

FILED
OFFICE OF THE CITY CLERK
OAKLAND
Introduced by

2013 APR 11 PM 4:18

Councilmember

Approved for Form and Legality


Office of the City Attorney

OAKLAND CITY COUNCIL

Resolution No. 84334 C.M.S.

RESOLUTION APPROVING A SUBDIVISION IMPROVEMENT AGREEMENT WITH CLAREWOOD ASSOCIATES LLC FOR DEFERRED CONSTRUCTION OF PUBLIC INFRASTRUCTURE IMPROVEMENTS FOR THE FINAL MAP FOR TRACT NO. 7891 LOCATED AT 5000 CLAREWOOD DRIVE

WHEREAS, the developer of a residential project, Clarewood Associates LLC, a California limited liability company (no. 201000810067), is the Subdivider of a single parcel identified by the Alameda County Assessor as APN 048B-7152-011-00, and by the Alameda County Clerk-Recorder as Tract No. 7891, and by the City of Oakland as 5000 Clarewood Drive; and

WHEREAS, the Subdivider has acquired by purchase for valuable consideration the real property comprising Tract No. 7891 through a grant deed, series no. 2010-059066, recorded March 4, 2010, by the Alameda County Clerk-Recorder; and

WHEREAS, said single parcel is comprised of two (2) vacant lots, designated as Lot B and Lot C on Parcel Map No. 8497, recorded by the Alameda County Recorder on December 1, 2005, series no. 2005514028, in book 286 of maps, pages 48 and 49, and on an unrecorded lot line adjustment (PMW07036) approved by the Zoning Division of the City of Oakland on March 24, 2008; and

WHEREAS, a previous subdivider, First Church of Religious Science, applied to the City of Oakland for a Tentative Map (TTM7891) to subdivide said platted land into eight (8) vacant residential lots comprising Tract No. 7891 for the future construction of single family dwellings and appurtenant infrastructure; and

WHEREAS, the Planning Commission of the City of Oakland approved the environmental determination (exempt), land use entitlement (CU08156), tree removal (T0800041), and Tentative Map for Tract No. 7891 on October 15, 2008, which proposed:

- the voluntary merger of said two (2) vacant lots and the establishment by subdivision through a Final Map of eight (8) vacant residential lots for future ownership of newly constructed single family dwellings by private purchasers; and
- pursuant to California Government Code section 66499.20½, the abandonment (vacation) of unused existing public utility easements dedicated to the City of Oakland through previous subdivision maps; and

- the irrevocable offer of dedication to the City of Oakland of new public service easements for public access, emergency vehicle access, and public utilities; 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. 7891, 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. 7891, described schematically in *Exhibit A* attached hereto, and delineated diagrammatically in *Exhibit B* attached hereto, is substantially the same as the Tentative Map approved by the Planning Commission, and
- the Final Map for Tract No. 7891 complies in all manners with the provisions of the California Government Code (Section 66400, et seq. - Subdivision Map Act), and the City of Oakland's local ordinance (Municipal Code Title 16 - Subdivisions); and

WHEREAS, pursuant to California Business and Professions Code section 6731, the City Engineer 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 eight (8) lots and the proposed dedicated public service easements, the limits of which have been established by a field boundary survey performed by a competent civil engineer, 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. 7891; 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 within the proposed on-site public easements; and

WHEREAS, the City Engineer has approved infrastructure permit no. PX1100054 and the Subdividers' plans and specifications for construction of the required public infrastructure improvements, included by reference with *Exhibit C* attached hereto; and

WHEREAS, pursuant to Government Code section 66462 and Municipal Code section 16.20.100 as a condition precedent to approval of the Final Map for Tract No. 7891, the Subdivider has executed a Subdivision Improvement Agreement, attached hereto as *Exhibit C*, assuring 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 Municipal Code section 16.20.100, the Subdivider has deposited securities in the form of surety bonds, included by

reference with *Exhibit C*, and in sufficient amounts, as estimated by the City Engineer, to secure the Subdivider's performance under *Exhibit C* as a

- guarantee that the required public infrastructure improvements will be constructed in accordance with the approved plans and specifications, and as a
- guarantee that the contractor and his subcontractors and all persons renting equipment or furnishing labor and materials will receive full payment, and as a
- warrantee that the required public infrastructure improvements will perform as designed and intended, and as a
- guarantee that the Subdivider will maintain the required public infrastructure improvements for the duration prescribed in the Subdivision Improvement Agreement; and

WHEREAS, that upon City Attorney's approval for form and legal sufficiency of the Subdivision Improvement Agreement and the surety bonds, the City Engineer is authorized to execute the Subdivision Improvement Agreement on behalf of the City of Oakland; 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 on December 1, 2010, that the project is exempt from CEQA pursuant to Section 15332 (infill project) and Section 15183 (consistency with an adopted General Plan), each of which provides a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance; now, therefore, be it

RESOLVED: That the Subdivision Improvement Agreement which is required for the approval of the Final Map for Tract No. 7891 complies with the requirements of the California Environmental Quality Act (CEQA); and be it

FURTHER RESOLVED: That the Subdivision Improvement Agreement with Clarewood Associates LLC for the Final Map for Tract No. 7891 is hereby approved; and be it

