

OFFICE OF THE CLERK  
Approved as to form and legality  
2008 SEP 16 PM 4:01  
Oakland City Attorney

## OAKLAND CITY COUNCIL

ORDINANCE NO. 12767 C. M. S.

**ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A FIVE YEAR LICENSE AGREEMENT WITH SHAY AND OLIVIA HARTING AND CAROL CORDRAY, WITH OPTIONS TO EXTEND THE LICENSE TERM, TO ACCOMMODATE AN EXISTING DRIVEWAY FOR INGRESS AND EGRESS AT 4683 AND 4689 BENEVIDES AVENUE (APN: 024-0551-001) ON APPROXIMATELY 2,000 SQUARE FEET OF CITY OWNED PARKLAND LOCATED ALONG THE WESTERLY EDGE OF DIMOND PARK.**

**WHEREAS**, the City of Oakland (“Licensor”) is the owner and the Office of Parks and Recreation is the custodial agency for the real property commonly known as Dimond Park and more particularly described on Exhibit “A” attached hereto and hereby incorporated herein; and

**WHEREAS**, Shay and Olivia Harting and Carol Cordray (“Licensees”) are the owners of that real property and the improvements thereon, commonly known as 4683 and 4689 Benevides Avenue, in Oakland, California, and more particularly described on Exhibit “B” attached hereto and hereby incorporated herein; and

**WHEREAS**, a strip of land along the Easterly edge of the driveway from the end of Benevides Avenue to the garage under the home commonly known as 4689 Benevides Avenue, as described in Exhibit “C” attached hereto and hereby incorporated herein, and as shown on the plot plan attached hereto and incorporated herein as Exhibit “D”, hereinafter referred to as the “License Area,” is located on the Westerly edge of Dimond Park on the land owned by the Licensor; and

**WHEREAS**, Licensees contend and Licensor denies that Licensees have previously obtained any right to use the License Area for access to the homes located on the real Area described on Exhibit B; and

**WHEREAS**, Licensor and Licensees now desire to settle any differences and authorize Licensees’ right to use the License Area for access to Licensees’ property, in order to permit Licensor and Licensees to split the Area described on Exhibit “B” into two, separate legal parcels, subject to planning and other necessary reviews and approvals ; and

WHEREAS, the requirements of the California Environmental Quality Act of 1970 ("CEQA"), the CEQA Guidelines as prescribed by the Secretary for Resources, and the provisions of the Environmental Review Regulations of the City of Oakland have been satisfied; now, therefore

**THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**Section 1:** The Parks and Recreation Advisory Committee reviewed and found that it is in the City's best interest to negotiate and execute a License Agreement with the Hartings and Carol Corday to authorize a driveway for access to the private property across and directly adjacent to the westerly border of Dimond Park.

**Section 2:** Licensees must agree that as consideration for the City's grant of easement they shall a) pay a monthly fee, b) construct a fence and a sign and provide other improvements as agreed with City; c) assume responsibility for utilities and maintenance and associated costs, d) make no claim and take no action to establish any past, current or future rights to use the License Area, except those rights conferred pursuant to the License Agreement authorized hereby, and e) perform other tasks as agreed with City Administrator or designee.

**Section 3:** Revenue of \$350.00 per month, paid in advance, with an annual increase equal to the amount of the Consumer Price Index plus 2%, will be placed into Fund (1820); Director's Unit (501110); Miscellaneous Concession Account (44519).

**Section 4:** The City Council independently finds and determines that the Project complies with CEQA, as the Project is categorically exempt from CEQA pursuant to Section 15301 (existing facilities) of the CEQA Guidelines, and the City Administrator is hereby directed to cause to be filed with the appropriate agencies, a Notice of Exemption.

**Section 5:** The City Administrator, or her designee, is hereby authorized to take any and all actions necessary, consistent with this Ordinance, to complete the negotiations and execution of the License Agreement, and to make any amendments, modifications or extensions thereto, at no additional cost.

**Section 6:** The License Agreement or other appropriate instrument shall be approved as to form and legality by the City Attorney's Office and a copy shall be filed with the Office of the City Clerk.

**Section 7:** This Ordinance shall become effective immediately upon final adoption if it receives six or more affirmative votes; otherwise, it shall become effective upon the seventh day after final adoption.

