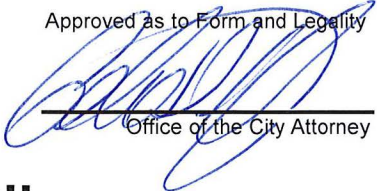


FILED
OFFICE OF THE CITY CLERK
OAKLAND

2016 FEB 18 PM 2:51


Office of the City Attorney

OAKLAND CITY COUNCIL

RESOLUTION NO. 86016 C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR OR DESIGNEE TO ENTER INTO A SUBDIVISION IMPROVEMENT AGREEMENT WITH KASK DEVELOPMENT LLC FOR DEFERRED CONSTRUCTION OF PUBLIC INFRASTRUCTURE IMPROVEMENTS AS A CONDITION TO FINAL MAP APPROVAL FOR TRACT NO. 8191 LOCATED AT 0 WOOD STREET

WHEREAS, Kask Development LLC, a California limited liability company (no. 201505810061) (“Subdivider”) is the subdivider of nine (9) parcels identified by the Alameda County Assessor as APNs 007-0551-014, 007-0551-015, 007-0551-016, and 007-0551-017, and by the Alameda County Clerk-Recorder as Tract No. 8191, and by the City of Oakland as 0 Wood Street; and

WHEREAS, the Subdivider has acquired by purchase for valuable consideration the real property comprising Tract No. 8191 through a grant deed, series no. 2014107977, recorded May 6, 2014, by the Alameda County Clerk-Recorder; and

WHEREAS, said seven (7) parcels are comprised of a portion of Block F of the Map entitled “Map of Resubdivision of Blocks C and F, Garden Tract Homestead”, recorded by the Alameda County Clerk-Recorder on May 26, 1890 in Book 8 of maps, Page 24; and

WHEREAS, the Subdivider applied to the City of Oakland for a Tentative Tract Map (TTM 8191) to subdivide said platted land, which proposed:

- the resubdivision of the site into ten (10) lots for future construction of ten single family townhouses; and

WHEREAS, on September 3, 2014, the City Planning Commission approved the Tentative Tract Map for Tract No. 8191 and the land use entitlements (PLN14110), and affirmed staff’s environmental determination that the project is exempt from CEQA pursuant to Sections 15183 (projects consistent with a community plan, general plan, or zoning), 15301 (existing facilities), and 15332 (infill projects) of the CEQA Guidelines; and

WHEREAS, the Secretary of the Planning Commission of the City of Oakland has certified that the Planning Commission approved the Tentative Map for Tract No. 8191 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. 8191, delineated diagrammatically in *Exhibit A* attached hereto and incorporated herein, is substantially the same as the Tentative Map approved by the Planning Commission; and
- the Final Map for Tract No. 8191 complies in all manners with the provisions of California Government Code sections 66410 et seq. (Subdivision Map Act) and the City of Oakland's local subdivision ordinance (Oakland Municipal Code, Title 16 - Subdivisions); and

WHEREAS, pursuant to California Business and Professions Code section 6731, the City Surveyor 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 five (5) lots, the limits of which have been established by a field boundary survey performed by a competent Land Surveyor, who is licensed by the State of California to practice land surveying, and can be re-established from the monuments, property corners, radii, bearings, and distances shown on the Final Map for Tract No. 8191; and

WHEREAS, the Subdivider has employed a competent 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 in the public right of way; and

WHEREAS, through a separate companion Resolution, staff is seeking authorization to enter into a Subdivision Improvement Agreement attached hereto as *Exhibit B* and incorporated herein with the Subdivider pursuant to Government Code section 66462 and Oakland Municipal Code section 16.20.100, as a condition precedent to approval of the Final Map for Tract No. 8191, to assure 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 Oakland Municipal Code section 16.20.100, the Subdivider has deposited adequate security in the form of surety bonds to secure the Subdivider's performance of the required public infrastructure improvements identified in the Subdivision Improvement Agreement; 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 Planning Commission that the project is exempt from CEQA pursuant to Sections 15183 (projects consistent with a community plan, general plan, or zoning), 15301 (existing facilities), and 15332 (infill projects) of the CEQA Guidelines; now, therefore, be it

RESOLVED: That the City Administrator or designee is hereby authorized to enter into a Subdivision Improvement Agreement with Kask Development LLC for deferred construction of

public infrastructure improvements as a condition to final map approval for Tract No. 8191; and be it