FURTHER RESOLVED: That the City Attorney's approval of the Subdivision Improvement Agreement and the instruments securing the Subdivider's performance under said Agreement shall be obtained prior to execution of said Agreement by the City Engineer on behalf of the City of Oakland; 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. 7891 for recordation by the Alameda County Clerk-Recorder; and be it

FURTHER RESOLVED: That the City Engineer is further authorized, without returning to the City Council, to extend the time period designated in the Subdivision Improvement Agreement for completion of the public infrastructure improvements upon demonstration of good cause; and be it

FURTHER RESOLVED: That this Resolution shall be effective upon its adoption by 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, MAY 7 2013 , 2013

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON- McELHANEY, KALB, KAPLAN, REID, SCHAAF,
AND PRESIDENT KERNIGHAN - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

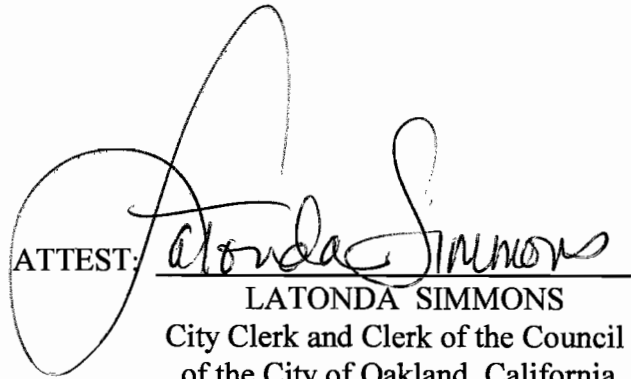
ATTEST: 
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