**OCT - 3 2006**

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2006  
PASSED BY THE FOLLOWING VOTE:


AYES                    BROOKS, ~~WATKINS~~, CHANG, NADEL, REID, QUAN, KERNIGHAN, AND  
~~WATKINS, REID, QUAN, KERNIGHAN~~ - 6

NOES - 0

ABSENT - Brunner - 1

ABSTENTION - 0

Excused - De La Fuente - 1

ATTEST: 

LA TONDA SIMMONS  
City Clerk and Clerk of the Council  
of the City of Oakland, California

Introduction Date:

**SEP 19 2006**





Order No. 431042

LEGAL DESCRIPTION

REAL PROPERTY in the City of Oakland, County of Alameda, State of California, described as follows

Lot 47, Block 5 as said lot and block are shown on the Map of "Fourth Avenue Height", filed March 23, 1910, Map Book 25, Page 43, Alameda County Records

A.P. No. 024-0551-001

\*\*\*\*\*

Exhibit B

Exhibit C

All that certain real property being a portion of land of the City of Oakland known as Diamond Park, described as follows:

Commencing at the most northern corner of Lot 47 being on the eastern boundary of the tract shown on the map entitled "Fourth Avenue Heights," filed March 27, 1910, in Map Book 25, page 43, Alameda County Records; thence along the eastern boundary of Lot 47, South 18°17' West 24.60 feet and South 9°33' West 247 feet to the POINT OF BEGINNING; thence continuing along said eastern boundary of Lot 47, the following courses:

South 09°33' West 20.53 feet, South 03°51' West 237.70 feet  
South 16°58' West 102.70 feet, and South 08°08' West 23.50 feet to the

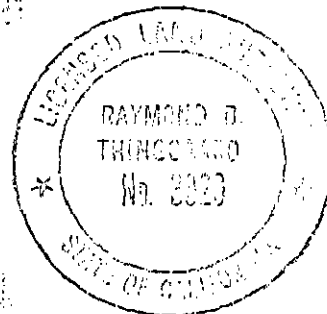
northeastern end of Benevides Avenue; thence along the northeastern end of said Benevides Avenue, South 15°19' East 30.98 feet and South 05°39' East 11.09 feet to the back of a concrete curb; thence along said curb along a curve to the right with a radius of 18.0 feet, from a tangent that bears North 84°46'51" East, through a central angle of 34°07'40", an arc distance of 10.72 feet; thence leaving said curb, along the following courses:

North 04°33'12" West 66.75 feet to the beginning of a tangential curve to the right with a radius of 47.0 feet, thence along said curve, through a central angle of 4°56'17" an arc distance of 11.52 feet, thence tangent to said curve,

North 09°29'29" East 24.54 feet, North 21°00'27" East 18.78 feet  
North 15°34'53" East 19.04 feet, North 20°44'10" East 24.62 feet,  
North 18°07'37" East 16.98 feet, North 24°45'19" East 20.35 feet,  
North 56°25'17" West 20.74 feet, and North 52°46'52" West 5.25 feet to

the Point of Beginning.

