



TO THE HONORABLE MAYOR AND COUNCIL:

DATE: June 1, 2009

SUBJECT: ADOPTING RESOLUTION NO. 09-38 APPROVING THE PHASE 1 FINAL MAP AND SUBDIVISION AGREEMENT FOR JOHN MUIR MEDICAL CENTER; AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE PHASE 1 SUBDIVISION AGREEMENT

Report in Brief

On June 20, 2007, the Planning Commission approved the Vesting Tentative Map, Use Permit, and other related applications for the John Muir Medical Center. Subsequently, the developer opted to file a two-phase final map. The final map under consideration is the first final map or Phase 1. The Subdivision Map Act requires concurrence of the local agency if the decision to phase the filing of the final map occurs subsequent to the filing of the tentative map. The Zoning Administrator, the approving body designated in the Ordinance, has concurred with phasing the filing of the final map. The developer has complied with the applicable conditions of approval, paid the applicable fees, signed the Subdivision Agreement, and posted the required securities for Phase 1.

Staff recommends that the Council adopt Resolution No. 09-38 approving the Phase 1 Final Map and Subdivision Agreement for the John Muir Medical Center; and authorize the City Manager to execute the Phase 1 Subdivision Agreement.

Background

On July 29, 2005, Mt. Diablo Medical Center (MDMC) submitted an application for Use Permit (UP 05-011), Vesting Tentative Map (TM 05-010), Design Review (DR 05-022), and Tree Removal (RT 05-003) for what would later become known as John Muir Medical Center (JMMC) – Concord Campus. After several revisions of the proposed plans, the Design Review Board recommended Final Design Review approval on April 19, 2007. The project (**Attachment 2, Vicinity Map**) includes:

- Construction of 174,000 sq. ft hospital tower;
- Construction of a parking lot on the west side of East St., between Bacon St. and Almond St.;
- Expansion, remodel and seismic retrofit of existing hospital;
- Construction of a 40,000 sq. ft. Medical Office Building on Almond Avenue;
- Construction of a 20,000 sq. ft. Medical Office Building on the West Property.

On June 20, 2007, the Planning Commission approved an application by John Muir Health for a Use Permit (UP 05-011), Vesting Tentative Map (TM 05-010), Design Review (DR 05-022), General Plan (GP-

**ADOPTING RESOLUTION NO. 09-38 APPROVING THE PHASE 1 FINAL MAP AND
SUBDIVISION AGREEMENT OF THE JOHN MUIR MEDICAL CENTER –
CONCORD CAMPUS SUBDIVISION; AND AUTHORIZING THE CITY MANAGER
TO EXECUTE THE PHASE 1 SUBDIVISION AGREEMENT**

June 1, 2009

Page 2

05006), Preliminary Development Plan (PD 05-004), Right-of-Way Vacation (DP 05-002), and Tree Removal (RT 05-003) for improvements to the John Muir Health Center Campus, located at 2540 East Street, with conditions and findings. On that same date, the Planning Commission held a public hearing on the EIR and recommended that the City Council certify the Final EIR and adopt the Findings with Statement of Overriding Considerations and the Mitigation Monitoring and Reporting Program. On July 10, 2007, the City Council approved the General Plan and Preliminary Development Plan, certified the EIR and adopted the Mitigation Monitoring and Reporting Program.

The developer, via its June 6, 2008 letter, informed staff that there is no near-term plan to develop the 40,000 sq. ft. Medical Office Building. At this time, the developer is uncertain when it may be developed. The developer requested that the payment of fees associated with the Medical Office Building be deferred until such time it is developed. Due to a development condition of approval requiring payment of most of the fees at the filing of the final map, staff suggested that the developer consider filing a multiple final map as provided for in the Subdivision Map Act. Following consideration of this option, the developer decided to file a two-phased final map. Because the decision to phase the final map was subsequent to the filing of the Vesting Tentative Map, its filing requires the concurrence of the City per the Map Act. The Zoning Administrator, the approving body designated in the Ordinance, has concurred with phasing the final map.