EXHIBIT A

SCHEMATIC OF TRACT No. 7891

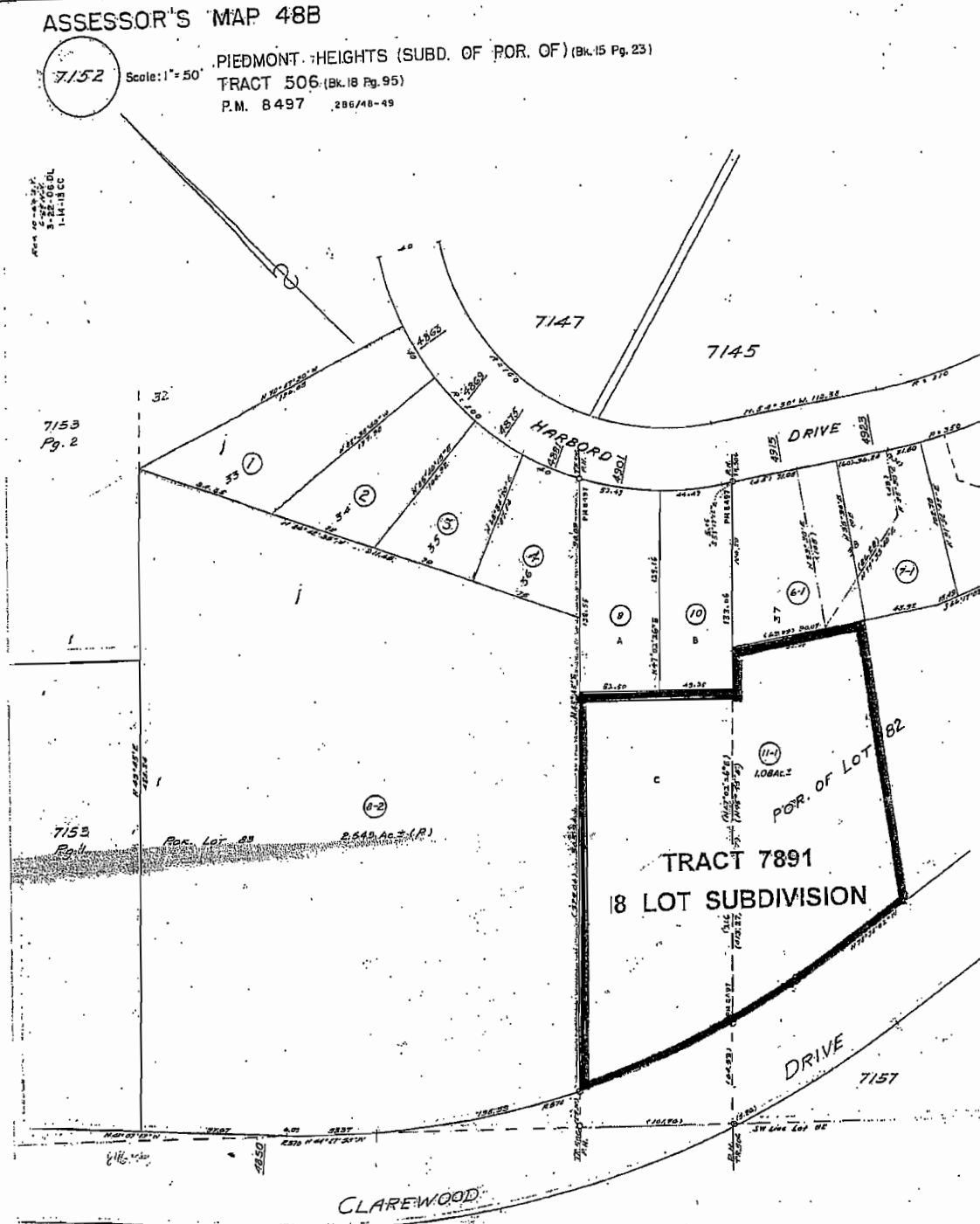
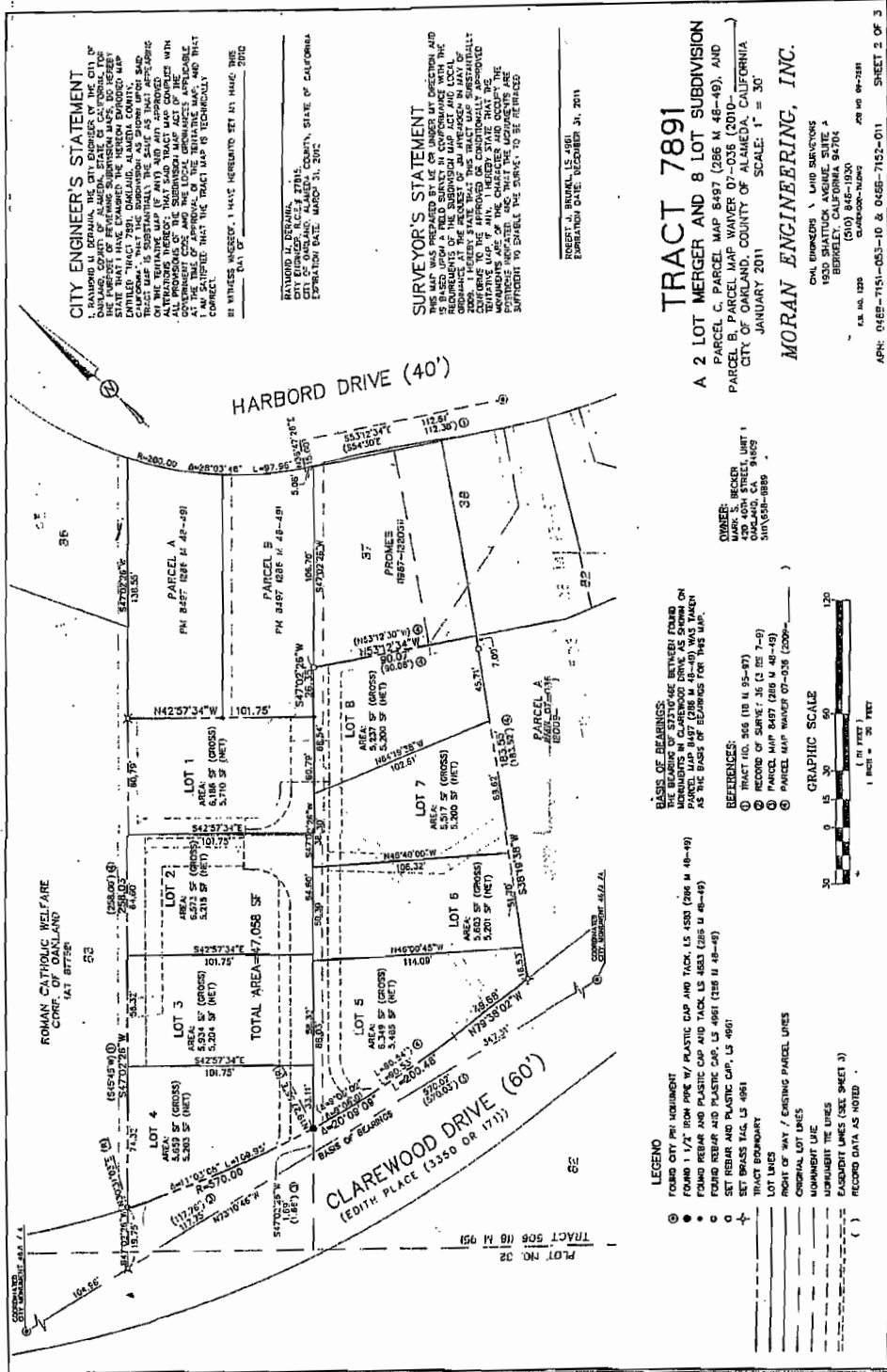


EXHIBIT B

FINAL MAP FOR TRACT No. 7891



CITY ENGINEER'S STATEMENT
 I, RANDOLF M. DEBANA, THE CITY ENGINEER OF THE CITY OF OAKLAND, CALIFORNIA, HAVE REVIEWED THE FINAL MAP OF THE PROJECT OF REVISION SUBDIVISION MAPS, DO HEREBY STATE THAT I HAVE EXAMINED THE REVISION SUBDIVISION MAP OF PARCELS A, B AND C, AND THE SUBDIVISION MAPS OF LOTS 1 THROUGH 8, AND I AM Satisfied THAT THE REVISION SUBDIVISION MAPS COMPLY WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND THE SUBDIVISION MAP ACT REGULATIONS, AND I HEREBY STATE THAT THIS TRACT MAP SUBSTANTIALLY ACCURATELY REPRESENTS THE ACTUAL CONDITIONS OF THE TRACT MAP AS SHOWN ON THE REVISION SUBDIVISION MAPS, AND THAT THE REVISION SUBDIVISION MAPS ARE CORRECT.

