

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING PUBLIC IMPROVEMENT PLANS, NEW PUBLIC PARK PLANS, FINAL MAP AND AUTHORIZING THE EXECUTION OF A SUBDIVISION IMPROVEMENT AGREEMENT FOR CERANO APARTMENTS (TRACT 10019), PROJECT NO. 3170**

**WHEREAS**, on November 6, 2007, the City Council of the City of Milpitas approved the Major Vesting Tentative Map MA2005-07, Planned Unit Development No. PD2007-4, and "S" Zone Application No. SZ2005-13 (Resolution No. 7714) to allow construction of 659 residential units on approximately 22 acres located at the southwest corner of Technology Drive and Murphy Ranch Road in Milpitas, California; and

**WHEREAS**, the applicant, Fairfield Murphy Road LLC, has prepared the public improvement plans, the new public park plans, and final map as conditioned in the Exhibit 2 of the Resolution No. 7714, and similar work pursuant to a Subdivision Improvement Agreement; and

**WHEREAS**, acceptance of such improvements and any underlying easements shall be subject to a later action by the City Council or authorized action by the City Engineer.

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines, and resolves, as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The public improvement plans, the new public park plans, and final map for Cerano Apartments (Tract 10019) conform to the requirements of the Subdivision Map Act and Chapter 1 (Subdivisions) of Title XI of the Milpitas Municipal Code and are hereby approved. Such documents are kept on file and available for public review at the City Engineer's Office.
3. The City Manager is authorized to execute the Subdivision Improvement Agreement.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Robert Livengood, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

Subdivider: **Fairfield Murphy Road LLC**

Project Name: **Cerano Apartments**

File No.: **100.01.226**

Private Job Account No.: **3170**

Improvement Plan No.: **2-1103 & 2-1105**

Tract/Parcel Map No.: **10019**

Council Approval Date: \_\_\_\_\_

Completion Period: \_\_\_\_\_

## CITY OF MILPITAS

### SUBDIVISION IMPROVEMENT AGREEMENT

THIS AGREEMENT, executed this \_\_\_\_\_ day of \_\_\_\_\_, 2009, at Milpitas, California, by and between the CITY OF MILPITAS, a municipal corporation of the State of California, (hereafter referred to as "City") and **Fairfield Murphy Road LLC, a Delaware Limited Liability Company**

(hereafter referred to as "SUBDIVIDER"):

#### R E C I T A L S

- A. SUBDIVIDER desires to subdivide certain land in the CITY in accordance with a map filed with the City Council of the CITY, marked and designated **Tract No. 10019** (**Cerano Apartments**).
- B. Pursuant to the terms of this agreement, SUBDIVIDER will complete certain improvements associated with this project, including undergrounding existing utilities.

NOW, THEREFORE, in consideration of the mutual covenants terms and conditions herein contained, and for other valuable consideration, the receipt of which is hereby acknowledged, the parties do hereby agree as follows:

1. SUBDIVIDER agrees that it will construct at its sole cost and expense, all those certain improvements listed in the **Improvement Plans No. 2-1103 & 2-1105** consisting of **33 & 53** sheets and specifications approved by said City Council on \_\_\_\_\_, including setting survey monuments and identified by Project/Agency Fund Account No. **3170** (hereby referred to and made a part hereof the same as if set forth at length herein).
2. SUBDIVIDER shall obtain design approval letter from the San Francisco Public Utility Commission (SFPUC) for the proposed public park and Hetch Hetchy park, prior to the execution of this agreement or any building permits issuance. SUBDIVIDER agrees that it will construct at its sole cost and expense the proposed public park and Hetch Hetchy park, Lot "A" of Tract 10019, Cerano Apartments. The cost of the design and improvements to the public park areas will be credited against the park in-lieu fee. The public park improvements, including those on the Hetch-Hetchy parcel, shall be accepted by the City prior to building permit finals or occupancy of any units within either the last 50% of the town-home units built or final occupancy of the apartment building which ever occurs first. The new public park improvements shall be dedicated to the City after the map recordation. All work to be performed within the SFPUC's Right of Way shall be in accordance to the SFPUC's letter dated July 2, 2009 and Attachment A-1 (Equipment and Vehicle Load Restrictions).
3. SUBDIVIDER agrees that it will construct at its sole cost and expense the new 42-inch storm drain bypass line parallel to the existing 72-inch storm drain line pursuant to the City Stormdrain Master Plan to provide adequate capacity to convey stormwater runoff from

the project site to the Bellew Pump Station. The cost of the improvements to the 42-inch storm drain bypass will be credited by the City against the storm connection fee, up to the amount shown in section 19B.g. below.

