

CITY OF OAKLAND
Agenda Report

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2007 SEP -6 PM 12:17

TO: Office of the City Administrator
ATTN: Deborah Ederly
FROM: Community and Economic Development Agency
DATE: September 18, 2007

RE: **A Report And Resolutions Approving A Final Map For Tract 7763 And A Subdivision Improvement Agreement With KG Partners LP For Deferred Construction Of Public Infrastructure Improvements At 5920 San Pablo Avenue**

SUMMARY

Two resolutions have been prepared approving:

- A Final Map for Tract No. 7763 by the developer, KG Partners LP, a California limited partnership (no. 200518600009), for a nine (9) lot subdivision with public access and utility easements.
- A Subdivision Improvement Agreement (SIA) with the developer for deferred construction of on-site public access and utility improvements.

The Planning Commission approved the land use entitlements (CDV06140) and the tentative map (TTM 7763) for the subdivision on July 19, 2006. The City Engineer has determined that the Final Map is in substantial compliance with the approved tentative map. Approval of the Final Map will be a ministerial action by the City Council.

FISCAL IMPACT

Staff costs for processing the Final Map have been covered by previously collected fees set by the Master Fee Schedule and paid by the property owner. The revenue has been deposited in the Development Service Fund (2415), Engineering Services organization (88432), Tract Map account (45119), Engineering and Architectural Program (PS30).

The property owners will maintain new infrastructure improvements, including sanitary sewers and storm drains. The public utility companies will maintain water, natural gas, electricity, and telecommunication mains.

PROJECT DESCRIPTION

The "L shaped" parcel (APN 015-1336-011-02) is zoned R-40, Garden Apartment Residential, and is located on San Pablo Avenue and 60th Street. The parcel has an existing commercial building at 5920 San Pablo Avenue which will occupy one of the nine (9) lots. The remaining eight (8) parcels will be residential "mini lots" for single family dwellings which will be accessed from 60th Street.

The developer is dedicating a public access easement and a public utility easement to the City for the residential lots for emergency vehicles and undergrounded utilities (potable water, electric,

Item No. _____
City Council
September 18, 2007

gas, telecommunications). New on-site storm drain and sanitary sewer lines will be privately maintained by the homeowners' association.

The City Engineer has approved the plans and specifications prepared by the developer for construction of public and private infrastructure improvements (permit PX0700061), and the Fire Marshal has approved Ariane Court for fire apparatus access. The developer has provided surety bonding (150% of the estimated cost of construction) that guarantees the completion of the infrastructure improvements and payment of the contractors and suppliers and warrants the performance of the completed work and the maintenance by the developer for one year following acceptance by the City Engineer.

KEY ISSUES AND IMPACTS

Final Map

As set forth in California Government Code section 664474.1 (Subdivision Map Act), approval of the Final Map is an administrative, ministerial, and mandatory action by the City Council once the City Engineer has determined that the Final Map conforms substantially with the approved Tentative Map and is technically correct (correct map size and medium, correct metes and bounds, required signatures, required statements, required licensures, etc.). The controlling discretionary action to be taken by the City relating to a subdivision map is at the Tentative Map stage. The purpose of submitting the Final Map to the City Council is to ensure that the Council and the public remain informed about development in the City.

Subdivision Improvement Agreement

Whenever public infrastructure improvements are made necessary by a proposed subdivision, state law and City ordinance require that the subdivider execute an SIA with the City (on mutually agreeable terms) as a condition for approving a Final Map. An SIA, with its accompanying security (bond, letter of credit, etc. for 150% of the construction cost), guarantees the completion of the infrastructure improvements within a prescribed period of time (typically not more than one year) and the payment of the contractors and suppliers and also warrants the performance of the completed work and maintenance by the developer over a determinate period of time (typically, not more than one year). Upon expiration of the warrantee period, the City assumes maintenance of the infrastructure.

The SIA allows the City Administrator to extend the completion date beyond one year for cause without return to Council. Issuance of the Certificate of Completion by the City Engineer will be contingent upon submittal by the contractor of all required employee pay records and supplier payment releases. The City Attorney has reviewed the SIA for form and legality and the surety bonds provided by the developer for conformance with the requirements of the state Subdivision Map Act (California Government Code section 664933 et seq.).

SUSTAINABLE OPPORTUNITIES

Economic

The subdivision will provide opportunities for home ownership for the Oakland community.

Environmental

Land use approvals and construction permits for new buildings require that the permittee comply with City ordinances and regional Best Management Practices for reducing nuisance noise, fugitive dust, construction debris disposal, and storm drainage pollutant runoff.

Social Equity

The proposed development will provide housing opportunities for the Oakland community.

DISABILITY AND SENIOR CITIZEN ACCESS

Construction of the access easement and sidewalk improvements on 60th Street will conform to City requirements for handicapped accessibility.

RECOMMENDATIONS

Adoption of the resolution approving the Final Map is a ministerial action of the City Council, which does not require an action by a Committee of the Council.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the Council accept this report for the subdivision of an existing parcel at 5920 San Pablo Avenue into nine (9) lots, and

- adopt the proposed resolution, as a ministerial action,
 - conditionally approving the Final Map for Tract 7763, and
 - accepting off-site public infrastructure improvements for maintenance by the City after expiration of the one-year construction warranty period; and
 - accepting on-site offers of dedication of the public access and public utility easements after acceptance by the City Engineer of the construction; and
 - authorizing the City Engineer and City Clerk to execute the Final Map, and
 - directing the City Clerk to file the executed Final Map with the Alameda County Clerk-Recorder for recordation, and
- adopt the proposed resolution, as a discretionary action,
 - conditionally approving the Subdivision Improvement Agreement with the property owner, CCCI Properties, and
 - authorizing the City Engineer to execute the Subdivision Improvement Agreement and to grant an extension of time, without returning to Council, to complete the work, and

- directing the City Clerk to file the executed Subdivision Improvement Agreement with the Alameda County Clerk-Recorder concurrently with the Final Map for simultaneous recordation.

Respectfully submitted,

Claudia Cappio for

CLAUDIA CAPPIO

Development Director

Community and Economic Development Agency

Prepared by:

Raymond M. Derania

Interim City Engineer

Building Services Division

APPROVED FOR FORWARDING
TO THE CITY COUNCIL

Deborah Edgerly
OFFICE OF THE CITY ADMINISTRATOR

FILED
OFFICE Introduced by: CLERK
OAKLAND

2007 SEP 6 PM 3:49
Councilmember

Approved for Form and Legality

F. Fair
City Attorney

OAKLAND CITY COUNCIL

Resolution No. _____ C.M.S.

**RESOLUTION APPROVING A SUBDIVISION IMPROVEMENT AGREEMENT
WITH KG PARTNERS LP FOR THE FINAL MAP FOR TRACT 7763 FOR
CONSTRUCTION OF PUBLIC INFRASTRUCTURE IMPROVEMENTS FOR
A SUBDIVISION AT 5920 SAN PABLO AVENUE**

WHEREAS, the developer of a residential dwelling project, KG Partners LP, a California limited partnership (no. 200518600009), is the Subdivider of a single parcel identified by the Alameda County Assessor as APN 015-1336-011-02, and by the Alameda County Clerk-Recorder as Tract 7763, and by the City of Oakland as 5920 San Pablo Avenue; and

WHEREAS, the Subdivider has acquired by purchase for valuable consideration the real property comprising Tract 7763; and

WHEREAS, the Subdivider has previously applied to the City of Oakland to subdivide the platted land into the nine (9) contiguous lots comprising Tract 7763; and

WHEREAS, the Planning Commission of the City of Oakland approved the environmental determination (categorically exempted) and land use entitlements (CDV06140) and the Tentative Map (TTM 7763) for the subdivision on July 19, 2006, which proposed the subdivision of the single parcel into eight (8) developable "mini lots" fronting on 60th Street with irrevocable offers of dedication of coterminous easements for public access and public utilities for the construction of single-family dwellings and an additional ninth (9th) lot fronting on San Pablo Avenue which will be occupied by an existing non-residential building; and

WHEREAS, the Secretary of the Planning Commission of the City of Oakland has certified to the Council of the City of Oakland that the Planning Commission approved the Tentative Map for Tract 7763, upon which the Final Map for Tract 7763 is based; and

WHEREAS, the City Engineer of the City of Oakland has determined that

- the Final Map for Tract 7763, attached hereto as Exhibit A, is substantially the same as the Tentative Map approved by the Planning Commission, and
- the Final Map for Tract 7763 complies in all manners with the provisions of the California Government Code (Section 66400, et seq. - Subdivision Map Act), and the City of Oakland's local ordinance (Municipal Code Title 16 - Subdivisions); and

WHEREAS, the City Engineer has further determined that the Final Map is technically correct and accurately delineates the metes and bounds for the proposed nine (9) lots and the proposed on-site public and private easements, the limits of which have been established by field survey and can be re-established from the monuments, property corners, radii, bearings, and distances shown on the Final Map for Tract 7763; and

WHEREAS, the Subdivider has employed a competent and qualified design professional, who is licensed by the State of California to practice civil engineering, to prepare plans and specifications for the construction of required surface and subsurface public infrastructure improvements within the proposed on-site public easements; and

WHEREAS, the City Engineer has approved infrastructure permit no. PX0700061 and the Subdividers' plans and specifications for construction of the required public infrastructure improvements, included by reference with Exhibit B; and