Discussion

Staff has reviewed the Phase 1 Final Map and verified that it substantially conforms to the Vesting Tentative Map “John Muir Medical Center – Concord Campus” approved by the Planning Commission, complies with the applicable provisions of the Subdivision Map Act and the Concord Municipal Code, and is technically correct. The developer has complied with all applicable conditions of approval. The developer has signed the Phase 1 Subdivision Agreement (**Attachment 3**), paid the applicable fees, and posted the required securities for Phase 1 of the project.

Fiscal Impact

The developer has paid the applicable fees for Phase 1 of the project as part of the Phase 1 Subdivision Agreement. The proposed 5-lot subdivision would result in beneficial property tax and sales tax impacts on the City.

Public Contact

Posting of the Council Agenda.

**ADOPTING RESOLUTION NO. 09-38 APPROVING THE PHASE 1 FINAL MAP AND
SUBDIVISION AGREEMENT OF THE JOHN MUIR MEDICAL CENTER –
CONCORD CAMPUS SUBDIVISION; AND AUTHORIZING THE CITY MANAGER
TO EXECUTE THE PHASE 1 SUBDIVISION AGREEMENT**

June 1, 2009

Page 3

Recommendation for Action

Staff recommends the City Council adopt Resolution No. 09-38 approving the Phase 1 Final Map and Subdivision Agreement for John Muir Medical Center – Concord Campus Subdivision; and authorize the City Manager to execute the Phase 1 Subdivision Agreement.

Prepared by: Libbey Bell
Acting Senior Civil Engineer
Libbey.bell@ci.concord.ca.us

Reviewed by: Alex Pascual, PE, Director
Building, Engineering & Neighborhood
Services
Alex.pascual@ci.concord.ca.us



Daniel E. Keen
City Manager
Dan.keen@ci.concord.ca.us

Attachments: Attachment 1: Resolution No. 09-38
Attachment 2: Vicinity Map
Attachment 3: Phase 1 Subdivision Agreement

**BEFORE THE CITY COUNCIL OF THE CITY OF CONCORD
COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA**

**A Resolution Approving the Phase 1 Final Map for
Subdivision 9195 Assessor’s Parcel Nos. 112-151-025,
112-162-043 and -044.**

Resolution No. 09-38

WHEREAS, on June 20, 2007 the City of Concord Planning Commission approved with conditions and findings the Vesting Tentative Map (TM 05-010), Use Permit (UP 05-011), Heritage Tree Removal (RT 05-003), and Design Review (DR 05-022) for the John Muir Medical Center – Concord Campus Seismic Replacement and Upgrade Project for the Main Campus located at 2450 East Street; South Property at 2492, 2494, 2496, 2500, 2520 & 2550 Almond Avenue, and West Property at 2313 East Street; 2345 Almond Avenue; consisting of seventeen parcels, Assessor’s Parcel Numbers 112-151-025, 112-162-043, -044, 112-152-014, -015, -016, -017, -026, and 112-142-008 thru -016; and

WHEREAS, the Phase 1 subdivision proposes to subdivide three parcels, Assessor’s Parcel Numbers 112-151-025, 112-162-043 and -044, totaling 15.97 acres into five lots composed of a five-story hospital tower and related site improvements; and

WHEREAS, the Developer opted to file a two-phase final map subsequent to the filing of the Vesting Tentative Map; and

WHEREAS, the Subdivision Map Act requires the concurrence of the City in the filing of the multiple final maps; and

WHEREAS, the Zoning Administrator, the approving body designated by the Ordinance, has concurred with phasing the final map; and

WHEREAS, the City Engineer has certified that the Phase 1 Final Map conforms to the approved Vesting Tentative Map, and that it is technically correct; and

WHEREAS, the developer has complied with all applicable conditions of approval established by the Planning Commission and City Council for this Subdivision prior to the Phase 1

1 Final Map approval; and

2 **WHEREAS**, the developer has signed the Phase 1 Subdivision Agreement, paid the applicable
3 fees, posted the required securities, and furnished the required insurance for Phase 1 of the project.