BY WITNESSES WHEREOF, I HAVE HERETO SET MY HAND AND SEAL OF OFFICE THIS 31st DAY OF MARCH 2011.
 RANDOLF M. DEBANA, CIVIL ENGINEER
 CITY OF OAKLAND, ALAMEDA COUNTY, STATE OF CALIFORNIA
 EXPIRATION DATE: MARCH 31, 2012

SURVEYOR'S STATEMENT
 I, MORAN ENGINEERING, INC., A PROFESSIONAL CORPORATION, IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND THE SUBDIVISION MAP ACT REGULATIONS, AND I HEREBY STATE THAT THIS TRACT MAP SUBSTANTIALLY ACCURATELY REPRESENTS THE ACTUAL CONDITIONS OF THE TRACT MAP AS SHOWN ON THE REVISION SUBDIVISION MAPS, AND THAT THE REVISION SUBDIVISION MAPS ARE CORRECT.

PROJECT 1, PARCEL 15, 4881
 EXPIRATION DATE: RECORDED 31, 2011

TRACT 7891
 A 2 LOT MERGER AND 8 LOT SUBDIVISION
 PARCEL C, PARCEL MAP 8497 1286 M 48-48, AND
 PARCEL B, PARCEL MAP WAYER 07-036 (2010-01-01)
 CITY OF OAKLAND, COUNTY OF ALAMEDA, CALIFORNIA
 JANUARY 2011 SCALE: 1" = 30'

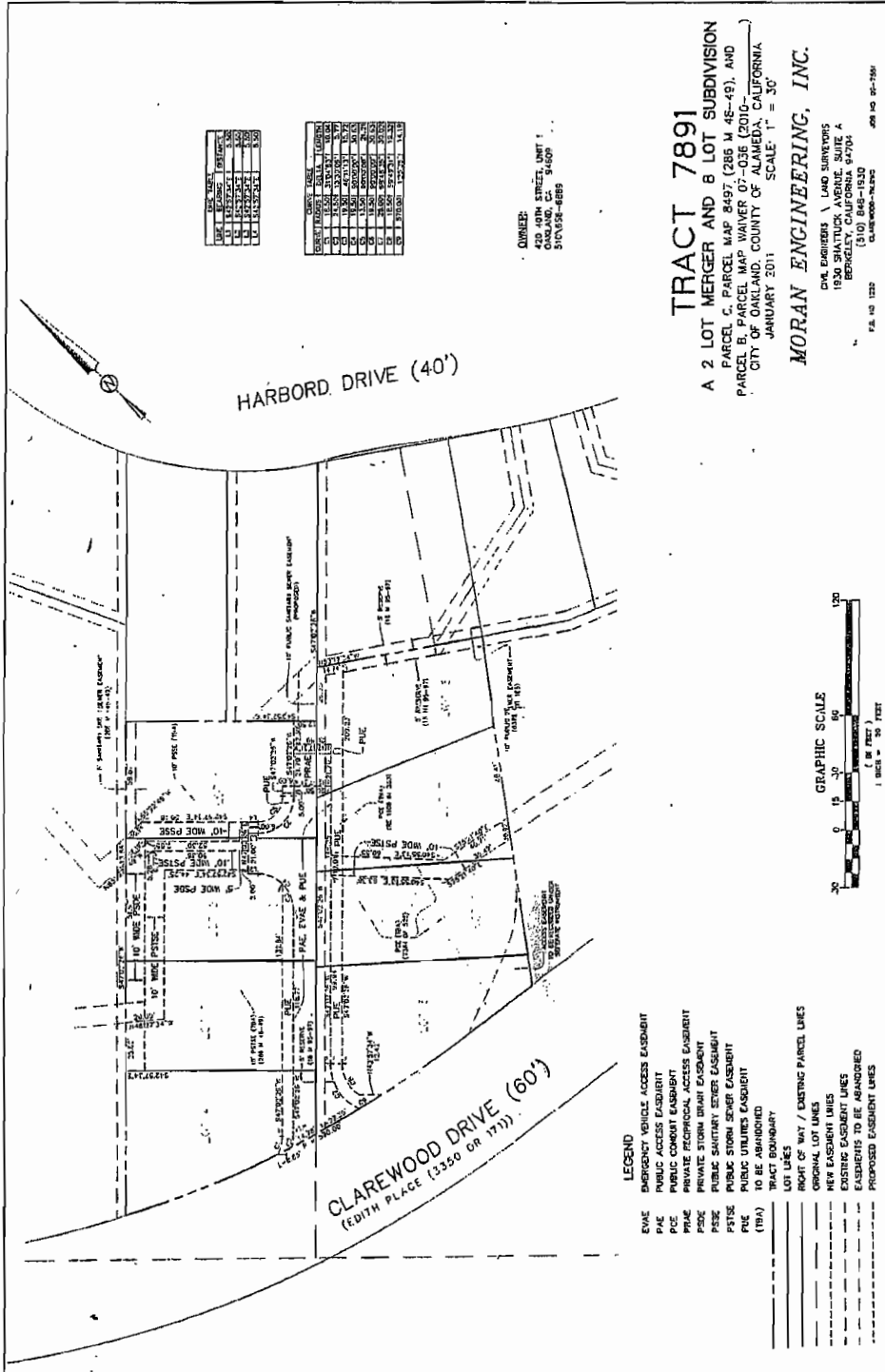
MORAN ENGINEERING, INC.
 CIVIL ENGINEERS & LAND SURVEYORS
 1525 CALIFORNIA STREET, SUITE 200
 BERKELEY, CALIFORNIA 94705
 TEL NO. 925 845-1930 FAX NO. 925-7881
 CLAREWOOD-NEWING
 (510) 845-1930
 310/658-8889