WHEREAS, at the time of approval of the Final Map by the Council of the City of Oakland, the Subdivider will not have commenced nor competed construction of the required public infrastructure improvements, and consequently the City Engineer will not have approved the construction of nor issued a Certificate of Completion for the required improvements; and

WHEREAS, pursuant to Government Code section 66462 and Municipal Code section 16.20.100, the Subdivider may record a Final Map before completing construction of required public infrastructure improvements by entering into an agreement with the City giving assurance that the required improvements will be completed within a determinate period of time; and

WHEREAS, pursuant to Government Code section 66462 and Municipal Code section 16.20.100 as a condition precedent to approval of the Final Map, the Subdivider has executed a Subdivision Improvement Agreement, attached hereto as Exhibit B, assuring the timely construction, unconditional warrantee, and prescribed maintenance of all required public infrastructure improvements; and

WHEREAS, pursuant to Government Code section 66499 et seq. and Municipal Code section 16.20.100, the Subdivider has deposited securities in the form of surety bonds, included by reference with Exhibit A, and in sufficient amounts, as estimated by the City Engineer, to secure the Subdivider's performance under Exhibit B as a:

- guarantee that the required public infrastructure improvements will be constructed in accordance with the approved plans and specifications, and as a
- guarantee that the contractor and his subcontractors and all persons renting equipment or furnishing labor and materials will receive full payment, and as a
- warrantee that the required public infrastructure improvements will perform as designed and intended, and as a
- guarantee that the Subdivider will maintain the required public infrastructure improvements for the duration prescribed Subdivision Improvement Agreement; and

WHEREAS, that upon City Attorney's approval for form and legal sufficiency of the Subdivision Improvement Agreement and the surety bonds, the City Administrator is authorized to execute the Subdivision Improvement Agreement on behalf of the City of Oakland; and

WHEREAS, the requirements of the California Environmental Quality Act (CEQA) have been complied with and the project was determined to be categorically exempt under Section 15332 of the CEQA Guidelines; and the approval of a final map is ministerial and exempt from CEQA, now, therefore, be it

RESOLVED: That the Subdivision Improvement Agreement with KG Partners LP for the Final Map for Tract 7763 is hereby conditionally approved; and be it

FURTHER RESOLVED: That the City Attorney's review and approval of the Agreement and the surety bonds securing the Subdivider's performance under the Agreement shall be obtained prior to execution of the Agreement by the City Engineer on behalf of the City of Oakland; and be it

FURTHER RESOLVED: That the City Clerk is hereby directed to file the executed Subdivision Improvement Agreement concurrently with the fully endorsed Final Map for Tract 7763 for simultaneous recordation by the Alameda County Clerk-Recorder; and be it

FURTHER RESOLVED: That upon recommendation of the City Engineer, the City Administrator is further authorized, without returning to City Council, to extend the time period designated in the Subdivision Improvement Agreement for completion of the public infrastructure improvements upon demonstration of good cause by the Subdivider, as determined by the City Administrator at his or her sole discretion.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2007

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and
PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LATONDA SIMMONS

City Clerk and Clerk of the Council
of the City of Oakland, California

FURTHER RESOLVED: That private maintenance of the required public and private infrastructure improvements shall remain the responsibility in perpetuity of the property owners of Tract 7763 and their homeowners' association, both severally and jointly, and their representatives, agents, heirs, successors, and assigns.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, **2007**

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and
PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LATONDA SIMMONS

City Clerk and Clerk of the Council
of the City of Oakland, California

GRAPHIC SCALE



(IN FEET)
1 Inch = 20 Ft.



OWNER:
KC PARTNERS LP
4 COMMOORE DRIVE, D-433
EMERYVILLE, CA 94808

BASIS OF BEARINGS:
NORTHERN RIGHT OF WAY LINE
OF 59TH STREET TAKEN AS
N78°48'00" W AS SHOWN ON
ASSESSOR'S MAP NO. 15,
PAGE 1336.

NOTES:
RIGHT OF WAY LINE OF BOTH ST.
ESTABLISHED BY CURB SPLIT.

TOTAL AREA = 28,269± SQ. FT.

LEGEND	
	FOUND CITY MONUMENT
	SET REBAR & CAP L.S. 7170
	SET P.M. & T&E L.S. 3175
	PARCEL MAP BOUNDARY LINE
	ORIGINAL LOT LINE
	E LINE
	P.A.U.E. PUBLIC ACCESS AND UTILITY EASEMENT

SEISMIC HAZARD NOTE:
THIS REAL PROPERTY LIES WITHIN THE FOLLOWING HAZARDOUS AREA:
A SEISMIC HAZARD ZONE-LIQUEFACTION ZONE PURSUANT TO SECTION
2586 OF THE PUBLIC RESOURCES CODE. THESE HAZARDS MAY LIMIT
YOUR ABILITY TO DEVELOP THE REAL PROPERTY, TO OBTAIN INSURANCE,
OR TO RECEIVE ASSISTANCE AFTER A DISASTER. THE MAPS ON WHICH
THESE DISCLOSURES ARE BASED ESTIMATE WHERE NATURAL DISASTERS
EXIST. THEY ARE NOT DEFINITIVE INDICATORS OF WHETHER OR NOT A
PROPERTY WILL BE AFFECTED BY A NATURAL DISASTER, TRANSFERABLES
AND TRANSFEREES MAY WISH TO OBTAIN PROFESSIONAL ADVICE REGARDING
THESE HAZARDS AND OTHER HAZARDS THAT MAY AFFECT THE PROPERTY.

TRACT MAP 7763

LOTS 3, 4, 13 AND A PORTION
OF LOTS 7 AND 14, BLOCK 6,
MAP OF THE
BUTLER TRACT (10 M. 3)
OAKLAND, ALAMEDA COUNTY,
CALIFORNIA
AUGUST, 2007 SCALE 1" = 20'
SCALE: 1" = 20'
BAY AREA LAND
SURVEYING INC.

1828 BONITA ROAD
RICHMOND, CA 94806
(510) 232-3095

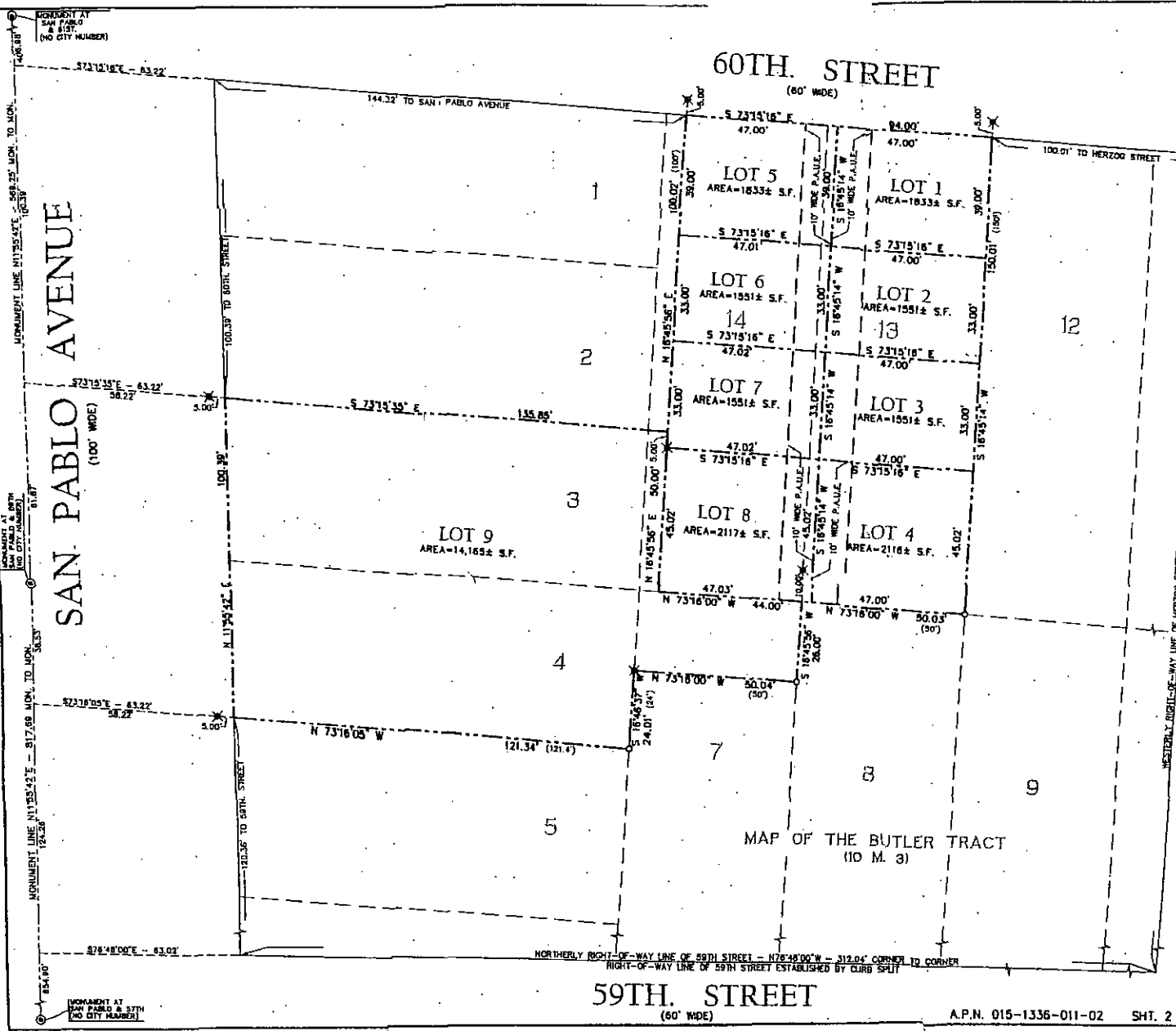
60TH STREET (80' WIDE)

