

Introduced by

OFFICE OF THE CITY CLERK
OAKLAND

Approved for Form and Legality

2006 MAY -4 PM 6:42

F. Faiz

Councilmember

City Attorney

OAKLAND CITY COUNCIL

Resolution No. 79898 C.M.S.

RESOLUTION APPROVING A SUBDIVISION IMPROVEMENT AGREEMENT WITH EAST BAY HABITAT FOR HUMANITY, INC., FOR CONSTRUCTION OF PUBLIC INFRASTRUCTURE IMPROVEMENTS AT 10900 EDES AVENUE FOR THE FINAL MAP FOR TRACT 7598

WHEREAS, the developer of a residential home project, East Bay Habitat For Humanity, a California non-profit public benefit corporation (no. C1589421), is the Subdivider of an undeveloped two-acre parcel identified as Tract 7598 and currently addressed as 10900 Edes Avenue; and

WHEREAS, the Subdivider has acquired by purchase for valuable consideration all real property comprising Tract 7598; and

WHEREAS, the Subdivider has previously applied to the City of Oakland to subdivide an undeveloped parcel, identified by the Alameda County Assessor as APN 045-5263-003-00, into the twenty-seven (27) contiguous lots comprising Tract 7598; and

WHEREAS, the Planning Commission of the City of Oakland approved the environmental determination and general plan amendment for the project on November 16, 2004, the re-zoning of the property on December 7, 2004, and the Planned Unit Development (PUD 05124) and the Vesting Tentative Map for Tract 7598 on June 15, 2005, which proposed a subdivision of the undeveloped parcel into twenty-seven (27) contiguous lots, twenty-six (26) being developable, with companion irrevocable offers of dedication of on-site coterminous public easements for utilities and emergency vehicle access and for off-site widening of the adjoining Edes Avenue public right-of-way; 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 7598, upon which the Final Map for Tract 7598 is based; and

WHEREAS, grading of the site has been completed; and

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

- the Final Map for Tract 7598 is substantially the same as the Vesting Tentative Map approved by the Planning Commission, and
- the Final Map 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 of the twenty-seven proposed lots, the proposed on-site public and private easements, and the proposed off-site widening of Edes Avenue public right-of-way, 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 7598; 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 existing public right-of-way of Edes Avenue, the proposed widened public right-of-way of Edes Avenue, and the proposed on-site public easements; and

WHEREAS, the City Engineer has approved infrastructure permit no. PX0500094 and the Subdividers' plans and specifications for construction of the required public infrastructure improvements, included with Exhibit A and attached hereto; 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 completed 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, included with Exhibit A and attached hereto, 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, attached hereto as Exhibit D, and in sufficient amounts, as estimated by the City Engineer, to secure the Subdivider's performance under Exhibit A 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; now, therefore, be it

RESOLVED, that the Subdivision Improvement Agreement with East Bay Habitat For Humanity, Inc., for the Final Map for Tract 7598 is 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 Administrator 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 7598 for simultaneous recordation by the Alameda County 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, MAY 16 2006, 2006

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and
PRESIDENT DE LA FUENTE - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST: 
LATONDA SIMMONS

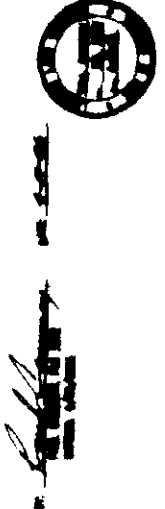
City Clerk and Clerk of the Council
of the City of Oakland, California