4 **NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CONCORD DOES**
5 **RESOLVE AS FOLLOWS:**

6 **Section 1.** Approves the Phase 1 Final Map of Subdivision 9195 and directs the City Clerk,
7 Planning Manager, and City Engineer to sign the Phase 1 Final Map on behalf of the City.

8 **Section 2.** Approves the Phase 1 Subdivision Agreement and authorizes the City Manager to
9 execute the Phase 1 Subdivision Agreement.

10 **Section 3.** The City Clerk shall cause a certified copy of this resolution attested to under her
11 seal to be recorded in the office of the Contra Costa County Recorder.

12 **Section 4.** This resolution shall become effective immediately upon its passage and adoption.

13 **PASSED AND ADOPTED** by the City Council of the City of Concord on June 1, 2009, by
14 the following vote:

15 **AYES:** Councilmembers -

16 **NOES:** Councilmembers -

17 **ABSTAIN:** Councilmembers -

18 **ABSENT:** Councilmembers -

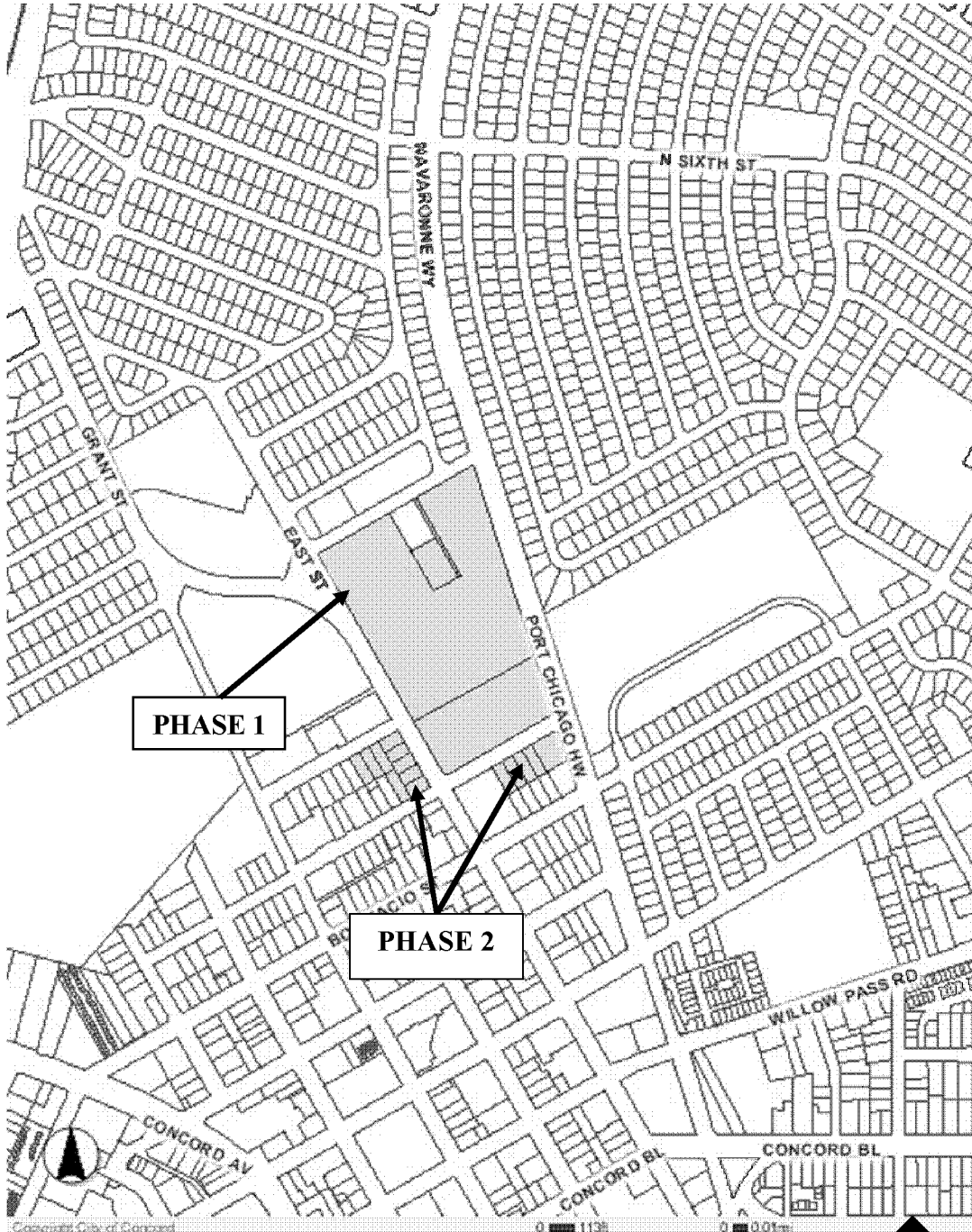
19 **I HEREBY CERTIFY** that the foregoing Resolution No. 09-38 was duly and regularly
20 adopted at a regular joint meeting of the City Council and the Redevelopment Agency of the City of
21 Concord on June 1, 2009.

