

RECORDING REQUESTED BY)
 AND WHEN RECORDED MAIL TO:)
)
 CITY OF HOLLISTER)
 375 Fifth Street)
 Hollister, California 95023)
Attention: City Clerk)
)
)

(Space Above This Line for Recorder's Use Only)
 Exempt from recording fee per Gov. Code § 27383.

SUBDIVISION IMPROVEMENT AGREEMENT

THIS SUBDIVISION IMPROVEMENT AGREEMENT (the “**Agreement**”) is made and entered into on this ___ day of _____, 2017 (the “**Effective Date**”) by and between _____, a _____ (“**Developer**”), and the CITY OF HOLLISTER, a California municipal corporation (“**City**”) (collectively, the “**Parties**”).

RECITALS

A. Developer is the owner of that certain real property located at _____ in the City of Hollister, San Benito County, California, and identified by San benito County Assessor Parcel Numbers _____ and _____, as more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (the “**Property**”). Developer has submitted an application to the City for the development of a Condominium Subdivision Map, Site Development Permit, [Coastal Development Permit], and Use Permit to construct a _____ on the Property (the “**Project**”).

B. On _____, the Planning Commission of the City of Hollister (“**Planning Commission**”) adopted Resolution No. _____, approving the tentative map for _____, prepared by _____, dated _____, subject to certain conditions of approval (the “**Conditions**”). On that same date, the Planning Commission also adopted Resolution No. _____ approving Site Development Permit _____, [Resolution No. _____ approving Coastal Development Permit CDP-_____] and Resolution No. _____ approving Use Permit _____. {An amended tentative map was approved by the _____ on _____.}

C. The Conditions require either (1) that certain improvements be constructed prior to approval of the final map, or (2) that Developer enter into an agreement with the City providing for the future construction of such improvements.

D. {On _____, Developer applied for an encroachment permit to perform grading, undergrounding of utilities, paving, and asphalt. The City issued Permit # _____ on _____. Developer provided \$_____ in cash security for the work to be done under Permit # _____ on _____ (“**Encroachment Permit Security**”).}

E. {{{Developer has applied to City for final parcel map approval without having completed all required improvements and therefore will enter into an agreement with the City providing for the future construction and installation of the improvements, as required by the Subdivision Map Act, Government Code Section 66410 *et seq.*, and City of Hollister Municipal Code section _____, *et seq.*, may be amended from time to time (the “**Subdivision Ordinance**”).

F. Developer has submitted plans, specifications and drawings for the improvements entitled “_____” prepared by _____ and dated _____ (the “**Improvement Plans**”), which Improvement Plans have been approved by the City Engineer. The Improvements Plans are attached hereto as Exhibit B and incorporated by this reference.

G. City and Developer desire to enter an agreement providing for the construction and installation of the improvements in accordance with the Improvement Plans.

AGREEMENT

NOW, THEREFORE, in consideration of the faithful performance of the terms and conditions set forth in this Agreement, the parties hereto agree as follows:

1. Purpose. The purpose of this Agreement is to guarantee completion of certain improvements in accordance with the Improvement Plans and ensure satisfactory performance by Developer of Developer’s obligations to satisfy the Conditions.

2. Duty to Install Improvements. Developer will construct, install and complete, or cause to be constructed, installed and completed, at the Developer’s sole cost and expense, all improvements required by the Conditions and/or described in the Improvement Plans (the “**Improvements**”), in accordance with such plans, all applicable federal, state and local laws, regulations and standards, including without limitation State of California Division of Industrial Safety Construction Orders, and to the satisfaction of the City Engineer in his or her reasonable discretion. Developer will also supply all labor and materials therefor, all in strict accordance with the terms and conditions of this Agreement. The construction, installation and completion of the Improvements and all labor and materials furnished in connection therewith are hereinafter referred to collectively as the “**Work.**”

3. Duty to Maintain Improvements. City shall not be responsible or liable for the maintenance or care of the Improvements until City formally approves and accepts them in accordance with its policies and procedures. City shall exercise no control over the Improvements until approved and accepted. Any use by any person of the Improvements, or any portion thereof, shall be at the sole and exclusive risk of the Developer at all times prior to City’s acceptance of the Improvements. Developer shall maintain all the Improvements in a state of good repair until they are completed by Developer and approved and accepted by City. Maintenance shall include, but shall not be limited to, repair of pavement, curbs, gutters, sidewalks, signals, parkways, water mains, and sewers; maintaining all landscaping in a vigorous and thriving condition reasonably acceptable to City; removal of debris from sewers and storm

