

33
WHEN RECORDED MAIL TO:

City Clerk
City of Fresno
2600 Fresno Street
Fresno, CA 93721-3603

Exempt from SB2 fees per
Government Code 27388.1 (a)(2)(D)

NO FEE-Government Code 6103



2021-0193941

FRESNO County Recorder
Paul Dictos, CPA

Wednesday, Nov 24, 2021 08:00:00 AM

Titles: 1

Pages: 33

Fees:

\$0.00

CA SB2 Fee:

\$0.00

Taxes:

\$0.00

Total:

\$0.00

CITY OF FRESNO

City of



PUBLIC WORKS DEPARTMENT
2600 Fresno Street
Fresno, California 93721-3616
(559) 621-8650

P.W. File No. 12635

**SUBDIVISION AGREEMENT
FINAL MAP OF TRACT NO. 6281,
OF VESTING TENTATIVE MAP NO. 6281
ADDENDUM TO SUBDIVISION AGREEMENT FOR RIGHTS OF
WAY ACQUISITION**

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THIS AGREEMENT is made this 14th day of October, 2021, by and between the **City of Fresno**, a Municipal Corporation, hereinafter designated and called the "City," and, **CENTURY COMMUNITIES OF CALIFORNIA, LLC**, A Delaware Limited Liability Company, hereinafter designated and called the "Subdivider," without regard for number or gender.

RECITALS

A. The Subdivider has filed with the City, a Final Map which proposes the subdivision of land owned by Subdivider, situated in the City of Fresno, County of Fresno, State of California, dividing the real property more particularly described as follows:

Lots 1 through 132 and Outlot A, B, C and D, inclusive, of the Final Map of Tract No. 6281 according to the map thereof recorded on Nov 24, 2021, in Volume 91 of Plats at Page(s) 59 thru 62, Fresno County Records.

B. The City requires, as a condition precedent to the acceptance and approval of the Final Map, the dedication of such streets, highways and public places and easements as are delineated and shown on the Final Map, and deems the same as necessary for the public use, and also requires that any and all streets delineated and shown on the Final Map shall be improved by the construction and the installation of the improvements hereinafter specified.

C. Section 15-3806 of the Municipal Code of the City of Fresno requires the Subdivider to enter into this Agreement with the City whereby Subdivider agrees to do, perform and complete the work and matters required as Conditions of Approval for Vesting Tentative Map No. 6281 dated July 1, 2020 and revised July 24, 2020 issued by the City and any amendments thereto (hereinafter referred to as "Conditions of Approval", hereinafter set forth in detail, within the time hereinafter mentioned, in consideration of the acceptance of the offers of dedication by the City of Fresno.

D. The Subdivider desires to construct the improvements and develop the subdivision.

E. The Subdivider hereby warrants that any and all parties having record title interest in the Final Map which may ripen into a fee have subordinated to this instrument and that all such instruments of subordination, if any, are attached hereto and made a part of this instrument.

AGREEMENT

In consideration of the acceptance of the offers of dedication of the streets, highways, public ways, easements and facilities as shown and delineated on the Final Map, and in consideration of finding of substantial compliance with said Tentative Map, it is mutually agreed and understood by and between the Subdivider and the City, and the Subdivider and the City do hereby mutually agree as follows:

1. The Subdivision is subject to the following:
 - a. The work and improvements shall be performed hereinafter specified on or before **one (1) year** of the date of this agreement, except as noted below.
 - b. The Street Trees required for each lot shall be provided and planted by the Subdivider upon occupancy of each lot. All species of Street Trees to be planted in the subdivision shall be as approved by the City Engineer. The Subdivider shall notify the Public Works Department - Construction Management Division of the planting schedules and to schedule inspections.
 - c. The Issuance of building permits for any structure within the subdivision shall conform to the requirements of the prevailing Uniform Fire Code (UFC). The Subdivider's attention is particularly called to Chapter 5, Part 9 of Title 24 of California Code of regulations relating to Fire Department access and water supply. No building permit shall be issued until all Fire Department access and fire fighting water supply requirements have been met. No occupancy permit shall be issued until all Fire Department requirements for occupancy have been met. The issuance of any occupancy permits by the City for dwellings located within said subdivision shall not be construed in any manner to constitute an acceptance and approval of any or all of the streets and improvements in the subdivision.
 - d. No certificates of occupancy will be issued, nor any human occupancy allowed for any building on any lot of the subdivision until permanent sanitary sewer and water service is determined to exist by the Director of Public Utilities Department.
 - e. When a delay occurs due to unforeseen causes beyond the control and without the fault or negligence of the Subdivider, the time of completion may be extended for a period justified by the effect of such delay on the completion of the work. The

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Subdivider shall file a written request for a time extension with the Director of Public Works prior to the above noted date, who shall ascertain the facts and determine the extent of justifiable delays, if any. Extension of time for completion of improvements (including street trees planting) may be granted by the Public Works Director with an extension fee from the current Master Fee Schedule based upon the initial estimated total improvement cost. The Director of Public Works shall give the Subdivider written notice of his determination in writing, which shall be final and conclusive.

2. The work and improvements ("Improvements"), more specifically shown on the referenced plans which are incorporated by reference and made a part of this Agreement, shall be done in accordance with the construction standards contained in the most current edition of the City of Fresno Standard Specifications and Drawings (City Council Resolution No. 70-36 and Resolution No. 84-361) and any amendments thereto, (hereinafter referred to as "Public Works Standards") at the sole cost and expense of the Subdivider including all costs of engineering, inspection and testing. The construction cost estimates, and corresponding Improvement and warranty security requirements for these Improvements are set forth in Exhibit "A" which is incorporated by reference.

3. The Improvements are as follows:

a. Set all landmarks, monuments and lot corners required to locate land divisions shown on the Final Map. Pursuant to Section 66497 of the State Subdivision Map Act, prior to the City's final acceptance of the subdivision and release of securities, the Subdivider shall submit evidence to the City of Fresno of payment and receipt thereof by the Subdivider's engineer or surveyor for the final setting of all monuments required in the subdivision.

b. All utility systems shall be installed underground. Subdivider's attention is directed to the installation of streetlights in accordance with Resolution No. 78-522 or any amendments or modifications which may be adopted by Council prior to the actual installation of the lights. The Subdivider shall construct a complete underground serviced street light system as approved by the City Engineer prior to final acceptance of the subdivision. Height, type, spacing, etc. of standards and luminaires shall be in accordance with Resolution Nos. 78-522 and 88-229 or any amendments or modifications which may be adopted by Council prior to the actual installation of the lights and shall be approved by the

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City Engineer.

c. Water main extensions and services shall be provided in accordance with applicable provisions of Chapter 6, Article 5 of the Fresno Municipal Code and all applicable charges shall apply.