HERZOG STREET (60' WIDE)

SAN PABLO AVENUE (100' WIDE)

59TH STREET (60' WIDE)

MAP OF THE BUTLER TRACT
(10 M. 3)



NORTHERLY RIGHT-OF-WAY LINE OF 59TH STREET - N78°48'00" W - 312.04' CORNER TO CORNER
RIGHT-OF-WAY LINE OF 59TH STREET ESTABLISHED BY CURB SPLIT

WESTERLY RIGHT-OF-WAY LINE OF HERZOG STREET - S78°42'48" W - 300.71' CORNER TO CORNER
RIGHT-OF-WAY LINE OF HERZOG STREET ESTABLISHED BY CURB SPLIT

recording requested by:

CITY OF OAKLAND

when recorded mail to:

City of Oakland
CEDA - Building Services
Dalziel Administration Building
250 Ogawa Plaza - 2nd Floor
Oakland, CA 94612
Attn: City Engineer

EXHIBIT B

----- space above for Recorder's use only -----

APPROVED FOR FORM AND LEGALITY

CITY ATTORNEY

SUBDIVISION IMPROVEMENT AGREEMENT

Deferred Construction of Public Infrastructure Improvements

5920 San Pablo Avenue

Final Map - No. 7763

This Agreement is between **KG Partners LP**, a California limited partnership (no. 200518600009), and its successors or assigns, affiliated companies or corporations, parent companies or corporations, or partners, and the **City of Oakland (CITY)**, a California municipal corporation.

RECITALS

The DEVELOPER is the owner in fee title and subdivider of single parcel located within the corporate limits of the CITY, which is identified by the Alameda County Assessor as parcel number 015-1336-011-02 and by the CITY as 5920 San Pablo Avenue, who has presented a proposed Final Map, which is identified by the Alameda County Recorder as No. 77, to the Council of the CITY that proposes a voluntary merger of the previously subdivided lots of this platted land and its re-subdivision as nine (9) developable lots.

As a condition precedent to the approval of the proposed Final Map, the CITY requires the irrevocable dedication of public right-of-way and public easements shown on the map. In addition, the CITY requires the construction of public infrastructure improvements off-site in the CITY right-of-way and on-site in dedicated right-of-way and easements that customarily includes grading, paving, striping and lettering, curbs, gutters and sidewalks, trees, landscaping and irrigation, retaining walls, storm drains and sanitary sewers, street name and public transportation signs, survey monuments, electricity, communication, water, and natural gas utility mains and branch piping and wiring, fire hydrants, street light electroliers, traffic control and curb parking signs, signals and meters, and all appurtenances thereto.

The DEVELOPER has asked the CITY and local public utility companies to accept the permanent maintenance of the required public infrastructure improvements shown on the construction plans accompanying permit number PX 0700061, attached hereto.

Construction of the required public infrastructure improvements, however, has not commenced nor been accepted by the CITY. Consequently and in consideration of the approval of the proposed Final Map and acceptance of the irrevocable offers of dedication of public right-of-way and easements and acceptance of the permanent maintenance of the required public infrastructure improvements, the parties desire to establish an Agreement binding the DEVELOPER to complete the required improvements within the time duration set forth in paragraph 4 below.

THEREFORE, it is agreed as follows:

1. Approval of Parcel Map

Approval of the proposed Final Map No. 7763 by the CITY shall be conditioned upon recordation of this Agreement with the Alameda County Recorder, as well as DEVELOPER's satisfactory performance of its obligations specified in this Agreement, as determined by the CITY.

2. Construction of Improvements

The DEVELOPER shall construct all required off-site and on-site public infrastructure improvements in strict accordance with all permits, specifications, plans and applicable CITY standards and performance criteria as specified in *Exhibit A* and set forth below in paragraph 3, Special Conditions.

3. Special Conditions

The DEVELOPER shall comply with the special conditions as follows:

A. Public infrastructure improvements shall conform with the performance criteria specified in *Oakland Municipal Code Chapter 16.16 - Design Standards and in Standard Details for Public Works Construction 2002 Edition and Standard Specifications for Public Works Construction 2002 Edition.*

B. The time duration for the completion of required public infrastructure improvements, as set forth in paragraph 4 below, shall include allowance for construction workday delays attributable to consecutive and intermittent inclement weather, as has been recorded by the United States Weather Bureau for the CITY and surrounding area and seasonally averaged for the previous ten years.

C. Hours, days, and months of operation and control of public nuisance conditions for the construction of required public infrastructure improvements shall conform with the requirements of all CITY Conditions of Approval for the project and the Oakland Municipal Code, including section 15.04.780 and subsections 3304.6 and 3304.11. No work shall be performed on Saturdays or Sundays or holidays nor commence before 8:00 am local time nor be performed after 5:00 pm local time without the written authorization of the City Engineer.

D. Performance standards for the construction of required public infrastructure improvements shall comply with the requirements of Oakland Municipal Code chapter 17.120 and with regional, state, and federal regulations for "Best Management Practices" for erosion and sedimentation control.

E. In order to safeguard life, public and private property, and to ensure that the work will be carried out in an orderly manner in conformance with all regulations and without creating a public nuisance, the City Engineer may add to, remove, or change these Special Conditions from time to time during the duration of the permit as he or she deems reasonably necessary.

4. Completion of Improvements

A. All construction of required public infrastructure improvements shall be completed by the DEVELOPER within one (1) year of the date of recordation of this Agreement, except those required

improvements for which another completion date may have been set forth above in paragraph 3, Special Conditions. Construction shall not be deemed complete until the public infrastructure permit has been finalized and an unconditional Certificate of Completion has been issued by the City Engineer.

B. The City Administrator may extend the time for completion of the required public infrastructure improvements. Upon consultation with the City Engineer, the City Administrator shall be the sole and final judge as to whether or not good cause has been shown to entitle the DEVELOPER to an extension under this paragraph 4B.

C. An extension may be granted without notice to the DEVELOPER's surety, and extensions so granted shall not relieve the surety's liability on any of the bonds required by this Agreement.

D. In the event that an extension is granted, DEVELOPER agrees to promptly extend the term of all surety bonds securing its performance under this Agreement, and/or provide additional bonds or other surety acceptable to the CITY. All such bonds and/or other surety are subject to review and approval by the City Attorney for legal sufficiency, and if no bonds or other surety acceptable to the City Attorney are provided to secure DEVELOPER's performance, the extension shall be void.

5. Acceptance of Dedications and Ownership of Improvements

Upon final approval of the public infrastructure improvement permit and unconditional issuance of a Certificate of Completion, all irrevocable offers of dedication of public rights-of-way and public easements will be accepted by the CITY, and all improvements required by this Agreement shall become the sole property of the CITY. The CITY will subsequently accept the permanent maintenance of these improvements as set forth below in paragraphs 7, Maintenance, and 8, Guarantee and Warrantee.

6. Responsibility for Dedications and Improvements

Until the Certificate of Completion is unconditionally issued, the DEVELOPER shall give good and adequate warning to the public of each and every defective or dangerous condition existing or arising within all public right-of-way and public easements offered for dedication and shall adequately protect the public from said unsafe conditions. Warning to and protection of the public shall remain the sole responsibility and expense of the DEVELOPER until such time as the Certificate of Completion is unconditionally issued.

7. Maintenance of Improvements

Until one (1) year has elapsed following unconditional issuance of the Certificate of Completion, the DEVELOPER shall maintain the construction of the required public infrastructure improvements and shall immediately perform or cause to be performed at its sole expense all necessary repairs, replacements, additions, or other corrective actions.

8. Guarantee of Workmanship and Warranty of Equipment, Materials, and Expertise

Until one (1) year has elapsed following the unconditional issuance of the Certificate of Completion, the DEVELOPER warrants that the required public infrastructure improvements, including the equipment and materials provided for the required improvements, are and will be free from defects and guarantees that the construction of the required improvements is and will be free from deficiencies and that the required improvements will perform satisfactorily in accordance with the specifications, plans and applicable CITY standards and performance criteria as specified in *Exhibit A* and set forth above in paragraph 3, Special Conditions. DEVELOPER further warrants that its design professionals are competent, that their analyses are adequate, and that their designs will meet or exceed the applicable CITY standards and performance criteria as specified in *Exhibit A* and set forth above in paragraph 3, Special Conditions.

If at any time before the expiration of the guarantee and warrantee period specified herein said designs prove to be inadequate in any respect, as determined by the City Engineer, the DEVELOPER shall make changes at its sole expense necessary to assure conformance with said standards and criteria.

