

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2016 MAR 24 PM 2:04

Approved as to Form and Legality

  
Office of the City Attorney

## OAKLAND CITY COUNCIL

RESOLUTION NO. 86070 C.M.S.

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**RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR OR DESIGNEE TO ENTER INTO AN AMENDED AND RESTATED SUBDIVISION IMPROVEMENT AGREEMENT WITH US TP SRM TEMESCAL, LLC FOR DEFERRED CONSTRUCTION OF PUBLIC INFRASTRUCTURE IMPROVEMENTS AS A CONDITION TO FINAL MAP APPROVAL FOR TRACT NO. 8185 LOCATED AT 4901 BROADWAY**

**WHEREAS**, US TP SRM Temescal, LLC, a California limited liability company (no. 201515910070) (“Subdivider”) is the subdivider of nine (9) parcels identified by the Alameda County Assessor as APNs 013-1136-010, 013-1136-021, 013-1136-022-01, 013-1136-004-02, 013-1136-005-05, 013-1136-008-04, 013-1136-009-02, 013-1136-011, and 013-1136-012, and by the Alameda County Clerk-Recorder as Tract No. 8185, and by the City of Oakland as 4901 Broadway; and

**WHEREAS**, on October 6, 2015, the City Council of the City of Oakland by Resolution No. 85812 C.M.S. conditionally approved Final Map No. 8185 (the “Final Map”), a merger and re-subdivision of the lots described above into five (5) developable lots in furtherance of a mixed use multi-family development previously approved by the City pursuant to Application No. PLN14248 and Final Planned Unit Development Permit PUDF06 (the “Project Approvals”); and

**WHEREAS**, on the same date, the City Council by Resolution No. 85813 C.M.S. authorized the City Administrator to enter into a Subdivision Improvement Agreement with the original subdivider, SRM Development LLC (the “Original Subdivider”), in the form approved by the City Council (the “Original Subdivision Improvement Agreement”) for deferred construction of certain public infrastructure improvements as a condition of approval of the Final Map; and

**WHEREAS**, the Original Subdivision Improvement Agreement included, among other things, undertakings by the Original Subdivider to construct, maintain and dedicate certain Public Infrastructure Improvements shown on the construction plans accompanying permit number PX1500014 and included in *Exhibit A*, attached hereto and incorporated herein, within the time frames set forth therein; and

**WHEREAS**, following issuance of the Project Approvals, the Original Subdivider and the capital partner for the Project formed a new development entity, US TP SRM Temescal, LLC, a California limited liability company, to serve as developer of the Project (the “New Subdivider”); and

**WHEREAS**, the New Subdivider has taken an assignment of the Project Approvals, and is in the process of obtaining a construction loan from Union Bank (the “Construction Lender”) to support the financing of the Project; and

**WHEREAS**, the Original Subdivider has now requested that due to changes in the development schedule, the impact of current weather conditions and other factors, the City extend the deadline for completing the Required Public Infrastructure Improvements from one year to two years. City staff has evaluated this request and concluded that granting the extension will not adversely affect the City or the public; and

**WHEREAS**, the Original Subdivider has also requested certain clarifications and changes to facilitate its construction financing and better enable the Construction Lender to protect its interests. City staff has evaluated this request and recommends approval of such clarifications and changes as they do not materially impact the benefits and protections provided to the City under the Original Subdivision Improvement Agreement and are reasonably necessary to facilitate the construction financing; and

**WHEREAS**, in order to provide an amended Subdivision Improvement Agreement that more clearly sets out the obligations and liabilities of the Subdivider and the intent of the parties, the parties desire to incorporate the changes into a single Amended and Restated Subdivision Improvement Agreement, attached hereto as *Exhibit B* and incorporated herein, to be executed by the New Subdivider as the Subdivider. The Amended and Restated Subdivision Improvement Agreement is intended to replace and supersede the Original 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 an Amended and Restated Subdivision Improvement Agreement with US TP SRM Temescal, LLC for deferred construction of public infrastructure improvements as a condition to final map approval for Tract No. 8185; and be it

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

**FURTHER RESOLVED:** That the City Engineer is authorized to cause the fully executed Amended and Restated Subdivision Improvement Agreement to be filed 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, APR 05 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

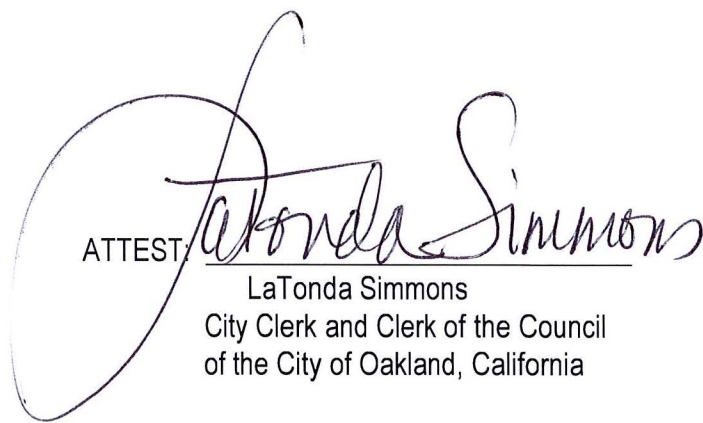
ATTEST:   
LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California

Exhibit A

PUBLIC INFRASTRUCTURE IMPROVEMENTS

4901 Broadway

Final Map No. 8185

---

**Exhibit A**

Public Infrastructure Permit PX1500014





brick.