EXHIBIT A

ILLEGIBLE ORIGINAL RECEIVED

ILLEGIBLE ORIGINAL RECEIVED

ILLEGIBLE ORIGINAL RECEIVED



ILLEGIBLE ORIGINAL RECEIVED

ILLEGIBLE ORIGINAL RECEIVED

ILLEGIBLE ORIGINAL RECEIVED

ILLEGIBLE ORIGINAL RECEIVED

TRACT 7888

PORTION OF LOT 1, AND A PORTION OF THE ROAD 50 FEET WIDE... CITY OF OAKLAND, COUNTY OF ALAMEDA, CALIFORNIA

APRIL 2008

THE PUBLIC UTILITIES

I, LAURENCE BROWN, CITY CLERK AND CLERK OF THE CITY COUNCIL OF THE CITY OF OAKLAND, STATE OF CALIFORNIA, DO HEREBY CERTIFY THAT THE ABOVE DESCRIBED MAP SHOWS THE CITY OF OAKLAND, COUNTY OF ALABAMA, INCORPORATED AND EXTENDED TO THE CITY OF OAKLAND, STATE OF ALABAMA, BY AN ACT OF THE LEGISLATURE OF THE STATE OF CALIFORNIA, PASSED AND ENACTED ON THE _____ DAY OF _____ 19____, AND THAT THE SAID MAP IS CORRECTLY AS DESCRIBED IN _____ AND BY _____

I HEREBY CERTIFY AS SECRETARY OF THE CITY OF OAKLAND THE ABOVE DESCRIBED AS THE MAP OF THE CITY OF OAKLAND, COUNTY OF ALABAMA, AND THAT SAID MAP IS CORRECTLY AS DESCRIBED IN _____ AS APPROVED BY THE CITY COUNCIL OF THE CITY OF OAKLAND, COUNTY OF ALABAMA, ON THE _____ DAY OF _____ 19____.

IN WITNESS WHEREOF, I HAVE HERETOBY SET MY HAND AND THE _____ DAY OF _____ 19____.

LAURENCE BROWN
CITY CLERK AND CLERK OF THE COUNCIL
OF THE CITY OF OAKLAND, COUNTY OF
ALABAMA, STATE OF CALIFORNIA

STATEMENT OF THE PLANNING COMMISSION

I, _____, SECRETARY OF THE CITY PLANNING COMMISSION OF THE CITY OF OAKLAND, STATE OF CALIFORNIA, DO HEREBY CERTIFY THAT A RESOLUTION OF THE CITY OF OAKLAND, COUNTY OF ALABAMA, INCORPORATED AND EXTENDED TO THE CITY OF OAKLAND, COUNTY OF ALABAMA, PASSED AND ENACTED ON THE _____ DAY OF _____ 19____, IS IN ACCORDANCE WITH THE PROVISIONS OF THE CITY PLANNING ACT, AS AMENDED BY THE LEGISLATURE OF THE STATE OF CALIFORNIA, PASSED AND ENACTED ON THE _____ DAY OF _____ 19____, AND THAT THE SAID RESOLUTION IS CORRECTLY AS DESCRIBED IN _____ AND BY _____

DATED: _____

SECRETARY OF THE CITY PLANNING
COMMISSION OF THE CITY OF OAKLAND,
COUNTY OF ALABAMA, STATE OF CALIFORNIA

PLANNING COMMISSION

I, _____, SECRETARY OF THE CITY PLANNING COMMISSION OF THE CITY OF OAKLAND, STATE OF CALIFORNIA, DO HEREBY CERTIFY THAT THE ABOVE DESCRIBED MAP SHOWS THE CITY OF OAKLAND, COUNTY OF ALABAMA, INCORPORATED AND EXTENDED TO THE CITY OF OAKLAND, COUNTY OF ALABAMA, BY AN ACT OF THE LEGISLATURE OF THE STATE OF CALIFORNIA, PASSED AND ENACTED ON THE _____ DAY OF _____ 19____, AND THAT THE SAID MAP IS CORRECTLY AS DESCRIBED IN _____ AND BY _____

AND APPROVED THE MAP

ON _____

AT _____

IN _____

PLANNING COMMISSION

STATEMENT

I, _____, SECRETARY OF THE CITY PLANNING COMMISSION OF THE CITY OF OAKLAND, STATE OF CALIFORNIA, DO HEREBY CERTIFY THAT THE ABOVE DESCRIBED MAP SHOWS THE CITY OF OAKLAND, COUNTY OF ALABAMA, INCORPORATED AND EXTENDED TO THE CITY OF OAKLAND, COUNTY OF ALABAMA, BY AN ACT OF THE LEGISLATURE OF THE STATE OF CALIFORNIA, PASSED AND ENACTED ON THE _____ DAY OF _____ 19____, AND THAT THE SAID MAP IS CORRECTLY AS DESCRIBED IN _____ AND BY _____

AND APPROVED THE MAP

ON _____

AT _____

IN _____

IN WITNESS WHEREOF, I HAVE HERETOBY SET MY HAND AND THE _____ DAY OF _____ 19____.