9. Inspection of Construction

Inspection of the construction and equipment and materials, or approval of the construction and equipment and materials inspected, or statement by any officer, agent, or employee of the CITY indicating the construction and equipment and materials, or any part thereof, comply with the requirements and conditions of this Agreement, or acceptance of the whole or any part of the construction and materials, or payments thereof, or any combinations, or any combination, or all of these acts shall not relieve the DEVELOPER of its obligation to fulfill this Agreement as prescribed herein; nor shall the CITY be thereby estopped from bringing any action for damages arising from the failure of the DEVELOPER to comply with any of the requirements and conditions of this Agreement.

10. Payment of Fees and Penalties and Accrued Interest

Prior to issuance of the Certificate of Completion and prior to acceptance by the CITY of the on-site and off-site required public infrastructure improvements for permanent maintenance, the DEVELOPER shall pay all fees and penalties and accrued interest to the CITY and other Public Agencies that remain unpaid. Interest on amounts owed to the CITY shall accrue at the rates set forth in its Master Fee Schedule and from date that the fees and penalties are assessed and shall continue until full payment is received, whether or not any conditions of this Agreement are extended or modified.

11. Reversion to Acreage

If the DEVELOPER fails to perform its obligations under this Agreement, DEVELOPER, as the subdivider, consents to the reversion to acreage of the land which is the subject to this Agreement pursuant to Government Code section 66499.16 and to bear all applicable costs.

12. Property Acquisition

If the DEVELOPER is unable to acquire property required for the construction of required improvements, the DEVELOPER agrees to execute the standard CITY Contract for Real Property Acquisition to provide for acquisition through eminent domain.

13. Security

The DEVELOPER shall present to the CITY surety bonds, in a form satisfactory to the City Attorney, issued by a corporate surety authorized to issue said security in the State of California as follows:

A. Before execution of this Agreement, the following securities shall be presented:

1. Faithful Performance Bond in a face amount not less than \$ _____, which is the full amount (one-hundred percent) of the City Engineer's total estimated cost for constructing the on-site and off-site public infrastructure improvements, to secure faithful performance of this Agreement by the DEVELOPER; and

2. Labor and Materials Bond in a face amount not less \$ _____, which is one-half (fifty percent) of the full amount of the City Engineer's total estimated cost for constructing the required on-site and off-site public infrastructure improvements, to secure payment by the DEVELOPER to its contractor, subcontractors, laborers and materialmen furnishing supervision, labor, materials and equipment engaged in the construction pursuant to this Agreement, and further to secure payment as required by the Unemployment Insurance Act.

B. Before final approval of the public infrastructure permit, the following security shall be presented:

Maintenance Bond in a face amount not less than \$ _____, which is one-quarter (twenty-five percent) of the full amount of the City Engineer's total estimated cost for constructing the required on-site and off-site public infrastructure improvements, to secure faithful performance of paragraphs 7, Maintenance, and 8, Guarantee and Warranty, above. This Maintenance Bond shall remain in effect for not less than one year after the date of the unconditional issuance of the Certificate of Completion of the required public infrastructure improvements.

C. Pursuant to Government Code section 66499.4, the obligation guaranteed by each bond shall include costs and reasonable expenses and fees, including reasonable attorney fees and expert witness fees, incurred by the CITY in successfully enforcing said obligations and shall be in addition to the face amount of each bond.

14. Alternative Security

In lieu of the bonds required above in paragraph 13, Security, alternative securities may be substituted by the DEVELOPER in a form provided by Government Code Section 66499.3 and subject to review and approval by the City Attorney.

15. Hold Harmless

The DEVELOPER shall indemnify, defend and hold the CITY and its officers, officials, employees, representatives, agents and volunteers harmless against any and all claims, injuries, damages, losses and suits, including attorney fees and expert witness fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages directly caused by the sole gross negligence of the CITY and its officers, official, employees, representative, agents, or volunteers.

Not in limitation of the foregoing, DEVELOPER further agrees to defend and protect the CITY and its officers, officials, employees, representatives, agents and volunteers from all liability or claim because of, or arising out of the use of any patent or patented articles in the construction of said improvements.

DEVELOPER waives all claims and recourse against the CITY, including, without limitation, the right of contribution for loss or damage to persons or property, arising from, growing out of, or in any way connected with or incident to the work performed or failed to be performed under this Agreement, except claims and recourse arising directly from the sole gross negligence of the CITY and its officers, officials, employees, representatives, agents or volunteers.

This indemnification clause shall survive the termination of this Agreement.

16. Insurance Required

DEVELOPER shall procure and maintain for the duration of the Agreement sufficient insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the DEVELOPER and his agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001).

2. Insurance Services Office form number CA 0001 covering Automobile Liability, code 1 "any auto."

3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

B. Minimum Limits of Insurance

1. **Commercial General Liability** insurance, including but not limited to, Bodily Injury, Broad Form Property Damage, Contractual Liability, Operations, Products and Completed Operations, Owners and Contractors Protective Liability, and/or XCU coverage, when applicable, with limits not less than **\$2,000,000.00** combined single limit per occurrence for bodily damage, personal injury and property damage. The limits of insurance shall apply separately to this project or location. The policy shall contain a severability of interest clause or cross liability clause or the equivalent thereof.

2. **Automobile Liability** with limits not less than **\$2,000,000.00** combined single limit per accident for bodily injury and property damage.

3. **Worker's Compensation** insurance as required by the laws of the State of California with limits not less than **\$1,000,000.00**. Statutory coverage may include Employers Liability coverage. The Contractor certifies that he/she is aware of the provisions of section 3700 of the California Labor Code, which requires every employer to provide Workers' Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code. The Contractor shall comply with the provisions of section 3700 of the California Labor Code before commencing performance of the work under this Agreement and thereafter as required by that code.

4. **Professional Liability/ Errors/ Omissions** insurance with limits not less than **\$1,000,000.00**.

5. **Builders' Risk/ Course of Construction** insurance covering all risks of loss with limits not less than the completed value of the project with no coinsurance penalty provisions. The CITY shall be named as loss payee under this policy. The insurer shall waive all rights of subrogation against the CITY.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the option of the CITY, either

1. the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the CITY and its officers, officials, employees, agents and volunteers, or

2. the DEVELOPER shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Other Insurance Provisions

The general and automobile liability policies shall contain, or be endorsed to contain, the following provisions:

1. The CITY and its officers, officials, employees, representatives, agents and volunteers are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of the DEVELOPER, products and completed operations of the DEVELOPER; premises owned, occupied or used by the DEVELOPER, or automobiles owned, leased, hired or borrowed by the DEVELOPER. The coverage shall contain no special limitations on the scope of protection afforded to the CITY and its officers, officials, employees, representatives, agents, and volunteers.

2. The DEVELOPER's insurance coverage shall be primary insurance as respects the CITY and its officers, officials, representatives, employees, agents and volunteers. Any insurance or self-insurance maintained by the CITY and its officers, officials, employees, representatives, agents, or volunteers shall be excess of the DEVELOPER's insurance and shall not contribute with it.

3. Any failure to comply with reporting provisions of the policies required by this clause, including breaches of warranties, shall not affect coverage provided to the CITY and its officers, officials, employees, representatives, agents, and volunteers.

4. The DEVELOPER's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. The insurer shall agree to waive all rights of subrogation against the CITY and its officers, officials, employees, representatives, agents, and volunteers for losses arising from work performed by the DEVELOPER for the CITY.

6. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except for non-payment of premium, by either party, except after thirty (30) days prior written notice by certified mail, return receipt required, has been given to the CITY. In the event the policy is canceled for non-payment of premium, ten (10) days prior written notice, as stated above, will be given.

E. Acceptability of Insurers

If the insurance company providing coverage is licensed to do business in the State of California, the company shall have an A.M. Best rating of not less than A:VII. However, if the insurance company is not licensed to do business in California, the A.M. Best rating shall not be less than A+:X. The maximum A.M. Best rating is A++:XV.

F. Verification of Coverage

DEVELOPER shall furnish the CITY with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Commercial General Liability endorsement shall be a form CG 20 10 (or proprietary equivalent), attached to this form. The Commercial Automobile Liability endorsement shall be a form CA 20 48, attached to this document. All certificates and endorsements are to be received and approved by the CITY before work commences. The CITY reserves the right to require complete, certified copies of all required insurance policies, at any time. A STATEMENT OF ADDITIONAL INSURED ENDORSEMENT ON THE ACORD INSURANCE CERTIFICATE FORM IS INSUFFICIENT AND WILL BE REJECTED AS PROOF OF THE ADDITIONAL INSURED REQUIREMENT.

G. Subcontractors

The DEVELOPER shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

17. Participation in Benefit Districts

The DEVELOPER shall participate in all Benefit Districts formed by the CITY prior to the execution of this Agreement and shall pay the prorated fee due the CITY under the terms of Benefit District or Districts as applied to the real property covered by this Agreement.

18. Actions to Enforce

If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to costs and reasonable expenses and fees, including reasonable attorneys' fees and expert witness fees, in addition to any other relief to which they may be entitled.

19. Beneficiaries, Heirs, Assigns, and Successors In Interest

This Agreement pertains to and runs with the real property included within Final Map No. 7763, which land is expressly agreed to benefit from the privileges granted to DEVELOPER under this Agreement, and binds the beneficiaries, heirs, assigns, and successors in interest of the DEVELOPER.

