

Introduced by

Councilmember

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2008 JUN -5 AM 10:43

Approved for Form and Legality

Kivan Jim
City Attorney

OAKLAND CITY COUNCIL

Resolution No. 81346 C.M.S.

RESOLUTION CONDITIONALLY APPROVING A FINAL MAP FOR TRACT No. 7904 AT 10800 EDES AVENUE FOR PHASE II OF AN AFFORDABLE HOUSING PROJECT FOR HABITAT FOR HUMANITY OF THE EAST BAY

WHEREAS, the developer of a residential dwelling project, Habitat For Humanity Of The East Bay, a California public benefit corporation (no. C1589421), is the Subdivider of a single parcel identified by the Alameda County Assessor as APN 045-5263-002-00, and by the Alameda County Clerk-Recorder as Tract No. 7904, and by the City of Oakland as 10800 Edes Avenue, and by the developer as Phase II of an affordable housing project; and

WHEREAS, the Subdivider has acquired by purchase for valuable consideration the real property comprising Tract No. 7904 through a grant deed, series no. 2006342717, recorded September 8, 2006, by the Alameda County Clerk-Recorder; and

WHEREAS, the Subdivider has previously applied to the City of Oakland for a tentative map (TTM7904) to subdivide the platted land into thirty-one (31) lots comprising Tract No. 7904 for the construction of single family dwellings and appurtenant infrastructure; and

WHEREAS, the Planning Commission of the City of Oakland approved the environmental determination (mitigated negative declaration) and land use entitlements (CMDV07235, GP07233, PUD07237, RZ07234, ER070009) and the Tentative Map for Tract No. 7904 on March 19, 2008, and the Council of the City of Oakland approved said determination and entitlements on April 15, 2008, which proposed:

- the establishment of twenty-eight (28) residential lots for ownership by private purchasers, and one (1) lot for common-ownership of a private road, and one (1) lot for common-ownership of vehicle parking, and one (1) lot for common-ownership of open space; and
- the dedication to the City of Oakland of public service easements for access and utilities; and
- the dedication to the City of Oakland of real property as public right-of-way for Edes Avenue.

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 and the City Council approved the Tentative Map for Tract No. 7904, upon which said Final Map is based; and

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

- the Final Map for Tract No. 7904, attached hereto as *Exhibit A*, is substantially the same as the Tentative Map approved by the Planning Commission and the City Council, and

- the Final Map for Tract No. 7904 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 proposed metes and bounds of the property boundaries separating the proposed thirty-one (31) lots and the proposed dedicated public service easements and the proposed dedicated 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 No. 7904; 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. PX0800052 and the Subdividers' plans and specifications for construction of the required public infrastructure improvements, included by reference with *Exhibit B*; 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 for Tract No. 7904, the Subdivider has executed a Subdivision Improvement Agreement, attached hereto as *Exhibit C*, 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*; and

WHEREAS, the requirements of the California Environmental Quality Act (CEQA), the Guidelines as prescribed by the Secretary of Resources, and the provisions of the Statement of Objectives, Criteria and Procedures for Implementation of the California Environmental Quality Act: City of Oakland, have been satisfied by the certification by the Council of the City of Oakland on April 15, 2008 of a negative declaration for the Phase II project; now, therefore, be it

RESOLVED: That the Final Map for Tract No. 7904 is hereby conditionally approved; and be it

FURTHER RESOLVED: That the dedication of real property as delineated on the Final Map for public right-of-way for Edes Avenue is hereby conditionally accepted; and be it

FURTHER RESOLVED: That pursuant to California Streets and Highways Code section 8300, et seq., should the City of Oakland vacate said portion of the public right-of-way offered for dedication, at some future date as yet undetermined, Habitat For Humanity Of The East Bay and its representatives, heirs, assigns, and successors and the future owners, separately and jointly, of said subdivide lots retain the unqualified right to the underlying fee simple interest of said real property; and be it

FURTHER RESOLVED: That the dedication of public service easements as delineated on the Final Map is hereby conditionally accepted; and be it

FURTHER RESOLVED: That the approval of the Final Map and the acceptance of said dedications are conditioned upon completion to the satisfaction of the City Engineer of public infrastructure improvements, as set forth in the Subdivision Improvement Agreement; and be it

FURTHER RESOLVED: That Habitat For Humanity Of The East Bay shall be responsible in perpetuity for the installation, maintenance, repair, and removal of all infrastructure improvements within said public service easements and public right-of-way dedications as delineated on the Final Map, including but not limited to roadway pavement, sidewalks, curbs, gutters, trees and landscaping, irrigation, electrical lighting, sanitary sewer piping, and storm water piping, but excepting from said responsibility infrastructure improvements that are otherwise regulated by California Public Utilities Commission; and be it

FURTHER RESOLVED: That the hereinabove conditions shall be binding upon Habitat For Humanity Of The East Bay and its representatives, heirs, successors, and assigns and the successive owners of said lots as delineated on the Final Map.