d. Sanitary sewer extensions and services shall be provided in accordance with applicable provisions of Chapter 6, Article 3 of the Fresno Municipal Code and all applicable charges shall apply.

e. All storm water runoff and other surface drainage shall be discharged in accordance with the California Building Code as may be amended and City approval of a storm drainage and grading plan obtained by the Subdivider.

f. All "Dead-End" streets created by this subdivision shall be barricaded in accordance with Public Works Standards within seven (7) days from the time said streets are surfaced, or as directed by the City Engineer.

g. Any temporary storm drainage basins constructed or enlarged to serve this subdivision shall be fenced in accordance with Public Works Standards within seven (7) days from the time said basins become operational, or as directed by the City Engineer. The Subdivider shall maintain these temporary storm drainage basins so as not to create a nuisance as defined by Section 10-605 of the Fresno Municipal Code or California Law until such time as the City Engineer provides official notice to the Subdivider, its successors or assignees, that these temporary storm drainage basins are no longer required. This term shall survive the termination or expiration of this Agreement.

h. "Wet-Ties" (i.e., the physical connection of newly constructed water system facilities to the existing water system facilities already in service) shall be in accordance with Chapter 6, Article 5 of the Fresno Municipal Code. The amounts identified as "Wet-Tie Charges" are estimates only and serve as a deposit to cover the actual cost of construction. Should the actual construction cost be less than the deposit, the Subdivider shall be refunded the excess. Should the actual construction cost be greater than the deposit, the Subdivider shall be billed by the City of Fresno for the difference and shall be directly responsible for payment.

i. The Subdivider shall install and maintain the fencing/walls, landscaping,

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irrigation system and certain miscellaneous improvements in accordance with the approved improvement plans (i.e., Landscape and Irrigation Plans, Grading Plans), within the designated easements or areas required in the Conditions of Approval and delineated on the Final Map.

The improvement plans for such landscaping, irrigation system and miscellaneous improvements shall be prepared by a licensed Landscape Architect, certified irrigation designer or other persons with landscaping and irrigation design expertise acceptable to the Planning and Development Director, except that for improvements to be maintained by a City Community Facilities District ("CFD"), such improvement plans shall be approved by the City Engineer.

j. Perform and construct all work shown on the following construction plans and any amendments thereto, unless specifically omitted herein.

- i. Installation of Water and Sewer Services, City Drawing No: 10-C-12136 through 10-C-12150 inclusive.
- ii. Installation of Storm Drainage System, City Drawing No: BS-28-1 through BS-28-4.
- iii. Construction of Street Improvements and Landscaping, City Drawing No. 15-C-18377 through 15-C-18401 and 15-C-18401A through 15-C-18401Z.
- iv. Installation of Streetlights, City Drawing No. 4-C-1694 through 4-C-1656, inclusive.
- v. Installation of a Traffic Signal at Temperance and McKinley, City Drawing No. 4-E-3439 through 4-E-3440 and 4-E-3443 through 4-E-3444.

Install and complete all other street improvements required by Section 15-3804 of the Fresno Municipal Code in accordance with the Public Works Standards and the construction plans.

k. Prior to approval of the Final Map by the City, the Subdivider shall pay to the City and/or execute a covenant to defer certain impact fees due which are eligible to be deferred by relevant Fresno Municipal Code provisions, the total fees and charges due as a condition of Final Map approval. The total fees and charges are more particularly itemized

and made a part of this Agreement in the attached Exhibit "B."

l. In connection with the amounts set forth in Exhibits "A" and "B," the City has made its best faith efforts at predicting the amounts to be credited as reimbursements for Improvements that will benefit other properties. Because the subject Improvements have not been completed at the time of execution of this Agreement, the actual cost of construction is not yet known. Some degree of reasonable estimation is incorporated into the calculations. Subdivider agrees that these figures represent City's best estimates only and that they are subject to fluctuation following calculation of actual construction costs after improvement completion and acceptance. It is further subject to Subdivider's submission and City review of a financial accounting which sets forth those actual costs, and the application, by City, of all relevant Fresno Municipal Code provisions which relate to the Subdivider's payment of fees and reimbursement thereto. This would include any pertinent provisions contained within City's Master Fee Schedule which would also apply to the payment of fees or reimbursements.

m. With regard to fee credits including those referenced above and herein, Subdivider may receive designated fee credits from the City as offsets toward a UGM or development impact fee for construction of certain required infrastructure improvements either as a part of this Agreement or at some future date. With regard to the amounts to be credited as referenced above, Subdivider acknowledges and agrees any such fee credits are provided contingent upon the City accepting required infrastructure improvements completely installed by Subdivider. Until then, and notwithstanding any other provision, Subdivider expressly agrees Subdivider has no right to any portion of any fee credit and the Director of Public Works for the City, in the Director's sole discretion, may unilaterally amend this Agreement effective upon mailed notice to Subdivider to adjust (including adding, reducing or removing) credits at any time prior to acceptance of all required infrastructure improvements by City. Upon adjustment, Subdivider shall pay in full any UGM or development impact fees, due from modification of the fee credit, prior to approval of the subdivision map or as may be deferred by a fee deferral covenant. If the subdivision map has already been approved and there is no applicable fee deferral covenant, all such fees shall be promptly paid by Subdivider. The City may enforce recovery of such fees in any manner available at law or in equity, including but not limited to private foreclosure and sale of the property in the manner provided in Section 2924 of the California Civil Code or

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successor statute.

n. ADDENDUM TO SUBDIVISION AGREEMENT. Subdivider has attempted but is unable to acquire and dedicate to the City all easements required for street purposes related to this agreement prior to final map approval. Subdivider requests that City acquire the necessary easement or dedication through negotiation or the lawful exercise of the City's power of Eminent Domain. Subdivider agrees to observe all the terms and conditions of the Addendum to Subdivision Agreement (Right-of-Way Acquisition) ("Addendum") attached to this Agreement and incorporated herein by this reference. Subdivider shall deposit with the City the sums in a form required by the Public Works Director pursuant to the Addendum.

Such sums shall be security to pay the City the initial cost to acquire the necessary easement, but not limited to: just compensation and damages for the interests acquired, City legal and non-legal staff time as needed to attempt a negotiated purchase, appraisal fees, court costs and the related expenditures mentioned in the Addendum to acquire the easement through the lawful exercise of the City's power of Eminent Domain. If deposited funds are less than the actual cost to acquire all necessary right-of-way, the Subdivider shall remit to the City such additional sums as may be required from time to time to prosecute the matter to the conclusion, such further payment to be made within ten (10) days of the mailing to the Subdivider of a notice requesting such additional cost. If deposited sums exceed the actual cost to acquire the subject right-of-way, then at the conclusion of acquisition proceeding City shall refund the difference as soon as the City determines the amount of such excess.