4. SUBDIVIDER agrees that at its sole cost and expense it will retrofit the Bellew Pump Station diesel engines similar to Berryessa Pump Station upgrades (Design Option C) to meet the ATCM 2009 requirements for diesel emissions and to the satisfaction of the City Engineer, prior to building occupancy permit issuance.
5. SUBDIVIDER shall petition to annex into the Community Facility District (CFD 2005-1) the Cerano Apartments and the Townhomes. The petition to annex into the CFD 2005-1 shall be finalized with the final map recordation.
6. SUBDIVIDER shall obtain design approval from the Santa Clara Valley Water District (SCVWD) for the Coyote Creek trail access improvements, prior to ~~the execution of this agreement~~ or any building permit issuance.
7. No improvement work shall be undertaken by SUBDIVIDER until all plans and specifications have been submitted to the City Engineer and have been approved by him in writing nor shall any change be made in said plans and specifications or in the work of improvement to be done under them without the prior written approval of CITY.
8. SUBDIVIDER agrees that said improvements will be constructed under and subject to the inspection of and to the satisfaction of the City Engineer.
9. SUBDIVIDER agrees that it will construct said improvements in accordance with the requirements set forth in said "Improvement Plans and Specifications" referred to above, all applicable ordinances, resolutions and orders of CITY enacted or adopted by said City Council as amended or revised as of the date hereof, and governing statutes of the State of California or of the United States of America.
10. All said improvements shall be completed and ready for final inspection by the City Engineer within 24 months of the date of execution of this Agreement or prior to City issuance of Phasing Occupancy Permit Final inspection of the Last residential units whichever occurs first. If SUBDIVIDER shall fail to complete the work required by this Agreement within same time, CITY may, at its option, and after giving ten (10) days written notice thereof to SUBDIVIDER, complete the same and recover the full cost and expense thereof from SUBDIVIDER, unless SUBDIVIDER makes a request in writing to the City Engineer for a time extension 30 days prior to the expiration date of this agreement, at which time City Engineer may extend this agreement administratively for a period of one additional year, and for any additional time extensions requested.
11. Upon the execution of this Agreement, SUBDIVIDER shall file and submit security to CITY as obligee in the penal sum of approximately two million two hundred thousand dollars (\$2,200,000.00), conditioned upon the full and faithful performance of each of the terms, covenants, and conditions of this Agreement and conditioned upon the full and faithful performance of any and all improvement work required hereunder.
12. In the event that SUBDIVIDER fails to perform any obligation on its part to be performed hereunder, SUBDIVIDER agrees to pay all costs and expenses incurred by CITY in securing performance of such obligation, and if suit be brought by CITY to enforce this Agreement, SUBDIVIDER, agrees to pay costs of suit and reasonable attorney's fees to be fixed by the Court.

