

FINAL MAP SUBDIVISION AGREEMENT

THIS AGREEMENT is executed in triplicate this 10 day of August, 2021, by and between the COUNTY OF HUMBOLDT, a political subdivision of the State of California, hereinafter called COUNTY and SAMOA PACIFIC GROUP, LLC, hereinafter called SUBDIVIDER.

WITNESSETH:

WHEREAS, on August 10 SUBDIVIDER presented to the Board of Supervisors of COUNTY for approval a final map of a subdivision known as TOWN OF SAMOA SUBDIVISION PHASE 1; and

WHEREAS, COUNTY pursuant to Chapter 6 of Division 2 of Title III of the Humboldt County Code requires SUBDIVIDER to either complete all improvements required by the Humboldt County Code prior to the filing of the final map or enter into an improvements agreement which requires that the work on the required improvements be completed within the time specified; and

WHEREAS, the Board of Supervisors of COUNTY approved the final map subject to the execution of an improvements agreement between COUNTY and SUBDIVIDER pursuant to Chapter 6 of Division 2 of Title III of the Humboldt County Code; and

WHEREAS, SUBDIVIDER has presented to COUNTY improvement plans and specifications (hereinafter referred to as the "Improvement Plan") which are on file with the Public Works Department outlining therein the improvements to be constructed by SUBDIVIDER within the subdivision which are required by the Humboldt County Code as a condition precedent to the filing of the final map with the County Recorder; and

WHEREAS, SUBDIVIDER desires to complete the improvements described in the improvement plan after the final map is filed with the County Recorder and therefore desires to enter into this improvements agreement with the COUNTY;

NOW, THEREFORE, it is mutually agreed as follows:

(1) FINAL MAP

The term "final map" as defined in the Subdivision Map Act (Government Code sections 66410 *et seq.*) and the County Subdivision Ordinance (Division 2 of Title III of the Humboldt County Code), and as used in this agreement, shall refer to the map of the TOWN OF SAMOA SUBDIVISION PHASE 1, which was conditionally approved by the Planning Commission of COUNTY on February 20, 2020. A copy of the final map is attached to this agreement as Exhibit A and incorporated by reference herein.

(2) IMPROVEMENTS

SUBDIVIDER, at their own expense, shall make all improvements required by Title III, Division 2 of the Humboldt County Code as set forth in the Improvement Plan, and the conditions of approval of the tentative subdivision map, which are attached hereto as Exhibit B and incorporated herein by reference. It is agreed by both parties that the Improvement Plan titled "Phase 1:Water & Sewer Improvement Plans" dated 06/09/2021 is in accordance with the conditions of the tentative subdivision map which was approved by the Public Works Department on 06/10/2021; and that the Improvement Plan titled "Vance Avenue Phase 1A Improvement Plans" dated 02/04/2020 is in accordance with the conditions of the tentative subdivision map which was approved by the Planning and Building Department on 03/10/2020.

SUBDIVIDER warrants that Improvement Plan is adequate to complete the improvements shown in the Improvement Plan in a good, workmanlike manner and in accordance with accepted construction practices. Should the Improvement Plan, at any time prior to completion of the work on the improvements, appear to be inadequate in any respect in the opinion of the Public Works Director or designee thereof, hereinafter referred to as "DIRECTOR," the SUBDIVIDER agrees to make such change in the Improvement Plan as the DIRECTOR determines are necessary to complete improvements according to the standards specified in Section 3 of this agreement.

(3) STANDARDS

All improvements provided for in the Improvement Plan shall be constructed in a good workmanlike manner, using accepted construction practices and in accordance with the standards contained in Title III, Division 2 of the Humboldt County Code. Improvements for which specifications are not provided by said ordinance or by this agreement shall be constructed in accordance with the standards required by the DIRECTOR.

All improvements shall be subject to inspection and approval by the DIRECTOR.

(4) COSTS

SUBDIVIDER shall have the sole responsibility for paying all costs associated with the construction of all improvements required by this agreement, including but not limited to all costs associated with the improvements described in the Improvement Plan; meeting all conditions of the tentative map and furnishing any and all required public utility services, including but not limited to installing all necessary public water, public sewer, gas, electrical and telephone facilities.