4. It is agreed that the City shall inspect all Improvements. All of the Improvements and materials shall be done, performed and installed in strict accordance with the approved construction plans for said work on file with the City Engineer and the Public Works Standards, which said construction plans and Public Works Standards are hereby referred to and adopted and made a part of this Agreement. In the event there are not any Public Works Standards for any of said Improvements, it is agreed that the same shall be done and performed in accordance with the

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standards and specifications of the State of California, Division of Highways. All of said improvements and materials shall be done, performed and installed under the inspection of and to the satisfaction of the City Engineer.

5. Prior to the approval by the Fresno City Council of the Final Map, the Subdivider shall furnish to the City the following improvement securities in the amounts set forth in Exhibit A. Bonds shall be by one or more duly authorized corporate sureties licensed to do business in California subject to the approval of the City and on forms furnished or approved by the City, Certificates of Deposit that is made payable only to the City of Fresno in a form acceptable to the City Attorney's office.

a. PERFORMANCE SECURITY. The total amount shall equal 100% of the final Cost Estimate, as approved by the City Engineer, to be conditioned upon the faithful performance of this Agreement.

i. 95% of the final Cost Estimate shall be in the form of a bond or certificate of deposit that is made payable only to the City of Fresno ; and

ii. 5% of the final Cost Estimate shall be in cash or a certificate of deposit that is made payable only to the City of Fresno.

b. PAYMENT SECURITY. The total amount shall equal 50% of the final Cost Estimate, as approved by the City Engineer, to secure payment to all contractors and subcontractors performing work on said improvements and all persons furnishing labor, materials or equipment to them for said improvements. Payment Security shall be in the form of a bond or certificate of deposit that is made payable only to the City of Fresno .

c. Any and all other improvement security as required by Section 15-3806 of the Fresno Municipal Code.

d. Subject to the requirements of Resolution No. 2008-100 adopted by the City Council on May 6, 2008, the Subdivider may request a one-time partial acceptance, for maintenance only, of public improvements required by this agreement that the Subdivider has constructed, to reduce the amount of the Performance Security required by this

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Agreement. At the time of the City's partial acceptance, the City and Subdivider shall enter into an amendment to this Agreement reducing the Performance Security to an amount consistent with the requirements of Resolution No. 2008-100 required by this Agreement. The City shall not release any of the original Performance Security or execute the Amendment to this Agreement until such time as the Subdivider has provided the Performance Security required by the Amendment.

6. Any damage to the work and improvements constructed pursuant to this agreement that occurs after installation shall be made good to the satisfaction of the City Engineer by the Subdivider before any securities are released or the final acceptance of the completed work.

7. The Subdivider shall remedy any defective work or labor or any defective materials relating to the Improvements and pay for any damage to other work or improvements resulting therefrom which shall occur within a period of one (1) year from the date of acceptance of the Improvements.

8. To insure the Subdivider complies with its obligations set forth in paragraph 7, on acceptance of the required work by the City Engineer, a warranty security shall be furnished to or existing securities retained by the City, in the minimum amount identified in said Exhibit A, as a guarantee and warranty of the work for a period of one (1) year following acceptance against any defective work or labor done or defective materials furnished. In accordance with Section 15-3806 of the Fresno Municipal Code, said warranty security shall be in the form of cash or a Certificate of Deposit. The warranty security shall be released, less any amount required to be used for fulfillment of the warranty, one (1) year after final acceptance of the subdivision Improvements.

9. This Agreement shall in no way be construed as a grant by the City of any rights to the Subdivider to trespass upon land rightfully in the possession of, or owned by, another, whether such land be privately or publicly owned.

10. Indemnification.

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a. To the furthest extent allowed by law, Subdivider shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, Subdivider or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees, litigation and legal expenses incurred by City or held to be the liability of City, including plaintiff's or petitioner's attorney's fees if awarded, in connection with City's defense of its actions in any proceeding), arising or alleged to have arisen directly or indirectly out of performance or in any way connected with: (i) the making of this Agreement; (ii) the performance of this Agreement; (iii) the performance or installation of the work or improvements by Subdivider and Subdivider's employees, officers, agents, contractors or subcontractors; (iv) the design, installation, operation, removal or maintenance of the work and improvements; or (v) City's granting, issuing or approving use of this Agreement.

b. Subdivider's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees or agents are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of City or any of its officers, officials, employees, agents or authorized volunteers.

c. If Subdivider should subcontract all or any portion of the work to be performed under this Agreement, Subdivider shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of paragraphs "a" and "b" of this Section. Notwithstanding the preceding sentence, any subcontractor who is a "design professional" as defined in Section 2782.8 of the California Civil Code shall, in lieu of indemnity requirements set forth in paragraphs "a" and "b" of this Section, be required to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers to the furthest extent allowed by law, from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

d. Subdivider further agrees that the use for any purpose and by any person of

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any and all of the streets and improvements hereinbefore specified, shall be at the sole and exclusive risk of Subdivider at all times prior to final acceptance by City of the completed street and other improvements thereon and therein.

e. This Section shall survive termination or expiration of this Agreement.

11. Insurance. Throughout the life of this Agreement, Subdivider shall pay for and maintain in full force and effect all policies of insurance described in this Section with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide, or (ii) authorized by City's Risk Manager. The following policies of insurance are required:

a. COMMERCIAL GENERAL LIABILITY insurance, which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and shall include insurance for bodily injury, property damage, and personal and advertising injury with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, contractual liability (including indemnity obligations under this Agreement), with limits of liability of not less than \$5,000,000 per occurrence for bodily injury and property damage, \$1,000,000 per occurrence for personal and advertising injury and \$5,000,000 aggregate for products and completed operations, and \$10,000,000 general aggregate.

b. COMMERCIAL AUTOMOBILE LIABILITY insurance, which shall be at least as broad as the most current version of Insurance Services Office (ISO) Business Auto Coverage Form CA 00 01 and shall include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1-Any Auto), with combined single limits of liability of not less than \$1,000,000 per accident for bodily injury and property damage.

c. WORKERS' COMPENSATION insurance as required under the California Labor Code.

d. EMPLOYERS' LIABILITY with minimum limits of liability of not less than \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

Subdivider shall be responsible for payment of any deductibles contained in any insurance

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policies required hereunder and Subdivider shall also be responsible for payment of any self-insured retentions.