BRICK LLC  
111 S. MAIN ST. 4TH FL.  
ANN ARBOR, MI 48106  
TEL: 734.769.4400  
WWW.BRICKLLC.COM

DATE: 08/21/2018  
PROJECT: 18-00000000-0000  
SHEET: 18-00000000-0000



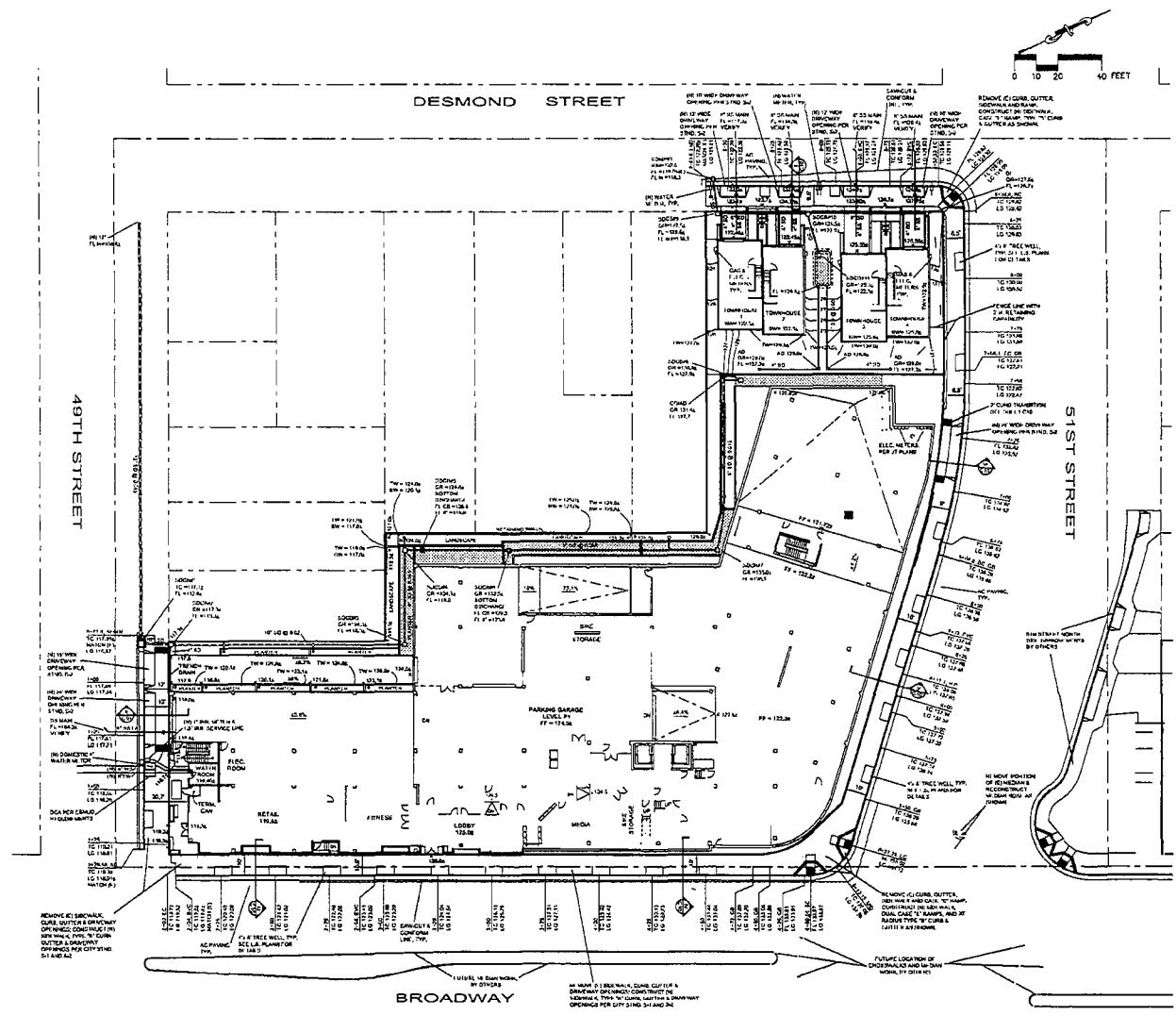
terresac  
apartments  
tract 0185

18-00000000-0000  
08/21/2018  
18-00000000-0000  
18-00000000-0000  
18-00000000-0000

permit submittal  
GRADING AND  
DRAINAGE PLAN  
GARAGE LEVEL P1

PX 15000xx

C03



WATER SERVICES LOCATIONS AND SIDES SHOWN ON PLAN ARE SUBJECT TO EMBLID AND FIRE DEPARTMENT APPROVAL.

NOTES: SAK-CUT CONFORM PAVING LIMIT FOR NEW CURB & GUTTER SHOWN IS MINIMUM REQUIREMENT. FIELD ADJUSTMENT MAY BE MADE TO ENSURE THAT FINAL PAVEMENT CROSS SLOPES ARE ACCEPTABLE TO CITY INSPECTOR.

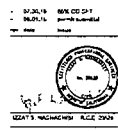
NOTE: AC OVERLAY TO CENTERLINE OF ALL PUBLIC STREETS ABUTTING THE PROJECT SITE, IF REQUIRED BY CITY BASED ON FIELD CONDITIONS.

SEE SHEET C05 FOR CURB PROFILES AND C06 & C07 PUBLIC SIDEWALK GRADES AT DOORS.

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PROJECT NO. 15-000000-001  
DATE: 08/14/15  
DRAWN BY: J. L. BROWN  
CHECKED BY: J. L. BROWN  
SCALE: AS SHOWN