22
23 _____
24 Mary Rae Lehman
25 City Clerk

26 **APPROVED AS TO FORM:**

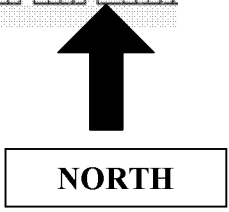
1 Craig Labadie
2 City Attorney

3 Cc: County Recorder's Office
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



VICINITY MAP

Not to scale



WHEN RECORDED MAIL TO

City Clerk
City of Concord
1950 Parkside Drive, MS 03
Concord, CA 94519-2578

ATTACHMENT 3

SPACE ABOVE FOR RECORDER'S USE ONLY

SUBDIVISION AGREEMENT

SUBDIVISION		NUMBER
NAME John Muir Medical Center Concord Campus Seismic Replacement & Upgrade		Subdivision 9195
SUBDIVIDER		
NAME John Muir Health, a California non profit public benefit corporation.		
STREET	CITY	ZIP
2540 East Street	Concord	94520

THIS SUBDIVISION AGREEMENT, entered into on **June 1, 2009**, BY AND BETWEEN THE CITY OF CONCORD, a general law city in Contra Costa County, California, hereinafter called "City", and **John Muir Health, a California non profit public benefit corporation.**, hereinafter called "Subdivider", who do mutually promise and agree as follows:

1. **Improvements.** Subdivider shall construct, install, and complete **the following improvements per the Improvement Plans prepared by Kier & Wright titled "Improvement Plans for John Muir Medical Center, Campus, Concord, California," approved by the City August 1, 2008 and the conditions of approval, including but not limited to: road and street improvements, sewer & drainage facilities, AC pavement, retaining walls, concrete curbs, gutters, sidewalks, valley gutter, handicap ramps with truncated domes, bus stop, utilities & utility under-grounding, street signs, fire hydrants, electroliers, traffic signals, pavement marking and striping, other structures,** and any and all grading and improvements incidental to the work to be performed hereunder by reference and made a part hereof, all as required by the Concord Municipal Code, and in accordance with the current edition of the City Standard Specifications and City Standard Plans, both of which are on file in the City Department of Building, Engineering & Neighborhood Services, and are incorporated herein by reference.