13. Upon the execution of this Agreement, SUBDIVIDER shall file and submit security to CITY, as obligee, in the penal sum of approximately **two million two hundred thousand dollars (\$2,200,000.00)**, insuring to the benefit of any contractor, his subcontractors and to persons renting equipment or furnishing labor or materials to them for the cost of labor and materials furnished in connection with any and all improvement work required hereunder.
14. SUBDIVIDER agrees to pay all costs for labor or materials in connection with the work of improvement hereunder.
15. Any faithful performance security required hereunder shall be reduced to 10% of the security's original value for one year after the date of final completion and initial acceptance of said work to fulfill the one-year maintenance guarantee period for said improvements.
16. Prior to commencing any work, SUBDIVIDER, agrees to obtain an Encroachment Permit from the Engineering Division and at SUBDIVIDER's expense, provide CITY with a duplicate public general liability and automobile liability insurance policy with endorsements showing the CITY as additional insured which insures CITY, its officers and employees against liability for injuries to persons or property (with minimum coverage of \$1000,000 for each person and \$1,000,000 for each occurrence and \$1000,000 for property damage for each occurrence) in connection with work performed by, for or on behalf of SUBDIVIDER. Said Policy shall: (a) be issued by an insurance company authorized to transact business in the State of California; (b) be written on the Standard California Comprehensive General Liability Policy Form which includes, but not limited to property damage, and bodily injury; (c) be written on an occurrence basis; (d) require thirty (30) days prior written notice to CITY of cancellation or coverage reduction; (e) provide that it is full primary coverage so that if said CITY, its officers and employees have other insurance covered by said policy, said other insurance shall be excess insurance; (f) provide that said CITY; its officers and employees shall not be precluded from claim against other insured parties thereunder; (g) be maintained in effect until final acceptance of SUBDIVIDER's improvements. If SUBDIVIDER does not comply with the provisions of this paragraph, City may (at its election and in addition to other legal remedies) take out the necessary insurance, and SUBDIVIDER shall forthwith repay City the premium therefor.
17. SUBDIVIDER agrees that any general contractor engaged by the SUBDIVIDER for any work of improvement under this Agreement will have:
  - a) In full force and effect, a Worker's Compensation Insurance as shown by a Certificate of Worker's Compensation Insurance issued by an admitted insurer. Said Certificate shall state that there is in existence a valid policy of Worker's Compensation Insurance in a form approved by the California Insurance Commissioner. The certificate shall show the expiration date of the policy, that the full deposit premium on the policy has been paid and that the insurer will give CITY at least thirty (30) days prior written notice of the cancellation or coverage reduction of the policy.
  - or
  - b) In full force and effect, a Certificate of Consent to Self-Insure issued by the Director of Industrial Relations and certified by him to be current, together with a Declaration under penalty of perjury in a form satisfactory to the City Attorney that said Certificate is in full force and effect and that the SUBDIVIDER or its general contractor shall immediately notify the CITY in writing in the event of its cancellation or coverage reduction at any time prior to the completion of all work of improvement.
18. SUBDIVIDER agrees to indemnify and save harmless CITY, City Council, City Engineer or any other officer or employee of CITY from any and all costs, expenses, claims, liabilities or damages, known or unknown, to persons or property heretofore or hereafter arising out of or in any way connected with the

act, omission or negligence of SUBDIVIDER, its officers, agents, employees, contractors or subcontractors or any officer, agent or employee thereof.

19. SUBDIVIDER agrees to comply with all special conditions and notes of approval for this development, pay all fees, and costs and expenses incurred by CITY in connection with said subdivision (including, but not limited to: office check of maps and improvement plans, field checking, staking and inspection of street monuments, construction water, wet taps, testing and inspection of improvement). SUBDIVIDER shall maintain Project/**Private Job Account No. 3170** for this purpose with additional deposits as required by CITY.

A. Fees to be paid upon execution of this agreement:

a) Plan-check and Inspection (Partial Deposit) (PJ3170-13-2500) (10% of Final Construction Costs Estimate)		\$220,000.00
b) Right-of-Way Reimbursement Fee (310-3614-XXXX50)		<u>N/A</u>
<del>e) Other Traffic Impact Fee</del>		
<del>1. Milpitas Business Park Traffic Fee (100-3718)</del>		<del>\$447,600.00</del>
<del>as of 1997 adjusted by ENR, June 2009 (48%) or to</del>		
<del>be recalculated at the time of payment</del>		<del>\$214,848.00</del>
<del>2. Montague Expressway Traffic Fee (100-3718)</del>		<del>\$82,173.00</del>
d) Building Permit Automation Fee (505-3601)		\$18,615.00
<del>(2.5% of total Traffic Fees)</del>		