temescal apartments  
tract 8185

permit submittal  
GRADING AND  
DRAINAGE PLAN  
LEVEL 11

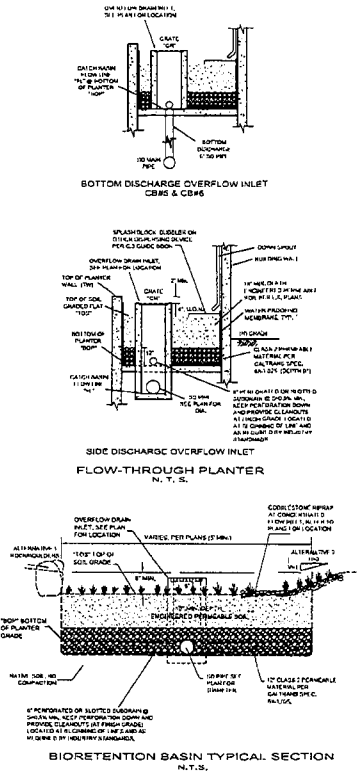


DESMOND STREET

49TH STREET

1ST STREET

BROADWAY



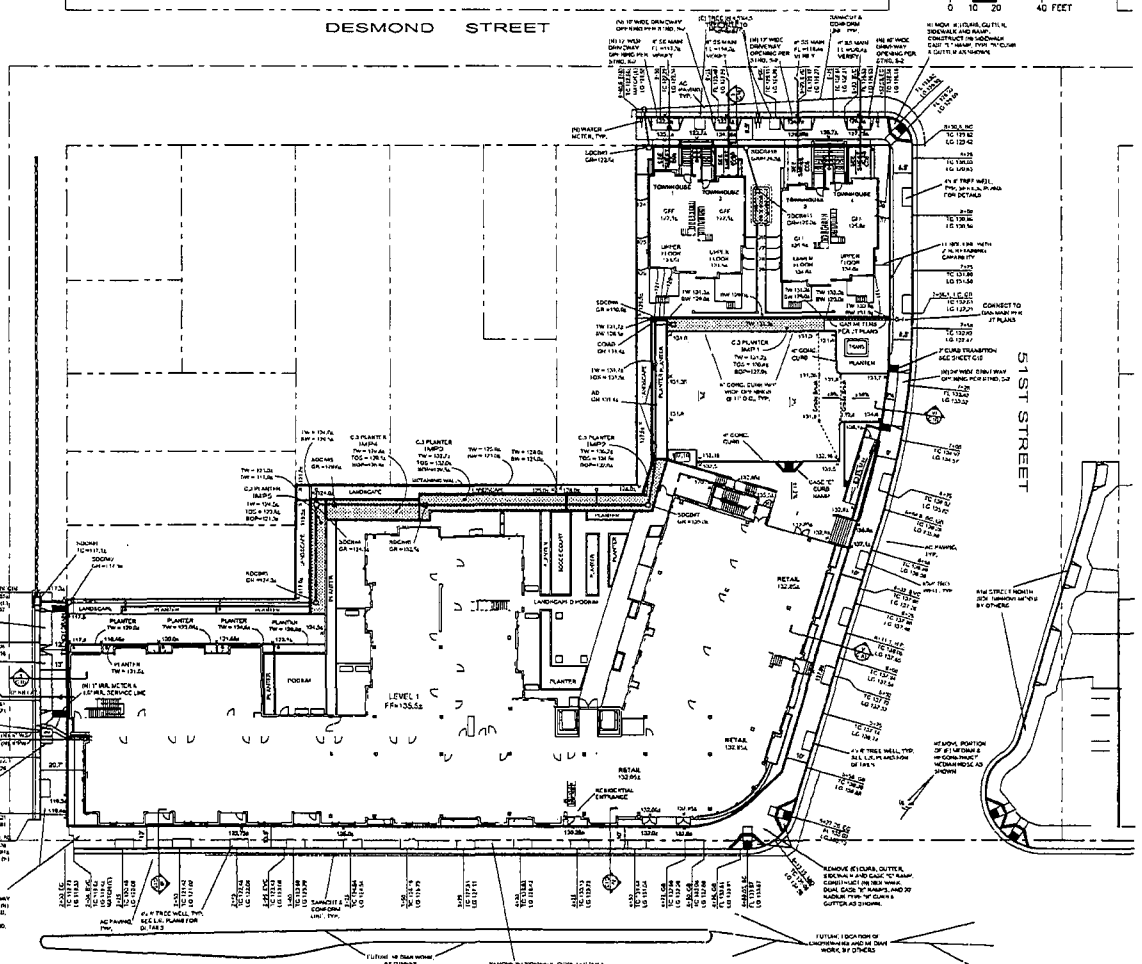
- PLANTER NOTES:**
- REFER TO ALABAMA COUNTY CLEAN WATER PROGRAM'S (CWP) TECHNICAL GUIDANCE FOR THE CHANGING SOILS SPECIFICATIONS PRIOR TO ORDERING THE MAT. SOILS SHALL HAVE A MINIMUM PERCENTAGE OF SAND AND A MINIMUM OF 10% ORGANIC MATTER.
  - ALL PERFORATED PIPES SHALL HAVE A MINIMUM SPACING OF 2' OR AS SHOWN ON PLAN, AND A MINIMUM OF TWO LINES OF THREE 3/4" DIA. HOLES PER LINEAL FOOT OF PIPE, EVENLY SPACED ALONG THE PIPE.
  - SEE ALABAMA COUNTY CLEAN WATER PROGRAM'S (CWP) TECHNICAL GUIDANCE, ITEM 4, ATTACHED HERE TO.
  - PLANTER SURFACE SHALL BE GRADED FLAT.
  - ADDITIONAL ATTENTION SHOULD BE DEVOTED TO INSURE ALL LANDSCAPE MATERIALS ARE VEGGIED AND STABILIZED BEFORE THE BANKS/RETAINMENT ARE BROUGHT ONLINE.

WATER SERVICES LOCATIONS AND SIZES SHOWN ON PLAN ARE SUBJECT TO EMAGD AND FIRE DEPARTMENT APPROVAL.

NOTE: SAW-CUT/CONFORM PAVING LIMIT FOR NEW CURB & CUTTER SHOWN IS MINIMUM REQUIREMENT. FIELD ADJUSTMENT MAY BE MADE TO ENSURE THAT FINAL PAVEMENT CROSS SLOPES ARE ACCEPTABLE TO CITY INSPECTOR.

NOTE: AC OVERLAY TO CENTERLINE OF ALL PUBLIC STREETS ABUTTING THE PROJECT SITE, IF REQUIRED BY CITY BASED ON FIELD CONDITIONS.

