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**OAKLAND CITY COUNCIL**  
**74594**  
RESOLUTION NO. \_\_\_\_\_ C. M. S.

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

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RESOLUTION AUTHORIZING THE SUPERINTENDENT OF STREETS TO ENTER INTO AN AGREEMENT WITH CHATEAU MONTCLAIR INC. FOR CERTAIN IMPROVEMENTS TO BE CONSTRUCTED IN A REAL ESTATE SUBDIVISION ENTITLED "TRACT 6746 (PHASE 1)"; FIXING THE AMOUNT OF THE SECURITY TO GUARANTEE THE FAITHFUL PERFORMANCE OF SUCH AGREEMENT AND ADOPTING PLANS AND SPECIFICATIONS FOR SUCH IMPROVEMENTS

WHEREAS, on November 30, 1992, the City Planning Commission of the City of Oakland approved Preliminary Planned Unit Development ("PUD") PUD88-367 to construct a 32-unit mixed use residential development at the northeast corner of Redwood Road and Crestmont Drive; and

WHEREAS, approval of the Preliminary PUD88-367 was appealed to City Council and City Council sustained the decision of the City Planning Commission in granting the application under Resolution 69660 C.M.S. in its January 26, 1993 meeting; and

WHEREAS, on January 25, 1995, the City Planning Commission approved Final PUD94-242 to allow the proposed development and subdivision into 32 lots for ten townhouse units and 22 single-family detached units; and

WHEREAS, on the 22nd day of February, 1995, the City Planning Commission approved a tentative map of a proposed real estate subdivision entitled "Tract 6746, Oakland, Alameda County, California"; and

WHEREAS, subsequent to the tentative map approval, City Planning staff granted the original subdivider's request to phase recordation of the final subdivision map into two phases: Phase I for the proposed 10 townhouse units off of Crestmont Drive; and Phase II for the proposed 22 single-family units off of Redwood Road; and

WHEREAS, the final map of Tract 6746 Phase II has been approved by City Council and permits have been issued for the required grading and public improvement work for Tract 6746 Phase II; and

WHEREAS, Chateau Montclair Inc. ("Subdivider"), a California Corporation, who is the Subdivider for Tract 6746 Phase I, desires to postpone the improvements proposed to be constructed in said proposed subdivision to a time subsequent to the approval of the final map thereof; now, therefore, be it

WHEREAS, the requirements of the California Environmental Quality Act ("CEQA") of 1970 and the provisions of the Statement of Objectives, Criteria and Procedure for implementation of CEQA, have

been satisfied by the circulation, review and certification of Draft and Final Environmental Impact Reports; now therefore, be it

RESOLVED: That the Council of the City of Oakland consents to the postponement of the construction of such improvements, and the Superintendent of Streets/Chief of Building Services is hereby authorized and empowered to enter into an agreement with the Subdivider for the construction within said proposed subdivision of those certain improvements set forth in the plans and specifications therefor, filed in the Office of the City Clerk on the 19th day of October 1998, said work to be completed on or before the 1st day of November 1, 1999, provided, however, the date for the completion of such improvements may be extended by the City Council upon recommendation of the Superintendent of Streets/Chief of Building Services; and be it

Further Resolved: That said Subdivider shall, at the time of the execution of said Agreement, file with the City Clerk a surety bond in the sum of Two Hundred and Fifteen Thousand One Hundred and Fifty Five Dollars (\$215,155) guaranteeing the faithful performance of work under such agreement, and shall at said time file with the City Clerk an additional surety bond in the sum of One Hundred and Seven Thousand Five Hundred and Seventy Seven Dollars (\$107,577) securing payment to the contractor, his subcontractors and to all persons renting equipment or furnishing labor and materials to them, or post such other security as is provided in Section 11612 of the "Business and Professions Code"; and be it

Further Resolved: That this Council will approve said proposed final map upon the execution of said agreement and the filing of said surety bonds or other security; and be it

Further Resolved: That the plans and specifications prepared by Berry and Associates, consulting engineers for the Subdivider and approved by the City Engineer and filed in the Office of the City Clerk on the 19th day of October, 1998, for the above-mentioned improvements, which are incorporated herein as Exhibit A, are hereby approved and adopted as the plans and specifications for such proposed improvements.

IN COUNCIL, OAKLAND, CALIFORNIA, **OCT 20 1998**, 19\_\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

AYES- BRUNNER, CHANG, DE LA FUENTE, MILEY, NADEL, REID, RUSSO, SPEES AND  
PRESIDENT HARRIS - 9

NOES- None

ABSENT- None

ABSTENTION- None

ATTEST:

  
for CEDA FLOYD

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

## SUBDIVISION AGREEMENT

WHEREAS, on the 22<sup>nd</sup> day of February, 1995, the City Planning Commission approved a tentative map of a proposed real estate subdivision entitled "Tract 6746, Oakland, Alameda County, California" and certified the related environmental impact report (EIR/ER 88-37); and

WHEREAS, subsequent to the tentative map approval, City Planning staff granted the original subdivider's request to phase recordation of the final subdivision map into two phases: Phase I for the proposed 10 townhouse units off of Crestmont Drive; and Phase II for the proposed 22 single-family units off of Redwood Road; and

WHEREAS, Chateau Montclair Inc. ("Subdivider"), a California corporation, is the Subdivider for Tract 6746 Phase I; and