FURTHER RESOLVED: That all documents related to this Resolution shall be reviewed and approved by the City Attorney's prior to execution; and be it

FURTHER RESOLVED: That the City Engineer is authorized to cause the fully executed Subdivision Improvement Agreement to be filed concurrently with the fully endorsed Final Map for Tract No. 8191 for recordation by the Alameda County Clerk-Recorder; and be it

FURTHER RESOLVED: That this Resolution shall be effective upon its adoption by a sufficient affirmative votes of the elected members of Council of the City of Oakland, as provided in the Charter of the City of Oakland.

IN COUNCIL, OAKLAND, CALIFORNIA, MAR 01 2016

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID AND PRESIDENT GIBSON McELHANEY - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST:

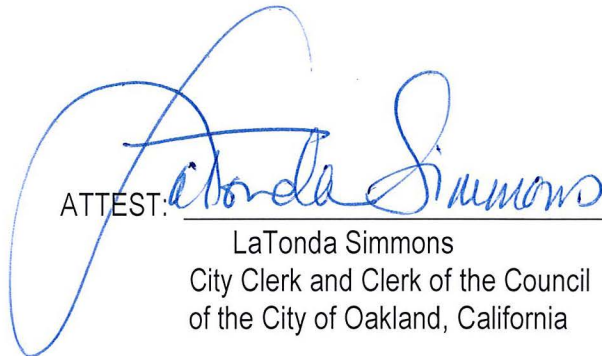

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

Exhibit A
Tract Map 8191

OWNER'S STATEMENT:

THE UNDERSIGNED HEREBY STATES THAT IT IS THE OWNER OF THE LAND DELINEATED AND EMBRACED WITHIN THE EXTERIOR BOUNDARY LINES ON THE HEREIN EMBODIED TRACT MAP ENTITLED "TRACT MAP 8191, CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA"; THAT SAID OWNER ACQUIRED TITLE TO SAID LAND BY VIRTUE OF THE GRANT DEED RECORDED MAY 06, 2014 UNDER SERIES NO. 2014-107977 IN THE OFFICIAL RECORDS OF ALAMEDA COUNTY, STATE OF CALIFORNIA; THAT SAID OWNER CONSENTS TO THE PREPARATION AND FILING OF THIS TRACT MAP.

THE UNDERSIGNED ALSO HEREBY STATES THAT: THE AREAS IN LOT 3 AND LOT 6, DESIGNATED AS "P.A.U.E.-3" AND "P.A.U.E.-6" (PRIVATE ACCESS AND UTILITY EASEMENTS) ARE NON-EXCLUSIVE EASEMENTS AND ARE HEREBY RESERVED FOR THE PURPOSE OF INGRESS AND EGRESS OF PEDESTRIANS AND VEHICLES, EMERGENCY VEHICLE ACCESS, CONSTRUCTING AND MAINTAINING PRIVATE UTILITIES, SEWERS, STORM DRAINS AND ALL APPURTENANCES THERETO FOR THE BENEFIT OF THE OWNER(S) OF LOTS 3, 4, 5 AND 6. THESE AREAS SHALL BE KEPT FREE OF PARKED VEHICLES, OBSTRUCTIONS AND AVAILABLE FOR VEHICULAR ACCESS AT ALL TIMES. CONSTRUCTION AND MAINTENANCE WITHIN SAID EASEMENTS SHALL BE SHARED EQUALLY AMONG THE OWNER(S) OF LOTS 3, 4, 5 AND 6, THEIR HEIRS, EXECUTORS, ADMINISTRATORS, SUCCESSORS AND ASSIGNS.

THE AREAS IN LOT 7 AND LOT 10, DESIGNATED AS "P.A.U.E.-7" AND "P.A.U.E.-10" (PRIVATE ACCESS AND UTILITY EASEMENTS) ARE NON-EXCLUSIVE EASEMENTS AND ARE HEREBY RESERVED FOR THE PURPOSE OF INGRESS AND EGRESS OF PEDESTRIANS AND VEHICLES, EMERGENCY VEHICLE ACCESS, CONSTRUCTING AND MAINTAINING PRIVATE UTILITIES, SEWERS, STORM DRAINS AND ALL APPURTENANCES THERETO FOR THE BENEFIT OF THE OWNER(S) OF LOTS 7, 8 AND 10. THESE AREAS SHALL BE KEPT FREE OF PARKED VEHICLES, OBSTRUCTIONS AND AVAILABLE FOR VEHICULAR ACCESS AT ALL TIMES. CONSTRUCTION AND MAINTENANCE WITHIN SAID EASEMENTS SHALL BE SHARED EQUALLY AMONG THE OWNER(S) OF LOTS 7, 8 AND 10, THEIR HEIRS, EXECUTORS, ADMINISTRATORS, SUCCESSORS AND ASSIGNS.