SEE SHEET C05 FOR CURB PROFILES AND 3/4" & C/7" PUBLIC SIDEWALK GRADES AT DOORS







brick.

DATE: 11/15/11  
BY: [Signature]  
PROJECT: [Project Name]

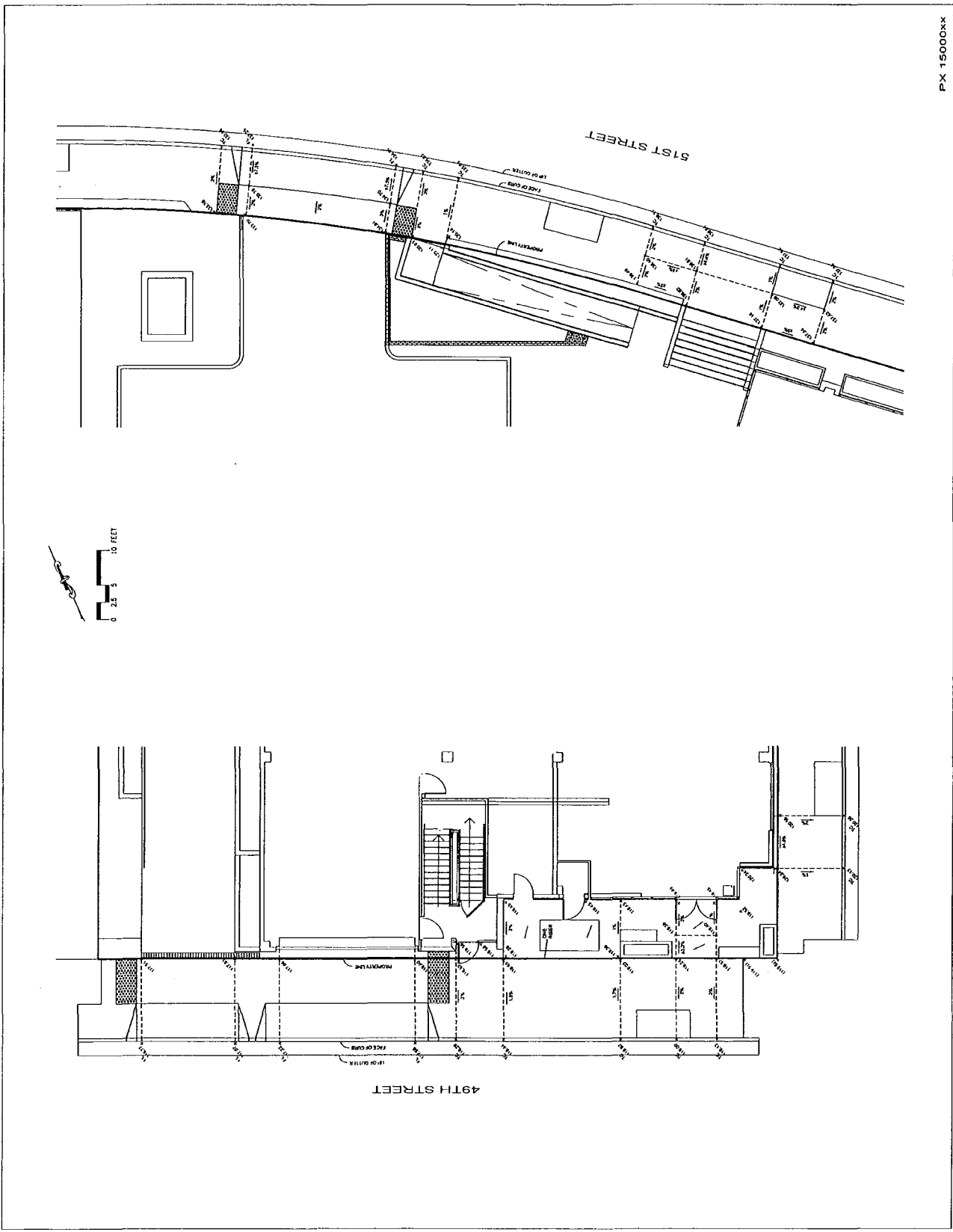


JOHANN COMPANY, INC.  
1111 [Address]  
[City, State, Zip]