The above described policies of insurance shall be endorsed to provide an unrestricted 30 calendar day written notice in favor of City of policy cancellation of coverage, except for the Workers' Compensation policy which shall provide a 10 calendar day written notice of such cancellation of coverage. **In the event any policies are due to expire during the term of this Agreement, Subdivider shall provide a new certificate evidencing renewal of such policy(ies) not less than 15 calendar days prior to the expiration date of the expiring policy(ies).** Upon issuance by the insurer, broker, or agent of a notice of cancellation in coverage, Subdivider shall file with City a new certificate and all applicable endorsements for such policy(ies).

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name City, its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Subdivider's insurance shall be primary and no contribution shall be required of City. In the event claims-made forms are used for any Professional Liability coverage, either (i) the policy(ies) shall be endorsed to provide not less than a five (5) year discovery period, or (ii) the coverage shall be maintained for a minimum of five (5) years following the termination of this Agreement and the requirements of this Section relating to such coverage shall survive termination or expiration of this Agreement. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City, its officers, officials, agents, employees and volunteers.

Subdivider shall have furnished City with the certificate(s) and applicable endorsements for ALL required insurance prior to City's execution of the Agreement. Subdivider shall furnish City with copies of the actual policies upon the request of City's Risk Manager at any time during the life of the Agreement or any extension, and this requirement shall survive termination or expiration of this Agreement.

The fact that insurance is obtained by Subdivider or his/her/its subcontractors shall not be

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deemed to release or diminish the liability of Subdivider or his/her/its subcontractors including without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City, its officers, officials, agents, employees and volunteers, shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Subdivider or his/her/its subcontractors. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Subdivider, its principals, officers, agents, employees, persons under the supervision of Subdivider, vendors, suppliers, invitees, subcontractors, consultants or anyone employed directly or indirectly by any of them.

If at any time during the life of the Agreement or any extension, Subdivider fails to maintain the required insurance in full force and effect, the Director of Public Works for the City, or his/her designee, may order that the Subdivider, or its contractors or subcontractors, immediately discontinue any further work under this Agreement and take all necessary actions to secure the work site to insure that public health and safety is protected. All payments due or that become due to Subdivider shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement.

If Subdivider should subcontract all or any portion of the services to be performed under this Agreement, Subdivider shall require each subcontractor to provide insurance protection in favor of City, its officers, officials, employees, volunteers and agents in accordance with the terms of each of the preceding paragraphs, except that the subcontractors' certificates and endorsements shall be on file with Subdivider and City prior to the commencement of any work by the subcontractor.

12. The Subdivider and his subcontractors shall pay for any materials, provisions, and other supplies used in, upon, for, or about the performance of the Improvements contracted to be done, and for any work or labor thereon of any kind, and for amounts due under the Unemployment

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Insurance Act of the State of California, with respect to such work or labor.

13. Compaction and other materials testing performed for determination of compliance with Public Works Standards shall conform to Section 2-11 of the City Standard Specifications, entitled "*Materials Acceptance Testing*." Materials testing shall at all times remain under the review of the City Engineer who may determine additional test procedures, and additional locations to be tested. All materials testing for improvement work within the public easements and rights-of-way shall be ordered and paid for by the Subdivider.

14. The Subdivider shall comply with Street, Plumbing, Building, Electrical, Zoning Codes and any other codes or ordinances of the City.

15. It shall be the responsibility of the Subdivider to coordinate all work done by his contractors and subcontractors, such as scheduling the sequence of operations and the determination of liability if one operation delays another. In no case shall representatives of the City be placed in the position of making decisions that are the responsibility of the Subdivider. It shall further be the responsibility of the Subdivider to give the City Engineer written notice not less than two (2) working days in advance of the actual date on which work is to be started. Failure on the part of the Subdivider to notify the City Engineer may cause delay for which the Subdivider shall be solely responsible.

16. Whenever the Subdivider varies the period during which work is carried on each day, it shall give due notice to the City Engineer so that proper inspection may be provided. If Subdivider fails to duly notify City as herein required, any work done in the absence of the City Engineer will be subject to rejection. The inspection of the Improvements shall not relieve the Subdivider of any obligation to fulfill the Agreement as prescribed. Defective work shall be made good, and unsuitable materials may be rejected, notwithstanding the fact that such defective work and unsuitable materials have been previously overlooked by the City Engineer or City Inspector and accepted.

17. Adequate dust control shall be maintained by the Subdivider on all streets within and

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without the subdivision on which work is required to be done under this Agreement from the time work is first commenced in the subdivision until the paving of the streets is completed. "Adequate dust control" as used herein shall mean the sprinkling of the streets with water or the laying of an approved dust palliative thereon with sufficient frequency to prevent the scattering of dust by wind or the activity of vehicles and equipment onto any street area or private property adjacent to the subdivision in strict compliance with all rules and regulations established by the San Joaquin Valley Air Pollution Control Board. Whenever in the opinion of the City Engineer adequate dust control is not being maintained on any street or streets as required by this paragraph, the City Engineer shall give notice to the Subdivider to comply ("Notice to Comply") with the provisions of this paragraph forthwith. If in the opinion of the City Engineer the Subdivider's failure to comply with the provisions of this paragraph is having an immediate and significant impact on the public's health, safety and welfare, the City Engineer may immediately issue a stop work order until the City receives reasonable assurances that the Subdivider shall comply with the provisions of this paragraph forthwith. Such notices and stop-work orders may be personally served upon the Subdivider or, if the Subdivider is not an individual, upon any person who has signed this Agreement on behalf of the Subdivider or, at the election of the City Engineer, such notices and stop-work orders may be mailed to the Subdivider at his address on file with the City Engineer. If the City Engineer has issued a Notice to Comply and within twenty-four (24) hours after such personal service of such notice or within forty-eight (48) hours after the mailing thereof as herein provided, the Subdivider shall not have commenced to maintain adequate dust control or shall at any time thereafter fail to maintain adequate dust control, the City Engineer may, without further notice of any kind, cause any such street or streets to be sprinkled or oiled, as it may deem advisable to eliminate the scattering of dust, by equipment and personnel of City or by contract as the City Engineer shall determine, and the Subdivider agrees to pay to City forthwith, upon receipt of billing therefore, the entire cost to City of such sprinkling or treating. When the surfacing on any existing street is disturbed, this surfacing

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shall be replaced with temporary or permanent surfacing within fourteen (14) calendar days, and the roadway shall be maintained in a safe and passable condition at all times between the commencement and final completion, and adequate dust control shall be maintained during these operations.

18. Concrete curbs and gutters, the sanitary sewer system and house connections, together with water mains, gas mains, and their respective service connections, and all other facilities required to be installed under ground shall be completed in the streets and alleys before starting the street and alley surfacing.

19. Time is of the essence of this Agreement, and the same shall bind and inure to the benefit of the parties hereto, their successors and assigns.