WHEREAS, said Subdivider has requested permission to defer the subdivision public improvements proposed to be constructed in said tract to a time subsequent to the acceptance of the final map of said subdivision; and

WHEREAS, the Council of the City of Oakland did on October 20, 1998 by its Resolution No. \_\_\_\_\_ C.M.S., consent to the postponement of said work and authorized the Superintendent of Streets/Chief of Building Services of the City of Oakland to enter into a contract with said Subdivider for the construction of such proposed subdivision public improvements and did on said date by said resolution adopt plans and specifications for such work (see Exhibit A which is attached hereto and incorporated herein by this reference); now, therefore, in consideration of the mutual promises hereinafter made,

### IT IS HEREBY AGREED:

1. That said Subdivider will, at his own cost and expense, furnish all labor, equipment and materials necessary to perform and complete said proposed subdivision public improvements in accordance with said plans and specifications, the approved EIR mitigation measures, conditions of approval for Tract 6746, including those set forth in the Engineering Services/Building Services February 1, 1995 memorandum, conditions attached to Grading Permit 980002, and all conditions and mitigations imposed pursuant to Resolution No. 69660 C.M.S., P.U.D. 88-367 and P.U.D. 94-242. All of said work shall be completed on or before the 1st day of November 1999; provided, however, the date for the completion of such improvements may be extended by the City Council upon the recommendation of the Superintendent of Streets/Chief of Building Services.

2. That said work will be done under the supervision of, and to the satisfaction of, the Superintendent of Streets/Chief of Building Services of the City of Oakland, and shall not be deemed complete until approved and accepted as complete by said Superintendent of Streets/Chief of Building Services in writing.

3. That the City of Oakland shall not, nor shall any of its officers, agents or employees, be liable or responsible for any accident, loss or damage happening or occurring to the improvement specified in this contract prior to the completion and acceptance of the same by the Superintendent of Streets/Chief of Building Services, nor shall the City of Oakland, nor any of its officers or employees be liable for injury to persons or property by reason of the nature of said work; that all such liabilities shall be assumed by and satisfied by the Subdivider. The Subdivider further agrees to defend and protect said City and its officers and employees 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. Subdivider further agrees to provide and maintain in force and effect at all times, good and sufficient public liability insurance in amounts not less than \$500,000/\$500,000 and property damage insurance in the amount of \$100,000, insuring the City of Oakland, its officers and employees as additional insureds thereunder, from the date hereof until completion of all of the improvements herein agreed to be performed and that a certificate of such insurance shall be filed with the City Clerk of the City of Oakland that such certificate shall state that said insurance coverage shall not be canceled, reduced or be permitted to lapse without thirty (30) days prior written notice to said Clerk.

4. The Subdivider waives all claims and recourse against the City, including 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 from the concurrent or sole negligence of the City, its officers, agents and employees. Subdivider shall indemnify, hold harmless and defend the City, its officers, agents and employees against any and all claims, demands, damages, costs, expenses and liability costs including attorneys' fees 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 for liability arising out of the concurrent or sole negligence of the City, its officers, agents or employees.

5. The Subdivider agrees that from the date of the acceptance of the Council of the City of Oakland of the streets and other public places offered for dedication in said tract up to the acceptance of said improvements by the said Superintendent of Streets/Chief of Building Services, the Subdivider shall give good and adequate warning to the traveling public of each and every dangerous condition existing in said streets and public places, and shall protect the public from such defective or dangerous condition; that until the completion of all of the improvements herein agreed to be performed, each of said streets and public places, the improvements of which are not accepted by the Superintendent of Streets/Chief of Building Services, shall be under the charge of the said Subdivider for the purpose of this contract, and the said Subdivider shall close all of such public streets or public places whenever it is necessary for the protection of the public during the making of the improvements herein to be made.

6. The Subdivider agrees to file with the City Clerk of

the City of Oakland, at the time of the execution of this agreement, a surety company bond in the sum of Two Hundred and Fifteen Thousand One Hundred and Fifty Five Dollars (\$215,155) guaranteeing the faithful performance of the terms and conditions of this agreement, and an additional surety bond in the sum of One Hundred and Seven Thousand Five Hundred and Seventy Seven Dollars (\$107,577) securing payment to the contractor, his subcontractors and to all persons renting equipment or furnishing labor and materials to them, or said Subdivider shall post such other security as is provided in Section 11612 of the "Business and Profession Code." Time is of essence hereof.

7. The City of Oakland, subject to applicable laws, rules and regulations, hereby agrees to thereafter approve the proposed final map of said proposed subdivision and accept the offer of dedication thereon; provided that acceptance of the offers of dedication shall be contingent upon the completion of the public improvement work by the Subdivider and acceptance of said work by the Superintendent of Streets/Chief of Building Services.

IN WITNESS WHEREOF, the Subdivider has caused his name to be hereto subscribed and the Superintendent of Streets/Chief of Building Services of the City of Oakland, thereunto duly authorized by Resolution No. \_\_\_\_\_ C.M.S. of the Council of the said City of Oakland, has caused the name of the said City to be affixed hereto, all in triplicate, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

CHATEAU MONTCLAIR INC.

By: \_\_\_\_\_

CITY OF OAKLAND, A Municipal Corporation

By: \_\_\_\_\_  
CALVIN N. WONG,  
Chief of Building Services  
(By authorization of the  
Superintendent of Streets)

APPROVED AS TO FORM  
AND LEGALITY

\_\_\_\_\_  
City Attorney's Office

(attach notary acknowledgment slip here)