20. Attachments

The following documents are incorporated into this Agreement by reference:

CITY permits: Public Infrastructure	<u>PX 0700061</u>	Planning	<u>CDV 06140</u>
Creek Protection	<u>NA</u>	Building	
Grading		Encroachment	<u>NA</u>

Resolutions: _____ CMS _____ CMS

Subdivision: Final Map No. 7763 City Engineer's Estimate of the Cost of Improvements

Insurer: _____ Surety: _____

21. Constructive Notice

DEVELOPER shall cause this Agreement to be filed for recordation in the Official Records of Alameda County within five (5) calendar days following execution by the CITY.

22. Effective Date

This Agreement shall not become effective until recorded as provided in paragraph 21 above.

IN WITNESS WHEREOF, the DEVELOPER has caused its name to be subscribed hereto, and the CITY has caused its name to be affixed hereto on the dates indicated below.

KG Properties LP *

CITY OF OAKLAND

signature

signature

name

RAYMOND M. DERANIA
City Engineer

title

date

date

* notarized acknowledgment required

FILED
OFFICE OF THE CITY CLERK
OAKLAND
Introduced by

2007 SEP -6 PM 3:49
Councilmember

Approved for Form and Legality

F. Filley

City Attorney

OAKLAND CITY COUNCIL

Resolution No. _____ C.M.S.

RESOLUTION CONDITIONALLY APPROVING THE FINAL MAP FOR TRACT 7763 FOR A SUBDIVISION AT 5920 SAN PABLO AVENUE AND CONDITIONALLY ACCEPTING IRREVOCABLE OFFERS OF DEDICATION FOR ON-SITE PUBLIC ACCESS AND PUBLIC UTILITY EASEMENTS

WHEREAS, the developer of a residential dwelling project, KG Partners LP, a California limited partnership (no. 200518600009), is the Subdivider of a single parcel identified by the Alameda County Assessor as APN 015-1336-011-02, and by the Alameda County Clerk-Recorder as Tract 7763, and by the City of Oakland as 5920 San Pablo Avenue; and

WHEREAS, the Subdivider has acquired by purchase for valuable consideration the real property comprising Tract 7763; and

WHEREAS, the Subdivider has previously applied to the City of Oakland to subdivide the platted land into the nine (9) contiguous lots comprising Tract 7763; and

WHEREAS, the Planning Commission of the City of Oakland approved the environmental determination (categorically exempted) and land use entitlements (CDV06140) and the Tentative Map (TTM 7763) for the subdivision on July 19, 2006, which proposed the subdivision of the single parcel into eight (8) developable "mini lots" fronting on 60th Street with irrevocable offers of dedication of coterminous easements for public access and public utilities for the construction of single-family dwellings and an additional ninth (9th) lot fronting on San Pablo Avenue which will be occupied by an existing non-residential building; and

WHEREAS, the Secretary of the Planning Commission of the City of Oakland has certified to the Council of the City of Oakland that the Planning Commission approved the Tentative Map for Tract 7763, upon which the Final Map for Tract 7763 is based; and

WHEREAS, the City Engineer of the City of Oakland has determined that

- the Final Map for Tract 7763, attached hereto as Exhibit A, is substantially the same as the Tentative Map approved by the Planning Commission, and
- the Final Map for Tract 7763 complies in all manners with the provisions of the California Government Code (Section 66400, et seq. - Subdivision Map Act), and the City of Oakland's local ordinance (Municipal Code Title 16 - Subdivisions); and

WHEREAS, the City Engineer has further determined that the Final Map is technically correct and accurately delineates the metes and bounds for the proposed nine (9) lots and the proposed on-site public and private easements, the limits of which have been established by field survey and can be re-established from the monuments, property corners, radii, bearings, and distances shown on the Final Map for Tract 7763; and

WHEREAS, the Subdivider has employed a competent and qualified design professional, who is licensed by the State of California to practice civil engineering, to prepare plans and specifications for the construction of required surface and subsurface public infrastructure improvements within the proposed on-site public easements; and

WHEREAS, the City Engineer has approved infrastructure permit no. PX0700061 and the Subdividers' plans and specifications for construction of the required public infrastructure improvements, included by reference with Exhibit B; and

WHEREAS, at the time of approval of the Final Map by the Council of the City of Oakland, the Subdivider will not have commenced nor competed construction of the required public infrastructure improvements, and consequently the City Engineer will not have approved the construction of nor issued a Certificate of Completion for the required improvements; and

WHEREAS, pursuant to Government Code section 66462 and Municipal Code section 16.20.100, the Subdivider may record a Final Map before completing construction of required public infrastructure improvements by entering into an agreement with the City giving assurance that the required improvements will be completed within a determinate period of time; and

WHEREAS, pursuant to Government Code section 66462 and Municipal Code section 16.20.100 as a condition precedent to approval of the Final Map, the Subdivider has executed a Subdivision Improvement Agreement, attached hereto as Exhibit B, assuring the timely construction, unconditional warrantee, and prescribed maintenance of all required public infrastructure improvements; and

WHEREAS, pursuant to Government Code section 66499 et seq. and Municipal Code section 16.20.100, the Subdivider has deposited securities in the form of surety bonds, included by reference with Exhibit A, and in sufficient amounts, as estimated by the City Engineer, to secure the Subdivider's performance under Exhibit B as a:

- guarantee that the required public infrastructure improvements will be constructed in accordance with the approved plans and specifications, and as a
- guarantee that the contractor and his subcontractors and all persons renting equipment or furnishing labor and materials will receive full payment, and as a
- warrantee that the required public infrastructure improvements will perform as designed and intended, and as a
- guarantee that the Subdivider will maintain the required public infrastructure improvements for the duration prescribed Subdivision Improvement Agreement; and

WHEREAS, that upon City Attorney's approval for form and legal sufficiency of the Subdivision Improvement Agreement and the surety bonds, the City Administrator is authorized to execute the Subdivision Improvement Agreement on behalf of the City of Oakland; and

WHEREAS, the requirements of the California Environmental Quality Act (CEQA) have been complied with and the project was determined to be categorically exempt under Section 15332 of the CEQA Guidelines; and the approval of a final map is ministerial and exempt from CEQA, now, therefore, be it

RESOLVED: That the Final Map for Tract 7763 is hereby approved; and be it

FURTHER RESOLVED: That the approval of the Final Map for Tract 7763 is hereby conditioned upon the performance by the Subdivider of its obligations to construct, warrant, and maintain required public infrastructure improvements, as set forth in the Subdivision Improvement Agreement; and be it

FURTHER RESOLVED: That the City Engineer of the City of Oakland is hereby authorized to endorse the Final Map for Tract 7763; and be it

FURTHER RESOLVED: That the City Clerk of the City of Oakland is hereby authorized to endorse the Final Map for Tract 7763, upon its execution by the City Engineer, and directed to file the fully endorsed Final Map and the fully executed Subdivision Improvement Agreement concurrently with the Alameda County Clerk-Recorder for simultaneous recordation; and be it

FURTHER RESOLVED: That this Resolution shall become effective upon the recordation of the Final Map for Tract 7763 and the Subdivision Improvement Agreement; and be it

FURTHER RESOLVED: That upon issuance of a Certificate of Completion by the City Engineer for construction of the required public infrastructure improvements, the irrevocable offers of dedication of the on-site public access and public utility easements are hereby accepted by the City of Oakland; and be it

FURTHER RESOLVED: That upon expiration of the warrantee and maintenance period, as identified in the Subdivision Improvement Agreement, following the issuance of a Certificate of Completion by the City Engineer, the maintenance of newly constructed public infrastructure improvements is hereby accepted by the City of Oakland, excepting from said maintenance all off-site infrastructure improvements within the public right-of-way, including but not limited to sidewalks, curbs, gutters, trees and landscaping, irrigation, sanitary sewer piping, and storm water piping, that are identified in the California Streets and Highways Code and the Oakland Municipal Code to be the responsibility of the abutting property owner and also excepting from said maintenance all off-site and one-site infrastructure improvements that are otherwise regulated by California Public Utilities Commission, and also excepting from said maintenance all on-site infrastructure improvements within the real property that are associated with public access, including but not limited to roadway, sidewalks, curbs, gutters, trees and landscaping, and irrigation, and with sanitary sewer and storm water drainage; and be it

FURTHER RESOLVED: That private maintenance of the required public and private infrastructure improvements shall remain the responsibility in perpetuity of the property owners of Tract 7763 and their homeowners' association, both severally and jointly, and their representatives, agents, heirs, successors, and assigns.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, **2007**

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and
PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LATONDA SIMMONS

City Clerk and Clerk of the Council
of the City of Oakland, California

OWNER'S STATEMENT:

THE UNDERSIGNED HEREBY STATE THAT IT IS THE OWNER OF THE LAND DELINEATED AND EMBRACED WITHIN THE EXTERIOR BOUNDARY LINES ON THE HEREIN EMBODIED MAP ENTITLED "TRACT MAP 7763, CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA," THAT SAID OWNER ACQUIRED TITLE TO SAID LAND BY VIRTUE OF THE GRANT DEED RECORDED AUGUST 31, 2005 UNDER SERIES NO. 2005375443 IN THE OFFICIAL RECORDS OF ALAMEDA COUNTY, STATE OF CALIFORNIA; THAT HE CONSENTS TO THE PREPARATION AND FILING OF THIS MAP.