ILLEGIBLE ORIGINAL
RECEIVED

TRACT 7888
PORTION OF LOT 1, AND A PORTION OF THE ROAD 80 FEET WIDE, ADJOINING SAID LOT ON THE NORTHWEST, AS SAID LOT AND ROAD, 80 FEET WIDE, ARE SHOWN ON THE CERTAIN TRACTING OF LANDS IN PARTITION JOHN P. BROWN, VS. GARDEN FORD, JR. BROWN, ET AL., APPROVED BY THE PEOPLE IN CASE 1389 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN THE COUNTY OF ALABAMA
CITY OF OAKLAND, COUNTY OF ALABAMA
CALIFORNIA
LOT AND ADJOINING ROAD
80 FEET WIDE
(SAC) 788-7888
APRIL 2006

ILLEGIBLE ORIGINAL
RECEIVED

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

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

APPROVED FOR FORM AND LEGALITY

CITY ATTORNEY

SUBDIVISION IMPROVEMENT AGREEMENT

Deferred Construction of Public Infrastructure Improvements

Final Map - Tract No. 7598

This Agreement is between East Bay Habitat For Humanity (DEVELOPER), a California non-profit public benefit corporation (no. C1589421), and the City of Oakland (CITY), a California municipal corporation.

RECITALS

The DEVELOPER is the owner in fee title and subdivider of an undeveloped two-acre parcel located within the corporate limits of the City of Oakland, which is identified by the Alameda County Assessor as parcel number 045-5263-003-00 and by the CITY as 10900 Edes Avenue, who has presented a proposed Final Map, which is identified as Tract No. 7598, to the Council of the City of Oakland that proposes a subdivision of this platted land into twenty-seven (27) lots.

As a condition precedent to the approval by the Council of the City of Oakland of the proposed Final Map, the CITY requires the irrevocable dedication of public streets, paths, and other rights-of-way and of public easements shown on the proposed Final Map. In addition, the CITY requires construction of public infrastructure improvements within these on-site dedicated rights-of-way and easements and off-site on other CITY rights-of-way that customarily include 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 to accept the irrevocable dedication of the public rights-of-way and public easements shown on the proposed Final Map and the permanent maintenance of the required public infrastructure improvements shown on the construction plans accompanying permit number PX0500094 and included in *Exhibit A*, 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 rights-of-way and public easements and

acceptance of the permanent maintenance of the improvements, the parties desire to establish an Agreement binding the DEVELOPER to complete the required improvements within one year of the date that this Agreement has been recorded by the Alameda County Recorder. .

THEREFORE, it is agreed as follows:

1. Approval of Final Map

Approval of the proposed Final Map for the subdivision of Tract No. 7598 by Resolution of the Council of the City of Oakland 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 on-site and off-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 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 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 public infrastructure improvements shall conform with the requirements of all Conditions of Approval for the Prairie Stone I 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 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 public infrastructure improvements shall be completed by the DEVELOPER within one (1) year of the date of recordation of this Agreement, except those improvements for which another completion date is stated in *Exhibit A* or 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 rights-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 **\$ 315,960.00**, which is the full amount (one-hundred percent) of the City Engineer's total estimated cost for constructing the on-site and off-site required 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 **\$ 157,980.00**, which is one-half of the full amount (fifty percent) of the City Engineer's total estimated cost for constructing the on-site and off-site required 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 **\$ 78,990.00**, which is one-quarter (25%) of the full amount of the City Engineer's total estimated cost for constructing the on-site and off-site required

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 attorneys' 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 in a form provided by Government Code Section 66499.3 by the DEVELOPER 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 which 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** 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** 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**. 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**.

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's 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 Tract No. 7598, 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 0500094 Planning GP 03023/ ER 030002/ PUD 050124
Creek Protection n.a. Building RB 0505521 through RB 0505531
Grading GR 0400056, GR 0500134

Resolutions: _____ C.M.S. _____ C.M.S.

Subdivision: Final Map - Track 7598 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 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.

EAST BAY HABITAT FOR HUMANITY, Inc.

CITY OF OAKLAND

signature

signature

name

DEBORAH EDGERLY
City Administrator

title

date

Date

(Note: signatures must be notarized)