OWNER:
KASK DEVELOPMENT, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

KATHY KUHNER, MANAGING MEMBER
OWNER OF DOGTOWN DEVELOPMENT

OWNER'S ACKNOWLEDGEMENT:

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THE DOCUMENT.

STATE OF CALIFORNIA
COUNTY OF _____
ON _____ BEFORE ME,
A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED
KATHY KUHNER

WHO 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 SHE EXECUTED THE SAME IN HER AUTHORIZED CAPACITY, AND THAT BY HER SIGNATURE ON THE INSTRUMENT, THE PERSON, OR THE ENTITY UPON BEHALF OF WHICH THE PERSON ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.

WITNESS MY HAND AND OFFICIAL SEAL
NOTARY PUBLIC
NAME: _____

MY COMMISSION EXPIRES: _____ COMMISSION NUMBER: _____
PRINCIPAL COUNTY OF BUSINESS: _____

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 KATHY KUHNER IN APRIL OF 2014. I HEREBY STATE THAT THIS TRACT MAP SUBSTANTIALLY CONFORMS TO THE APPROVED OR CONDITIONALLY APPROVED TENTATIVE TRACT MAP, IF ANY. I HEREBY STATE THAT THE MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED AND THAT THE MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.



MICHAEL J. FOSTER, L.S. 7170
DATE: _____

CITY SURVEYOR'S STATEMENT:

I, GILBERT E. HAYES, CITY SURVEYOR, HAVING BEEN AUTHORIZED TO PERFORM THE FUNCTIONS OF THE CITY SURVEYOR OF THE CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DO HEREBY CERTIFY THAT I HAVE EXAMINED THE HEREON EMBODIED TRACT MAP ENTITLED "TRACT MAP 8191, CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA;"

I AM SATISFIED THAT THE TRACT MAP IS TECHNICALLY CORRECT.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND THIS _____ DAY OF _____ 2016.

GILBERT E. HAYES, P.L.S. NO. 4700
CITY SURVEYOR
CITY OF OAKLAND, ALAMEDA COUNTY
STATE OF CALIFORNIA



CITY PLANNING COMMISSION'S STATEMENT:

I HEREBY STATE THAT THE PLANNING COMMISSION OF THE CITY OF OAKLAND APPROVED ON APRIL 1, 2015, THE TENTATIVE MAP OF "TRACT NO. 8191, UPON WHICH THIS FINAL MAP IS BASED.

DATED _____

ROBERT MERCAMP
SECRETARY OF THE CITY PLANNING COMMISSION

BENEFICIARY'S STATEMENT:

THE UNDERSIGNED, CALIFORNIA BANK OF COMMERCE, AS BENEFICIARY BY VIRTUE OF THE DEED OF TRUST RECORDED DECEMBER 4, 2015, UNDER SERIES NUMBER 2015-320271, OFFICIAL RECORDS OF ALAMEDA COUNTY, DOES HEREBY CONSENT TO THE PREPARATION AND RECORDATION OF THE HEREIN EMBODIED MAP OF TRACT 8191.

IN WITNESS WHEREOF, THE UNDERSIGNED, _____ HAVE/HAS EXECUTED THIS STATEMENT THIS _____ DAY OF _____, 2016.

BY: _____ NAME: _____
BY: _____ NAME: _____
TITLE: _____ TITLE: _____

BENEFICIARY'S ACKNOWLEDGEMENT

STATE OF CALIFORNIA
COUNTY OF _____
ON _____ BEFORE ME,
A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED

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(ES), AND THAT BY HIS/HER/ THEIR SIGNATURE(S) ON THE INSTRUMENT, THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.