**Sub-Total A**

**\$220,000.00**

B. Fees to be paid at the time of building permit issuance:

a) Water Connection Fee (374-units @ \$1,164.00 per unit)	(402-3715)	\$435,336.00
b) Potable Water Meter Fee (1-4" WM, 3- 5/8" WM & 1-1" WM)	(400-3662)	\$3,300.80
c) Recycled Water Meter Fee (2- 1 1/2" meters)	(406-3622)	\$839.78
d) Sanitary Sewer Connection Fee (374-units @ \$1,406.00 per unit)	(452-3715)	\$528,844.00
e) Sewer Treatment Plant Fee (374-units @ \$690 per unit)	(452-3714)	\$258,060.00
f) Sewer Bypass Benefit Fund	(HA1320-2500)	<u>N/A</u>
g) Storm Drain Connection Fee	(340-3711)	\$364,434.00
h) Parksites Fee		
1. Park Dedication In-Lieu Fee	(320-3712)	<u>TBD</u>
2. PUD Park Fee	(320-3712)	<u>N/A</u>
i) Sewage Collection System & Treatment Plant Capacity Fee (452-3718) as of Oct 2006, adjusted by ENR June 2009 (9.2%) or to be calculated at the time of payment		\$1,159,481.00  \$106,672.00

j) Main Sewage Pumping Station Impact Fee (455-3718)	\$665,390.00
as of Oct 2006, adjusted by ENR June 2009 (9.2%) or to be calculated at the time of payment	\$61,215.00
k) Water Distribution System Capacity Fee (402-3718)	\$277,749.00
as of Oct 2006, adjusted by ENR June 2009 (9.2%) or to be calculated at the time of payment	\$25,552.00
l) Other <u>Traffic Impact Fee</u>	
1. Milpitas Business Park Traffic Fee (100-3718)	\$447,600.00
as of 1997 adjusted by ENR, June 2009 (48%) or to be recalculated at the time of payment	\$214,848.00
2. Montague Expressway Traffic Fee (100-3718)	\$82,173.00
m) Building Permit Automation Fee (not included Park Fee) (505-3601)	\$115,787.00
<b>Sub-total Fee B (not including Park In-Lieu Fee)</b>	<b>\$4,747,282.00</b>
<b>Total (Estimated)</b>	<b>\$4,967,282.00</b>

20. Upon completion of the work and before City Initial Acceptance of the work thereof, SUBDIVIDER shall provide the City a complete original mylar of "Record Drawing" showing all the changes from the original plan.
21. Upon completion of the work, and before City Council final acceptance thereof, SUBDIVIDER shall be billed for and pay the outstanding balance of the project's private job account or shall be refunded the difference between the amount of City costs and expenses in each instance and the amount of said remittance.
22. Any easement or right-of-way necessary for the completion of any of the improvements required of SUBDIVIDER shall be acquired by SUBDIVIDER at its sole cost and expense. In the event that eminent domain proceedings are necessary for the acquisition of any easement or right-of-way, SUBDIVIDER agrees that he will pay all engineering fees and costs, legal fees and costs, and other incidental costs sustained by CITY in connection with said eminent domain proceedings and any condemnation award and damages (including all costs awarded in said eminent domain proceedings). SUBDIVIDER further agrees that prior to the institution of any eminent domain proceedings and upon ten (10) days written notice from CITY. SUBDIVIDER will deposit such sums as are determined by City Council to be necessary to defray said fees, costs, awards, and damages.
23. City will accept on behalf of the public, the dedication of the streets, and easements offered for dedication, and will supply water for sale to and within said subdivision, provided however, that as a condition precedent to said initial acceptance and to supplying water, SUBDIVIDER shall perform the covenants, terms and conditions of this Agreement.
24. SUBDIVIDER hereby irrevocably offers to convey title of the water and sanitary sewer mains and lines, and appurtenances constructed in or for said subdivision to CITY. Upon final acceptance of said improvements by CITY, said title will be deemed to be accepted by CITY in the event that title has not previously passed to CITY by operation by law.
25. SUBDIVIDER agrees to comply with all requirements set forth on **Exhibit "A"** (attached hereto, hereby referred to and made a part hereof).
26. This Agreement shall be deemed to include any final conditions imposed by CITY upon the approval of

the tentative and final maps related to public improvements of said subdivision.