drains; and sweeping, repairing, and maintaining in good and safe condition all streets and street improvements. It shall be Developer's responsibility to initiate all maintenance work, but if it shall fail to do so, it shall promptly perform such maintenance work when notified to do so by City. If Developer fails to properly prosecute its maintenance obligation under this Section 3, City may do all work necessary for such maintenance and the cost thereof shall be the responsibility of Developer and its surety under this Agreement. City shall not be responsible or liable for any damages or injury of any nature in any way related to or caused by the Improvements or their condition prior to acceptance. Notwithstanding the above, Developer shall make available for public use any streets, curbs, gutters, sidewalks or walkways, streetlights, street furniture, storm drain improvements, fire hydrants, and any other facilities intended for general public use, which are installed, altered or affected by the Work, as soon as they can be safely placed in service.

4. Commencement and Completion Date. Developer will notify City in writing at least 24 hours prior to the commencement of the Work. Developer will complete the Work within nine (9) months of the Effective Date. All Work will be completed in a good and workmanlike manner in accordance with accepted design and construction practices. This completion date may be extended by the City Engineer in consultation with the City Attorney in its sole and absolute discretion at the request of Developer, which request shall be accompanied by a written assurance acceptable to the City Attorney that the securities required by Section 13 shall remain enforceable throughout the term of the extension.

5. Estimated Cost of Work. The estimated cost of the Work is _____ dollars (\$ _____). Notwithstanding this estimate, Developer hereby acknowledges and agrees that (a) the actual costs to complete the Work may significantly exceed this estimate, (b) this estimate in no way limits Developer's financial obligation, and (c) that Developer is obligated to complete the Work at its own cost, expense, and liability.

6. Modifications to the Plans. Approval of this Agreement by City does not release Developer of its responsibility to correct mistakes, errors or omissions in the Improvement Plans. If, at any time, in the opinion of the City Engineer, in his or her reasonable discretion, the Improvement Plans are deemed inadequate in any respect Developer agrees to make such modifications, changes or revisions as necessary in order to complete the Work in a good and workmanlike manner in accordance with this Agreement.

7. Repairs. Developer agrees to repair or have repaired in a timely manner at its sole cost and expense all public or private property damaged as a result of or incidental to the Work or in connection with the development of the Property or to pay to the property owner of any property the full cost of such repair. In addition, Developer shall obtain the written acceptance of such repair or payment from any owner whose private property was repaired by Developer or to whom Developer has paid the full cost of such repair in accordance with this Section 7. City shall be under no obligation whatsoever to approve or accept the Work completed under this Agreement until such time as all repairs have been completed or have been paid for and required written acceptances have been provided to the City Engineer.

8. Foreman or Superintendent. Developer shall give personal attention to the Work. A competent foreman or superintendent, satisfactory to the City Engineer, in his or her

reasonable discretion, with authority to act for and on behalf of Developer, shall be named in writing by Developer prior to commencement of the Work, shall be present on the Property during the performance of the Work and may not be changed without advance notification to and approval of the City Engineer. Developer shall provide the City with emergency contact information for the foreman or superintendent prior to commencement of the Work.

9. Examination of Work. All of the Work shall be performed to the satisfaction of the City Engineer in his or her reasonable discretion. The City and its authorized agents shall, at all times during the performance of the Work, have free access to the Work and shall be allowed to examine the Work and all materials used and to be used in the Work. No Work shall be performed without inspection by City. Any Work performed without inspection is subject to rejection by City. All Work shall be performed during the City's normal working hours and work days. If any Work is planned to be performed during non-working hours or work days, there must be a request made in writing to City at least sixty four (64) hours in advance. If an inspector is available, Developer shall pay the actual costs for overtime work as provided in Section 10 below. If an inspector is not available, no Work shall be performed.

10. City's Inspection, Administration and Testing. Developer shall pay to City the actual cost for all inspection, administration and testing services furnished by City in connection with this Agreement, including those performed by consultants under contract with the City (the "**City Costs**"). The estimated cost for City Costs is _____ dollars (\$_____) (the "**Estimated Cost**"). Concurrently with the execution of this Agreement, Developer shall deposit an amount equal to the Estimated Cost with City for the payment of the City Costs. In the event that the Estimated Cost is insufficient to cover the actual City Costs incurred, Developer shall, upon notice in writing by the City Engineer, deposit such additional amount as may be required to pay the City Costs. Any amount of the Estimated Cost, initial deposit or additional amounts deposited remaining after payment of all City Costs will be returned to Developer. City may, at its discretion, deposit such funds in an interest-bearing account and retain any and all interest earned.