WITNESS MY HAND AND OFFICIAL SEAL
NOTARY PUBLIC
NAME: _____

MY COMMISSION EXPIRES: _____ COMMISSION NUMBER: _____
PRINCIPAL COUNTY OF BUSINESS: _____

CITY CLERK'S STATEMENT:

I, THE UNDERSIGNED, LATONDA SIMMONS, CITY CLERK AND CLERK OF THE CITY COUNCIL OF THE CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DO HEREBY STATE THAT THIS MAP, CONSISTING OF 2 SHEETS AND ENTITLED "TRACT MAP 8191" WAS PRESENTED TO SAID COUNCIL, AS PROVIDED BY LAW AT A REGULAR MEETING HELD ON THE _____ DAY OF _____ 2015 AND THAT SAID COUNCIL DID THEREUPON APPROVE SAID MAP.

I FURTHER STATE THAT ALL AGREEMENTS AND SURETY AS REQUIRED BY LAW TO ACCOMPANY THE MAP HAVE BEEN APPROVED BY THE CITY COUNCIL OF THE CITY OF OAKLAND AND ARE FILED IN MY OFFICE.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND THIS _____ DAY OF _____ 2015.

LATONDA SIMMONS, CITY CLERK AND CLERK OF THE COUNCIL OF THE CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA

CITY ENGINEER'S STATEMENT:

I, MICHAEL J. NEARY, 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 CERTIFY THAT I HAVE EXAMINED THE HEREON EMBODIED TRACT MAP ENTITLED "TRACT MAP 8191, CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA;" THAT THE SUBDIVISION AS SHOWN UPON SAID TRACT MAP IS SUBSTANTIALLY THE SAME AS THAT APPEARING ON THE TENTATIVE TRACT MAP AND ANY APPROVED ALTERATIONS THEREOF; THAT SAID TRACT MAP COMPLIES WITH ALL PROVISIONS OF THE SUBDIVISION MAP ACT OF THE GOVERNMENT CODE AND THE LOCAL ORDINANCES APPLICABLE AT THE TIME OF THE TENTATIVE TRACT MAP.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND THIS _____ DAY OF _____ 2015.

MICHAEL J. NEARY, R.C.E. NO. 38547
CITY ENGINEER
CITY OF OAKLAND, ALAMEDA COUNTY
STATE OF CALIFORNIA



CLERK OF THE BOARD OF SUPERVISORS STATEMENT:

I, ANIKA CAMPBELL-BELTON, CLERK OF THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DO HEREBY STATE THAT CERTIFICATES HAVE BEEN FILED AND DEPOSITS HAVE BEEN MADE IN CONFORMANCE WITH THE REQUIREMENTS OF SECTION 66492 AND 66493 OF THE GOVERNMENT CODE OF THE STATE OF CALIFORNIA.

DATED: _____

ANIKA CAMPBELL-BELTON, CLERK OF THE BOARD OF SUPERVISORS, COUNTY OF ALAMEDA, STATE OF CALIFORNIA

RECORDER'S STATEMENT:

FILED THIS _____ DAY OF _____, 2016, AT _____ M. IN BOOK _____ OF PARCEL MAPS, AT PAGE _____, AT THE REQUEST OF CHICAGO TITLE COMPANY.

STEVE MANNING
COUNTY RECORDER

BY: _____
DEPUTY COUNTY RECORDER

TRACT MAP NO. 8191

A LOT MERGER AND RESUBDIVISION
FOR A TEN LOT SUBDIVISION
LOTS 1, 2, 3, 27, 28, 29 & 30, BLOCK F, MAP OF RESUBDIVISION
OF BLOCKS C & F GARDEN TRACT HOMESTEAD (8 M 24)
CITY OF OAKLAND, ALAMEDA COUNTY, CALIFORNIA
JANUARY, 2016
BAY AREA LAND SURVEYING INC.

961 MITCHELL WAY
EL SOBRANTE, CA 94803
(510) 223-5167

Exhibit B
Subdivision Improvement Agreement

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

**City of Oakland
Public Works Department
Dalziel Administration Building
250 Frank H. Ogawa Plaza – 4th Floor
Oakland, CA 94612
Attention: City Engineer**

This document is exempt from payment
of a recording fee pursuant to California
Government Code section 27383.