permit submittal  
PUBLIC SIDEWALK  
GRADING AT ENTRY  
POINTS

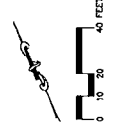
C07



PX 15000-X

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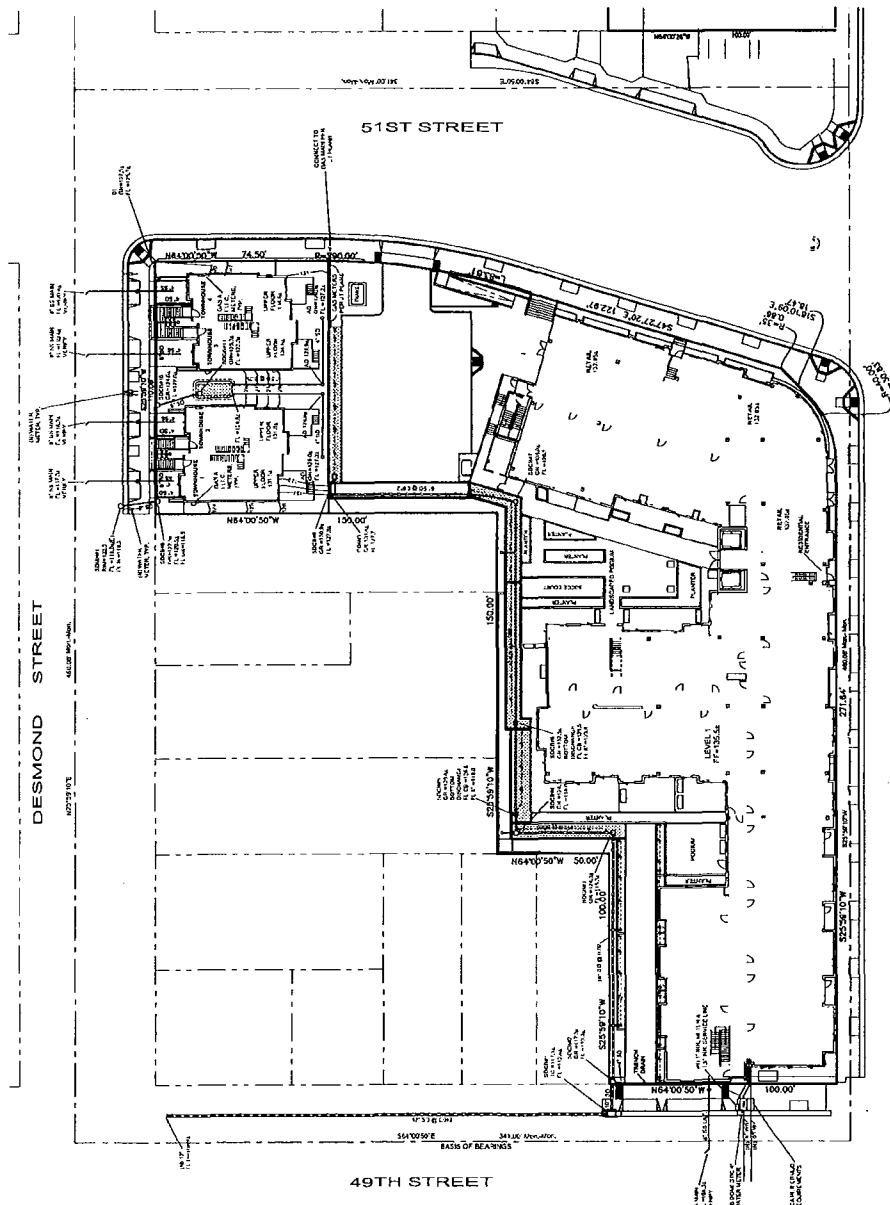
DESIGNED BY  
 1000 W. 10th Street, Suite 100  
 Minneapolis, MN 55402  
 (612) 338-1100  
 www.mhfi.com



James J. Hines  
 Professional Engineer  
 License No. 1000000000  
 State of Minnesota

permit submittal  
 UTILITY PLAN

C08



**STORM DRAIN NOTES**

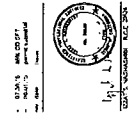
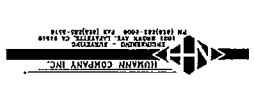
1. UNLESS OTHERWISE NOTED, ALL PRIVATE STORM DRAINAGE SHALL BE FACTOR 1.0. UNLESS OTHERWISE NOTED, ALL PRIVATE STORM DRAINAGE SHALL BE FACTOR 1.0. UNLESS OTHERWISE NOTED, ALL PRIVATE STORM DRAINAGE SHALL BE FACTOR 1.0. UNLESS OTHERWISE NOTED, ALL PRIVATE STORM DRAINAGE SHALL BE FACTOR 1.0.
2. PROVIDE CLEARANCES FOR STORM DRAIN AND PERFORMED SUBORDINATE TO MAINTAIN THE STORM DRAINAGE CODE REQUIREMENTS.
3. PROVIDE ADDITIONAL CLEARANCES FOR STORM DRAINAGE PERFORMED SUBORDINATE TO MAINTAIN THE STORM DRAINAGE CODE REQUIREMENTS.

**STORM DRAIN SCHEDULE**

| ITEM NO. | DESCRIPTION |
|----------|-------------|
| 1        | 1\"/>       |

PX 15000000

NOTES:  
1. ALL DIMENSIONS ARE IN FEET AND INCHES.  
2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.  
3. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.  
4. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.  
5. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.