FURTHER RESOLVED: That failure by Habitat For Humanity Of The East Bay to comply in all aspects with the Subdivision Improvement Agreement shall void approval of the Final Map and void acceptance of said dedications and shall revert the original parcels comprising Tract No. 7904 to acreage; and be it

FURTHER RESOLVED: That the City Engineer is hereby authorized to endorse the Final Map for Tract No. 7904; and be it

FURTHER RESOLVED: That the City Clerk of the City of Oakland is hereby authorized to endorse the Final Map for Tract No. 7904, upon its execution by the City Engineer, and directed to file the fully endorsed Final Map with the Alameda County Clerk-Recorder for recordation; and be it

FURTHER RESOLVED: That this Resolution shall become effective upon the recordation of the Final Map for Tract No. 7904 by the Alameda County Clerk-Recorder.

IN COUNCIL, OAKLAND, CALIFORNIA, JUN 17, 2008 , 2008

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

OWNER'S STATEMENT

THE UNDERSIGNED HEREBY STATE THAT IT IS THE OWNER OF THE LAND DELINEATED AND ENRAGED WITHIN THE EXTERIOR BOUNDARY LINES OF THE HEREIN EMBODIED MAP ENTITLED, "TRACT 7904, CITY OF OAKLAND, COUNTY OF ALAMEDA, CALIFORNIA," CONCESSING TO THREE (3) SHEETS, THIS STATEMENT SHEET BEING SHEET NO. 1, THAT IT IS THE OWNER OF SAID LAND BY VIRTUE OF THE GRANT DEED RECORDED IN THE PUBLIC RECORDS OF SAID COUNTY OF ALAMEDA, CALIFORNIA, AND THAT IT CONSENTS TO THE PREPARATION AND FILING OF THIS MAP.

THE UNDERSIGNED HEREBY DEDICATES TO THE CITY OF OAKLAND, THE AREA OR SAID MAP DESIGNATED AS "S" RIGHT OF WAY DEDICATION TO CITY OF OAKLAND FOR THE PURPOSE OF CONSTRUCTING AND MAINTAINING PUBLIC ROADSWAYS AND UTILITIES.

THE AREAS DESIGNATED AS "M1" OR "M2" OR "M3" ARE HEREBY OFFERED FOR DEDICATION TO THE CITY OF OAKLAND, THE AREA OR SAID MAP DESIGNATED AS "S" RIGHT OF WAY DEDICATION TO CITY OF OAKLAND FOR THE PURPOSE OF CONSTRUCTING AND MAINTAINING PUBLIC ROADSWAYS AND UTILITIES.

THE AREAS DESIGNATED AS "T1" OR "T2" OR "T3" ARE HEREBY OFFERED FOR DEDICATION TO THE CITY OF OAKLAND, THE AREA OR SAID MAP DESIGNATED AS "S" RIGHT OF WAY DEDICATION TO CITY OF OAKLAND FOR THE PURPOSE OF CONSTRUCTING AND MAINTAINING PUBLIC ROADSWAYS AND UTILITIES.

THE AREAS DESIGNATED AS "P1" OR "P2" OR "P3" ARE HEREBY RESERVED FOR THE OWNERS AND ASSIGNS OR LOTS 20 TO 24 OF TRACT 7904 FOR BUT NOT LIMITED TO ACCESS, INGRESS AND EGRESS AND FOR THE USE OF EMERGENCY VEHICLES OF ALL KINDS.

THE AREAS DESIGNATED AS "E1" OR "E2" OR "E3" ARE HEREBY RESERVED FOR THE OWNERS AND ASSIGNS OR LOTS 14 TO 17 OF TRACT 7904 FOR BUT NOT LIMITED TO ACCESS, INGRESS AND EGRESS AND FOR THE USE OF EMERGENCY VEHICLES OF ALL KINDS.

THE AREAS DESIGNATED AS "U1" OR "U2" OR "U3" ARE HEREBY RESERVED FOR THE OWNERS AND ASSIGNS OR LOTS 18 TO 24 OF TRACT 7904 FOR BUT NOT LIMITED TO ACCESS, INGRESS AND EGRESS AND FOR THE USE OF EMERGENCY VEHICLES OF ALL KINDS.

THE AREAS DESIGNATED AS "V1" OR "V2" OR "V3" ARE HEREBY RESERVED FOR THE OWNERS AND ASSIGNS OR LOTS 14 TO 17 OF TRACT 7904 FOR BUT NOT LIMITED TO ACCESS, INGRESS AND EGRESS AND FOR THE USE OF EMERGENCY VEHICLES OF ALL KINDS.

