



**MEMORANDUM**  
*Office of the City Attorney*

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**Date:** April 23, 2014  
**To:** Mayor and Members of City Council  
**Cc:** Bryan Montgomery, City Manager  
**From:** William Galstan, Special Counsel *William R. Galstan*  
**Subject:** Closed Session of April 22, 2014

**FOR CONSIDERATION AT THE CITY COUNCIL MEETING OF MAY 13, 2014**

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**Summary and Recommendation**

Receive and file this report.

**Fiscal Impact**

None.

**Background and Analysis**

This memo is a supplemental way of "reporting-out" following a closed session.

The Council did conduct a closed session on April 22, 2014 to discuss exposure to litigation in the matter of the collection of development services fees attributable to Claremont Homes. The City Council determined, on a 5-0 vote, to approve a collection agreement for the recovery of those fees. A copy of the agreement is attached.

**Conclusion**

This report should be received and filed.

PURSUANT TO GOVERNMENT CODE  
§6103 NO FEE IS REQUIRED FOR THE  
RECORDATION OF THIS DOCUMENT

**WHEN RECORDED MAIL TO:**

City Clerk  
City Of Oakley  
3231 Main Street  
Oakley, CA 94561

**RECORDING REQUESTED BY:**

City Clerk  
City Of Oakley  
3231 Main Street  
Oakley, CA 94561

A.P.N.'s: 035-250-022, 035-250-028, 035-250-029,  
035-250-030, 035-250-031, 035-250-032, 035-250-033,  
035-250-047, 035-250-048, 035-250-049, 035-250-050,  
035-250-051, 035-250-059, 035-250-060, 035-250-061,  
035-250-062

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

**REIMBURSEMENT AGREEMENT**

**44 Heartwood Associates, L.P. /City of Oakley**

THIS AGREEMENT is made this 23<sup>rd</sup> day of April, 2014 by and between 44 Heartwood Associates, L.P. ("DEVELOPER") and the City of Oakley, a municipal corporation ("CITY").

Recitals

- A. CITY has a policy of requiring developers of land within the City of Oakley to deposit funds to be used by the CITY to reimburse itself to pay for staff time in reviewing project applications and to pay outside consultants and experts for environmental review, engineering, legal and other special expertise; and
- B. Claremont Homes, Inc., a California corporation ("CLAREMONT"), and related party to DEVELOPER, previously acquired and developed property on which there was owed approximately Nineteen Thousand (\$19,000.00) Dollars to CITY for staff and consultant review of the project, which amount has never been paid to the CITY; and
- C. CLAREMONT itself incurred approximately an additional Forty Thousand (\$40,000.00) Dollars for staff and consultant review and analysis of the project; and

*aj*

- D. Typically CITY would deem a project's developer to be responsible for all funds owed for review of a project, notwithstanding that costs may have been incurred by a previous developer; and
- E. CLAREMONT has requested that it be responsible only for the work incurred on its behalf and an accommodation in paying off its share of the incurred costs by allowing DEVELOPER to pay the obligation in several payments, rather than in one lump sum, DEVELOPER has agreed to make the payments described herein to satisfy CLAREMONT's obligation, and CITY is willing to accept such arrangements upon receiving assurances that the specified amount will be paid;