THE UNDERSIGNED ALSO HEREBY STATES THAT THE EXISTING BUILDING AT 8820 SAN PABLO AVENUE MAY NOT BE IN COMPLIANCE WITH THE 2001 CALIFORNIA BUILDING CODE. ANY FUTURE MODIFICATIONS TO WALLS, EAVE OVERHANGS AND ANY ALTERATION OR ADDITION OF OPENINGS ON SAID WALLS MAY NOT BE ALLOWED.

THE UNDERSIGNED OWNERS DO HEREBY IRREVOCABLY OFFER FOR DEDICATION TO THE CITY OF OAKLAND FOREVER THE AREA DESIGNATED "PUBLIC ACCESS AND UTILITY EASEMENT" (P.A.U.E.) WITH THE PUBLIC RIGHT OF INGRESS AND EGRESS UPON AND OVER SAID AREA OR STRIP OF LAND DELINEATED AND DEDICATED ON THIS MAP, ALSO WITH THE RIGHT TO CONSTRUCT, MAINTAIN, RECONSTRUCT AND REPAIR PUBLIC UTILITIES AND ALL THEIR APPURTENANCES THEREON, UNDER, ON AND OVER SAID AREA OR STRIP OF LAND. SAID AREA OR STRIP OF LAND IS TO BE KEPT OPEN AND FREE FROM BUILDINGS, VEHICLES AND STRUCTURES OF ANY KIND EXCEPT APPLICABLE UTILITY STRUCTURES AND APPURTENANCES, IRRIGATION SYSTEMS AND APPURTENANCES AND LAWN FENCES. THE MAINTENANCE OF SAID PUBLIC ACCESS AND UTILITY EASEMENT SHALL BE THE RESPONSIBILITY OF THE OWNERS OF LOTS 1 THROUGH 8 OF TRACT 7763.

KO PARTNERS LP
Lottie Rose
LOTTIE ROSE, GENERAL PARTNER
KO PARTNERS LP

David Rose
DAVID ROSE, GENERAL PARTNER
KO PARTNERS LP

OWNER'S ACKNOWLEDGEMENT:

STATE OF CALIFORNIA
COUNTY OF Alameda
ON 8/16/07 BEFORE ME, Eleanor A. Sterns
A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARED LOTTIE ROSE, PERSONALLY KNOWN TO ME (OR PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE), TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT SHE EXECUTED THE SAME IN HER AUTHORIZED CAPACITY, AND THAT BY HER SIGNATURE ON THE INSTRUMENT THE PERSON OR THE ENTITY UPON BEHALF OF WHICH THE PERSON ACTED, EXECUTED THE INSTRUMENT.

WITNESS MY HAND AND OFFICIAL SEAL
Shampa A. Patel
NOTARY PUBLIC
NAME: Eleanor A. Sterns

MY COMMISSION EXPIRES: 12/9/09 COMMISSION NUMBER: 1628105
PRINCIPAL COUNTY OF BUSINESS: Alameda

OWNER'S ACKNOWLEDGEMENT:

STATE OF CALIFORNIA
COUNTY OF Alameda
ON 8/16/07 BEFORE ME, Eleanor A. Sterns
A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARED DAVID ROSE, PERSONALLY KNOWN TO ME (OR PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE), TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME IN HIS AUTHORIZED CAPACITY, AND THAT BY HIS SIGNATURE ON THE INSTRUMENT THE PERSON OR THE ENTITY UPON BEHALF OF WHICH THE PERSON ACTED, EXECUTED THE INSTRUMENT.

WITNESS MY HAND AND OFFICIAL SEAL
Shampa A. Patel
NOTARY PUBLIC
NAME: Eleanor A. Sterns

MY COMMISSION EXPIRES: 12/9/09 COMMISSION NUMBER: 1628105
PRINCIPAL COUNTY OF BUSINESS: Alameda

CITY ENGINEER'S STATEMENT:

I, RAYMOND M. DERABA, INTERIM CITY ENGINEER, HAVING BEEN AUTHORIZED TO PERFORM THE FUNCTIONS OF THE CITY ENGINEER OF THE CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, FOR THE PURPOSE OF REVIEWING SUBDIVISION MAPS, DO HEREBY CERTIFY THAT I HAVE EXAMINED THE HEREIN EMBODIED TRACT MAP ENTITLED "TRACT MAP 7763, CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA;" THAT THE SUBDIVISION AS SHOWN UPON SAID TRACT MAP IS SUBSTANTIALLY THE SAME AS THAT APPEARING ON THE TENTATIVE MAP AND ANY APPROVED ALTERATIONS THEREOF; THAT SAID TRACT MAP COMPLIES WITH ALL PROVISIONS OF THE SUBDIVISION MAP ACT OF THE GOVERNMENT CODE AND THE LOCAL ORDINANCES APPLICABLE AT THE TIME OF THE TENTATIVE MAP; AND THAT I AM SATISFIED THAT THE TRACT MAP IS TECHNICALLY CORRECT.
THE OFFER OF DEDICATION TENDERED ON THE OWNERS' STATEMENT ON THE HEREIN EMBODIED MAP ENTITLED "TRACT 7763" IS HEREBY CONDITIONALLY ACCEPTED IN ACCORDANCE WITH SECTION 18-2413(C) OF THE OAKLAND MUNICIPAL CODE.
IN WITNESS WHEREOF, I HAVE HERETO SET MY HAND THIS _____ DAY OF _____, 2007.

Raymond M. Deraba
RAYMOND M. DERABA, R.C.E. NO. 57815
INTERIM CITY ENGINEER
CITY OF OAKLAND, ALAMEDA COUNTY
STATE OF CALIFORNIA
LICENSE EXPIRES 3/31/08

CITY CLERK'S STATEMENT:

I, THE UNDERSIGNED, LATONDA SIMMONS, CITY CLERK AND CLERK OF THE CITY COUNCIL OF THE CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DO HEREBY STATE THAT THIS MAP, CONSISTING OF 2 SHEETS AND ENTITLED "TRACT MAP 7763" WAS PRESENTED TO SAID COUNCIL, AS PROVIDED BY LAW AT A REGULAR MEETING HELD ON THE _____ DAY OF _____, 2006 AND THAT SAID COUNCIL DID THEREUPON APPROVE SAID MAP.
I HEREBY ACCEPT ON BEHALF OF THE CITY OF OAKLAND, THE AREAS DESIGNATED "10' WIDE PUBLIC ACCESS AND UTILITY EASEMENT" (P.A.U.E.) AS HEREIN DEDICATED IN ACCORDANCE WITH SECTION 18-12.080 OF THE OAKLAND MUNICIPAL CODE.
I FURTHER STATE THAT ALL AGREEMENTS AND SURETY AS REQUIRED BY LAW TO ACCOMPANY THE MAP HAD BEEN APPROVED BY THE CITY COUNCIL OF THE CITY OF OAKLAND AND ARE FILED IN MY OFFICE.
IN WITNESS WHEREOF, I HAVE HERETO SET MY HAND THIS _____ DAY OF _____, 2007.

Latonda Simmons
LATONDA SIMMONS, CITY CLERK AND CLERK OF THE COUNCIL
OF THE CITY OF OAKLAND, COUNTY OF ALAMEDA,
STATE OF CALIFORNIA

CITY PLANNING COMMISSION'S STATEMENT:

I HEREBY STATE THAT THE PLANNING COMMISSION OF THE CITY OF OAKLAND APPROVED ON JULY 18, 2006, THE VESTING TENTATIVE MAP OF TRACT 7763 UPON WHICH THIS FINAL MAP IS BASED.
DATED: _____

Gary K. Patton
GARY K. PATTON
SECRETARY OF THE PLANNING COMMISSION

SURVEYOR'S STATEMENT:

THE MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF KEITH NIMMER IN JANUARY OF 2006.
I HEREBY STATE THAT THIS TRACT MAP SUBSTANTIALLY CONFORMS TO THE APPROVED OR CONDITIONALLY APPROVED TENTATIVE MAP, IF ANY. I HEREBY STATE THAT THE MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED AND ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.



Michael J. Foster
MICHAEL J. FOSTER, L.S. 5170
EXPIRATION DATE: DECEMBER 31, 2007
DATE: 8-09-07

CLERK OF THE BOARD OF SUPERVISORS STATEMENT:

I, CRYSTAL HISHIDA ORATE, CLERK OF THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DO HEREBY STATE THAT CERTIFICATES HAVE BEEN FILED AND DEPOSITS HAVE BEEN MADE IN CONFORMANCE WITH THE REQUIREMENTS OF SECTIONS 88492 AND 88493 OF THE GOVERNMENT CODE OF THE STATE OF CALIFORNIA.
DATED: _____

Crystal Hishida Orate
CRYSTAL HISHIDA ORATE, CLERK OF THE BOARD
OF SUPERVISORS, COUNTY OF ALAMEDA, STATE OF
CALIFORNIA.
BY: _____
DEPUTY CLERK

RECORDER'S STATEMENT:

FILED THIS _____ DAY OF _____, 2007, AT _____ M. IN BOOK _____
OF PARCEL MAPS, AT PAGE _____ AT THE REQUEST OF _____
Patrick O'Connell
PATRICK O'CONNELL
COUNTY RECORDER
BY: _____
DEPUTY COUNTY RECORDER

TRACT MAP 7763
LOTS 3, 4, 13 AND A PORTION OF LOTS 7 AND 14,
BLOCK 5, MAP OF THE BUTLER TRACT (10 M. 3)
CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA
AUGUST, 2007
BAY AREA LAND SURVEYING INC.
1828 BONITA ROAD
RICHMOND, CALIFORNIA
94606
(510) 232-3085

EXHIBIT A

recording requested by:

CITY OF OAKLAND

when recorded mail to:

City of Oakland
CEDA - Building Services
Daiziel Administration Building
250 Ogawa Plaza - 2nd Floor
Oakland, CA 94612
Attn: City Engineer

EXHIBIT B

----- space above for Recorder's use only -----

APPROVED FOR FORM AND LEGALITY

CITY ATTORNEY

SUBDIVISION IMPROVEMENT AGREEMENT

Deferred Construction of Public Infrastructure Improvements

5920 San Pablo Avenue

Final Map - No. 7763

This Agreement is between **KG Partners LP**, a California limited partnership (no. 200518600009), and its successors or assigns, affiliated companies or corporations, parent companies or corporations, or partners, and the **City of Oakland (CITY)**, a California municipal corporation.