THE AREAS DESIGNATED AS "W1" OR "W2" OR "W3" ARE HEREBY RESERVED FOR THE OWNERS AND ASSIGNS OR LOTS 14 TO 17 OF TRACT 7904 FOR BUT NOT LIMITED TO ACCESS, INGRESS AND EGRESS AND FOR THE USE OF EMERGENCY VEHICLES OF ALL KINDS.

THE AREAS DESIGNATED AS "X1" OR "X2" OR "X3" ARE HEREBY RESERVED FOR THE OWNERS AND ASSIGNS OR LOTS 14 TO 17 OF TRACT 7904 FOR BUT NOT LIMITED TO ACCESS, INGRESS AND EGRESS AND FOR THE USE OF EMERGENCY VEHICLES OF ALL KINDS.

THE AREAS DESIGNATED AS "Y1" OR "Y2" OR "Y3" ARE HEREBY RESERVED FOR THE OWNERS AND ASSIGNS OR LOTS 14 TO 17 OF TRACT 7904 FOR BUT NOT LIMITED TO ACCESS, INGRESS AND EGRESS AND FOR THE USE OF EMERGENCY VEHICLES OF ALL KINDS.

THE AREAS DESIGNATED AS "Z1" OR "Z2" OR "Z3" ARE HEREBY RESERVED FOR THE OWNERS AND ASSIGNS OR LOTS 14 TO 17 OF TRACT 7904 FOR BUT NOT LIMITED TO ACCESS, INGRESS AND EGRESS AND FOR THE USE OF EMERGENCY VEHICLES OF ALL KINDS.

THE AREAS DESIGNATED AS "AA1" OR "AA2" OR "AA3" ARE HEREBY RESERVED FOR THE OWNERS AND ASSIGNS OR LOTS 14 TO 17 OF TRACT 7904 FOR BUT NOT LIMITED TO ACCESS, INGRESS AND EGRESS AND FOR THE USE OF EMERGENCY VEHICLES OF ALL KINDS.

THE AREAS DESIGNATED AS "AB1" OR "AB2" OR "AB3" ARE HEREBY RESERVED FOR THE OWNERS AND ASSIGNS OR LOTS 14 TO 17 OF TRACT 7904 FOR BUT NOT LIMITED TO ACCESS, INGRESS AND EGRESS AND FOR THE USE OF EMERGENCY VEHICLES OF ALL KINDS.

THE AREAS DESIGNATED AS "AC1" OR "AC2" OR "AC3" ARE HEREBY RESERVED FOR THE OWNERS AND ASSIGNS OR LOTS 14 TO 17 OF TRACT 7904 FOR BUT NOT LIMITED TO ACCESS, INGRESS AND EGRESS AND FOR THE USE OF EMERGENCY VEHICLES OF ALL KINDS.

THE AREAS DESIGNATED AS "AD1" OR "AD2" OR "AD3" ARE HEREBY RESERVED FOR THE OWNERS AND ASSIGNS OR LOTS 14 TO 17 OF TRACT 7904 FOR BUT NOT LIMITED TO ACCESS, INGRESS AND EGRESS AND FOR THE USE OF EMERGENCY VEHICLES OF ALL KINDS.

THE AREAS DESIGNATED AS "AE1" OR "AE2" OR "AE3" ARE HEREBY RESERVED FOR THE OWNERS AND ASSIGNS OR LOTS 14 TO 17 OF TRACT 7904 FOR BUT NOT LIMITED TO ACCESS, INGRESS AND EGRESS AND FOR THE USE OF EMERGENCY VEHICLES OF ALL KINDS.

THE AREAS DESIGNATED AS "AF1" OR "AF2" OR "AF3" ARE HEREBY RESERVED FOR THE OWNERS AND ASSIGNS OR LOTS 14 TO 17 OF TRACT 7904 FOR BUT NOT LIMITED TO ACCESS, INGRESS AND EGRESS AND FOR THE USE OF EMERGENCY VEHICLES OF ALL KINDS.

THE AREAS DESIGNATED AS "AG1" OR "AG2" OR "AG3" ARE HEREBY RESERVED FOR THE OWNERS AND ASSIGNS OR LOTS 14 TO 17 OF TRACT 7904 FOR BUT NOT LIMITED TO ACCESS, INGRESS AND EGRESS AND FOR THE USE OF EMERGENCY VEHICLES OF ALL KINDS.

SURVEYOR'S STATEMENT

THIS 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 EAST BAY HABITAT FOR HUMANITY, A CALIFORNIA NON PROFIT PUBLIC BENEFIT CORPORATION IN RECORDER OF 2007. I HEREBY STATE THAT THIS SUBDIVISION MAP SUBSTANTIALLY CONFORMS TO THE APPROVED OR CONDITIONALLY APPROVED TENTATIVE MAP ENTITLED "TRACT 7904, CITY OF OAKLAND, COUNTY OF ALAMEDA, CALIFORNIA," AND THAT THE SURVEY CHANGES AND OCCUPY THE POSITIONS SHOWN, AND ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.