LEGEND
 FOUND CITY PERMITS
 FOUND 1/2" FROM PIRE W/ PLASTIC CAP AND TACK, LS 4333 (216 M 48-48)
 FOUND REBAR AND PLASTIC CAP AND TACK, LS 4633 (205 M 48-48)
 FOUND REBAR AND PLASTIC CAP, LS 4961 (228 M 48-48)
 SET REBAR AND PLASTIC CAP, LS 4961
 SET BRASS TAG, LS 4961
 TRACT BOUNDARY
 LOT LINES
 RIGHT OF WAY / EXISTING PARCEL LINES
 ORIGINAL LOT LINES
 HIGHWAY USE
 THROUGH THE LINES
 DASHED LINES (SEE SHEET 3)
 RECORD DATA AS NOTED

NOTES
 BASIS OF BEARINGS: THE BEARINGS OF EXISTING USE BETWEEN FOUND MONUMENTS IN CLAREWOOD DRIVE, AS SHOWN ON PARCEL MAP WAYER 07-036 (2010-01-01) SHALL BE AS THE BASIS OF BEARINGS FOR THIS MAP.
 REFERENCES:
 ① TRACT NO. 906 (10 M 95-87)
 ② RECORD OF SURVEY: 35 (3 85 7-8)
 ③ PARCEL MAP 8487 1286 M 48-48
 ④ PARCEL MAP WAYER 07-036 (2010-01-01)

GRAPHIC SCALE
 0 15 30 45 60 75 90 120
 (IN FEET)
 1 INCH = 30 FEET

EXHIBIT B
FINAL MAP FOR TRACT No. 7891



AREA	AREA	PERCENT
1	1.1523247	1.15
2	1.1523247	1.15
3	1.1523247	1.15
4	1.1523247	1.15
5	1.1523247	1.15

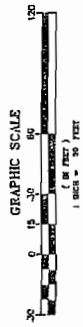
AREA	AREA	PERCENT
1	1.1523247	1.15
2	1.1523247	1.15
3	1.1523247	1.15
4	1.1523247	1.15
5	1.1523247	1.15
6	1.1523247	1.15
7	1.1523247	1.15
8	1.1523247	1.15
9	1.1523247	1.15
10	1.1523247	1.15

OWNER:
420 JOHN STREET, UNIT 1
SAN FRANCISCO, CALIF. 94107
510.438.4889

TRACT 7891
A 2 LOT MERGER AND 8 LOT SUBDIVISION
PARCEL C, PARCEL MAP 8497 (285 M. 45-49), AND
PARCEL B, PARCEL MAP WAIVER 07-036 (2010-
CITY OF OAKLAND, COUNTY OF ALAMEDA, CALIFORNIA
JANUARY 2011 SCALE: 1" = 30'

MORAN ENGINEERING, INC.

DR. PABLO A. LAND SURVEYOR
1900 UNIVERSITY AVENUE, SUITE 4
BERKELEY, CALIFORNIA 94704
(510) 848-1930
CLAREWOOD-7891 098 10 01-1501



- LEGEND**
- EVA EMERGENCY VEHICLE ACCESS EASEMENT
 - PAE PUBLIC ACCESS EASEMENT
 - PCE PUBLIC CONDUIT EASEMENT
 - PEAE PRIVATE PEDESTRIAN ACCESS EASEMENT
 - PESE PRIVATE STORM DRAIN EASEMENT
 - PESE PUBLIC STORM DRAIN EASEMENT
 - PESE PUBLIC SEWER EASEMENT
 - PESE PUBLIC UTILITIES EASEMENT
 - (TRA) TO BE ABANDONED
 - TRACT BOUNDARY
 - LOT LINES
 - RIGHT OF WAY / EXISTING PARCEL LINES
 - ORIGINAL LOT LINES
 - NEW EASEMENT LINES
 - EXISTING EASEMENT LINES
 - EASEMENTS TO BE ABANDONED
 - PROPOSED EASEMENT LINES

recording requested by:

CITY OF OAKLAND

when recorded mail to:

City of Oakland
CEDA - Building Services
Dalziel Administration Building
250 Ogawa Plaza - 2nd Floor
Oakland, CA 94612
Attn: City Engineer

EXHIBIT C

----- space above for Recorder's use only -----

APPROVED FOR FORM AND LEGALITY

CITY ATTORNEY

SUBDIVISION IMPROVEMENT AGREEMENT

Deferred Construction of Public Infrastructure Improvements

5000 Clarewood Drive

Tract No. 7891

This Agreement is between **Clarewood Associates, LLC**, a California limited liability company (DEVELOPER) and its successors or assigns, affiliated companies or corporations, parent companies or corporations, or partners, and the **City of Oakland (CITY)**, a California municipal corporation, herein after referred to as the Parties.