RECITALS

The DEVELOPER is the owner in fee title and subdivider of single parcel located within the corporate limits of the CITY, which is identified by the Alameda County Assessor as parcel number 015-1336-011-02 and by the CITY as 5920 San Pablo Avenue, who has presented a proposed Final Map, which is identified by the Alameda County Recorder as No. 77, to the Council of the CITY that proposes a voluntary merger of the previously subdivided lots of this platted land and its re-subdivision as nine (9) developable lots.

As a condition precedent to the approval of the proposed Final Map, the CITY requires the irrevocable dedication of public right-of-way and public easements shown on the map. In addition, the CITY requires the construction of public infrastructure improvements off-site in the CITY right-of-way and on-site in dedicated right-of-way and easements that customarily includes grading, paving, striping and lettering, curbs, gutters and sidewalks, trees, landscaping and irrigation, retaining walls, storm drains and sanitary sewers, street name and public transportation signs, survey monuments, electricity, communication, water, and natural gas utility mains and branch piping and wiring, fire hydrants, street light electroliers, traffic control and curb parking signs, signals and meters, and all appurtenances thereto.

The DEVELOPER has asked the CITY and local public utility companies to accept the permanent maintenance of the required public infrastructure improvements shown on the construction plans accompanying permit number PX 0700061, attached hereto.

Construction of the required public infrastructure improvements, however, has not commenced nor been accepted by the CITY. Consequently and in consideration of the approval of the proposed Final Map and acceptance of the irrevocable offers of dedication of public right-of-way and easements and acceptance of the permanent maintenance of the required public infrastructure improvements, the parties desire to establish an Agreement binding the DEVELOPER to complete the required improvements within the time duration set forth in paragraph 4 below.

THEREFORE, it is agreed as follows:

1. Approval of Parcel Map

Approval of the proposed Final Map No. 7763 by the CITY shall be conditioned upon recordation of this Agreement with the Alameda County Recorder, as well as DEVELOPER's satisfactory performance of its obligations specified in this Agreement, as determined by the CITY.

2. Construction of Improvements

The DEVELOPER shall construct all required off-site and on-site public infrastructure improvements in strict accordance with all permits, specifications, plans and applicable CITY standards and performance criteria as specified in *Exhibit A* and set forth below in paragraph 3, Special Conditions.

3. Special Conditions

The DEVELOPER shall comply with the special conditions as follows:

A. Public infrastructure improvements shall conform with the performance criteria specified in Oakland Municipal Code Chapter 16.16 - Design Standards and in Standard Details for Public Works Construction 2002 Edition and Standard Specifications for Public Works Construction 2002 Edition.

B. The time duration for the completion of required public infrastructure improvements, as set forth in paragraph 4 below, shall include allowance for construction workday delays attributable to consecutive and intermittent inclement weather, as has been recorded by the United States Weather Bureau for the CITY and surrounding area and seasonally averaged for the previous ten years.

C. Hours, days, and months of operation and control of public nuisance conditions for the construction of required public infrastructure improvements shall conform with the requirements of all CITY Conditions of Approval for the project and the Oakland Municipal Code, including section 15.04.780 and subsections 3304.6 and 3304.11. No work shall be performed on Saturdays or Sundays or holidays nor commence before 8:00 am local time nor be performed after 5:00 pm local time without the written authorization of the City Engineer.

D. Performance standards for the construction of required public infrastructure improvements shall comply with the requirements of Oakland Municipal Code chapter 17.120 and with regional, state, and federal regulations for "Best Management Practices" for erosion and sedimentation control.

E. In order to safeguard life, public and private property, and to ensure that the work will be carried out in an orderly manner in conformance with all regulations and without creating a public nuisance, the City Engineer may add to, remove, or change these Special Conditions from time to time during the duration of the permit as he or she deems reasonably necessary.

4. Completion of Improvements

A. All construction of required public infrastructure improvements shall be completed by the DEVELOPER within one (1) year of the date of recordation of this Agreement, except those required

improvements for which another completion date may have been set forth above in paragraph 3, Special Conditions. Construction shall not be deemed complete until the public infrastructure permit has been finalized and an unconditional Certificate of Completion has been issued by the City Engineer.

B. The City Administrator may extend the time for completion of the required public infrastructure improvements. Upon consultation with the City Engineer, the City Administrator shall be the sole and final judge as to whether or not good cause has been shown to entitle the DEVELOPER to an extension under this paragraph 4B.

C. An extension may be granted without notice to the DEVELOPER's surety, and extensions so granted shall not relieve the surety's liability on any of the bonds required by this Agreement.

D. In the event that an extension is granted, DEVELOPER agrees to promptly extend the term of all surety bonds securing its performance under this Agreement, and/or provide additional bonds or other surety acceptable to the CITY. All such bonds and/or other surety are subject to review and approval by the City Attorney for legal sufficiency, and if no bonds or other surety acceptable to the City Attorney are provided to secure DEVELOPER's performance, the extension shall be void.

5. Acceptance of Dedications and Ownership of Improvements

Upon final approval of the public infrastructure improvement permit and unconditional issuance of a Certificate of Completion, all irrevocable offers of dedication of public rights-of-way and public easements will be accepted by the CITY, and all improvements required by this Agreement shall become the sole property of the CITY. The CITY will subsequently accept the permanent maintenance of these improvements as set forth below in paragraphs 7, Maintenance, and 8, Guarantee and Warranty.

6. Responsibility for Dedications and Improvements

Until the Certificate of Completion is unconditionally issued, the DEVELOPER shall give good and adequate warning to the public of each and every defective or dangerous condition existing or arising within all public right-of-way and public easements offered for dedication and shall adequately protect the public from said unsafe conditions. Warning to and protection of the public shall remain the sole responsibility and expense of the DEVELOPER until such time as the Certificate of Completion is unconditionally issued.

7. Maintenance of Improvements

Until one (1) year has elapsed following unconditional issuance of the Certificate of Completion, the DEVELOPER shall maintain the construction of the required public infrastructure improvements and shall immediately perform or cause to be performed at its sole expense all necessary repairs, replacements, additions, or other corrective actions.

8. Guarantee of Workmanship and Warranty of Equipment, Materials, and Expertise

Until one (1) year has elapsed following the unconditional issuance of the Certificate of Completion, the DEVELOPER warrants that the required public infrastructure improvements, including the equipment and materials provided for the required improvements, are and will be free from defects and guarantees that the construction of the required improvements is and will be free from deficiencies and that the required improvements will perform satisfactorily in accordance with the specifications, plans and applicable CITY standards and performance criteria as specified in *Exhibit A* and set forth above in paragraph 3, Special Conditions. DEVELOPER further warrants that its design professionals are competent, that their analyses are adequate, and that their designs will meet or exceed the applicable CITY standards and performance criteria as specified in *Exhibit A* and set forth above in paragraph 3, Special Conditions.

If at any time before the expiration of the guarantee and warrantee period specified herein said designs prove to be inadequate in any respect, as determined by the City Engineer, the DEVELOPER shall make changes at its sole expense necessary to assure conformance with said standards and criteria.

9. Inspection of Construction

Inspection of the construction and equipment and materials, or approval of the construction and equipment and materials inspected, or statement by any officer, agent, or employee of the CITY indicating the construction and equipment and materials, or any part thereof, comply with the requirements and conditions of this Agreement, or acceptance of the whole or any part of the construction and materials, or payments thereof, or any combinations, or any combination, or all of these acts shall not relieve the DEVELOPER of its obligation to fulfill this Agreement as prescribed herein; nor shall the CITY be thereby estopped from bringing any action for damages arising from the failure of the DEVELOPER to comply with any of the requirements and conditions of this Agreement.

10. Payment of Fees and Penalties and Accrued Interest

Prior to issuance of the Certificate of Completion and prior to acceptance by the CITY of the on-site and off-site required public infrastructure improvements for permanent maintenance, the DEVELOPER shall pay all fees and penalties and accrued interest to the CITY and other Public Agencies that remain unpaid. Interest on amounts owed to the CITY shall accrue at the rates set forth in its Master Fee Schedule and from date that the fees and penalties are assessed and shall continue until full payment is received, whether or not any conditions of this Agreement are extended or modified.

