

Recording Requested By:
CITY OF SAN PABLO

Return to:
CITY ATTORNEY
CITY OF SAN PABLO
ONE ALVARADO SQUARE
SAN PABLO, CA 94806

FEB 25 1997

Recorded at request of

at 11 min Past m.
Contra Costa County Recorder
Stephen L. Weir, Recorder FEE: \$

City of San
Pablo

97 030693
97-030693

FEB 25 1997

offl

Document Title(s)

Waiver and Indemnification Agreement Between City of San Pablo
and Church Lane Rubicon Partners. RE: 2555 Church Lane, San Pablo
APN: 417-090-015

Please re-record. This is an address correction only. The correct
address is 2555 Church Lane, San Pablo.

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1996

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CITY OF SAN PABLO

96 89049

MAY 14 1996

AT 2 O'CLOCK P M
CONTRA COSTA COUNTY RECORDS
STEPHEN L. WEIR
COUNTY RECORDER

FEE:

OFF'L

Document Title(s)

Waiver and Indemnification Agreement Between City of San Pablo
and Church Lane Rubicon Partners. RE: 255 Church Lane, San Pablo
APN: 417-090-015

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CITY OF SAN PABLO

One Alvarado Square, San Pablo, CA 94806
(510) 215-3012 • Fax # (510) 235-7059

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Office of the City Manager
WHEN RECORDED RETURN TO
City Attorney
City of San Pablo
One Alvarado Square
San Pablo, CA 94806
No Fee for Recording Pursuant to
Government Code §27383

April 26, 1996

Mr. Rick Aubry
Executive Director
Rubicon Programs Inc.
2500 Bissell Avenue
Richmond, CA 94804

Re: Church Lane Housing Project

Dear Mr. Aubry:

The following are the negotiated terms under which the City will allow Church Lane-Rubicon Partners (hereinafter referred to as "the Partnership") to proceed with construction of the buildings without the creek bank work being completed at its Church Lane housing project:

The Partnership must provide City staff the following documents by May 2, 1996:

1. Final plans for the proposed creek bank stabilization work, based upon the schematic plans submitted to the City Engineer on April 11.
2. Evidence that the request for permits (or verification that no permits are required) have been submitted to Fish and Game and the Army Corps of Engineers.
3. Evidence of a bond on behalf of the Partnership and the City from a California-admitted surety for the performance of the creek bank stabilization work in a form and amount approved by the City.

Upon submission of the above items, I will authorize the granting of a building permit to allow construction of the building to begin, pending the creek bank work. A separate permit will be processed for the creek bank work. The issuance of the building permit is expressly conditioned on

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the following warranties and promises by the Partnership. The Partnership agrees and understands that any work it completes during the City's review of all plans, analyses and project records is done at the Partnership's sole financial risk, with full understanding that City may be entitled to issue a stop work order, refuse to issue a certificate of occupancy, or revoke the use permit, should the conditions herein or in the use permit be violated. Failure by the Partnership to comply with any of the following conditions shall result in the issuance of a STOP WORK NOTICE or ORDER, halting all work on the project until compliance is obtained. The Partnership agrees to obey and to not legally challenge such stop work notice:

A. The Partnership warrants and attests that the creek bank work will be completed prior to occupancy of the building. The Partnership hereby agrees that no certificate of occupancy for the building shall be issued by City unless and until the creek bank work has been completed to City's satisfaction. City shall not unreasonably withhold approval of such creek bank work. In any controversy over reasonableness, risk to the public health, safety or welfare shall take precedence. The Partnership hereby WAIVES any statutory or other right or argument it may have to compel City to issue such certificate of occupancy unless and until this condition precedent is satisfied. The Partnership agrees that it shall defend, indemnify and hold City and its officers and employees harmless from and against any damages and liabilities, of whatever nature, incurred by the Partnership or any third parties due to any delay in occupancy due to its failure to satisfy this condition.

B. The Partnership agrees that it shall defend, indemnify and hold harmless the City of San Pablo and its officers, agents and employees from and against any and all liability and damages stemming directly or indirectly, in whole or in part, from the possible instability of the creek bank and/or condition of the soil on the project site, from the time of the issuance of the building permits until the issuance of the certificate of occupancy from the City.