20. No assignment of this Agreement or of any duty or obligation of performance hereunder shall be made in whole or in part by the Subdivider without the written consent of City.

21. In addition to the following Covenants Affecting Land Development:

- a. Maintenance of Certain Public Improvements
- b. Deferring Certain Sewer Connection Charges, Water Connection Charges, Urban Growth Management Fees, City-wide fees, and Development Fees
- c. Relinquishing Access Rights
- d. Providing for Sanitary Sewer Capacity in the Fowler Avenue Trunk Sewer
- e. Maintenance of Landscape Improvements For Certain Lots
- f. Temporary Storm Drain Facilities
- g. Acknowledging Right to Farm Law
- h. Special Solid Waste Disposal

as referenced on the Final Map and this Agreement, Subdivider shall comply with all of the Conditions of Approvals that it has not already fully complied with as of the date of the approval of the Final Map and which are not otherwise set forth in this Agreement, including but not limited to,

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any condition to convey to a specific party a fee interest or easement in any parcels, upon Subdivider's completion of all required improvements to said parcels. Subdivider's compliance with such conditions shall be completed within a reasonable time, as determined by the City, after receiving written notice from the City Engineer of the outstanding condition or term with which the Subdivider is required to comply.

22. In performing its obligations set forth in this Agreement, Subdivider shall comply with all applicable laws, regulations, and rules of the governmental agencies having jurisdiction including, without limitation, applicable federal and state labor standards and environmental laws and regulations. Subdivider, not the City, is responsible for determining applicability of and compliance with all local, state, and federal laws including, without limitation, the California Labor Code, Public Contract Code, Public Resources Code, Health & Safety Code, Government Code, the City Charter, and Fresno Municipal Code. The City makes no representations regarding the applicability of any such laws to this Agreement, the project, or the parties' respective rights or obligations hereunder including, without limitation, payment of prevailing wages, competitive bidding, subcontractor listing, or other matters. City shall not be liable or responsible, in law or equity, to any person for Subdivider's failure to comply with any such laws, whether the City knew or should have known of the need for Subdivider to comply, or whether the City failed to notify Subdivider of the need to comply. The Subdivider is referred to the City's Department of Public Works, Construction Management Division to obtain the current prevailing wage rates, to the extent said rates are applicable to the construction of any of the Improvements.

23. If either party is required to commence any proceeding or legal action to enforce or interpret any term or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses. For the purposes of this Agreement, "attorneys' fees" and "legal expenses" include, without limitation, paralegals' fees and expenses, attorneys, consultants fees and expenses, expert witness fees and expenses, and all other expenses incurred by the prevailing party's attorneys in the course

Subdivision Agreement
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of the representation of the prevailing party in anticipation of and/or during the course of litigation, whether or not otherwise recoverable as "attorneys' fees" or as "costs" under California law, and the same may be sought and awarded in accordance with California procedure as pertaining to an award of contractual attorneys' fees.

24. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

25. The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision in this Agreement shall not affect the validity or enforceability of the other provisions, which shall remain in full force and effect.

26. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

27. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both City and Subdivider.

* * * *

Subdivision Agreement
Final Map of Tract No. 6281
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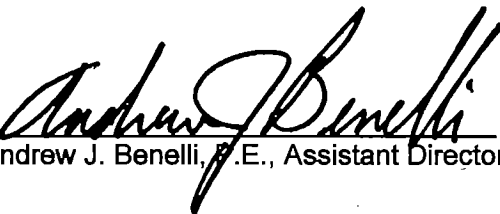
The parties have executed this Agreement on the day and year first above written.

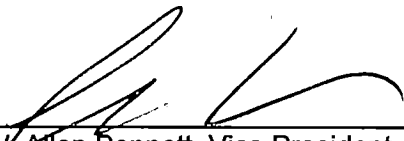
CITY OF FRESNO,
a Municipal Corporation

Public Works Department
Scott Mozier, P.E., Director

SUBDIVIDER

Century Communities of California, LLC
A Delaware Limited Liability Company

By: 
Andrew J. Benelli, P.E., Assistant Director

By: 
W. Allen Bennett, Vice President

APPROVED AS TO FORM:

DOUGLAS T. SLOAN
City Attorney

By: 
Mary Raterman-Dodge
Deputy City Attorney

Date: 10/16/21

(Attach Notary Acknowledgments)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

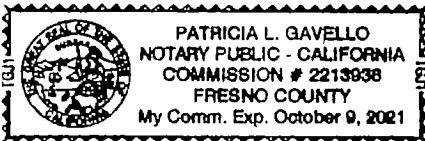
State of California

County of Fresno

On September 13, 2021 before me, Patricia L. Gavello, Notary Public, personally appeared W. Allen Bennett, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.



Patricia L. Gavello

Signature of Notary Public

CLERK'S CERTIFICATION

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document

State of California)
County of Fresno)

On October 19, 2021 before me, Bernard Canez, Deputy City Clerk, personally appeared, Andrew J. Benelli, P.E. Assistant Director, City of Fresno who proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal

BRIANA PARRA, CMC
Interim City Clerk, City of Fresno

By


Bernard Canez, Deputy



EXHIBIT A Subdivision Agreement for Tract No. 6281

A. APPROVED PUBLIC IMPROVEMENT CONSTRUCTION COST ESTIMATES

Water System Construction Cost Estimate	\$595,748	
Well Construction Cost Estimate	n/a	
Sewer System Construction Cost Estimate	\$464,379	
Storm Drain Construction Cost Estimate	\$298,131	
Street Construction Cost Estimate	\$6,983,000	
Final Cost Estimate (for Inspection Fee purposes)	\$8,341,258	
342 Landmarks, Monuments, Lot & Block Corners (\$50/ea)	\$17,100	
Sub-Total (for bonding purposes)	\$8,358,358	
Construction Contingency (10%)	\$835,836	
TOTAL COST ESTIMATE* (for improvement securities purposes)	\$9,194,194	\$9,194,000

* All amounts rounded to nearest \$1000

B. IMPROVEMENT SECURITY REQUIREMENTS (due with subdivision agreement)

Performance Security (100% of Total Cost Estimate)

95% of amount shall be in the form of a bond by duly authorized corporate sureties or certificate of deposit
5% of amount shall be in cash or a Certificate of Deposit made payable to the City of Fresno.