2. **Completion.** Subdivider shall complete the said work and improvements in three (3) years from the date of this Agreement, as required by the California Subdivision Map Act (Government Code, Section 66410 and following), in a good workmanlike manner in accordance with accepted construction practices and in a manner equal or superior to the requirements

of the Concord Municipal Code and rulings made thereunder; and where there is a conflict between the improvement plan and the Concord Municipal Code, the stricter requirements shall govern.

3. Guarantee and Maintenance. Subdivider guarantees that the work is and will be free from defects and will perform satisfactorily in accordance with the Concord Municipal Code; and he shall maintain the work for one (1) year after its completion and acceptance against any defective workmanship or materials or any unsatisfactory performance.

4. Fees. Upon execution of this Agreement, Subdivider shall, in accordance with the Concord Municipal Code, concurrently pay the following fees:

- a. Construction Inspection Fee
Off-site: 9% of estimated construction cost of \$737,842.75 = \$86,405.85
\$66,405.85; On-site: *\$20,000 deposit
- b. Grading Fee *\$5000 **\$5,000.00**
- c. Local Drainage Fee (drainage area 23/24), \$2,389/acre (20.15 acres) **\$48,138.35**
- d. Parkland Fee N/A **\$0.00**
- e. Improvement Plan Review and Filing Fee (*\$40,000 plan review deposit + \$85 filing fee) **\$40,085.00**
- f. Final Map Review and Filing Fee (*\$10,000 plan review deposit + \$1,690 filing fee) **\$11,690.00**
- g. Additional Plan Review Fee:
50 hours @ \$169.00 per hour **\$8,450.00**
- h. Other: Mitigation Monitoring *\$10,000, Restoration Security *15,000, **\$943,746.60**
Erosion Control deposit *\$10,000, Stockpile and Erosion Control Monitoring fee, (\$19/day x 720 days) = *\$13,680, new lot creation (\$338/lot for 5 lots) = \$1690, acceptance of improvement and dedications \$3,380, Archiving permanent records \$1000, specialty inspections \$5000, Sewer connection fee \$861 per fixture x 587 fixtures = \$505,407 (sewer connection fee includes a credit of 51 fixtures for the Kirk building), sewer service fee (\$4.90/month per fixture x 638 fixtures) = \$3,126, OSIP fee \$2.76/SF x 174,000 SF

hospital building, (less fee credit for demolished Kirk building

16,070 SF @ \$6.52/SF) = \$375,463.60

Subtotal	\$1,143,515.80
*Less Amount Previously Paid	\$1,143,515.80
Total	\$0.0

5. Additional Fees. All additional fees required by the Concord Municipal Code shall be paid to the City prior to the issuance of a Certificate of Occupancy for each dwelling unit within the subdivision.

6. Bonds. Upon execution of the Agreement, Subdivider shall deposit the following security with City:

a. Faithful Performance and Maintenance - The security shall consist of the following:

- 1) a \$1,000 cash deposit; and
- 2) a cash deposit, or certified or cashier's check, or an acceptable corporate surety bond for at least **\$964,044.93**; and
- 3) the **\$86,405.85** construction inspection fee paid under Subsection 4.a above which shall become a part of the security in the event Subdivider fails to meet his/her obligation prescribed under this Agreement.

The above together totals **\$1,051,450.78**. Said total represents the estimated cost to City to perform the work, including the cost to the City to administer the construction of the improvements, guaranteeing the faithful performance of this Agreement and maintenance of the work for one (1) year after completion and acceptance thereof against any defective workmanship or materials or any unsatisfactory performance pursuant to Section 94-117 of the Concord Municipal Code; and

b. Labor and Materials - Additional security for at least **\$965,044.93**, which is the total estimated cost of the work, security payment to the contractor, to his subcontractor, and to persons renting equipment or furnishing labor or materials to them or to the Subdivider.

7. Inspector. A City inspector shall be present on the job site, and the said inspector shall be such as the City shall designate and appoint.