(5) SERVICES

All administration and inspection services rendered in connection with the work covered by this agreement shall be paid for by SUBDIVIDER in accordance with the latest Fee Schedule adopted by the Board of Supervisors. The cash deposit for administration and inspection fees required by Section 326-13 of the Humboldt County Code is set in the amount of \$10,000. SUBDIVIDER is responsible for costs above the deposit amount.

(6) COMPLETION

Pursuant to Humboldt County Code section 326-2(a), all improvements shall be completed, inspected, and approved by the DIRECTOR no later than two (2) years following recordation of the Final Map.

COUNTY shall not issue any building permits until such time as the DIRECTOR determines that the improvements are complete.

(7) RIGHTS OF WAY

SUBDIVIDER, at its own expense and as approved by the DIRECTOR, shall provide any and all restrictions, rights of way, street rights of way, and easements for drainage, utilities and/or other purposes.

(8) GUARANTEE

Pursuant to Humboldt County Code section 326-2(b), SUBDIVIDER guarantees that all improvements and associated equipment required by this agreement, including but not limited to street surfacing, sidewalks, curbs and gutters, culverts, bridges and storm drains, shall be free from defects of material or workmanship and shall perform satisfactorily for a period of at least one year from and after acceptance of such improvements as complete, and the SUBDIVIDER shall repair any defects in these improvements or replace any defective improvements which cannot be repaired which occur or arise within the one year period at SUBDIVIDER's own expense.

(9) HOLD HARMLESS

(a) SUBDIVIDER shall hold COUNTY and its officers, employees, agents, volunteers, and representatives harmless against any and all damages arising out of the construction, maintenance, design, drainage, operation, and/or use of said subdivision including without limitation improvements specified in Section (2), and shall indemnify and defend the COUNTY against all claims. SUBDIVIDER shall also hold COUNTY and its officers, employees, agents, volunteers, and representatives harmless against any and all damages arising out of SUBDIVIDER's activities and operations in connection with the use, maintenance, design, and/or construction of the improvements in said subdivision prior to acceptance by COUNTY into the County Maintained Road System, and shall indemnify and defend the COUNTY against all claims. Insofar as said improvements are concerned, prior to acceptance into the County Maintained Road System, SUBDIVIDER shall likewise hold COUNTY harmless from any and all liability that may occur by reason of flooding and the deposit of debris, or either of such occurrences, caused either by the construction of the subdivision or lack of continuance of construction operations once commenced, and shall indemnify and defend the COUNTY against all claims.

(b) SUBDIVIDER shall hold COUNTY, its officers, employees, agents, volunteers, and representatives harmless against any and all damages by reason of injury to property arising out of design of the subdivision occurring within five years of the acceptance of the improvements.

(10) INSURANCE

This Agreement shall not be executed by COUNTY and the SUBDIVIDER is not entitled to any rights, unless certificates of insurance, or other sufficient proof that the following provisions have been complied with, and such certificates are filed with the Clerk of the Humboldt County Board of Supervisors.

(a) General Insurance Requirements. Without limiting SUBDIVIDER's indemnification obligations set forth herein, SUBDIVIDER, and its contractors and subcontractors, shall take out and maintain, throughout the term of this Agreement, and any extensions thereof,

the following policies of insurance, placed with insurers authorized to do business in the State of California with a current A.M. Bests rating of no less than A: VII or its equivalent against personal injury, death and property damage which may arise from, or in connection with, the activities of SUBDIVIDER and its agents, officers, directors, employees, assignees or subcontractors:

1. Comprehensive or Commercial General Liability Insurance at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence from CG 0001) in an amount of \$2,000,000.00 per occurrence. If work involves explosive, underground, or collapse risks, XCU must be included. If a general aggregate limit is used, either the general aggregate limit shall apply separately to this project or the general aggregate shall be twice the required occurrence limit.
2. SUBDIVIDER shall take out and maintain Automobile/Motor Liability Insurance with a limit of liability not less than One Million Dollars (\$1,000,000.00) combined single limit coverage. Such insurance shall include coverage of all owned, hired and non-owned vehicles, and be at least as broad as Insurance Service Offices Form Code 1 (any auto).
3. Workers' Compensation Insurance, as required by the California Labor Code, with statutory limits, and Employers Liability Insurance with a limit of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury or disease. Said policy shall contain, or be endorsed to contain, a waiver of subrogation against COUNTY and its agents, officers, officials, employees and volunteers, except for the negligence or willful misconduct of COUNTY and its agents, officers, employees and volunteers.

(b) Special Insurance Requirements. Said policies shall, unless otherwise specified herein, be endorsed with the following provisions:

1. The Comprehensive or Commercial General Liability Policy shall provide that COUNTY, and its agents, officers, officials, employees, and volunteers are covered as additional insured for liability arising out of the operations performed by or on behalf of SUBDIVIDER. The coverage shall contain no special limitations on the scope of protection afforded to the COUNTY, its officers, agents, and employees.
 - a. Includes contractual liability.
 - b. Does not contain exclusions as to property damage caused by explosion or collapse of structures or underground damage, commonly referred to as "XCU Hazards."
 - c. Is the primary insurance with regard to COUNTY.
 - d. Does not contain a pro-rata, excess only and/or escape clause.
 - e. Contains a cross liability, severability of interest or separation of insureds clause.

2. The above-referenced policies shall not be canceled or materially reduced in coverage without thirty (30) days prior written notice (10 days for non-payment of the premium). being provided to COUNTY in accordance with the notice requirements set forth herein. It is further understood that SUBDIVIDER shall not terminate such coverage until COUNTY receives adequate proof that equal or better insurance has been secured.
3. The inclusion of more than one insurance shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the insurer's liability.
4. For claims related to this project, the SUBDIVIDER's insurance is primary coverage to the COUNTY, and any insurance or self-insurance programs maintained by the COUNTY are excess to SUBDIVIDER's insurance and will not be called upon to contribute with it.
5. Any failure to comply with reporting or other provisions of the parties, including breach of warranties, shall not affect coverage provided to COUNTY, or its agents, officers, officials, employees, and volunteers.

(c) SUBDIVIDER shall furnish COUNTY with certificates and original endorsements effecting the required coverage prior to execution of this Agreement by COUNTY. The endorsements shall be on forms as approved by the County Risk Manager or County Counsel. Any deductible or self-insured retention over \$100,000.00 shall be disclosed to and approved by COUNTY. If SUBDIVIDER does not keep all required policies in full force and effect, COUNTY may, in addition to other remedies under this Agreement, take out the necessary insurance, and SUBDIVIDER agrees to pay the cost of said insurance.

(11) SECURITY

(a) Faithful Performance Security

In accordance with Section 66499 of the Government Code, SUBDIVIDER, at their sole expense, shall furnish COUNTY good and sufficient security in the sum of \$8,606,000 for the faithful performance of the provisions of this agreement requiring the construction of all improvements required by this agreement and associated equipment, including but not limited to street surfacing, sidewalks, curbs and gutters, culverts, bridges, and storm drains. Said security shall be maintained in full force and effect until the conditions thereof shall have been completely performed. The Humboldt County Board of Supervisors may, at its sole discretion and by official action, lower the amount of said security for faithful performance from time to time as portions of the improvements required by this agreement have been made.

(b) Payment Security

SUBDIVIDER shall furnish additional good and sufficient security in the sum of \$4,304,000, securing payment to the contractor, their subcontractors, and to persons renting equipment or furnishing labor, materials, or equipment. This security may, unless an appropriate waiver and release have been executed pursuant to Civil Code section 8122 *et seq.*, after the passage

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of the time within which claims of lien are required to be recorded pursuant to Article 2 (commencing with Section 8410) of Chapter 4 of Title 2 of Part 6 of Division 4 of the Civil Code and after acceptance of the work by COUNTY, be reduced to an amount equal to the total claimed by all claimants for whom claims of lien have been recorded and notice thereof given in writing to the Humboldt County Board of Supervisors, and if no such claims have been recorded at the expiration of such time, the security shall be released in full.