27. SUBDIVIDER agrees that, upon ten (10) days written notice from CITY, it will immediately remedy, restore, repair or replace, at its sole expense and to the satisfaction of City Engineer, all defects, damages or imperfections due to or arising from faulty materials or workmanship appearing within a period of one-year after the date of initial acceptance of all said improvements. If SUBDIVIDER shall fail to remedy, restore, repair, or replace said defects, damages or imperfections as herein required, CITY may at its option, do so and recover the full cost and expense thereof from SUBDIVIDER.
28. This Agreement shall bind the heirs, administrators, executors, successors, assigns and transferees of SUBDIVIDER. It is agreed and understood that the covenants in this Agreement shall run with the land and are for the benefit of the other lands in the CITY OF MILPITAS, and are made by SUBDIVIDER expressly, its heirs, administrators, executors, successors, assigns and transferees and to the CITY, its successors and assigns.
29. Nothing contained in this Agreement shall be construed to be a waiver, release or extension of any provision heretofore required by ordinance, resolution or order of the City Council of the CITY.
30. Time shall be of the essence of this Agreement. All covenants herein contained shall be deemed to be conditions. The singular shall include the plural; the masculine gender shall include the feminine and neuter gender. All comments presented by SUBDIVIDER hereunder shall be subject to approval of the City Attorney as to form.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the day and year first above written.

\*Signed and Sealed this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

CITY OF MILPITAS

By: \_\_\_\_\_  
City Manager

\*\* Attach proper acknowledgment.

**Fairfield Murphy Road LLC** \_\_\_\_\_  
Subdivider

\_\_\_\_\_  
Subdivider's Capacity

APPROVED AS TO FORM THIS

\_\_\_\_\_ day of \_\_\_\_\_, 2009

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

By: \_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
Typed Name and Capacity/Title

APPROVED AS TO SUFFICIENCY THIS

\_\_\_\_\_ day of \_\_\_\_\_, 2009

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

By: \_\_\_\_\_  
City Engineer

\_\_\_\_\_  
Typed Name and Capacity/Title

\* Date should be same as date on Page 1 of 6.

\*\* It is essential that the signatures be acknowledged before a California Notary Public and attach proper acknowledgment.

## **EXHIBIT "A"**

1. The Subdivider agrees to complete necessary Water Service Agreements, and pay the connection fees prior to Building Permit issuance.
2. The Subdivider agrees to pay to the City an in-lieu Park Fee of TBD, at the time of building permit issuance.
3. The Subdivider agrees to pay to the City a Traffic Impact Fee of \$744,621.00, upon execution of this Agreement.
4. The Subdivider agrees to complete the construction of all public improvements and settings of all Survey Monuments before the City issuance of the Occupancy Permit/Final Inspection of the last residential building.
5. The Subdivider agrees to execute a petition to annex and establish, with respect to the property, the Special taxes levied by a Community Facility District (CFD) for the purpose of maintaining the public services, upon execution of this Agreement.
6. The Subdivider agrees to comply with the special conditions and notes of approval for this Subdivision.

Principal: \_\_\_\_\_  
Project Name: Cerano Apartments

Project No. 3170  
Bond No. \_\_\_\_\_

**CITY OF MILPITAS  
FAITHFUL PERFORMANCE BOND**

WHEREAS, the Principal has entered into a contract with the City of Milpitas to perform the following work, to wit: Public Improvement for Cerano Apartments and Cerano Parks as on shown on Improvement Plans 2-1103 & 2-1105.

WHEREAS, said contract (and any City approved plans and specifications in connection therewith) is hereby referred to and made a part hereof, with like force an effect as it herein at length set forth:

NOW, THEREFORE, we the Principal and \_\_\_\_\_, as surety, are held and firmly bound unto the City of Milpitas, California, in the penal sum of **two million two hundred thousand dollars (\$2,200,000.00)**, lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bonded principal, it heirs, executors, administrators, successors or assigns, shall well and truly keep and perform the covenants, conditions, and provisions in said agreement and any alteration thereof on his or their part, to be kept and performed, at the time and in the manner therein specified, and shall indemnify and save harmless the City of Milpitas, its officers, agents and employees as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by the principal and surety above named on \_\_\_\_\_, 2009.

NOTE: BE SURE BOND DATE DOES NOT PRE-DATE CONTRACT.