C. By easement recorded on January 3, 1995, the Partnership granted an easement to the Roman Catholic Bishop of Oakland for an existing 18 inch corrugated metal storm drain pipe on the parcel. Without purporting to change the existing legal obligations of the Partnership and the Bishop vis-a-vis each other with regard to such easement, the Partnership acknowledges and assumes full responsibility for the existing 18 inch corrugated metal storm drain pipe on the parcel, and agrees to maintain such pipe in good condition and repair it promptly to maintain its full function and flow capacity. The Partnership further agrees to defend, indemnify and hold harmless the City of San Pablo, its officials and employees, from any and all claims, lawsuits, damages and liabilities to persons or property, resulting directly or indirectly from the existing 18 inch corrugated metal storm drain pipe on the parcel, or from any damage to or failure of such pipe.

D. i. Upon submittal by the Partnership of final plans and designs for the creek bank stabilization work, the City Engineer shall review, approve or disapprove such plans and designs within thirty (30) days. Such plans and designs shall not be considered "final" unless they include,

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at minimum, a slope stability analysis for the final building and slope design configuration; an analysis of the proposed gabions, including sliding, overturning and settlement; details for all storm drain connections at the catch basins; and written verification from a licensed engineer of a) the adequacy of the existing outfall structure, b) that the flows from the outfall structure will not jeopardize the structural integrity of the new slope modification improvements, and c) that there is adequate scour protection at the existing storm drain outlet to the creek.

ii. If the plan and design for the creek bank work is not approved by the City Engineer, the matter shall be referred to the City Manager for review. If, after this review, it is determined that the plan and design is still disapproved, or if the City's review of the construction (including peer review of slope stability) indicates deficiencies in the design or construction, or in the event that Fish and Game or the Army Corps of Engineers refuse to grant the Partnership a required permit, City may issue, and the Partnership agrees to obey, and **WAIVES** its right to legally challenge, a **STOP WORK NOTICE** or **ORDER**, halting all work on the project until adequate protective measures approved by City are taken, and/or until all necessary permits are obtained.

E. Review of other sites with biotechnical erosion protection measures similar to those proposed for this site indicates that maintenance and plant establishment in the first two to three winters is critical to the success of these measures. Therefore, a reasonable form of security for maintenance and repair work shall be maintained. That form of security may be a bond, letter of credit to the City, or escrow account in the name of the Partnership and the City specifically designated for repair and maintenance of the biotechnical measures. The amount of such security will be equal to the total cost of the biotechnical measures implemented at the time a certificate of occupancy is granted for the project. The security measures shall be maintained in force, after completion of the work, through the first three winters. This security must be posted prior to the City's issuance of a certificate of occupancy.

F. This agreement shall be binding on the parties' successors and assigns. The Partnership agrees to provide a copy of this agreement to any purchaser or transferee of the project site. Additionally, City shall record this agreement with the County Recorder's Office.

G. In the event remedial or corrective foundation work becomes necessary, the Partnership shall provide a separate bond, letter of credit or other reasonable security for the estimated cost of such foundation work to ensure the completion of such work.

H. City may specifically enforce the agreements, promises and warranties contained in this agreement.

I. If any sections, subsections, sentences, clauses, phrases or portions of this agreement are for any reason held invalid, such decision shall not affect the validity of the remaining portions of this agreement.

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J. In addition to issuing a stop work order for failure to comply with any of these conditions, City shall be entitled to pursue any other legal, administrative and/or equitable remedies available to it.

Please indicate the Partnership's acceptance of all of these terms by signing and dating below.

Very Truly Yours,



Rory Robinson
City Manager

APPROVED:

CHURCH LANE-RUBICON PARTNERS
A California Limited Partnership

By: CHURCH LANE HOUSING CORPORATION
Its General Partner


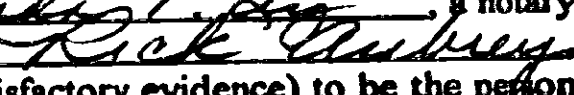
By:

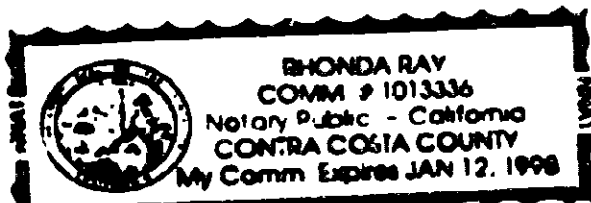

Rick Aubry, Secretary

Date: 4/30/96

ACKNOWLEDGEMENT

State of CALIFORNIA)
County of Contra Costa) ss

On this 30th day of April, 1996, before me, , a notary public for the State of CALIFORNIA, personally appeared , ~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.



Witness my hand and official seal.


Signature of Notary Public

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