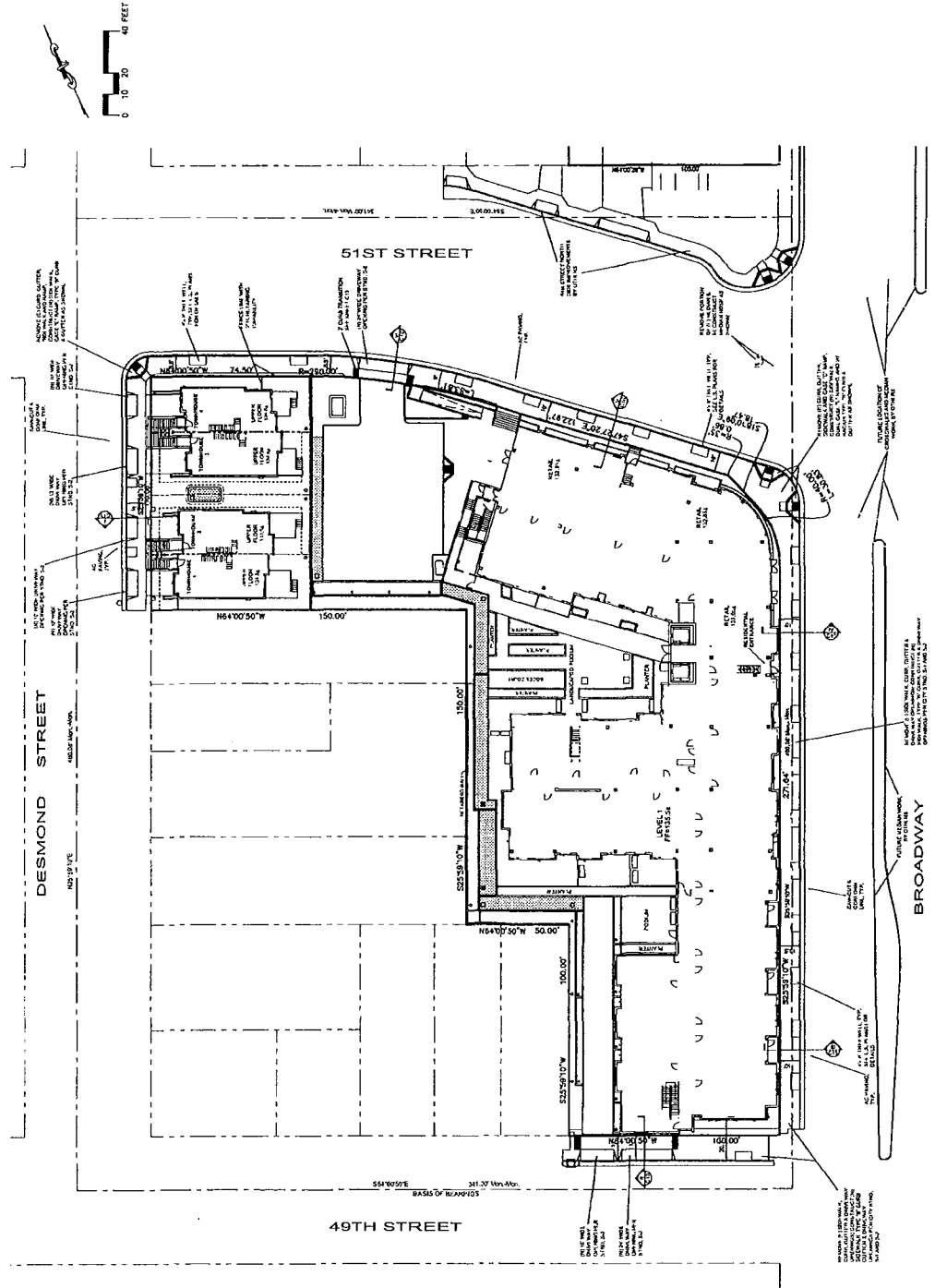


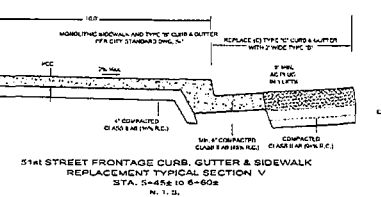
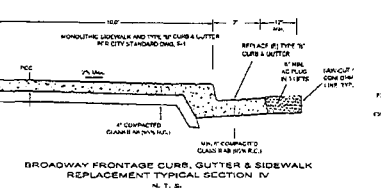
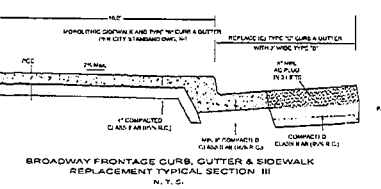
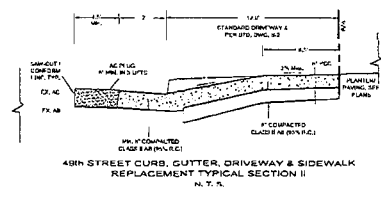
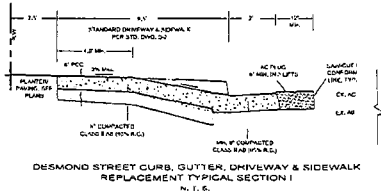
PROJECT:  
KIMMANN  
apartments  
Unit 8185  
1000 West 10th Ave., Denver, CO 80202  
DATE: 10/18/2018

PERMIT SUBMITTAL  
SITE SIGNAGE AND  
STRAPPING PLAN

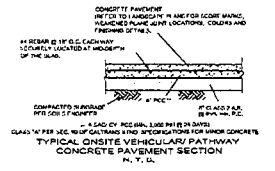
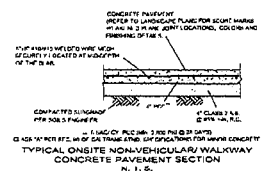
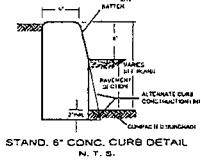
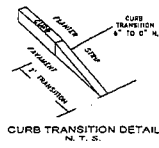
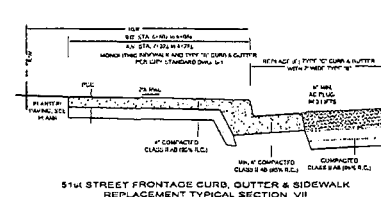
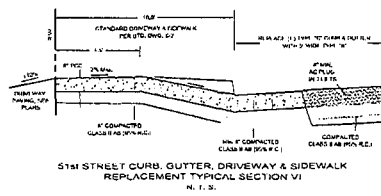
C09

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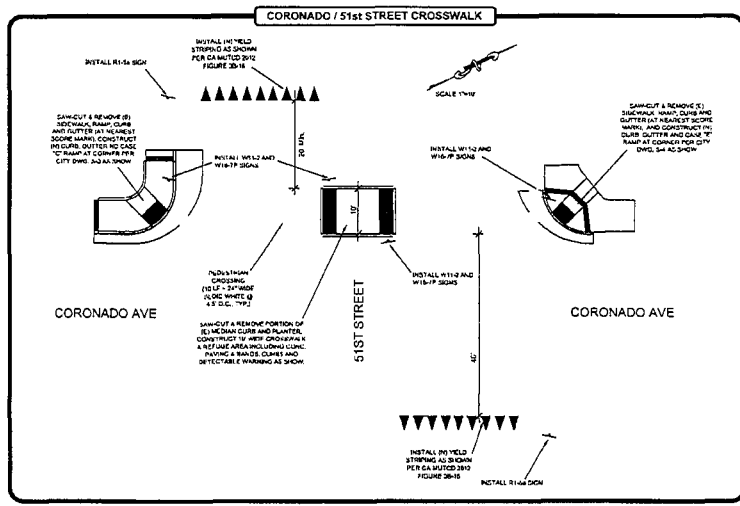
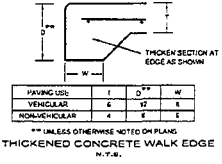




CONTRACTOR SHALL PROVIDE AND COMPACT CLASS II AB FOR ANY PORTION OF AREAS/SECTIONS NOTED TO HAVE EXISTING AB SHOULD FIELD VERIFICATION SHOWS THAT THE EXISTING AB SECTION DOES NOT MEET THE MINIMUM REQUIREMENTS.