If the security provided is not in the form of a bond and in the event the security for payment under this section becomes insufficient to pay all valid claims properly submitted, then the unencumbered balance, if any, of the other securities may be used for payment of such claims.

(c) Guarantee and Expenses Security

SUBDIVIDER shall furnish security in the sum of \$431,000, securing SUBDIVIDER's one-year guarantee of all work performed under this agreement. SUBDIVIDER shall also furnish security in the sum of \$431,000, securing payment of costs and reasonable expenses and fees, including attorney's fees, incurred by COUNTY in successfully enforcing this agreement. Said security shall be maintained until expiration of the one-year guarantee period set forth in Humboldt County Code section 326-2(b); thereafter, the Humboldt County Board of Supervisors may release such security. DIRECTOR shall furnish subdivider with the date upon which the one-year guarantee period commences.

(d) Monument Security

In accordance with Section 66496 of the Government Code, SUBDIVIDER has delivered to COUNTY the engineer's or surveyor's certificate which certifies on the final map where the monuments will be set. If the certificate states that the monuments will be set on or before a specified later date, SUBDIVIDER, at their sole expense, shall furnish COUNTY a good and sufficient corporate surety bond or a cash deposit in the amount of \$111,020 guaranteeing payment for the actual cost of the setting of the monuments.

If the security provided is not in the form of a bond and in the event the cash deposit under this section becomes insufficient to pay the actual cost of the setting of the monuments, then the unencumbered balance, if any, of the other securities may be used for payment of such costs.

(e) Tax Security

In accordance with Government Code section 66493, SUBDIVIDER, at their sole expense, shall furnish to COUNTY a good and sufficient surety bond approved by the Humboldt County Board of Supervisors, or in lieu thereof, a deposit of money or negotiable bonds of a kind approved for securing deposits of public money in the sum of \$0 for the benefit of COUNTY securing payment of all state, county, municipal, and local taxes and the current installment of principal and interest of all special assessments collected as taxes, which at the time the subdivision map is recorded are a lien against the property, but which are not yet payable.

(12) RELEASE OF SECURITY

(a) Pursuant to County Code Section 326-6.3, DIRECTOR may grant partial releases of Faithful Performance Security, Payment Security, and Monument Security as long as sufficient security remains to cover uncompleted work.

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(b) When the DIRECTOR has determined that work has been completed, the applicable Faithful Performance Security, Payment Security, and Monument Security may be released.

(c) At the conclusion of the 12-month guarantee period and all remaining security may be released when the DIRECTOR has determined that all work is free from defects of material or workmanship and that the improvements perform satisfactorily.

(13) DEFAULT ON SURETY BOND

Should SUBDIVIDER fail to make all improvements required by this agreement within the time period herein specified, or should any improvements thereof fail to meet the standards imposed by this agreement and the security provided is in the form of a security bond, then COUNTY may elect to do the following:

(a) Give to SUBDIVIDER and its surety a notice requiring that said improvements or any part thereof be completed and/or brought up to the standards required by the terms of this agreement within a 30-day period, together with a statement that if this is not done, surety will be required to complete and/or bring up to standards the improvements or parts thereof.

(b) Upon failure of SUBDIVIDER to comply with the 30-day notice contained in subsection (a) of this paragraph, give to SUBDIVIDER and to said surety a notice demanding that the matters required in the notice given under subsection (a) of this paragraph be performed by said surety within a 30-day period, stating that if this is not done, such matters may be performed by COUNTY, either directly or indirectly by contracting with an outside contractor. In the event of such performance by COUNTY or an outside contractor hired by COUNTY, SUBDIVIDER and said surety shall be liable to COUNTY for all costs of such performance.