8. Warranty. Subdivider warrants that said improvement plan is adequate to accomplish this work as promised in Section 1; and if, at any time before the City's resolution of completion for the subdivision, the improvement plan proves to be inadequate in any respect, Subdivider shall make changes necessary to accomplish the work as promised.

9. No Waiver by City. Inspection of work and/or materials, or approval of work and/or materials inspected, or statement by any officer, agent, or employee of the City indicating the work, or any part thereof, complies with the requirements of this Agreement, or acceptance of the whole or any part of said work and/or materials, or payments thereof, or any combination, or all of these acts shall not relieve Subdivider of his/her obligation to fulfill this contract as prescribed; nor shall the City be thereby stopped from bringing any action for damages arising from the failure to comply with any of the terms and conditions hereof.

10. Indemnity. Subdivider shall hold harmless and indemnify and defend the indemnitees from the liabilities as defined in this section.

a. The indemnitees benefited and protected by this promise are the City and its elective and appointive boards, commissions, officers, agents, and employees;

b. The liabilities protected against are any liability of claim for damage of any kind allegedly suffered, incurred, or threatened because of actions defined below, and including personal injury, death, property damage, inverse condemnation, or any combination of these, and regardless of whether or not such liability, claim, or damage was unforeseeable at any time before City approved the improvement plan or accepted the improvements as completed, and including the defense of any suit(s), action(s), or other proceeding(s) concerning these;

c. The actions causing liability are any act or omission (negligent or non-negligent) in connection with the matters covered by this Agreement and attributable to Subdivider, contractor, subcontractor, or any officer, agent, or employee of one (1) or more of them. The indemnification in this section is not conditioned or dependent on whether or not any indemnitee has prepared, supplied, or approved any plan(s) or specification(s) in connection with this work or subdivision, or has insurance or other indemnification covering any of these matters.

d. Certificate of Insurance/Additional Insured Endorsement - Subdivider, at his/her own expense, shall procure and maintain in full force at all times during the term of this agreement, the following insurance which shall be provided on an Occurrence basis, or Claims-made basis as approved by the City Attorney:

(1) Commercial General Liability. If Commercial General Liability Insurance or other form with a general aggregate limit is used, Subdivider shall procure and maintain a limit of liability of not less than two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage.

(2) Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

(a) General Liability coverage.

(i) The City, its officers, officials, employees and volunteers are to be covered as insureds as respects: Liability arising out of activities performed by or on behalf of the Subdivider and completed operations of Subdivider, premises owned, occupied, or used by Subdivider, the coverage shall contain no special limitations on the scope or protection afforded to the City, its officers, officials, employees or volunteers.

(ii) The Subdivider's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be in excess of Subdivider's insurance and shall not contribute with it.

(iii) Any failure to comply with the reporting provisions of the policy shall not affect the coverage provided to City, its officers, officials, employees, or volunteers.

The aforementioned policy(ies) shall be issued by an insurance carrier having a rating of Best A-7 or better which is satisfactory to the City Attorney and shall be delivered to the City at the time of the execution of this Agreement or as provided below. In lieu of actual delivery of such policy(ies), a certificate issued by the insurance carrier showing such policy is to be in force for the period covered by the Agreement may be delivered to the City. Such policy(ies) and such certificate(s) shall be in a form approved by the City Attorney. The policy(ies) mentioned in this subsection shall name the City as an additional insured and provide for thirty days notice of cancellation to the City. Said policy(ies) shall not be canceled earlier than nor the amount of coverage reduced earlier than thirty days after the City receives notices from the insurer of the intent of cancellation or reduction.

e. Workers' Compensation Insurance. Subdivider covenants that s/he will insure himself/herself against liability for Workers' Compensation pursuant to the provisions of the California Labor Code Section 3700 et. seq. Subdivider shall, at all times, upon demand of the City Council or its properly authorized agent, furnish proof that Workers' Compensation Insurance or a Certificate of Self-Insurance as permitted by law is being maintained by him/her in force and effect in accordance with said Labor Code.