NOTE: SAW-CUT/CONFORM PAVING LIMIT FOR NEW CURB & GUTTER SHOWN IS MINIMUM REQUIREMENT. FIELD ADJUSTMENT MAY BE MADE TO ENSURE THAT FINAL PAVEMENT CROSS SLOPES ARE ACCEPTABLE TO CITY ENGINEER



PX 15000xx

brick.

DATE: 08/21/15  
BY: [Signature]  
CHECKED: [Signature]  
SCALE: AS SHOWN



temescal apartments  
Tract 8185

PROJECT NUMBER: 1500  
DATE: 08/21/15  
SCALE: AS SHOWN  
DATE: 08/21/15

permit submittal  
SECTIONS, DETAILS  
AND CORONADO/51st  
STREET CROSSWALK

C10







# Exhibit B

Amended and Restated SUBDIVISION IMPROVEMENT AGREEMENT

4901 Broadway

Final Map No. 8185

**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.

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SPACE ABOVE FOR RECORDER'S USE

**AMENDED AND RESTATED SUBDIVISION IMPROVEMENT AGREEMENT**

**Deferred Construction of Public Infrastructure Improvements**

**4901 Broadway Final Map No. 8185**

This AMENDED AND RESTATED SUBDIVISION IMPROVEMENT AGREEMENT (“**Agreement**”), dated for reference purposes as of March \_\_, 2016 (“**Effective Date**”), is entered into by and between the City of Oakland, a California municipal corporation (“**CITY**”), and US TP SRM TEMESCAL, LLC, a California limited liability company (no. 201515910070) (“**SUBDIVIDER**”), with reference to the following facts and circumstances:

**RECITALS**

- A. SUBDIVIDER is the owner in fee title and subdivider of those nine (9) lots located within the corporate limits of the CITY, which are identified by the Alameda County Assessor as parcel numbers 013-1136-010, 013-1136-021, 013-1136-022-01, 013-1136-004-02, 013-1136-005-05, 013-1136-008-04, 013-1136-009-02, 013-1136-011 and 013-1136-012, and by the CITY as 4901 Broadway.
- B. On October 6, 2015, the City Council of the City of Oakland by Resolution No. 85812 approved with conditions Final Map No. 8185 (the “**Final Map**”), a merger and re-subdivision of the lots described in Recital A above into five (5) developable lots in furtherance of a mixed use multi-family development previously approved by the City pursuant to Application No. PLN14248 and Final Planned Unit Development Permit PUDF06 (the “**Project Approvals**”).
- C. As a condition of approval of the Final Map, the original Subdivider, SRM

Development LLC (the “**Original Subdivider**”), was required to execute a Subdivision Improvement Agreement in the form approved by the City Council (the “**Original Improvement Agreement**”). The Original Improvement Agreement included, among other things, undertakings by the Original Subdivider to construct, maintain and dedicate certain Public Infrastructure Improvements within the time frames set forth therein.

- D. Following issuance of the Project Approvals, the Original Subdivider and the capital partner for the Project formed a new development entity, US TP SRM Temescal, LLC, a California limited liability company, to serve as developer of the Project (the “**New Subdivider**”). The New Subdivider has taken an assignment of the Project Approvals, and is in the process of obtaining a construction loan from Union Bank (the “**Construction Lender**”) to support the financing of the Project.
- E. The Original Subdivider has now requested that due to changes in the development schedule, the impact of current weather conditions and other factors, the City extend the deadline for completing the Required Public Infrastructure Improvements from one year to two years. City staff has evaluated this request and concluded that granting the extension will not adversely affect the City or the public.
- F. The Original Subdivider has also requested certain clarifications and changes to facilitate its construction financing and better enable the Construction Lender to protect its interests. The City Attorney has evaluated this request and is prepared to recommend approval of such clarifications and changes as do not materially impact the benefits and protections provided to the City under the Original Agreement and are reasonably necessary to facilitate the construction financing.
- G. In order to provide an amended Subdivision Improvement Agreement that more clearly sets out the obligations and liabilities of the Subdivider and the intent of the parties, the parties desire to incorporate the changes into a single amended and restated Subdivision Improvement Agreement to be executed by the New Subdivider as the Subdivider hereunder. This Agreement is intended to replace and supersede the Original Improvement Agreement. Upon the approval, execution and recordation and recordation of this Agreement, the Original Improvement Agreement shall be void and of no further force and effect; provided, however, that all bonds furnished pursuant to the Original Improvement Agreement, if any, shall be deemed to secure the obligations contained in this Agreement.
- H. As a condition precedent to the CITY’s approval of the proposed Final Map, the CITY requires the construction of certain 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 piping and wiring, fire hydrants, street light electroliers, traffic control and curb parking signs, signals and meters, and all appurtenances thereto (“**Public Infrastructure Improvements**”).

- I. 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 PX1500014 and included in *Exhibit A*, attached hereto and incorporated herein (collectively, the “**Required Public Infrastructure Improvements**”).
- J. Construction of the Required Public Infrastructure Improvements, however, has not commenced nor have any Required Public Infrastructure Improvements been accepted by the CITY. Consequently and in consideration of the approval of the Final 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 Public Infrastructure 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. 8185**

Approval of Final Map No. 8185 by the CITY was and 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 off-site and on-site Required 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. If and to the extent reasonably necessary 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; provided that any such new or modified Special Condition shall be given in writing and shall be in effect for only such period of time as is reasonably necessary to address the condition(s) giving rise to the new or modified Special Condition.