RECITALS

The DEVELOPER is the owner in fee title of one (1) parcel comprising the approved Vesting Tentative Map (VTM 7891) for the 5000 Clarewood Drive project (Project) located within the corporate limits of Oakland, which are identified by the Alameda County Assessor with the following parcel number and by the CITY with the corresponding address:

048B-7151-053-10 - 5000 Clarewood Drive

The DEVELOPER has presented a Final Map, which is identified by the Alameda County Clerk-Recorder as Tract No. 7891, to the CITY that proposes a voluntary subdivision into eight (8) developable lots, identified as Lots 1 through 8 and proposes privately maintained public access roadway (1), emergency vehicle access easement (1), and public utility easement.

The DEVELOPER is the developer of the Project for all purposes of this Agreement. As the owner of the existing parcel comprising the Project, the DEVELOPER has consented to the recordation of the Final Map for Tract No. 7891 and to the dedication of public easements and emergency access easements set forth therein and to the recordation of this Agreement.

As a condition precedent to the approval of the Final Map for Tract No. 7891, the CITY requires the irrevocable dedication of public service easements shown on the map. In addition, the CITY requires the construction of public infrastructure improvements and on-site in dedicated public easements that

customarily includes grading, paving, , curbs, gutters, driveways, storm drains and sanitary sewers, swales, and all appurtenances thereto pursuant to this Agreement.

The DEVELOPER has accepted the permanent maintenance of the required public infrastructure improvements shown on the construction plans, excepting the specifically delineated public storm drain utility, accompanying the public infrastructure permit and the grading permit, included herein by reference. Construction of the required public infrastructure improvements, however, has not commenced nor been accepted by the CITY. Consequently and in consideration of the approval of the Phase 1 Final Map for Tract No. 7891 and acceptance of the irrevocable offers of dedication of public access and public service easements, and acceptance of the permanent maintenance of the required public storm drain infrastructure improvements, the Parties desire to establish an Agreement binding the DEVELOPER to complete the required on-site and off-site public infrastructure improvements within the time duration set forth in Section 4 below.

THEREFORE, it is agreed by and between the Parties as follows:

1. Approval of the Final Map for Tract No. 7891

Approval by the CITY of the Final Map for Tract No. 7891 shall be conditioned upon recordation of this Agreement by the Alameda County Clerk-Recorder, as well as the DEVELOPER's satisfactory performance of its obligations specified in this Agreement, as determined by the CITY.

2. Construction of Public Infrastructure Improvements

The DEVELOPER shall construct all required on-site and off-site public infrastructure improvements in strict accordance with all permits, specifications, plans and applicable CITY standards and performance criteria as specified in the public infrastructure permit and set forth below in Section 3.

3. Special Conditions

The DEVELOPER shall comply with the special conditions as follows:

- A. Public infrastructure improvements shall conform with 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 (10) years.
- C. Hours, days, and months of operation and control of public nuisance conditions for the construction of required public infrastructure improvements shall conform with the requirements of all CITY Conditions of Approval for the project and the Oakland Municipal Code, including section 15.04.660 (Grading, Excavations, and Fills).
- 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 the DEVELOPER within one (1) year of the date of recordation of this Agreement, except those required improvements for which another completion date is stated in the public infrastructure permit or set forth above in Section 3 above. Construction shall not be deemed complete until the public infrastructure permit has been finalized and an unconditional Certificate of Completion has been issued by the City Engineer.
- B. The City Engineer may approve an extension the time for completion of the required public infrastructure improvements upon demonstration of good cause. Such approval shall not be unreasonably withheld.
- C. An extension may be granted without notice to the Surety, and extensions so granted shall not relieve the Surety's liability on any of the bonds required by this Agreement.

5. Acceptance of Dedications and Ownership of Public Infrastructure Improvements

Upon final approval of the public infrastructure improvement permit and grading permit and unconditional issuance of a Certificate of Completion, all irrevocable offers of dedication of public rights-of-way and public easements will be accepted by the CITY, 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 Section 7 - Maintenance and Section 8 - Guarantee and Warranty.

6. Responsibility for Dedications and Public Infrastructure Improvements

Until the Certificate of Completion is unconditionally issued, the DEVELOPER 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 the DEVELOPER 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, the DEVELOPER 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, the DEVELOPER 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 the public infrastructure permit and set forth in Section 3 above. The DEVELOPER 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 the public infrastructure permit and set forth in Section 3 above.