11. Compliance with Laws. Developer shall fully comply with all federal, state and local laws, ordinances and regulations, including the Subdivision Ordinance, in the performance of this Agreement. Developer shall, at its own cost and expense, obtain all necessary permits and licenses for the Work, give all necessary notices, pay all fees and taxes required by law and make any and all deposits legally required by those public utilities that will serve the development on the Property. Copies and/or proof of payment of said permits, licenses, notices, fee and tax payments and deposits shall be furnished to the City Engineer upon request.

12. Encroachment Permits. Developer shall obtain, at its sole cost and expense, any encroachment permits required by the City in order to perform the Work. Prior to excavating within the public right of way for connections to public utilities, Developer must provide to the City documentation satisfactory to the City Engineer that the providers of such utilities services have agreed to serve the Project.

13. Performance, Labor and Materials and Warranty Security. In accordance with the Subdivision Ordinance and the Subdivision Map Act, Developer will furnish and deliver to City, within the times set forth below, the following surety bonds, each of which must be issued by a

surety company duly and regularly authorized to do general surety business in the State of California, or such other surety as may be acceptable to the City Attorney in accordance with the Subdivision Ordinance.

13.1 Performance Bond. Developer must provide a performance bond or security as described Section _____ of the City of Hollister Municipal , to guarantee the construction or installation of the improvements, which the Parties estimate at _____ (\$_____). [][][][Developer has already provided the Encroachment Permit Security and the Parties intend that the Encroachment Permit Security shall be applied toward this obligation.][][][][In addition, Developer shall deposit _____ (\$_____) in cash and shall also furnish and deliver a performance surety bond in the amount of _____ (\$_____), concurrently with the execution of this Agreement, which bond must meet the requirements of the City of Hollister Municipal Code _____ and Government Code Section 66499.1, as may be amended, and be acceptable to the City Attorney. The bond shall be conditioned upon the faithful performance of this Agreement with respect to the Work and shall be released by the City effective upon the date of recordation of the notice of acceptance or final approval of the Improvements and Developer’s delivery of a Warranty Bond, as described below, or as otherwise allowed by Government Code Section 66499.7.

13.2 Labor and Materials Bond. Pursuant to Section of the Hollister Municipal Code _____, Developer shall deposit _____ (\$_____) in cash and shall also furnish and deliver a labor and materials surety bond in the amount of _____ (\$_____), concurrently with the execution of this Agreement, which bond must meet the requirements of the Hollister Municipal Code and Government Code Section 66499.2, as may be amended, and be acceptable to the City Attorney. The cash and bond shall secure payment to the contractor(s) and subcontractor(s) performing the Work and to all persons furnishing labor, materials or equipment to them. The City shall retain the cash and bond until both (a) the City accepts or gives final approval to the Work, and (b) the statute of limitations to record a claim of lien under Civil Code section 8410 *et seq.* has expired. After said date, the cash deposited and/or the bond may be reduced by the City Engineer to an amount not less than the total amount claimed by all claimants for whom claims of lien have been recorded and notice given in writing to the City Council. The balance of the cash and bond shall be retained until the final settlement of all such claims and obligations. If no such claims have been recorded, the cash deposited and the bond shall be released in full by the City Engineer.

13.3 Cash Bond. Pursuant to Section _____ of the Hollister Municipal Code, Developer shall deposit with the City _____ (\$_____) cash which may be used at the discretion of the City Engineer to guarantee the improvements against any defective work or labor done or defective materials used in the performance of the improvements throughout the warranty period, as described in Section 19 below. Any unexpended amount will be returned to Developer at the time all bonds required by this Agreement are released. } } } } } }

14. Additional Security. If either upon execution of this Agreement or during the course of performance the City considers that it is necessary to have an updated engineer’s estimate prepared, the City shall provide written notice to Developer. Developer shall provide

such estimate within the timeframe set forth in the City's notice and shall make such modifications to the estimate as may be reasonably requested by City. Developer shall provide additional security as may be required by the updated engineer's estimate. If Developer is required to post additional security, the City may require either a cash deposit or a surety bond guaranteeing performance in a form and signed by sureties satisfactory to City. The condition of the security shall be that if Developer fails to perform its obligations under this Agreement, the City may, as applicable, use the proceeds or require the sureties to perform the obligations, of the Agreement.

15. No Waiver by City. Inspecting of the work and/or materials, or approval of work and/or materials, or a statement by an officer, agent or employee of the City indicating the work complies with this Agreement, or acceptance of all or any portion of the work and/or materials, or payments thereof, or any combination of all of these acts shall not relieve Developer or its obligation to fulfill this Agreement; nor is the City by these acts prohibited from bringing an action for damages arising from the failure to comply with this Agreement.