#### **4. Completion of Public Infrastructure Improvements**

A. All construction of Required Public Infrastructure Improvements shall be completed by SUBDIVIDER within two (2) years of the recordation of this Agreement with the Alameda County Recorder, except those required improvements for which another completion date is stated in *Exhibit A*. Construction shall not be deemed complete until the improvements have 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 Certificate 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. SUBDIVIDER shall perform all of its obligations within the periods of time required by this Agreement; provided, however, that said periods shall be extended for a period or periods of time as may be necessary, but in no event shall such extension be less than one day for each day of delay due to acts of terror or public unrest, labor disturbances and/or materials unavailability not caused by SUBDIVIDER, and other force majeure events outside the reasonable control of the SUBDIVIDER. In the event of the occurrence of any such delay listed above, the SUBDIVIDER must notify the CITY in writing of the cause or

causes of such delay within fifteen (15) days after the beginning of such delay to request an extension for the reasonably estimated period of the delay. Force majeure events do not include delays that are within the reasonable control of the SUBDIVIDER, delays associated with economic or market conditions, or delays related to financial inability or insolvency.

D. 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.

E. 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 if necessary, and if an extension is both necessary and not achievable, SUBDIVIDER shall provide additional bonds or other surety acceptable to the CITY in accordance with the Subdivision Map Act. All such bonds and/or other surety are subject to review and approval by the City Attorney for legal sufficiency in accordance with the Subdivision Map Act, 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 inspection sign-off by the City Inspector, receipt of an unconditional Letter of Completion, signed and stamped by the SUBDIVIDER's engineer, and unconditional issuance of a Certificate of Completion by the City Engineer, all Required Public Infrastructure Improvements 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 of which SUBDIVIDER has knowledge, 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 with respect to any specified Required Public Infrastructure Improvements until such time as the Certificate of Completion for such improvements is unconditionally issued.

#### **7. Maintenance of Public Infrastructure Improvements**

Until one (1) year has elapsed following unconditional issuance of the Certificate of Completion with respect to any specified Required Public Infrastructure Improvements, SUBDIVIDER shall maintain the construction of such 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 with respect to any specified Required Public Infrastructure Improvements, SUBDIVIDER warrants that such specified 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 design and 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.

If at any time before the expiration of the guarantee and warranty period specified herein the design of any such specified Required Public Infrastructure Improvements is established to be out of compliance with the applicable CITY standards and performance criteria as specified in *Exhibit A* and set forth above in Section 3, Special Conditions, 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 any specified Required Public Infrastructure Improvements for permanent maintenance, SUBDIVIDER shall pay all fees and penalties and accrued interest to the CITY and other Public Agencies, if any, that remain unpaid. Interest on amounts owed to the CITY shall accrue at the rates set forth in its Master Fee Schedule 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. Intentionally Omitted**

**12. Property Acquisition**

If SUBDIVIDER is unable to acquire property required for the construction of any Required Public Infrastructure Improvements, SUBDIVIDER agrees to execute the standard CITY



Contract for Real Property Acquisition to provide for acquisition through eminent domain. SUBDIVIDER shall be entitled to an extension of time under Section 4.B for the period of delay in constructing any Required Public Infrastructure Improvements due to the lack of necessary property rights.

**13. Security**

SUBDIVIDER shall present to the CITY surety bonds, in a form satisfactory to the City Attorney as consistent with the Subdivision Map Act, 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 of Two Hundred Sixty Five Thousand Dollars (**\$265,000**), which is the full amount (one-hundred percent) of the City Engineer's total estimated cost for constructing the Required Public Infrastructure Improvements, to secure faithful performance of such construction in accordance with the requirements of this Agreement by SUBDIVIDER; and

**2. Labor and Materials Bond** in a face amount of One Hundred Thirty Two Thousand and Five Hundred Dollars (**\$132,500**), which is one-half (fifty percent) of the full amount of the City Engineer's total estimated cost for constructing the Required 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 of the Required Public Infrastructure Improvements 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 and as a condition to issuance of the unconditional Certificate of Completion for the Required Public Infrastructure Improvements, the following security shall be presented:

**Maintenance Bond** in a face amount of Sixty Six Thousand and Two Hundred Fifty (**\$66,250**), which is one-quarter (twenty-five percent) of the full amount of the City Engineer's total estimated cost for constructing the Required 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 one year after the date of the unconditional issuance of the Certificate of Completion of the Required Public Infrastructure Improvements. If an unconditional Certificate of Completion is issued for some but not all of the Required Public Infrastructure Improvements, the Maintenance Bond shall be in a face amount equal to one-quarter (twenty-five percent) of the full amount of the City Engineer's total estimated cost for constructing the applicable completed 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 in accordance with the Subdivision Map Act, 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 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, and representatives, 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 SUBDIVIDER's 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 Public Infrastructure Improvements and regardless of responsibility for ordinary negligence (but not gross negligence, or willful misconduct). 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, and representatives 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, except to the extent of any gross negligence, or willful misconduct. 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, reasonably 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.

## **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 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. SUBDIVIDER certifies that it 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. This insurance may be provided by the engineer of record that stamps/signs the plans that apply to the work, and such engineer of record may provide the required evidence of coverage and endorsements directly to the City.

**5. Builders' Risk/Course of Construction** insurance covering all risks of loss with limits not less than the replacement cost of the Required Public Infrastructure Improvements 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, and representatives; 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, and representatives 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, and representatives.

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

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, and representatives 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 in which the real property included within Final Map No. 8185 is located, and shall pay the prorated fee due the CITY under the terms of Benefit District or Districts to the extent applicable 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. 8185, 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 - PX1500014  
                              Planning - PLN14248, PUDF06  
                              Creek Protection - N/A  
                              Building - B1502747  
                              Grading - GR1500111  
                              Encroachment - ENM15159

CITY Resolution No. 85813 C.M.S.

Subdivision: Final Map No. 8185

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 to implement the express terms of this Agreement.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK ]**

**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:**

US TP SRM TEMESCAL, LLC, a California limited liability company

By: SRMB51, LLC, a Washington limited liability company

Its: Managing Member

By: Stone Rivard McGonigle  
Development, L.L.C., a Washington limited liability company

Its: Manager

By: \_\_\_\_\_

Name: Ryan Leong

Its: Authorized Member