\$8,734,000
\$460,000

Payment Security (50% of Total Cost Estimate)

100% of amount shall be in the form of a bond by duly authorized corporate sureties or certificate of deposit

\$4,597,000

C. WARRANTY SECURITY REQUIREMENT* (due as condition of acceptance of the work)

5% of first \$50,000 of the Total Cost Estimate
3% of next \$50,000
1% of next \$400,000
0.5% of amount over \$500,000
Minimum amount

\$3,000
\$2,000
\$4,000
\$43,500
\$52,500

EXHIBIT B Subdivision Agreement for Tract No. 6281

A. MISCELLANEOUS FEES & CHARGES

A. MISCELLANEOUS FEES & CHARGES		EXTENSION	NET AMOUNT DUE	AMOUNT DEFERRED, DUE @ OCCUPANCY	AMOUNT DUE @ BUILDING PERMIT	AMOUNT DUE @ OCCUPANCY
1. INSPECTION FEE						
	\$8,341,268	Final Cost Estimate over \$500K	\$217,782.00			
Less Inspection Fees paid with Early Sewer/Water Construction Agreement						
			\$55,982.00			
Less Inspection Fees paid with Early Street Construction Agreement						
			\$161,780.00			
Inspection Fee						
			\$0.00		\$0.00	
2. MONUMENT CHECK FEE						
	138	Lots and Outlots	\$30.00 per Lot	\$4,080.00	\$4,080.00	
3. STREET SIGNS						
	0	Street Name Sign sets	\$173.00 per set	na	na	
	0	Warning/Regulatory signs	\$77.00 sign	na	na	
4. STREET TREES						
	0	City Installed (5-gallon) Street Trees	\$129.00 per Tree	na	na	
	132	Inspection Fee (when planted by subdivider)	\$30.00 per Tree	\$3,960.00	\$3,960.00	
5. STREET RIGHTS OF WAY ACQUISITION/CONSTRUCTION CHARGE per FMC 11-228(f)(6)						
		Lump Sum Charge as established by Public Works Director	na	na	na	
TOTAL MISCELLANEOUS FEES & CHARGES			\$8,040.00	\$8,040.00	\$8,040.00	

EXHIBIT B Subdivision Agreement for Tract No. 6281

B. IMPACT FEES, CONSTRUCTION CREDITS & FEES TO BE DEFERRED	EXTENSION	NET AMOUNT DUE	AMOUNT DEFERRED, DUE @	
			AMOUNT DUE @ BUILDING PERMIT	AMOUNT DUE @ OCCUPANCY

38.7527 Gross Acres	
37.6240 Adjusted Gross Acres (AG Ac); excludes Area of Arterial & Collector Streets	
132 Units (residential)	
0 LUE (non-residential)	
RS-4 Zoning	
UGM Input "ugm" if within the Urban Growth Management Area or "no"	

1. LOCAL DRAINAGE FEES

BS FMFCD Drainage Area	
38.7524 Acres per FMFCD	② \$11,770 per Acre

\$458,118.00

Preliminary Credit, FMFCD Memo dated 9/7/2021

\$375,248.00

Local Drainage Fee

\$80,888.00

\$80,888.00 (B1)

(B1) All or portion of fee obligation satisfied pursuant to FMFCD agreement.

2. SEWER CONNECTION CHARGES**(a) Lateral Sewer Charge**

Frontage: E. Clinton Avenue 49,800 SF

49,800 SF; sub-total Lateral Sewer Charge ② \$0.10 per SF \$4,980.00

Less estimated Lateral Sewer Charge Credits

\$0.00

Lateral Sewer Charge

\$4,980.00

\$3,382.65

* Fee Due for Lots under At-Risk Building Permits: Lots 5-16, 91-96, 102-115, 118, 119, 121-123, 127-132

(b) Oversize Sewer Charge

UGM Reimbursement Area

Frontage: E. Clinton Avenue 49,800 SF
Frontage: N. Temperance Avenue 65,100 SF

Total Square Feet 114,900 SF

114,900 SF; sub-total Oversize Sewer Charge ② \$0.05 per SF \$5,745.00

Less estimated Oversize Credits

\$0.00

Oversize Sewer Charge

\$5,745.00

\$3,878.08

(c) Trunk Sewer Charge

Fowler Trunk Sewer Service Area

132 Units ③ \$344.00 per Unit \$45,408.00

\$45,408.00

\$45,408.00

EXHIBIT B Subdivision Agreement for Tract No. 6281

	EXTENSION	NET AMOUNT DUE	AMOUNT DEFERRED, DUE @ OCCUPANCY	AMOUNT DUE @ BUILDING PERMIT	AMOUNT DUE @ OCCUPANCY
(d) Wastewater Facilities Charge					
132 Units	@ \$2,119.00 per Unit	\$279,708.00	\$81,117.00	\$188,591.00	
Fee to be paid at the rate in effect at time of issuance of building permit. (FMC 9-503-b)					
(g) Fowler Trunk Sewer Interim Fee Surety					
132 Units	@ \$843.00 per Unit	\$111,276.00	\$36,249.00	\$75,027.00	
Payable at the rate in effect at time of issuance of Certificate of Occupancy. The fee rate currently in effect is \$843 per Living Unit or Living Unit Equivalent.					
3. WATER CONNECTION CHARGES					
(a) Time & Material Charges ("Wet-Tile")					
2020 1016 Estimate Number					
6386 Water Job Number					
Estimated Deposit (FMC 14-111-f)		\$31,300.00	\$0.00 (B3)		
(B3) Deposit paid with Early Construction Agreement					
(b1) Service Connection Charges					
132 1" Meters to existing services	@ \$330.00 each	\$43,680.00			
Less amount paid with At-Risk Building Permits		\$14,180.00			
Service Connection Charges		\$29,370.00		\$28,370.00	
(b2) Landscape Service Connection Charges					
3 2" Meters to existing services	@ \$530.00 each	\$1,590.00	\$1,590.00		
(c) Frontage Charge					
Frontage: E. Clinton Avenue	498 LF				
Frontage: N. Temperance Avenue	651 LF				
Sub-Total Lineal Feet (full rate)	1,149 LF				
1,149 LF; sub-total Frontage Charge (full rate)	@ \$8.50 per LF	\$7,468.50			
Less estimated Frontage Charge Credits		\$0.00			
Frontage Charge		\$7,468.50	\$2,425.68	\$5,042.81	