BY: PAUL CARAWAY, R.S. 3272
EXPIRES: 6/20/2008

CITY ENGINEER'S STATEMENT

I, RAYMOND M. HIRSHIA, 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 STATE THAT I HAVE EXAMINED THE HEREIN EMBODIED FINAL MAP ENTITLED, "TRACT 7904, CITY OF OAKLAND, COUNTY OF ALAMEDA, CALIFORNIA," THAT THE SUBDIVISION AS SHOWN ON SAID FINAL MAP IS SUBSTANTIALLY THE SAME AS THAT APPEARING ON THE TENTATIVE MAP IF ANY, AND ANY APPROVED ALTERATIONS THEREOF; THAT SAID FINAL MAP COMPLIES WITH ALL PROVISIONS OF THE SUBDIVISION MAP ACT OF THE GOVERNMENT CODE AND OF THE LOCAL ORDINANCES APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP; AND THAT I AM SATISFIED THAT THE FINAL MAP IS TECHNICALLY CORRECT.

IN WITNESS THEREOF, I HAVE THEREunto SET MY HAND THIS _____ DAY OF _____, 2008.

RAYMOND M. HIRSHIA, R.C.E. NO. 27815
LICENSE EXPIRES: 03/31/08
INTERIM CITY ENGINEER
CITY OF OAKLAND, COUNTY OF ALAMEDA,
STATE OF CALIFORNIA

CLERK OF THE BOARD OF SUPERVISORS STATEMENT

I, CRYSTAL K. HIRSHIA GRAFT, CLERK OF THE BOARD OF SUPERVISORS FOR THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, HEREBY STATE, AS CHECKED BELOW THAT:

- AN APPROVED BOARD HAS BEEN FILED WITH SAID BOARD IN THE IN THE AMOUNT OF _____ CONDITIONED FOR PAYMENT OF ALL TAXES AND SPECIAL ASSESSMENTS COLLECTED AS WHICH ARE NOW A LIEN AGAINST THE AND OR ANY PART THEREOF BUT NOT PAYABLE, AND WAS DULY APPROVED BY SAID BOARD IN SAID AMOUNT.
- ALL TAXES AND SPECIAL ASSESSMENTS COLLECTED AS TAXES HAVE BEEN PAID, AS CERTIFIED BY THE TREASURER THAT COLLECTOR OF COUNTY OF ALAMEDA.

IN WITNESS WHEREOF, I HAVE HERETO SET MY HAND THIS _____ DAY OF _____, 2008.

CRYSTAL K. HIRSHIA GRAFT
CLERK OF THE BOARD OF SUPERVISORS,
COUNTY OF ALAMEDA, CALIFORNIA

BY: _____
DEPUTY CLERK

RECORDER'S CERTIFICATE

FILED THIS _____ DAY OF _____, 2008, AT _____ M. IN _____ COUNTY OF ALAMEDA, CALIFORNIA, AT THE REQUEST OF FIRST AMERICAN TITLE GUARANTY COMPANY.

SERIES NO. _____
FEE \$ _____
PATRICK J. O'CONNELL
COUNTY RECORDER, COUNTY OF ALAMEDA, CALIFORNIA

BY: _____
DEPUTY COUNTY RECORDER

OWNER'S ACKNOWLEDGMENT

STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ON _____ I, _____, REMOVE ME _____ A _____ PUBLIC IN AND FOR SAID COUNTY AND STATE PERSONALLY APPEARED

PERSONALLY KNOWING TO ME (OR PROVIDED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE) TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN STATEMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/IT/HEY EXECUTED THE SAME IN HIS/HER/HERS/AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/HERS/SIGNATURE(S) ON THE STATEMENT THE PERSON OF THE ENTITY UPON BEHALF OF WHICH THE PERSON ACTED, EXECUTED THE STATEMENT.