11. Reversion to Acreage

If the DEVELOPER fails to perform its obligations under this Agreement, DEVELOPER, as the subdivider, consents to the reversion to acreage of the land which is the subject to this Agreement pursuant to Government Code section 66499.16 and to bear all applicable costs.

12. Property Acquisition

If the DEVELOPER is unable to acquire property required for the construction of required improvements, the DEVELOPER agrees to execute the standard CITY Contract for Real Property Acquisition to provide for acquisition through eminent domain.

13. Security

The DEVELOPER shall present to the CITY surety bonds, in a form satisfactory to the City Attorney, issued by a corporate surety authorized to issue said security in the State of California as follows:

A. Before execution of this Agreement, the following securities shall be presented:

1. **Faithful Performance Bond** in a face amount not less than \$ _____, which is the full amount (one-hundred percent) of the City Engineer's total estimated cost for constructing the on-site and off-site public infrastructure improvements, to secure faithful performance of this Agreement by the DEVELOPER; and

2. **Labor and Materials Bond** in a face amount not less \$ _____, which is one-half (fifty percent) of the full amount of the City Engineer's total estimated cost for constructing the required on-site and off-site public infrastructure improvements, to secure payment by the DEVELOPER to its contractor, subcontractors, laborers and materialmen furnishing supervision, labor, materials and equipment engaged in the construction pursuant to this Agreement, and further to secure payment as required by the Unemployment Insurance Act.

B. Before final approval of the public infrastructure permit, the following security shall be presented:

Maintenance Bond in a face amount not less than \$ _____, which is one-quarter (twenty-five percent) of the full amount of the City Engineer's total estimated cost for constructing the required on-site and off-site public infrastructure improvements, to secure faithful performance of paragraphs 7, Maintenance, and 8, Guarantee and Warrantee, above. This Maintenance Bond shall remain in effect for not less than one year after the date of the unconditional issuance of the Certificate of Completion of the required public infrastructure improvements.

C. Pursuant to Government Code section 66499.4, the obligation guaranteed by each bond shall include costs and reasonable expenses and fees, including reasonable attorney fees and expert witness fees, incurred by the CITY in successfully enforcing said obligations and shall be in addition to the face amount of each bond.

14. Alternative Security

In lieu of the bonds required above in paragraph 13, Security, alternative securities may be substituted by the DEVELOPER in a form provided by Government Code Section 66499.3 and subject to review and approval by the City Attorney.

15. Hold Harmless

The DEVELOPER shall indemnify, defend and hold the CITY and its officers, officials, employees, representatives, agents and volunteers harmless against any and all claims, injuries, damages, losses and suits, including attorney fees and expert witness fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages directly caused by the sole gross negligence of the CITY and its officers, official, employees, representative, agents, or volunteers.

Not in limitation of the foregoing, DEVELOPER further agrees to defend and protect the CITY and its officers, officials, employees, representatives, agents and volunteers from all liability or claim because of, or arising out of the use of any patent or patented articles in the construction of said improvements.

DEVELOPER waives all claims and recourse against the CITY, including, without limitation, the right of contribution for loss or damage to persons or property, arising from, growing out of, or in any way connected with or incident to the work performed or failed to be performed under this Agreement, except claims and recourse arising directly from the sole gross negligence of the CITY and its officers, officials, employees, representatives, agents or volunteers.

This indemnification clause shall survive the termination of this Agreement.

16. Insurance Required

DEVELOPER shall procure and maintain for the duration of the Agreement sufficient insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the DEVELOPER and his agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001).

2. Insurance Services Office form number CA 0001 covering Automobile Liability, code 1 "any auto."

3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

B. Minimum Limits of Insurance

1. **Commercial General Liability** insurance, including but not limited to, Bodily Injury, Broad Form Property Damage, Contractual Liability, Operations, Products and Completed Operations, Owners and Contractors Protective Liability, and/or XCU coverage, when applicable, with limits not less than **\$2,000,000.00** combined single limit per occurrence for bodily damage, personal injury and property damage. The limits of insurance shall apply separately to this project or location. The policy shall contain a severability of interest clause or cross liability clause or the equivalent thereof.

2. **Automobile Liability** with limits not less than **\$2,000,000.00** combined single limit per accident for bodily injury and property damage.

3. **Worker's Compensation** insurance as required by the laws of the State of California with limits not less than **\$1,000,000.00**. Statutory coverage may include Employers Liability coverage. The Contractor certifies that he/she is aware of the provisions of section 3700 of the California Labor Code, which requires every employer to provide Workers' Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code. The Contractor shall comply with the provisions of section 3700 of the California Labor Code before commencing performance of the work under this Agreement and thereafter as required by that code.

4. **Professional Liability/ Errors/ Omissions** insurance with limits not less than **\$1,000,000.00**.

5. **Builders' Risk/ Course of Construction** insurance covering all risks of loss with limits not less than the completed value of the project with no coinsurance penalty provisions. The CITY shall be named as loss payee under this policy. The insurer shall waive all rights of subrogation against the CITY.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the option of the CITY, either

1. the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the CITY and its officers, officials, employees, agents and volunteers, or

2. the DEVELOPER shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Other Insurance Provisions

The general and automobile liability policies shall contain, or be endorsed to contain, the following provisions:

1. The CITY and its officers, officials, employees, representatives, agents and volunteers are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of the DEVELOPER, products and completed operations of the DEVELOPER; premises owned, occupied or used by the DEVELOPER, or automobiles owned, leased, hired or borrowed by the DEVELOPER. The coverage shall contain no special limitations on the scope of protection afforded to the CITY and its officers, officials, employees, representatives, agents, and volunteers.

2. The DEVELOPER's insurance coverage shall be primary insurance as respects the CITY and its officers, officials, representatives, employees, agents and volunteers. Any insurance or self-insurance maintained by the CITY and its officers, officials, employees, representatives, agents, or volunteers shall be excess of the DEVELOPER's insurance and shall not contribute with it.

3. Any failure to comply with reporting provisions of the policies required by this clause, including breaches of warranties, shall not affect coverage provided to the CITY and its officers, officials, employees, representatives, agents, and volunteers.

4. The DEVELOPER's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. The insurer shall agree to waive all rights of subrogation against the CITY and its officers, officials, employees, representatives, agents, and volunteers for losses arising from work performed by the DEVELOPER for the CITY.

6. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except for non-payment of premium, by either party, except after thirty (30) days prior written notice by certified mail, return receipt required, has been given to the CITY. In the event the policy is canceled for non-payment of premium, ten (10) days prior written notice, as stated above, will be given.

E. Acceptability of Insurers

If the insurance company providing coverage is licensed to do business in the State of California, the company shall have an A.M. Best rating of not less than A:VII. However, if the insurance company is not licensed to do business in California, the A.M. Best rating shall not be less than A+:X. The maximum A.M. Best rating is A++:XV.

F. Verification of Coverage

DEVELOPER shall furnish the CITY with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Commercial General Liability endorsement shall be a form CG 20 10 (or proprietary equivalent), attached to this form. The Commercial Automobile Liability endorsement shall be a form CA 20 48, attached to this document. All certificates and endorsements are to be received and approved by the CITY before work commences. The CITY reserves the right to require complete, certified copies of all required insurance policies, at any time. A STATEMENT OF ADDITIONAL INSURED ENDORSEMENT ON THE ACORD INSURANCE CERTIFICATE FORM IS INSUFFICIENT AND WILL BE REJECTED AS PROOF OF THE ADDITIONAL INSURED REQUIREMENT.

G. Subcontractors

The DEVELOPER shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

17. Participation in Benefit Districts

The DEVELOPER shall participate in all Benefit Districts formed by the CITY prior to the execution of this Agreement and shall pay the prorated fee due the CITY under the terms of Benefit District or Districts as applied to the real property covered by this Agreement.

18. Actions to Enforce

If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to costs and reasonable expenses and fees, including reasonable attorneys' fees and expert witness fees, in addition to any other relief to which they may be entitled.

19. Beneficiaries, Heirs, Assigns, and Successors In Interest

This Agreement pertains to and runs with the real property included within Final Map No. 7763, which land is expressly agreed to benefit from the privileges granted to DEVELOPER under this Agreement, and binds the beneficiaries, heirs, assigns, and successors in interest of the DEVELOPER.

20. Attachments

The following documents are incorporated into this Agreement by reference:

CITY permits: Public Infrastructure PX 0700061 Planning CDV 06140
Creek Protection NA Building
Grading Encroachment NA

Resolutions: _____ CMS _____ CMS

Subdivision: Final Map No. 7763 City Engineer's Estimate of the Cost of Improvements

Insurer: _____ Surety: _____

21. Constructive Notice

DEVELOPER shall cause this Agreement to be filed for recordation in the Official Records of Alameda County within five (5) calendar days following execution by the CITY.

22. Effective Date

This Agreement shall not become effective until recorded as provided in paragraph 21 above.

IN WITNESS WHEREOF, the DEVELOPER has caused its name to be subscribed hereto, and the CITY has caused its name to be affixed hereto on the dates indicated below.

KG Properties LP *

CITY OF OAKLAND

signature

signature

name

RAYMOND M. DERANIA
City Engineer

title

date

date

* notarized acknowledgment required