EXHIBIT B Subdivision Agreement for Tract No. 6281

	EXTENSION	NET AMOUNT DUE	AMOUNT DEFERRED, DUE @ OCCUPANCY	AMOUNT DUE @ BUILDING PERMIT	AMOUNT DUE @ OCCUPANCY
(d1) Water Capacity Fee					
132 1" Meters to existing services	\$4,879.00 per Meter	\$644,028.00			
Less Estimated Water Capacity Fee Construction Credits		\$0.00			
Water Capacity Fee		\$644,028.00	\$434,231.00		
(d2) Water Capacity Fee					
3 2" Meters to existing services	\$12,196.00 per Meter	\$36,586.00			
4. CITYWIDE IMPACT FEES & CONSTRUCTION CREDITS					
(a) FIRE FACILITIES IMPACT FEE					
132 Living Units (residential)	\$2,061.00 per Unit	\$272,052.00			\$183,429.00
Fire Impact Fee		\$272,052.00			
(b) PARK FACILITY IMPACT FEE					
132 Living Units (residential)	\$3,061.00 per Unit	\$404,052.00			
Less estimated Park Facility Impact Fee Credits		\$0.00			
Park Facility Impact Fee		\$404,052.00	\$131,823.00		\$272,429.00
(c) QUMBY PARKLAND DEDICATION FEE					
132 Living Units (residential)	\$1,324.00 per Unit	\$174,788.00			
Less estimated Qulimby Parkland dedication Fee Credits		\$0.00			
Qulimby Parkland Dedication Fee		\$174,788.00			
(d) CITYWIDE REGIONAL STREET CHARGE					
37.6240 Adjusted Gross Acres	\$8,762.00 per AG Ac	\$329,285.25			
Less estimated Significant Street Credits		\$320,000.00			
Citywide Street Charge		\$9,285.25	\$3,016.61	\$6,268.64	

EXHIBIT B Subdivision Agreement for Tract No. 6281

	EXTENSION	NET AMOUNT DUE	AMOUNT DEFERRED, DUE @ OCCUPANCY	AMOUNT DUE @ BUILDING PERMIT	AMOUNT DUE @ OCCUPANCY
(e) NEW GROWTH AREA MAJOR STREET CHARGE					
37.6240 Adjusted Gross Acres	@ \$24,090.00 per AG Ac	\$906,362.16			
Less estimated Major Street Credits		\$0.00			
Major Street Charge		\$906,362.16		\$611,982.36	\$284,379.80
(f) POLICE FACILITIES IMPACT FEE					
132 Living Units (residential)	@ \$673.00 per Unit	\$88,836.00			
Police Facilities Impact Fee		\$88,836.00			\$28,939.00
(g) TRAFFIC SIGNAL CHARGE					
132 Living Units (residential)	@ \$546.00 per Unit	\$72,072.00			
Less Estimated Traffic Signal Charge Construction Credits		\$777,492.00			
Traffic Signal Charge		\$0.00			Paid w/ Credits

* Fee Due for Lots under At-Risk Building Permits: Lots 5-16, 91-96, 102-115, 118, 119, 121-123, 127-132

+ Citywide Impact Fees due at occupancy (Reso. 05-427, 428, 429)

§ Citywide Street Charge and New Growth Area Major Street Charge due at Building Permit (Reso. 07-291)

City of Fresno Development Impact Fees for single family development due at occupancy / final inspection (Reso. 08-348)

Total Impact Fees & Charges	\$3,186,018.81	\$1,228,872.47	\$585,247.34	\$806,842.00	\$515,755.00
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Note: EXTENSION total includes net results of construction credits

SUMMARY**TOTAL (A) MISCELLANEOUS FEES & CHARGES****TOTAL (B) IMPACT FEES & CHARGES**

TOTAL SUBDIVISION FEES and CHARGES DUE WITH AGREEMENT (cash)	\$1,236,912.47
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ADDENDUM TO SUBDIVISION AGREEMENT

(RIGHT-OF-WAY ACQUISITION)

WHEREAS, this is an addendum (“Addendum”) to a subdivision agreement (“Agreement”) entered into pursuant to the Subdivision Map Act, specifically, Government Code Section 66462, affecting the Final Map of Tract No. 6281, of Vesting Tentative Map No. 6281 (“Final Map”); and,

WHEREAS, Vesting Tentative Map No. 6281 as approved by the City of Fresno (“Tentative Map”) are a single family residential subdivision; and,

WHEREAS, the City approved the project subject to certain conditions of approval, which conditions required several public improvements in order to mitigate the impacts of the project upon urban infrastructure and physical environment; and,

WHEREAS, in order to approve the Final Map, the Fresno City Council, as the Legislative Body approving final maps under the Map Act, must find the Final Map is in substantial compliance with the Tentative Map; and,

WHEREAS, the Agreement pertains to subdivision improvements not completed and accepted at the time of approval of the Final Map; and,

WHEREAS, this Addendum pertains specifically to the street improvements beyond the limits of the Final Map required in the Tentative Map conditions, which require the Subdivider to develop the infrastructure of, and dedicate the right-of-ways for, certain public streets that will directly or indirectly serve the project; and,

WHEREAS, with respect to such street improvements required to be developed and dedicated, neither the Subdivider nor the City has sufficient title or interest at the time of Final Map filing to permit the improvements to have been completed prior to Final Map filing; and,

WHEREAS, the Subdivider has notified the City (through the Public Works Director or the Planning and Development Department Director) of the Subdivider’s inability to acquire the necessary easements and right-of-ways by negotiation, and has requested City to acquire the necessary easements at Subdivider’s expense; and,

WHEREAS, the City of Fresno desires to proceed with the acquisition of the necessary easements for the required public right-of-ways, at the expense of the Subdivider.

Addendum to Subdivision Agreement
Tract No. 6281
Page 2

NOW THEREFORE IT IS AGREED between Subdivider and City as follows:

1. Subdivider shall be responsible for the entire cost of acquiring the necessary easements, whether the City acquires through negotiation or by use of its powers of eminent domain, including, but not limited to the fair market value of the easements, legal fees, non-legal staff time, appraisal fees, any necessary court costs.
2. Subdivider shall initially deposit, upon execution of this agreement, the sums set out in the paragraph below captioned, "Summary of Initial Deposit". Such sums shall be utilized by the City to acquire the necessary easement and right-of-ways. If the initially deposited funds are less than the actual full cost to acquire all necessary right-of-ways, the Subdivider shall remit to the City such additional sums as may be required from time to time to conclude the matters, such further payments to be made within ten (10) days of the mailing to the Subdivider of a notice requesting such additional funds. The notice shall state what costs have been incurred to date, what additional costs are anticipated; and how the City intends to apply these additional deposits. Subdivider's dissatisfaction with the adequacy or sufficiency of the notice for any reason shall not excuse Subdivider from any duty or obligation, including the obligation to deposit additional sums. If deposited sums exceed the actual full cost to acquire the subject right-of-ways, then at the conclusion of acquisition, City shall refund the difference as soon as the City determines the amount of such excess.
3. Subdivider shall have the option of providing appraisal and title reports from qualified and reputable appraisers and title companies, subject to approval of the City Attorney, in lieu of deposit of appraisal and title report fees.
4. Subdivider acknowledges that the initial cash deposits are estimates only and may increase if it is necessary to acquire the necessary easement through eminent domain. Subdivider agrees to pay all proper and necessary charges incurred or paid by City in pursuing the condemnation proceedings to a settlement or final judgement. City incurs no liability for its failure to accurately or properly estimate the actual costs incurred in the condemnation action.
5. If Subdivider fails to pay the sums stated in the notice to deposit by the date prescribed, the City shall have the following remedies in addition to any other remedies available to it under law or in equity:
 - a. Subdivider shall have waived and in such event does hereby waive all his development entitlements to build the subject project, and City may summarily revoke any and all permits issued to build such project.
 - b. City may, in its sole discretion, elect to terminate any acquisition