WITNESSED MY HAND

SIGNATURE: _____
PRINTED NAME: _____
MY COMMISSION EXPIRES: _____
PRINCIPAL PLACE OF BUSINESS: _____

TRACT NO. 7904

PORTION OF LOT 1, AND A PORTION OF THE ROAD 50 FEET WIDE ADJOINING SAID LOT ON THE SOUTHWEST, AS SAID LOT AND ROAD, 50 FEET WIDE, ARE SHOWN ON THE CERTAIN "DIAGRAM OF LANDS IN PARTITION JOHN P. WALKER, VS. CARMEN PERALTA SCHWARTZ, ET AL," ACCOMPANYING THE PAPERS IN CASE 13008 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN THE COUNTY OF ALAMEDA

CITY OF OAKLAND, COUNTY OF ALAMEDA
CALIFORNIA

LUK AND ASSOCIATES
SURVEYORS
HERCULES, CALIFORNIA 94547
510.724-3388

DECEMBER 2007

EXHIBIT A

CITY CLERK'S STATEMENT

I, LA TONDIA SHAKINS, CITY CLERK AND CLERK OF THE CITY COUNCIL OF THE CITY OF OAKLAND, STATE OF CALIFORNIA, DO HEREBY CERTIFY THAT THE HEREIN EMBODIED MAP ENTITLED, "TRACT 7904, CITY OF OAKLAND, COUNTY OF ALAMEDA, CALIFORNIA," WAS PRESENTED TO THE COUNCIL OF THE CITY OF OAKLAND AT A REGULAR MEETING HELD THEREON, BY RESOLUTION NO. _____, 2008 APPROVE SAID MAP.

I HEREBY ACCEPT ON BEHALF OF THE CITY OF OAKLAND THE AREAS DESIGNATED AS "25' RIGHT OF WAY DEDICATION TO CITY OF OAKLAND"; "PS" OR "PUBLIC SERVICE EASEMENT"; AND "PAVE OR PUBLIC PEDESTRIAN ACCESS EASEMENT" AS HEREBY DESIGNATED IN ACCORDANCE WITH SECTION 16.12.080 OF THE OAKLAND MUNICIPAL CODE.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND THIS _____ DAY OF _____ 2008.

LA TONDIA SHAKINS
CITY CLERK AND CLERK OF THE COUNCIL
OF THE CITY OF OAKLAND; COUNTY OF
ALAMEDA, STATE OF CALIFORNIA

SECRETARY OF THE PLANNING COMMISSION'S CERTIFICATE

I, GARY V. PATTON, SECRETARY OF THE CITY PLANNING COMMISSION OF THE CITY OF OAKLAND, STATE OF CALIFORNIA, DO HEREBY CERTIFY THAT A TENTATIVE MAP OF "TRACT NO. 7904, CITY OF OAKLAND, ALAMEDA COUNTY, CALIFORNIA" WAS PRESENTED TO THE CITY PLANNING COMMISSION AS PROVIDED BY THE SUBDIVISION MAP ACT, THAT AT A REGULARLY SCHEDULED MEETING HELD ON _____, 2008, AND THAT SAID COMMISSION APPROVED SAID TENTATIVE MAP UPON WHICH THIS MAP IS BASED.

GARY V. PATTON
SECRETARY OF THE CITY PLANNING
COMMISSION OF THE CITY OF OAKLAND;
COUNTY OF ALAMEDA, STATE OF CALIFORNIA

TRACT NO. 7904

PORTION OF LOT 1, AND A PORTION OF THE ROAD 50 FEET WIDE ADJOINING SAID LOT ON THE SOUTHWEST, AS SAID LOT AND ROAD, 50 FEET WIDE, ARE SHOWN ON THE CERTAIN "DIAGRAM OF LANDS IN PARTITION JOHN P. WALKER, VS. CARMEN PERALTA SCHWARTZ, ET AL", ACCOMPANYING THE PAPERS IN CASE 13006 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN THE COUNTY OF ALAMEDA

CITY OF OAKLAND, COUNTY OF ALAMEDA
CALIFORNIA

LUK AND ASSOCIATES
738 ALFRED NOBEL DRIVE
HERCULES, CALIFORNIA 94547
510 724-3388

DECEMBER 2007

SHEET 2 OF 5 SHEETS
PLOT DATE: DECEMBER 14, 2007

EXHIBIT A

TRACT NO. 7904

PORTION OF LOT 1, AND A PORTION OF THE ROAD 50 FEET WIDE ADJOINING SAID LOT ON THE SOUTHWEST, AS SAID LOT AND ROAD, 50 FEET WIDE, ARE SHOWN ON THE CERTAIN DIAGRAM OF LANDS IN PARTITION JOHN P. WALKER, VS. CARMEN FERALLTA SCHWARTZ ET AL., ACCOMPANYING THE PAPERS IN CASE 13006 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN THE COUNTY OF ALAMEDA