SPACE ABOVE FOR RECORDER'S USE

SUBDIVISION IMPROVEMENT AGREEMENT

Deferred Construction of Public Infrastructure Improvements

0 Wood Street

Final Map No. 8191

This SUBDIVISION IMPROVEMENT AGREEMENT (“**Agreement**”), dated as of _____, 2015 (“**Effective Date**”), is entered into by and between the City of Oakland, a California municipal corporation (“**CITY**”), and Kask Development LLC, a California limited liability company (no. 201505810061) (“**SUBDIVIDER**”), with reference to the following facts and circumstances:

RECITALS

- A. SUBDIVIDER is the owner in fee title and subdivider of nine (9) lots located within the corporate limits of the CITY, which are identified by the Alameda County Assessor as parcel numbers 007-0551-014, 007-0551-015, 007-0551-016, and 007-0551-017, and by the Alameda County Clerk-Recorder as Tract No. 8191, and by the City of Oakland as 0 Wood Street.
- B. SUBDIVIDER has presented a proposed Final Map to the City, identified as Final Map No. 8191, which proposes a subdivision of previously subdivided lots of this platted land into ten (10) developable micro-lots (“**Final Map**”).
- C. As a condition precedent to the CITY’s approval of the proposed Final Map, the CITY requires the construction of public infrastructure improvements off-site in the CITY right-of-way that customarily include, but are not limited to, 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

pipng and wiring, fire hydrants, street light electroliers, traffic control and curb parking signs, signals and meters, and all appurtenances thereto (“**Public Infrastructure Improvements**”).

- D. SUBDIVIDER 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 PX1500028 and included in *Exhibit A*, attached hereto and incorporated herein.
- E. Construction of the required Public Infrastructure Improvements, however, has not commenced nor has it been accepted by the CITY. Consequently and in consideration of the approval of the proposed Parcel Map and acceptance of the irrevocable offers of dedication of public right-of-way and easements and acceptance of the permanent maintenance of the required Public Infrastructure Improvements, the parties desire to establish an Agreement binding the SUBDIVIDER to complete the required improvements pursuant to the terms and conditions set forth herein.

AGREEMENT

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the CITY and SUBDIVIDER agree as follows:

1. Approval of Final Map No. 8191

Approval of Final Map No. 8191 by the CITY shall be conditioned upon recordation of this Agreement with the Alameda County Recorder, as well as SUBDIVIDER’s satisfactory performance of its obligations specified in this Agreement, as determined by the CITY.

2. Construction of Public Infrastructure Improvements

SUBDIVIDER shall construct all required off-site and on-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 Section 3, Special Conditions.

3. Special Conditions

SUBDIVIDER shall comply with the special conditions as follows:

A. The Public Infrastructure Improvements shall conform to the performance criteria specified in Oakland Municipal Code Chapter 16.16 – Design Standards and in Standard Details for Public Works Construction and Standard Specifications for Public Works Construction, current editions.

B. The time duration for the completion of required Public Infrastructure Improvements, as set forth in Section 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 to the requirements of all CITY Conditions of Approval for the 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 am local time nor be performed after 5:00 pm 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, including a California Construction General Permit with a Storm Water Pollution Prevention Plan (SWPPP – “C6”) provided by a Qualified SWPPP Developer (QSD) and monitored by a Qualified SWPPP Practitioner (QSP).

E. 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 Public Infrastructure Improvements

A. All construction of required Public Infrastructure Improvements shall be completed by SUBDIVIDER within one (1) year of the Effective Date of this Agreement, except those required improvements for which another completion date is stated in *Exhibit A* or set forth above in Section 3, Special Conditions. Construction shall not be deemed complete until the public infrastructure permit has received a final inspection sign-off by the city inspector, an unconditional Letter of Completion, signed and stamped by the SUBDIVIDER’s engineer, has been received by the CITY, and an unconditional Letter 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 upon demonstration of good cause. The City Engineer shall be the sole and final judge as to whether or not good cause has been shown to entitle SUBDIVIDER to an extension under this Section 4B.

C. An extension may be granted without notice to SUBDIVIDER’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, SUBDIVIDER 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 SUBDIVIDER’s performance, the extension shall be void.

5. Acceptance of Dedications and Ownership of Public Infrastructure Improvements

Upon final approval of the public infrastructure improvement permit and unconditional issuance of a Certificate of Completion, 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 Sections 7, Maintenance of Public Infrastructure Improvements, and 8, Guarantee of Workmanship and Warranty of Equipment, Materials, and Expertise.