Addendum to Subdivision Agreement
Tract No. 6281
Page 3

- proceedings commenced pursuant to this agreement. If City so elects, Subdivider shall indemnify and hold City harmless from any and all costs, fees, damages and expenses incurred as a result of the proceedings and the termination and abandonment thereof.
- c. In the alternative, City may, in its sole discretion, allow the project to proceed and treat all costs incurred pursuant to this agreement as a debt due and owing to the City. In this event, the sums so demanded in the notice to deposit shall be presumed to be proper, necessary and correct for continued proceedings to acquire the easements. Upon the failure of Subdivider to make timely and full deposit, as required by the notice, City shall collect interest on the amount demanded, to the extent the amounts reflect cost actually incurred, and upon any amounts thereafter incurred, at the rate of ten (10) percent per annum until paid. In any action brought by the City as the result of Subdivider's failure to timely and fully deposit the amounts demanded, City may recover its reasonable attorney's fees and litigation costs.
6. It is anticipated that it may be necessary for City to exercise its powers of eminent domain in order to acquire the necessary public right-of-way easements. Any determination to proceed with eminent domain will be made by the City Council of the City of Fresno, upon necessary findings.
7. In the event eminent domain proceedings are commenced, prior to the date of any settlement conference set by the superior court in the eminent domain proceedings, Subdivider shall be given notice and an opportunity to participate in any decision to settle the acquisition proceedings if the proposed compensation exceeds the opinion of value established by the City's appraisal or the property owner's appraisal. However, such participation shall be limited to advising City staff where the giving of such advice does not interfere with, restrict, delay or impede the City Attorney in the prosecution or compromise of the condemnation proceedings, as she deems necessary and appropriate in the exercise of her sole professional judgement and discretion.
8. Subdivider agrees that, if for any reason the City determines it necessary to assign the City's rights and responsibilities under this task to the County in order for the offsite road conditions to be implemented, the City may do so with written notice to Subdivider. Upon such assignment, all references to statutorily required actions on the part of the City in connection with eminent domain proceedings shall be construed to mean those same actions or legal equivalents on the part of the County. The Subdivider's responsibilities remain unchanged.
9. Compliance with the terms and conditions of this agreement is a condition of approval of any and all UGM subdivision map projects which are the subject of the principal agreement to which this ancillary agreement is a part.

Addendum to Subdivision Agreement**Tract No. 6281****Page 4**

10. Subdivider agrees that the Final Map shall be deemed filed as of the date the City Council finds the Final Map in substantial compliance with the Tentative Map and approves the same.
11. Subdivider acknowledges that, by execution of the Agreement, including this Addendum and the City's acceptance of the Final Map, Government Code Section 66462.5 is inapplicable to this subdivision.
12. Subdivider acknowledges that the Tentative Map approval was expressly conditioned upon the street improvement and right-of-ways being provided as project mitigation. Nothing herein shall constitute as a waiver by the City of its police power or of its authority to protect the public against adverse development project impacts. Nothing herein modifies the Tentative Map conditions imposing offsite road improvements, or of any other Tentative Map condition, except as expressly provided for in the Agreement or in this Addendum. Subdivider will not seek to invalidate any claim or defense made by or on behalf of the City in pursuance of procurement of the street and right-of-ways on any grounds including, but not limited to, the fact that all or a portion of the street right of ways traverse through unincorporated territory within the jurisdiction of the County of Fresno. Subdivider agrees to act in good faith in implementing the road condition and to actively assist City in seeking to obtain the County Approvals.
13. City shall have a lien upon any and all performance, payment and other bonds or deposits posted by or for Subdivider in conjunction with the development as security for the payment of any costs, charges or fees called for by this Agreement.
14. Upon recordation of the Subdivision Agreement to which this Addendum is incorporated by reference, City shall have a lien upon the lands more particularly described in the Subdivision Agreement as security for the payment of any costs, charges or fees called for by this Agreement.
15. At the conclusion of the acquisition of the necessary easements, City shall provide to Subdivider a final statement of the expenditures of the City relating to the subject acquisition. Failure of the City to provide any accounting required by this agreement, however, shall not excuse Subdivider's duty to perform any act, particularly the duty to make full and timely deposits in accordance with any demands and notices by the City. Upon rendering of the final accounting referenced herein, Subdivider may question or challenge any use of funds set forth in such accounting and may appeal same to the City Council.
16. Any amounts deposited by Subdivider shall be maintained by City in an interest-bearing account of the City's choice, and may be co-mingled with other City funds in such account. Interest accruing upon any such deposit shall inure to and be created for the benefit of Subdivider, less the City's reasonable or actual costs of administering the account and less any other charges which may be required or authorized by law. The parties agree that five (5) per cent of the

Addendum to Subdivision Agreement**Tract No. 6281****Page 5**

amount(s) deposited is the reasonable cost of administering the account.

17. Time is of the essence to this agreement since the City may suffer certain consequences in the event of Subdivider's breach, such as inverse condemnation liability, abandonment (by operation of law) of the condemnation action, and award to the property owner of her litigation expenses and reasonable attorney's fees and sanctions imposed by the Permit Streamlining Act (Government Code Section 65920, et seq.).
18. No partial invalidity of this agreement shall invalidate the remainder.
19. **Summary of Initial Deposit.**
Easement Acquisition for APN: 310-250-21
574-140-23, 310-010-06SU, 310-062-71S, 582-010-17;
310-143-46, 313-071-43, 313-270-27

AMOUNT TO BE DEPOSITED		ITEM
\$7,250.00		Escrow & Title Insurance
\$12,000.00		Appraisal Reviews
\$115,500.00		Acquisition Land Partial Takes
\$52,000.00		Acquisition Costs Staff Time
\$6,000.00		Surveyors Review of Legals
\$20,000.00		Statutory Owner-Appraisal Reimbursement Option (EST 2) Parcel x \$5,000 =
\$ 5,200.00		Legal Review of Agreements
\$ 217,950.00		Total
\$ 32,693.00		10% Contingency – Potential Eminent Domain = (Rounded to the Nearest 100.00)
\$250,700.00		TOTAL INITIAL DEPOSIT