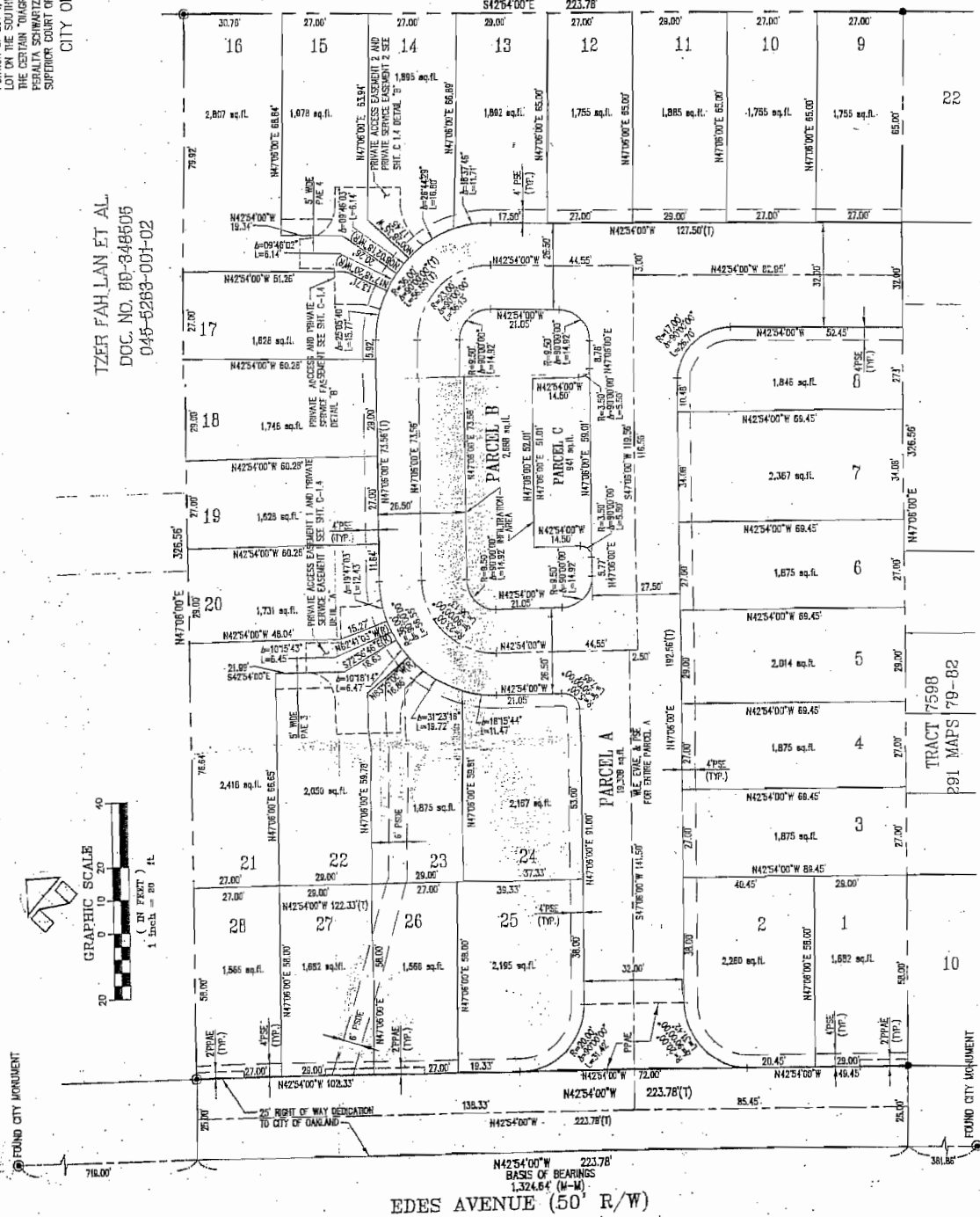
CITY OF OAKLAND, COUNTY OF ALAMEDA
 CALIFORNIA
 LUK AND ASSOCIATES
 238 ALFRED NEBEL DRIVE
 HERCULES, CALIFORNIA 94547
 510 724-3388
 DECEMBER 2007

TZER FAH LAN ET AL.
 DOC. NO. 00-348605
 048-6268-001-02

- LEGEND:**
- SET 1/2" REBAR W/IR TAG LS272
 - FOUND MONUMENT
 - EMERGENCY VEHICULAR ACCESS EASEMENT
 - PRIVATE ACCESS EASEMENT
 - PUBLIC SERVICE EASEMENT
 - PRIVATE STORM DRAIN EASEMENT
 - PUBLIC ACCESS EASEMENT
 - PUBLIC UTILITY EASEMENT
 - WATER LINE EASEMENT
 - SQUARE FOOT
 - ANGLE
 - LENGTH
 - RADIUS
 - TOTAL
 - LINE LENGTH
 - TEMPORARY BRUSH MARK
 - RECORD DATA AS PER 10 M 49
 - RECORD DATA AS PER 10 M 36
 - DATA FROM AMERICAN
 - DATA FROM AMERICAN
 - RECORD NO. 55876-CO
 - SUBDIVISION BOUNDARY
 - LL (INTERIOR LOT LINE)
 - STREET R/W LINE
 - STREET CENTERLINE
 - EASEMENT LINE

NOTE:
 SEE SHEET 4 FOR EASEMENT DIMENSIONS.
BASIS OF BEARINGS:
 NORTH 42°54'00" WEST BETWEEN TWO FOUND CITY MONUMENTS IN THE CENTERLINE OF EDES AVENUE AS SHOWN ON THE MAP OF TRACT 692 FILED IN BOOK 10 OF MAPS, PAGE 38.