(14) DEFAULT - CASH SURETY OR INSTRUMENT OF CREDIT

Should SUBDIVIDER fail to make all the improvements required by this agreement within the time specified, or should such improvements or any part thereof fail to meet the standard imposed by this agreement and SUBDIVIDER has provided security other than in the form of a security bond, COUNTY may elect to give to SUBDIVIDER a notice requiring that said improvements or any part thereof be completed and/or brought up to standards imposed by this agreement within a 30-day period, together with a statement that if this is not done, such matters may be performed by COUNTY either directly or indirectly by contracting with an outside contractor. In the event of such performance by COUNTY or an outside contractor hired by COUNTY, SUBDIVIDER shall be liable to COUNTY for all costs of such performance. Such costs may be collected from SUBDIVIDER's security, and from SUBDIVIDER, if the costs exceed the amount of the security.

(15) CONFLICT

In the event of conflict between this agreement and applicable state laws or local ordinances, the applicable provisions of law shall prevail.

(16) NOTICE

Any notice that is provided for herein to be given to SUBDIVIDER shall be deemed to be given when it is placed in the United States mail, first class and postage prepaid, addressed to

SUBDIVIDER at 5251 Ericson Way, Ste A, Arcata Ca 95521, or such other address as SUBDIVIDER may designate by written notice filed with the Clerk of the Humboldt County Board of Supervisors.

(17) TERMINATION

(a) Pursuant to Humboldt County Code section 326-2(a), the SUBDIVIDER may request that this agreement be terminated, and all security released if the land subject to this agreement has been reverted to acreage in conformance with Humboldt County Code section 327-1 *et seq.*

In the event that the SUBDIVIDER has not commenced any work subject to this agreement, DIRECTOR may grant a full release of Faithful Performance Security, Payment Security, Guarantee and Expenses Security, and Monument Security.

In the event that the SUBDIVIDER has commenced with any work subject to this agreement, the DIRECTOR may require the SUBDIVIDER to bring that work to a logical point of conclusion prior to this agreement being terminated. DIRECTOR may grant a full release of Faithful Performance Security, Payment Security, and Monument Security. DIRECTOR may grant a partial release of Guarantee and Expenses Security, retaining a portion sufficient to cover the 12-month guarantee period. DIRECTOR shall furnish subdivider with the date upon which the one-year guarantee period commences. At the conclusion of the 12-month guarantee period, all remaining security may be released when the DIRECTOR has determined that all work is free from defects of material or workmanship and that the improvements perform satisfactorily.

(b) This agreement may be terminated at the conclusion of the 12-month guarantee period and all remaining security may be released when the DIRECTOR has determined that all work is free from defects of material or workmanship and that the improvements perform satisfactorily.

(c) This agreement shall not be terminated until any outstanding charges for Services provided in Section 5 have been paid in full.

(18) AMENDMENT

The terms of this agreement may be amended only in writing with the consent of both parties.

(19) ASSIGNMENT

SUBDIVIDER shall not assign its obligations, duties, or rights hereunder, either in whole or in part, without COUNTY's prior written consent. Any assignment by SUBDIVIDER in violation of this provision shall be void.

(20) AGREEMENT SHALL BIND SUCCESSORS

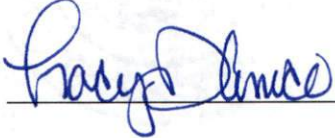
All provisions of this Agreement shall be fully binding upon, and inure to the benefit of, the parties and to each of their heirs, executors, administrators, transfers, successors and permitted assigns.


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IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their duly authorized officers the day and year first above written.

(SEAL)
ATTEST:
CLERK OF THE BOARD

SUBDIVIDER:
SAMOA PACIFIC GROUP, LLC

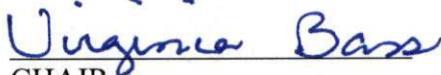
BY 

BY 
DANIEL J. JOHNSON, MEMBER

INSURANCE CERTIFICATES
REVIEWED AND APPROVED

COUNTY OF HUMBOLDT

BY 
RISK MANAGER

BY 
CHAIR,
BOARD OF SUPERVISORS
COUNTY OF HUMBOLDT,
STATE OF CALIFORNIA