11. Compliance with Laws. Subdivider shall carry out the work of Improvements described in Section 1 in conformity with all applicable laws, including without limitation, all applicable state labor laws and standards; any applicable

Public Contract Code requirements; City development standards; applicable building, plumbing, mechanical and electrical codes; all other provisions of the Concord Municipal Code; and all applicable disabled and handicapped access requirements, including without limitation, the American with Disabilities Act, 42 U.S.C. 12101, et seq., Government Code 4450, et, seq., Government Code section 11135 et seq. and the Unruh Civil Rights Act, Civil Code section 51 et seq. Nothing herein shall prevent Subdivider from contesting, in good faith, by proper proceedings, the validity or applicability of any such applicable laws.

Subdivider shall defend, indemnify, and hold harmless the City and its officers, employees, agents, volunteers and representatives, from and against any and all present and future liabilities, obligations, orders, claims, damages, fines, penalties, and expenses, (including reasonable attorneys' fees and costs) (collectively, "Claims"), arising out of or in any way connected with the Subdivider's obligation to comply with all applicable laws with respect to the work of Improvements, including, without limitation, all applicable laws described in the first paragraph of this section 11.

12. Costs. Subdivider shall pay, when due, all the costs of the work, including inspections thereof and relocating existing utilities required thereby.

13. Non-performance and Costs. If Subdivider fails to complete the work and improvements within the time specified in this Agreement or extensions granted, City may proceed to complete them by contract or otherwise, and Subdivider shall pay the costs and charges therefor immediately upon demand. If City sues to compel performance of this Agreement or to recover the costs of completing the improvements, Subdivider shall pay all costs of suit and reasonable attorney's fees, as determined by a court of competent jurisdiction.

14. Heirs, Successors and Assigns. This Agreement shall be binding upon the heirs, successors, and assigns of the parties hereto.

15. Runs with Land and Recordation. This Agreement shall run with the land. The City shall cause this agreement to be recorded with the County Recorder, and a copy will be provided to the Subdivider.

16. Recordation: This Agreement shall be recorded with the County recorder of Contra Costa County.

CITY OF CONCORD, a municipal corporation

DATE: _____

By: _____
City Manager

APPROVED AS TO FORM:

ATTEST:

City Attorney

By: _____
City Clerk

ACKNOWLEDGEMENT

STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

On _____ before me, _____, personally appeared _____ of the _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

Signature _____
CITY CLERK

SUBDIVIDER:

By: *Ken Meehan*
Ken Meehan
Executive Vice President

By: *Michael Moody*
Michael Moody
Chief Financial Officer

NOTE TO DEVELOPER: (1) Execute acknowledgement form below for both signatures; and (2) if a corporation attach a certified copy of (a) the Bylaws or (b) the resolution of the Board of Directors authorizing execution of this contract and of the bonds required hereby, together with appropriate corporate acknowledgment form—corporate seal must be affixed.

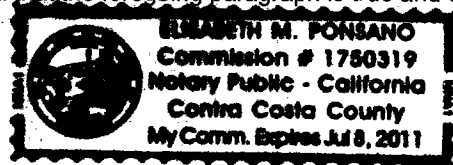
ACKNOWLEDGEMENT

STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

On May 13, 2009 before me, Elisabeth M. Ponsano, Notary Public, personally appeared Kenneth L. Meehan and Michael Moody of the _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

Signature *Elisabeth M. Ponsano*



ACKNOWLEDGEMENT

STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

On _____ before me, _____, personally appeared _____ of the _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

NOTARY PUBLIC, STATE OF CALIFORNIA

THIS Notary Form is associated with the SUBDIVISION AGREEMENT, entered into on **September 8, 2008**, BY AND BETWEEN THE CITY OF CONCORD, a general law city in Contra Costa County, California, hereinafter called "City", and **John Muir Health, a California non profit public benefit corporation.**