CENTRAL PACIFIC RAILWAY CO. (100' R/W)



N42°54'00"W 223.78'
 BASIS OF BEARINGS
 1-324.64' (M-W)
 EDES AVENUE (50' R/W)

EXHIBIT A

TRACT NO. 7904

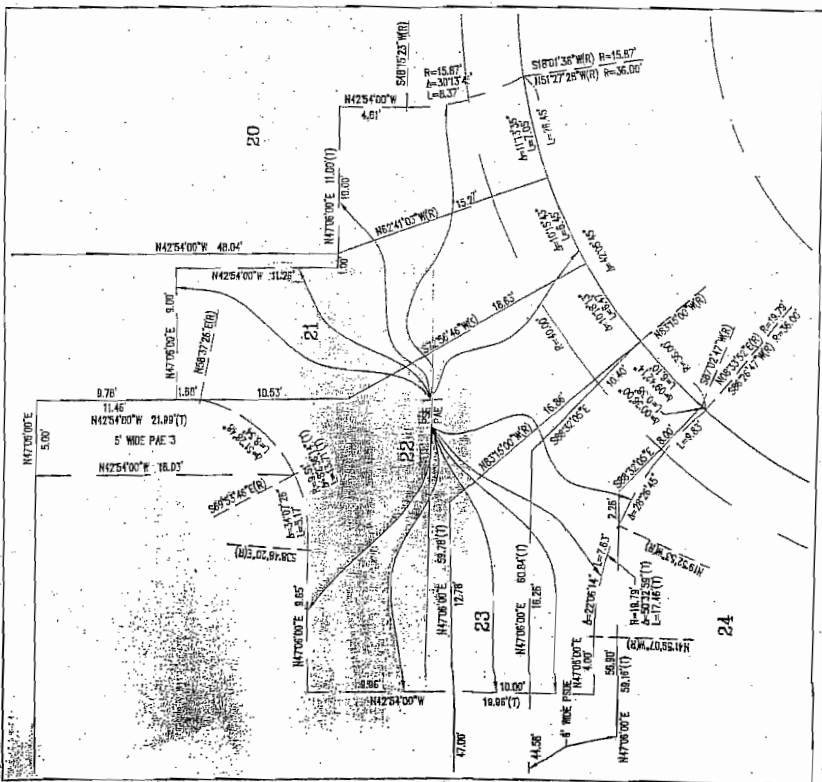
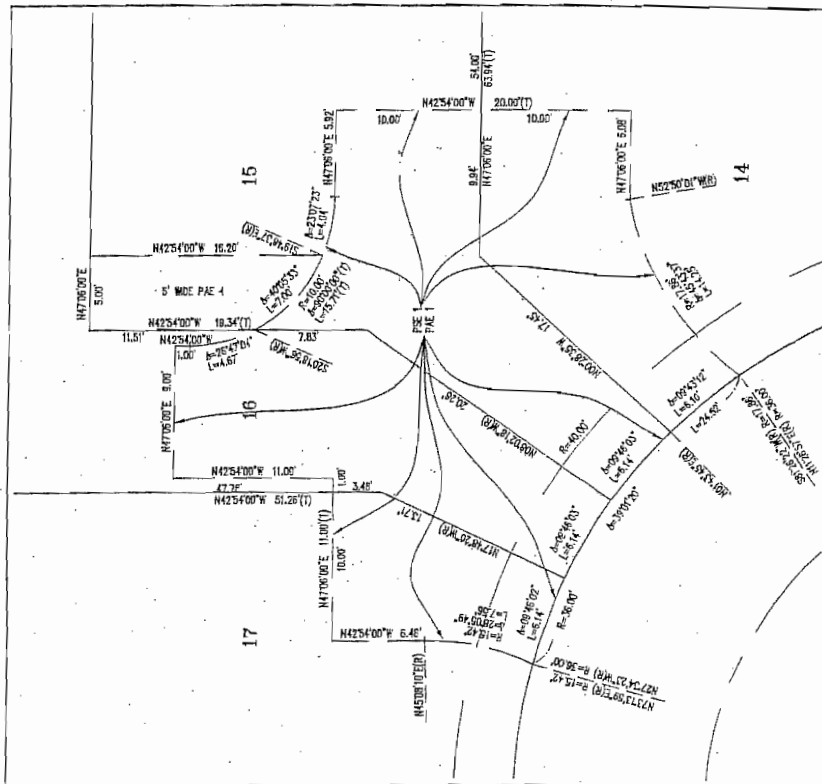
PORTRION OF LOT 1, AND A PORTION OF THE ROAD 50 FEET WIDE ADJOINING SAID LOT ON THE SOUTHWEST, AS SAID LOT AND ROAD, 50 FEET WIDE, ARE SHOWN ON THE CERTAIN "DIAGRAM OF LOTS IN PARTITION JOHN P. WALKER, VS. CARMEN PERALTA, SCHWARTZ, ET AL," ACCOMPANYING THE PAPERS IN CASE NO. 1006 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN THE COUNTY OF ALAMEDA