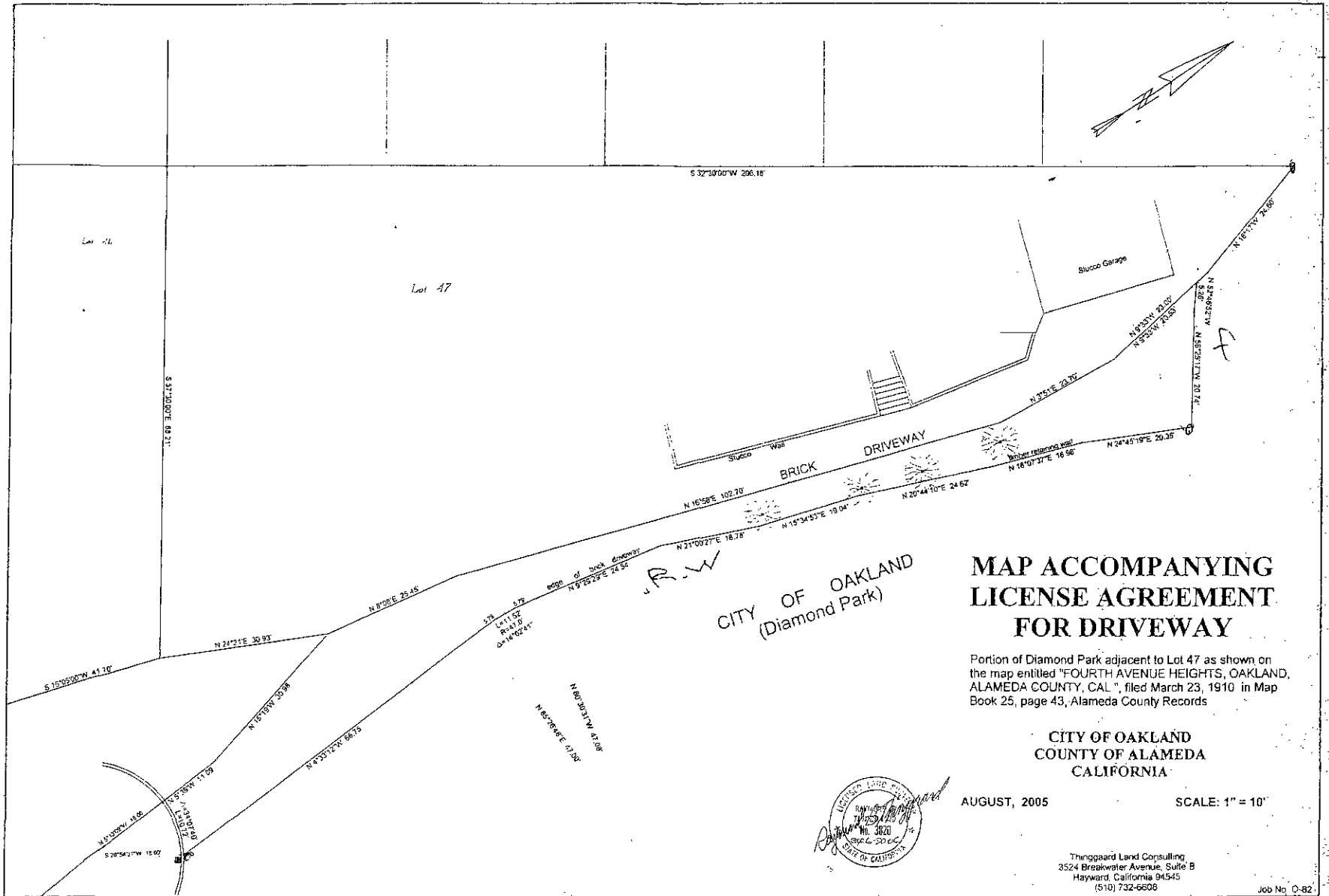
Containing 2000 square feet, more or less.



August 24, 2005  
Date

*Raymond B. Thinggaard*  
Raymond B. Thinggaard, PLS 8023

Exhibit D



CITY OF OAKLAND  
(Diamond Park)

### MAP ACCOMPANYING LICENSE AGREEMENT FOR DRIVEWAY

Portion of Diamond Park adjacent to Lot 47 as shown on the map entitled "FOURTH AVENUE HEIGHTS, OAKLAND, ALAMEDA COUNTY, CAL.", filed March 23, 1910 in Map Book 25, page 43, Alameda County Records

CITY OF OAKLAND  
COUNTY OF ALAMEDA  
CALIFORNIA

AUGUST, 2005

SCALE: 1" = 10'



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(510) 732-6608

Job No. O-82



## NOTICE AND DIGEST

**ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A FIVE YEAR LICENSE AGREEMENT WITH SHAY AND OLIVIA HARTING AND CAROL CORDRAY WITH OPTIONS TO EXTEND THE LICENSE TERM, TO ACCOMMODATE AN EXISTING DRIVEWAY FOR INGRESS AND EGRESS AT 4683 AND 4689 BENEVIDES AVENUE (APN: 024-0551-001) ON APPROXIMATELY 2,000 SQUARE FEET OF CITY OWNED PARKLAND LOCATED ALONG THE WESTERLY EDGE OF DIMOND PARK.**

An ordinance has been prepared authorizing the City Administrator to negotiate and execute a five year license agreement for a private driveway across the westerly border of Dimond Park for a period of five years with additional five year options to extend the license. License fees to the City will be \$350.00 per month.