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

12. Security

Surety bonds shall presented to the CITY, 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 **\$119,000.00**, 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; and
2. **Labor and Materials Bond** in a face amount not less **\$59,500.00**, 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 to the contractor, subcontractors, laborers and material, men 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 Material 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, a **Maintenance Bond** shall be presented in a face amount not less than **\$29,750.00**, 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 required public infrastructure improvements, to secure faithful performance of Section 7 - Maintenance and Section 8 - Guarantee and Warrantee above. This Maintenance Bond shall remain in effect for not less than one year (1) 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.

13. Alternative Security

In lieu of the bonds required above in Section 12, alternative securities may be substituted in a form provided by Government Code Section 66499.3 and subject to review and approval by the City Attorney.

14. Hold Harmless

- A. The DEVELOPER agrees and promises to 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, 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 on-site and off-site required 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 the DEVELOPER shall reimburse the CITY for its reasonable legal costs and attorneys' fees. This indemnification 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, the DEVELOPER 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 Letter Agreement does not relieve the DEVELOPER of any of the obligations contained in this condition or other requirements or conditions of approval that may be imposed by the CITY.

15. Insurance Required

Sufficient insurance shall be procured and maintained for the duration of the Agreement 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 the DEVELOPER and its 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. The Contractor 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. The Contractor 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 and its officers, officials, employees, agents and volunteers, or
2. a bond shall be procured guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Other Insurance Provisions

The general and automobile liability policies required by this Section 15 shall contain, or be endorsed to contain, the following provisions:

1. The CITY and its officers, officials, employees, representatives, agents and volunteers are to be covered as additional insured as respects:
 - (a) liability arising out of activities performed by or on behalf of the DEVELOPER and its agents, representatives, employees or subcontractors;
 - (b) products and completed operations of the DEVELOPER and its agents, representatives, employees or subcontractors;
 - (c) premises owned, occupied or used by the DEVELOPER and its agents, representatives, employees or subcontractors, or
 - (d) automobiles owned, leased, hired or borrowed by the DEVELOPER and its agents, representatives, employees or subcontractors.

The coverage shall contain no special limitations on the scope of protection afforded to the CITY and its officers, officials, employees, representatives, agents, and volunteers.

2. Insurance coverage required by this Section 15 shall be primary insurance as respects the CITY and its officers, officials, representatives, employees, agents and volunteers. Any insurance or self-insurance maintained by the CITY and its officers, officials, employees, representatives, agents, or volunteers shall be excess of insurance for the DEVELOPER and its agents, representatives, employees or subcontractors and shall not contribute with it.
3. Any failure to comply with reporting provisions of the policies required by this Section 15, including breaches of warranties, shall not affect coverage provided to the CITY and its officers, officials, employees, representatives, agents, and volunteers.
4. Insurance required by this Section 15 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 and its officers, officials, employees, representatives, agents, and volunteers for losses arising from work performed by the DEVELOPER for the CITY.
6. Each insurance policy required by this Section 15 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 required by this Section 15 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

Certificates of insurance shall be furnished with original endorsements effecting coverage required by this Section 15. The certificates and endorsements for each insurance policy shall 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 2010 (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 shall 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

All subcontractors shall be included as insured under the policies required by this Section 15 or separate certificates and endorsements shall be furnished for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

16. 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 attorney fees and expert witness fees, in addition to any other relief to which they may be entitled.

17. Beneficiaries, Heirs, Assigns, and Successors In Interest

This Agreement pertains to and runs with the real property included within the Phase 1 Final Map for Tract No. 8047, which land is expressly agreed to benefit from the privileges granted under this Agreement, and binds the beneficiaries, heirs, assigns, and successors in interest in the properties of the DEVELOPER.

18. Attachments

The following documents are incorporated into this Agreement by reference:

CITY permits: Public Infrastructure PX.1100054	Planning TTM 7891 CU 08156, ZP 120006
Building n.a.	Grading GR _____, Tree Removal 0800041
Encroachment n.a.	Est. Cost of Improvements \$ 119,000.00
Final Map: Phase 1 - Tract No. 7891	Resolution No. _____ C.M.S.
Insurer: _____	Surety: _____

19. Constructive Notice

This Agreement shall be filed with the Alameda County Clerk-Recorder for recordation.

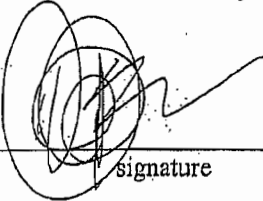
20. Effective Date

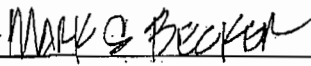
This Agreement shall be effective on the date of its execution by the CITY.

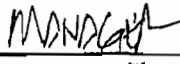
IN WITNESS WHEREOF, BART and the DEVELOPER each has caused its name to be subscribed hereto, and the CITY has caused its name to be affixed hereto on the dates indicated on the attached notarized acknowledgements.