6. Responsibility for Dedications and Public Infrastructure Improvements

Until the Certificate of Completion is unconditionally issued, SUBDIVIDER 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 SUBDIVIDER until such time as the Certificate of Completion is unconditionally issued.

7. Maintenance of Public Infrastructure Improvements

Until one (1) year has elapsed following unconditional issuance of the Certificate of Completion, SUBDIVIDER 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, SUBDIVIDER 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 Section 3, Special Conditions. SUBDIVIDER 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 Section 3, Special Conditions.

If at any time before the expiration of the guarantee and warranty period specified herein said designs prove to be inadequate in any respect, as determined by the City Engineer, SUBDIVIDER 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 SUBDIVIDER 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 SUBDIVIDER 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, SUBDIVIDER 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 the 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 SUBDIVIDER fails to perform its obligations under this Agreement, SUBDIVIDER consents to the reversion to acreage of the land which is the subject of this Agreement pursuant to Government Code section 66499.16 and to bear all applicable costs.

12. Property Acquisition

If SUBDIVIDER is unable to acquire property required for the construction of required improvements, SUBDIVIDER agrees to execute the standard CITY Contract for Real Property Acquisition to provide for acquisition through eminent domain.

13. Security

SUBDIVIDER 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 Two Hundred Sixty Five thousand Dollars (**\$151,700**), which is the full amount (one-hundred percent) of the City Engineer's total estimated cost for constructing the required on-site and off-site public infrastructure improvements, to secure faithful performance of this Agreement by SUBDIVIDER; and

2. **Labor and Materials Bond** in a face amount not less than One Hundred Thirty Two Thousand and Five Hundred Dollars (**\$75,850**), which is one-half (fifty percent) of the full amount of the City Engineer's total estimated cost for constructing the required on-site and off-site public infrastructure improvements, to secure payment by SUBDIVIDER to its

contractor, subcontractors, laborers and material suppliers 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.

The Faithful Performance Bond and the Labor and Materials Bond shall not be limited in duration nor stipulate a date of expiration and shall remain in effect until the unconditional issuance of the Certificate of Completion of the required public infrastructure improvements.

B. Before final approval of the public infrastructure permit, the following security shall be presented:

Maintenance Bond in a face amount not less than Sixty Six Thousand and Two Hundred Fifty (**\$37,925**), which is one-quarter (twenty-five percent) of the full amount of the City Engineer's total estimated cost for constructing the required on-site and off-site public infrastructure improvements, to secure faithful performance of Sections 7, Maintenance of Public Infrastructure Improvements, and 8, Guarantee of Workmanship and Warranty of Equipment, Materials, and Expertise, 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 attorney 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.

D. 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, this Agreement shall be void.

14. Alternative Security

In lieu of the bonds required above in Section 13, Security, alternative securities may be substituted by SUBDIVIDER in a form provided by Government Code Section 66499.3 and subject to review and approval by the City Attorney.

15. Defense, Indemnity, and Hold Harmless

A. To the maximum extent permitted by law, SUBDIVIDER shall defend (with counsel acceptable to the CITY), hold harmless, and indemnify the CITY, the Oakland City Council, and its respective officials, officers, employees, agents, representatives, and volunteers from any and all liability, claims, demands, losses (direct or indirect), lawsuits, actions, causes of action, proceeding and judgments for injury and/or damages of any kind and nature whatsoever (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "**Action**") arising out of, related to or caused by performance of this Agreement, including without limitation the design, construction and/or maintenance (for a period of one year following unconditional issuance of the Certificate of Completion) of the required on-site and off-site public infrastructure improvements and regardless of responsibility for negligence. The CITY may elect, in its sole and absolute discretion, to

participate in the defense of said Action, and SUBDIVIDER shall reimburse the CITY for its reasonable legal costs and attorneys' fees. Not in limitation of the foregoing, SUBDIVIDER further agrees to defend and protect the CITY, the Oakland City Council, and its respective officials, officers, employees, agents, representatives, and volunteers from all liability or claims because of, or arising out of the use of any patent or patented articles in the construction of said improvements. SUBDIVIDER 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. This Defense, Indemnity, and Hold Harmless section shall survive the termination of this Agreement.