CITY OF OAKLAND, COUNTY OF ALAMEDA
CALIFORNIA

LUK AND ASSOCIATES
739 ALFRED NOBEL DRIVE
BERKELEY, CALIFORNIA 94577
510.533.3300
DECEMBER 2007

BASIS OF BEARINGS:

NORTH 42°54'00" WEST BETWEEN TWO FOUND CITY MONUMENTS IN THE CENTERLINE OF SIDES 16 AND 17 ON THE MAP OF TRACT 597 FILED IN BOOK 10 OF MAPS, PAGE 36.



DETAIL "B"
SCALE: 1"=5'

DETAIL "A"
SCALE: 1"=5'

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 C

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

APPROVED FOR FORM AND LEGALITY

CITY ATTORNEY

SUBDIVISION IMPROVEMENT AGREEMENT

Deferred Construction of Public Infrastructure Improvements

10800 Edes Avenue

Final Map - Tract No. 7904

Phase II Affordable Housing Project

This Agreement is between **Habitat For Humanity Of The East Bay**, (DEVELOPER), a California public benefit corporation (no. C1589421), and its successors or assigns, affiliated corporations, or partners, and the **City of Oakland** (CITY), a California municipal corporation, herein identified together as the PARTIES.

RECITALS

The DEVELOPER is the owner in fee title and subdivider of a two (2) acre parcel within the corporate limits of the City of Oakland, which is identified by the Alameda County Assessor as parcel number 045-5263-002-00, and by the CITY as 10800 Edes Avenue, who has presented a Final Map, which is identified by the Alameda County Recorder as Tract No. 7904, to the Council of the City of Oakland that proposes a subdivision of this platted land into twenty-eight (28) residential lots and three (3) additional lots for a private road, visitor parking, and open space.

As a condition precedent to the approval of the Final Map, the CITY requires the irrevocable dedication of public right-of-way and easements shown on the Map. In addition, the CITY requires construction of public infrastructure improvements off-site in the CITY right-of-way and on-site in dedicated easements 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 and local public utility companies to accept the permanent maintenance of the required public infrastructure improvements shown on the construction plans accompanying permit number PX0800052 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 by the CITY of its approval of the proposed Final Map and its vacation of public right-of-way and its conditional acceptance of the irrevocable offers of dedication of public easements and its 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 Section 4 below.

THEREFORE, the PARTIES to this Agreement mutually agree as follows:

1. Approval of Final Map

Approval of the proposed Final Map No. 7904 by the CITY shall be conditioned upon recordation of this Agreement with the Alameda County Recorder, as well as the 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 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 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 Conditions of Approval for the Phase II Affordable Housing 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 a.m. local time nor be performed after 5:00 p.m. 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. The DEVELOPER shall execute an agreement with the CITY for the continuing maintenance of storm water pollutant pre-treatment facilities ("C3") and shall obtain a private easement from the adjoining property owner, which shall include the CITY as a third-party beneficiary, for discharging rainwater into their drainage facility.

F. 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 execution of this Agreement by the CITY, except those required 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 Engineer may extend the time for completion of the required public infrastructure improvements. The City Engineer 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 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 \$ _____, 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 \$ _____, 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 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's for subcontractors shall be subject to all of the requirements stated herein.

17. Participation in Benefit Districts

This section is not applicable.

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. 7904, 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 PX0800052 Planning CMDV07235, PUD07237, RZ07234
Grading GR0800053 Building RB0800067, et al.

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

Subdivision: Final Map - Tract No. 7904 City Engineer's Estimate of the Cost of Improvements

Insurer: _____ Surety: _____

21. Constructive Notice

This Agreement shall be filed with the Alameda County Clerk-Recorder for recordation upon its execution by the PARTIES.

22. Effective Date

This Agreement shall become effective upon its execution by the PARTIES.

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.

HABITAT FOR HUMANITY OF THE EAST BAY *

CITY OF OAKLAND

signature

signature

name

by **RAYMOND M. DERANIA**
Interim City Engineer

title

date

date

* *notarized acknowledgment required*