SUBDIVIDER: \_\_\_\_\_

SURETY: \_\_\_\_\_

BY: \_\_\_\_\_  
(write name)

BY: \_\_\_\_\_  
(write name)

BY: \_\_\_\_\_  
(type name and office)

BY: \_\_\_\_\_  
(type name and office)

Address of Surety: \_\_\_\_\_  
\_\_\_\_\_

**VERIFICATION**

I declare under the penalty of perjury that I have authority to execute this bond on behalf of the above-named surety.

Executed at \_\_\_\_\_, California, on the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Type Name)

Address: \_\_\_\_\_  
\_\_\_\_\_

Subscribed and sworn to before me, a )  
Notary Public, this \_\_\_\_\_ day of )  
\_\_\_\_\_, 2009. )

THIS JURAT MUST BE COMPLETED  
) BY A NOTARY IF THE VERIFICATION  
) IS EXECUTED OUTSIDE OF CALIFORNIA  
)  
)  
)

\_\_\_\_\_  
(Sign)

\_\_\_\_\_  
(Type)

**ACKNOWLEDGMENT**

NOTE: A Notary acknowledgment must be completed for signatures of both principal and surety. Use correct form.  
A power of attorney is not enough.

Form Approved:  
\_\_\_\_\_

Principal: \_\_\_\_\_  
Project Name: **Cerano Apartments**

Project No. **3170**  
Bond No. \_\_\_\_\_

**CITY OF MILPITAS  
LABOR AND MATERIALS BOND**

WHEREAS, the Principal has entered into a contract with the City of Milpitas to perform the following work, to wit: **Public Improvement for Cerano Apartments and Cerano Park as on shown on Improvement Plans 2-1103 & 2-1105.**

WHEREAS, said contract (and any City approved plans and specifications in connection therewith) is hereby referred to and made a part hereof, with like force and effect as it herein at length set forth:

NOW, THEREFORE, said Principal and the undersigned as corporate surety, their heirs, successors, executors and administrators, are held firmly bound, jointly and severally, unto the City of Milpitas California, and all contractors, subcontractors, laborers, materialmen, and other persons employed in the performance of the aforesaid agreement in the sum of **two million two hundred thousand dollars (\$2,200,000.00)**, for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that said surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the fact amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, to be awarded and fixed by the Court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies and corporations entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of said agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by the principal and surety above named on \_\_\_\_\_, 2009.

NOTE: BE SURE BOND DATE DOES NOT PRE-DATE CONTRACT.

SUBDIVIDER: \_\_\_\_\_

SURETY: \_\_\_\_\_

BY: \_\_\_\_\_  
(write name)

BY: \_\_\_\_\_  
(write name)

BY: \_\_\_\_\_  
(type name and office)

BY: \_\_\_\_\_  
(type name and office)

Address of Surety: \_\_\_\_\_

**VERIFICATION**

I declare under the penalty of perjury that I have authority to execute this bond on behalf of the above-named surety.

Executed at \_\_\_\_\_, California, on the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Type Name)

Address: \_\_\_\_\_  
\_\_\_\_\_

Subscribed and sworn to before me, a )  
Notary Public, this \_\_\_\_\_ day of )  
\_\_\_\_\_, 2009. )

THIS JURAT MUST BE COMPLETED  
) BY A NOTARY IF THE VERIFICATION  
) IS EXECUTED OUTSIDE OF CALIFORNIA  
)  
)  
)

\_\_\_\_\_  
(Sign)

\_\_\_\_\_  
(Type)

**ACKNOWLEDGMENT**

NOTE: A Notary acknowledgment must be completed for signatures of both principal and surety. Use correct form.  
A power of attorney is not enough.

Form Approved:

\_\_\_\_\_

Principal: \_\_\_\_\_  
Project Name: Cerano Apartments

Project No. 3170  
Bond No. \_\_\_\_\_

**CITY OF MILPITAS  
SURVEY MONUMENTATION BOND**

WHEREAS, the Principal has entered into a contract with the City of Milpitas to install and complete certain designated public improvements, including setting of survey monuments by an engineer or surveyor prior to a certain date.