B. Within ten (10) calendar days of the filing of any Action as specified in subsection A above, SUBDIVIDER shall execute a Joint Defense Letter Agreement with the CITY, acceptable to the City Attorney, which memorializes the above obligations. These obligations and the Joint Defense Letter of Agreement shall survive termination, extinguishment or invalidation of this Agreement. Failure to timely execute the Joint Defense Letter Agreement does not relieve SUBDIVIDER of any of the obligations contained in this Agreement or other requirements that may be imposed by the CITY.

16. Insurance Required

SUBDIVIDER 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 SUBDIVIDER 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. SUBDIVIDER 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. SUBDIVIDER 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, the Oakland City Council, and its respective officials, officers, employees, agents, representatives, and volunteers; or

2. SUBDIVIDER 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, the Oakland City Council, and its respective officials, officers, employees, agents, representatives, and volunteers are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of SUBDIVIDER, products and completed operations of SUBDIVIDER; premises owned, occupied or used by SUBDIVIDER, or automobiles owned, leased, hired or borrowed by SUBDIVIDER. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, the Oakland City Council, and its respective officials, officers, employees, agents, representatives, and volunteers.

2. SUBDIVIDER's insurance coverage shall be primary insurance as respects the CITY, the Oakland City Council, and its respective officials, officers, employees, agents, representatives, and volunteers. Any insurance or self-insurance maintained by the CITY, the Oakland City Council, and its respective officials, officers, employees, agents, representatives, and volunteers shall be excess of SUBDIVIDER'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, the Oakland City Council, and its respective officials, officers, employees, agents, representatives, and volunteers.

4. SUBDIVIDER'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, the Oakland City Council, and its respective officials, officers, employees, agents, representatives, and volunteers for losses arising from work performed by SUBDIVIDER 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

SUBDIVIDER 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

SUBDIVIDER shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

17. Participation in Benefit Districts

SUBDIVIDER shall participate in all Benefit Districts formed by the CITY prior to the execution of this Agreement and shall pay the prorated fee due the CITY under the terms of Benefit District or Districts as applied to the real property covered by this Agreement.

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 Final Map No. 8191, which land is expressly agreed to benefit from the privileges granted to SUBDIVIDER under this Agreement, and binds the beneficiaries, heirs, assigns, and successors in interest of SUBDIVIDER.

20. Attachments

The following documents are incorporated into this Agreement by reference:

- CITY Permits: Public Infrastructure – PX1500028
- Planning – PLN1410
- Creek Protection – N/A
- Building – NA
- Grading – N/A
- Encroachment – NA

CITY Resolution: _____

Subdivision: Final Map No. 8191

City Engineer's Estimate of the Cost of Improvements

Insurer: _____

Surety: _____

21. Constructive Notice

This Agreement shall be filed for recordation in the Official Records of Alameda County within five (5) calendar days following execution by the CITY.

22. Effective Date

This Agreement shall be effective on the Effective Date.

22. Miscellaneous

A. Counterparts. This Agreement may be executed in any number of counterparts (including by fax, PDF or other electronic means), each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

B. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. The parties agree that all actions or proceedings arising directly or indirectly under this Agreement shall be litigated in courts within the County of Alameda, State of California.

C. Integration. This Agreement contains the entire agreement between the parties with respect to the subject matter of this Agreement. Any prior correspondence, memoranda, agreements, warranties or representations relating to such subject matter are superseded in total by this Agreement. No prior drafts of this Agreement or changes from those drafts to the executed version of this Agreement shall be introduced as evidence in any litigation or other dispute resolution proceeding by either party or any other person, and no court or other body shall consider those drafts in interpreting this Agreement.

D. Further Assurances. The CITY and SUBDIVIDER shall execute and deliver all documents, amendments, agreements and instruments reasonably necessary or reasonably required in furtherance of this Agreement.

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IN WITNESS WHEREOF, the CITY and SUBDIVIDER have each caused this Agreement to be duly executed on its behalf as of the Effective Date.

Authorized by City Resolution No. _____
C.M.S., adopted _____

CITY:

CITY OF OAKLAND, a municipal corporation

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

By: _____
Michael J. Neary, P.E.
Assistant Director/City Engineer

SUBDIVIDER*:

SRM Development, LLC, a California limited liability company

By: _____
Name:
Title:

*Notarized acknowledgment required.