*** DEVELOPER:**

Clarewood Associates, LLC
a California limited liability company

by:  _____
signature

 _____
name

 _____
title

*** CITY:**

City of Oakland
a California municipal corporation

** notarized acknowledgment required*

by: _____
signature

RAYMOND M. DERANIA
City Engineer

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

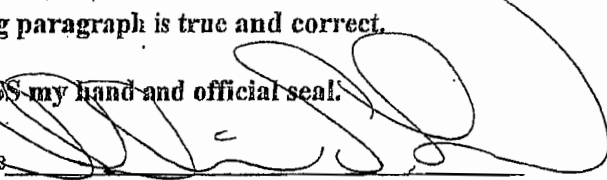
STATE OF CALIFORNIA) SS.
COUNTY OF ALAMEDA)

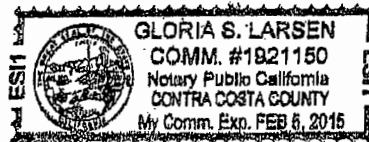
On JANUARY 31 2013 before me, GLORIA S. LARSEN
Notary Public, personally appeared
MARK S. BICKEL

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 his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature 



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF California } ss.:
COUNTY OF Contra Costa } ss.:

On November 7, 2012, before me Cathy A. Shapard, Notary Public
DATE Here Insert Name and Title of the Officer

personally appeared Mark C. Johnson

NAME(S) OF SIGNER(S)

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

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

WITNESS my hand and official seal.

Cathy A. Shapard
(Signature of Notary)

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

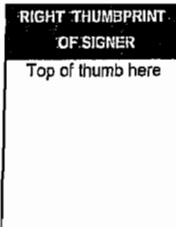
Title or Type of Document: Defective Materials and Workmanship (Warranty) Bond
Document Date: November 7, 2012 Number of Pages: 1
Signer(s) Other Than Named Above: Clarewood Associates LLC

Capacity(ies) Claimed by Signer(s)

Signer's Name: Mark C. Johnson Signer's Name: N/A

- | | |
|--|--|
| <input type="checkbox"/> Individual | <input type="checkbox"/> Individual |
| <input type="checkbox"/> Corporate Officer – Title(s) _____ | <input type="checkbox"/> Corporate Officer – Title(s) _____ |
| <input type="checkbox"/> Partner – <input type="checkbox"/> Limited <input type="checkbox"/> General | <input type="checkbox"/> Partner – <input type="checkbox"/> Limited <input type="checkbox"/> General |
| <input checked="" type="checkbox"/> Attorney-In-Fact | <input type="checkbox"/> Attorney-In-Fact |
| <input type="checkbox"/> Trustee | <input type="checkbox"/> Trustee |
| <input type="checkbox"/> Guardian or Conservator | <input type="checkbox"/> Guardian or Conservator |

Other: _____



Signer is Representing: SureTec
Insurance Company

Other: _____



Signer is Representing: _____

SureTec Insurance Company

LIMITED POWER OF ATTORNEY

Know All Men by These Presents, That SURETEC INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Texas, and having its principal office in Houston, Harris County, Texas, does by these presents make, constitute and appoint

Mark C. Johnson, John F. Arents, Cecil A. Collins III

its true and lawful Attorney-in-fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings or other instruments or contracts of suretyship to include waivers to the conditions of contracts and consents of surety for:

Five Million and 00/100 Dollars (\$5,000,000.00)

and to bind the Company thereby as fully and to the same extent as if such bond were signed by the President, sealed with the corporate seal of the Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney-in-Fact may do in the premises. Said appointment shall continue in force until 10/31/2013 and is made under and by authority of the following resolutions of the Board of Directors of the SureTec Insurance Company:

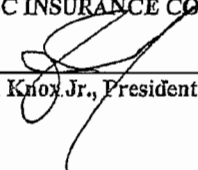
Be it Resolved, that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

Attorney-in-Fact may be given full power and authority for and in the name of and of behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.

Be it Resolved, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached. *(Adopted at a meeting held on 20th of April, 1999.)*

In Witness Whereof, SURETEC INSURANCE COMPANY has caused these presents to be signed by its President, and its corporate seal to be hereto affixed this 3rd day of September, A.D. 2010.

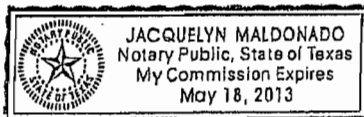
SURETEC INSURANCE COMPANY

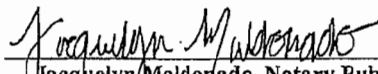
By: 
John Knox Jr., President



State of Texas ss:
County of Harris

On this 3rd day of September, A.D. 2010 before me personally came John Knox Jr., to me known, who, being by me duly sworn, did depose and say, that he resides in Houston, Texas, that he is President of SURETEC INSURANCE COMPANY, the company described in and which executed the above instrument; that he knows the seal of said Company; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Company; and that he signed his name thereto by like order.




Jacquelyn Maldonado, Notary Public
My commission expires May 18, 2013

I, M. Brent Beaty, Assistant Secretary of SURETEC INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Company, which is still in full force and effect; and furthermore, the resolutions of the Board of Directors, set out in the Power of Attorney are in full force and effect.

Given under my hand and the seal of said Company at Houston, Texas this 7th day of November, 2012, A.D.


M. Brent Beaty, Assistant Secretary

Any instrument issued in excess of the penalty stated above is totally void and without any validity.
For verification of the authority of this power you may call (713) 812-0800 any business day between 8:00 am and 5:00 pm CST.