WHEREAS, said contract (and any City approved plans and specifications in connection therewith) is hereby referred to and made a part hereof, with like force and effect as it herein at length set forth:

NOW, THEREFORE, we the Principal and \_\_\_\_\_, as surety, are held and firmly bound unto the City of Milpitas, California, and that Engineer or Surveyor, who set said survey monuments in the penal sum of **ten thousand dollars (\$10,000.00)**, lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bonded principal, it heirs, executors, administrators, successors or assigns, shall well and truly keep and perform the covenants, conditions, and provisions in said agreement and any alteration thereof on his or their part, to be kept and performed, at the time and in the manner therein specified, and shall indemnify and save harmless the City of Milpitas, its officers, agents and employees as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by the principal and surety above named on \_\_\_\_\_, 2009.

NOTE: BE SURE BOND DATE DOES NOT PRE-DATE CONTRACT.

SUBDIVIDER: \_\_\_\_\_

SURETY: \_\_\_\_\_

BY: \_\_\_\_\_  
(write name)

BY: \_\_\_\_\_  
(write name)

BY: \_\_\_\_\_  
(type name and office)

BY: \_\_\_\_\_  
(type name and office)

Address of Surety: \_\_\_\_\_

**VERIFICATION**

I declare under the penalty of perjury that I have authority to execute this bond on behalf of the above-named surety.

Executed at \_\_\_\_\_, California, on the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Type Name)

Address: \_\_\_\_\_  
\_\_\_\_\_

Subscribed and sworn to before me, a )  
Notary Public, this \_\_\_\_\_ day of )  
\_\_\_\_\_, 2009. )

THIS JURAT MUST BE COMPLETED  
) BY A NOTARY IF THE VERIFICATION  
) IS EXECUTED OUTSIDE OF CALIFORNIA  
)  
)  
)

\_\_\_\_\_  
(Sign)

\_\_\_\_\_  
(Type)

**ACKNOWLEDGMENT**

NOTE: A Notary acknowledgment must be completed for signatures of both principal and surety. Use correct form.  
A power of attorney is not enough.

Form Approved:

\_\_\_\_\_

Project Name: Cerano Apartments

**CITY OF MILPITAS**

**CERTIFICATE RELATING TO WORKER'S COMPENSATION  
INSURANCE PURSUANT TO LABOR CODE SECTION 3800**

(Subdivision)

I, THE UNDERSIGNED, HEREBY CERTIFY that at all times during the performance of any work of improvement under agreement with the City of Milpitas. (Check one of he following):

\_\_\_\_\_ Any general contractor engaged by me for said work will have in full force and effect Worker's Compensation Insurance pursuant to the attached certificate of Worker's Compensation Insurance issued by an admitted insurer. Said Certificate shall state that there is in existence a valid policy of Worker's Compensation Insurance in a form approved by the California Insurance Commissioner. The certificate shall show the expiration date of the policy, that the full deposit premium on the policy has been paid and that the insurer will give City at least ten days advance notice of the cancellation of the policy (an exact copy or duplicate of the Certificate of Worker's Compensation Insurance certified by the Director of Industrial Relations or the insurer may be attached).

\_\_\_\_\_ Or has in full force and effect and have attached hereto a Certificate of Consent to Self-insure issued by the Director of Industrial Relations or the insurer may be attached).

I declare under penalty of perjury that the foregoing is true and correct and executed on \_\_\_\_\_  
at \_\_\_\_\_.  
(Date) (City)

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

\_\_\_\_\_  
Official Title

On behalf of: \_\_\_\_\_  
Contractor

**NOTE: YOUR CERTIFICATE OF WORKER'S COMPENSATION INSURANCE MUST BE ATTACHED AND MUST MEET THE REQUIREMENTS SET FORTH ABOVE.**

PLEASE NOTE THAT IF YOU HAVE ANYONE WORKING FOR OR WITH YOU, YOU MAY BE REQUIRED TO HAVE WORKER'S COMPENSATION INSURANCE. FOR FURTHER INFORMATION, CONTACT THE OFFICE OF THE DIRECTOR OF INDUSTRIAL RELATIONS, 888 NORTH FIRST STREET, SAN JOSE, CALIFORNIA, TELEPHONE: 277-1265.