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

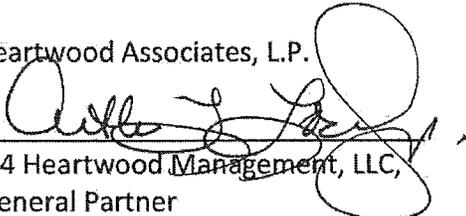
1. This Agreement will pertain to the parcels of land identified on the attached Exhibit "A" by reference to Assessor's Parcel Numbers of the Contra Costa County Assessor's Office, and also identified in such exhibit by reference to street name locations and, if assigned, street numbers for each parcel.
2. The parties agree that the total amount due and owing to CITY for staff and consultant review and analysis of the development project as specified on Exhibit "A" shall be the sum of Forty Thousand (\$40,000.00) Dollars, the CITY waiving funds due from the previous developer and also hereby waiving any and all interest and late penalty assessments that may have attached to the amount due.
3. DEVELOPER has agreed and shall pay off the total amount due by paying to CITY the sum of Two Thousand Five Hundred (\$2,500.00) Dollars when each home or lot identified by parcel number on Exhibit "A" is purchased and escrow closes thereon.
4. CITY shall not be obligated to issue a Certificate of Occupancy for any home associated with the parcels identified on Exhibit "A" unless and until DEVELOPER delivers to CITY a written Instruction to its escrow agent for said home that the escrow officer is to pay to CITY the sum of \$2,500.00 on behalf of DEVELOPER in the discharge of the debt which is the subject of this Agreement. This clause shall be effective as an enforcement mechanism for DEVELOPER's promise to pay and shall be in force and effect notwithstanding that any subject home may be otherwise eligible to receive a Certificate of Occupancy from CITY. DEVELOPER shall not change escrow agents after having delivered the copy of the Instruction to CITY without so notifying CITY and receiving a new counterpart of an Instruction to a new escrow agent. Funds shall be payable to "City of Oakley" and shall be paid as follows: by check or warrant delivered or mailed in the United States Mail, postage prepaid, to "City of Oakley, Attn: Finance Department, 3231 Main Street, Oakley, CA 94561." Upon receipt of any payment, an authorized official of CITY shall execute a recordable Release of the payment obligation for the subject parcel, and deliver same to DEVELOPER's escrow agent.

*ay*

5. Nothing shall prevent DEVELOPER from prepaying all, or a portion, of its remaining obligation at any time, for example, at the time of applying for a Building Permit for any subject home.
6. Should DEVELOPER or its escrow agent fail to make any payment specified herein at the time of closing escrow on any home associated with the lots identified on Exhibit "A", then the total amount of the unpaid \$40,000.00 debt shall become immediately due and payable, and CITY may withhold any further issuance of building permits or certificates of occupancy until such total amount is paid. Nothing shall prevent CITY from exercising any civil remedies that it may have for the collection of any unpaid amount, and DEVELOPER shall be obligated to pay CITY's reasonable attorney's fees in pursuing such collection. This Agreement shall also act as a "confession of judgment" by DEVELOPER of the amount owed by CLAREMONT.
7. This Agreement shall be binding upon the successors of the parties, and DEVELOPER has an affirmative duty to disclose this Agreement to its successors in interest of the parcels identified in Exhibit "A" (other than to retail homebuyers). DEVELOPER concurs that this Agreement may be recorded by CITY, or that DEVELOPER may be required by CITY to issue to CITY promissory notes and deeds of trust for each parcel identified herein.
8. In the event there is any question as to the priority of this obligation to a loan made to finance the construction of the homes on each property, CITY agrees that this obligation shall be subordinate to the construction loan.
9. The signatories below represent that they have the authority of their principals to execute this Agreement on their behalf and that this Agreement will be binding upon the parties, and each of them.

DEVELOPER

44 Heartwood Associates, L.P.

By: 

44 Heartwood Management, LLC,  
General Partner  
Arthur L. Lorenzini, Jr., Manager

CITY

City of Oakley, a municipal corporation

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

Bryan H. Montgomery, City Manager

ATTEST:

\_\_\_\_\_  
Libby Vreonis, City Clerk

APPROVED AS TO FORM:

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Derek P. Cole, City Attorney



## EXHIBIT A

SUBDIVISION 8916			
SUB 8916			
Lot #	APN	Addr	Street name
1	035-250-022	233	Heartwood Drive
7	035-250-028	221	Heartwood Drive
8	035-250-029	219	Heartwood Drive
9	035-250-030	217	Heartwood Drive
10	035-250-031	215	Heartwood Drive
11	035-250-032	213	Heartwood Drive
12	035-250-033	211	Heartwood Drive
26	035-250-047	226	Heartwood Drive
27	035-250-048	224	Heartwood Drive
28	035-250-049	222	Heartwood Drive
29	035-250-050	220	Heartwood Drive
30	035-250-051	218	Heartwood Drive
38	035-250-059	327	Clearwood Drive
39	035-250-060	331	Clearwood Drive
40	035-250-061	335	Clearwood Drive
41	035-250-062	339	Clearwood Drive