Subdivider: Fairfield Murphy Road LLC

Project No. 3170

Project Name: Cerano Apartments

**CITY OF MILPITAS**  
**CERTIFICATE OF WORKER'S COMPENSATION INSURANCE**

Pursuant to California Labor Code Section 3800, the undersigned Insurer certifies that it is an admitted Worker's Compensation Insurer, that it has issued a valid policy of Worker's Compensation Insurance in a form approved by the California Insurance Commissioner (bearing policy number \_\_\_\_\_) to \_\_\_\_\_ in connection with the above project, title and subdivider. Said policy is now in full force and effect and the full deposit premium has been paid. At least 10 days advance notice of the cancellation of said policy will be given to the City of Milpitas. The expiration date on said policy is \_\_\_\_\_.

Dated: \_\_\_\_\_

\_\_\_\_\_  
INSURANCE COMPANY

\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE (Signature)

Address: \_\_\_\_\_

\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE (Type Name)

\_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

**VERIFICATION**

I declare under the penalty of perjury that I am authorized to sign this Certificate on behalf of the above-named insurer. Executed at \_\_\_\_\_, California, on the \_\_\_\_\_ day of \_\_\_\_\_, 2009. \*\*

\_\_\_\_\_  
Authorized Signatory (Sign)

\_\_\_\_\_  
(Type Name)

SUBSCRIBED AND SWORN TO BEFORE ME, a  
Notary Public, this \_\_\_\_\_ day of  
\_\_\_\_\_, 2009.

\_\_\_\_\_  
(Sign)

\_\_\_\_\_  
(Type Name)

Project Name: Cerano Apartments

**CERTIFICATE OF GENERAL LIABILITY AND AUTOMOBILE LIABILITY INSURANCE**

The undersigned insurance company certifies to the City of Milpitas, California, that it has issued a general public liability insurance policy, policy number \_\_\_\_\_ to \_\_\_\_\_ in connection with a work of improvement generally described as Street and underground improvement on \_\_\_\_\_. The policy names the City of Milpitas, its officers and employees (as additional insured) and insures said City, officers and employees against liability arising out of activities, including but not limited to, coverage for all work performed by or on behalf of permittee, products and completed operations of the permittee; the premises owned, occupied or used by the permittee; or automobiles owned, leased, hired or borrowed by the permittee in the following minimum amounts and for the following periods:

<u>COVERAGE</u>	<u>POLICY NUMBER</u>	<u>POLICY PERIOD</u>	<u>MINIMUM LIMITS OF LIABILITY</u>
(1) Bodily Injury			\$1,000,000 each person ) \$1,000,000 each occurrence ) )*
(2) Property Damage			\$1,000,000 each occurrence ) \$1,000,000 aggregate )

**This policy provides:** (1) primary coverage for additional insured parties; if said additional insured have other insurance against loss covered by this policy, the other insurance shall be excess insurance only; (2) that said additional insured parties are not precluded from claim under this policy against other insured parties; and (3) each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City Clerk.

\_\_\_\_\_  
Insurance Company  
  
\_\_\_\_\_  
Authorized Signature (Sign)  
  
\_\_\_\_\_  
Authorized Signature (Type)

Address of Signatory:  
  
\_\_\_\_\_  
  
\_\_\_\_\_

If project involves less than \$50,000, City will accept \$300,000/\$50,000

**VERIFICATION**

I declare under the penalty of perjury that I am authorized to sign this Certificate on behalf of the above-named insurer.  
Executed at \_\_\_\_\_, California, on the \_\_\_\_\_ day of \_\_\_\_\_, 2009. \*\*

\_\_\_\_\_  
Authorized Signatory (Sign)

\_\_\_\_\_  
(Type Name)

SUBSCRIBED AND SWORN TO BEFORE ME, a  
Notary Public, this \_\_\_\_\_ day of  
\_\_\_\_\_, 2009.

\_\_\_\_\_  
(Sign)

\_\_\_\_\_  
(Type Name)

\*\* If this certificate is executed outside of California, it must be sworn to before a Notary Public.

FORM APPROVED: \_\_\_\_\_, 2009, by \_\_\_\_\_