16. Completion of Work. After Developer (a) completes the Work in accordance with the Improvement Plans and the terms and conditions of this Agreement, and (b) repairs any private or public property damaged as a result of the Work, or pays the full cost of such repair to the owner whose property was damaged, and obtains the written acceptance of such repair or payment from any owner whose private property was repaired by Developer or to whom Developer paid the full cost of such repair in accordance with Section 7 above, Developer will provide City with a written notice of completion, together with copies of all written acceptances as described in Section 7. City, in its sole and absolute discretion, may accept or give final approval to the Work in phases and allow a partial release of the bonds provided under Section 13 above.

17. Final Acceptance.

17.1 Notice of Completion. Within fifteen (15) days of receipt of Developer's written notification pursuant to Section 16 above, City Engineer shall inspect the Work and repairs and review the written acceptances, if any, and send Developer a written notice stating whether the Work and repair are complete to the satisfaction of the City Engineer, in his reasonable discretion, and whether the written acceptances described in Section 7 have been provided. If the Work and repair are, in the opinion of the City Engineer, not complete, not satisfactory, and/or written acceptances have not been provided, the City Engineer will list the deficiencies that must be corrected to find the Work and repair complete and satisfactory. Upon satisfactory completion of the Work and repair and submittal of written acceptances, the City Engineer will send Developer a written notice of satisfactory completion. The requirement for written acceptances may be waived by the City Engineer, in his reasonable discretion, if Developer has made commercially reasonable efforts to obtain such acceptances. City Engineer's failure to respond to Developer's written notification within fifteen (15) days will not be deemed a breach or default under this Agreement.

17.2 Acceptance of Improvements. After sending Developer a written notice of satisfactory completion pursuant to Section 17.1, the City Engineer will recommend acceptance of the Improvements within the public right of way, or designated for public use, to the City

Council. The acceptance of those Improvements shall be by resolution. Upon adoption of such resolution, the City Engineer shall record a notice of acceptance, in a form to be approved by the City Attorney, in the Official Records of San Benito County. Title to, and ownership of, all Improvements constructed by Developer under this Agreement within the public right of way, or designated for public use, shall vest in City upon City's acceptance of such Improvements. Acceptance of the Improvements by the City shall be deemed as final approval of the completed Improvements that are not accepted for ownership by the City.

17.3 Acceptance of Dedications. In conjunction with the recommendation to accept the Improvements, the City Engineer will recommend the acceptance of any offers of dedication shown on the final map for, or separately recorded against, the Property ("**Dedicated Property**"). The Dedicated Property shall be conveyed free and clear of all liens, encumbrances, assessments and leases (recorded and unrecorded), except items approved by City in writing. City may require Developer to obtain and pay for title insurance in connection with any such approvals of title exceptions.

18. Reversion to Acreage. If Developer fails to perform its obligations under this Agreement, Developer consents to the reversion to acreage of Property pursuant to Government Code section 66499.16 at Developer's sole cost and expense.

19. Warranty Period.

19.1 Warranty; Repair and Reconstruction. Without limiting the foregoing, Developer expressly warrants and guarantees all Work and all materials used in the Work for a period of one year after the date of recordation of the notice of acceptance of the Improvements in accordance with Section 17. If, within this one-year period, any Improvement or part of any Improvement installed or constructed, or caused to be installed or constructed by Developer, or any of the Work, fails to fulfill any of the requirements of the Improvement Plans or this Agreement, Developer shall, without delay and without cost to City, repair, replace or reconstruct any defective or otherwise unsatisfactory part or parts of the Work or Improvement to the satisfaction of the City Engineer. Should Developer fail to act promptly or in accordance with this requirement, or should the exigencies of the situation require repairs, replacements or reconstruction to be made before Developer can be notified, City may, at its option, make the necessary repairs, replacements or perform the necessary reconstruction and Developer shall pay to the City upon demand the actual cost of such repairs, replacements or reconstruction plus 25 percent.

19.2 Warranty Bond. Developer shall furnish and deliver a warranty bond in the amount of ten percent of the value of the Improvements upon acceptance and final approval of the Improvements and prior to release of the entirety of the Performance Bond. The bond shall be in a form acceptable to the City Attorney and shall guarantee and warranty the Work for a period of one year following the date of recordation of the notice of acceptance of the Improvements against any defective work or labor done, or defective materials furnished.

20. Developer Not Agent of City. Neither Developer nor Developer's contractors, subcontractors, agents, officers, or employees are agents, partners, joint venturers or employees of City and the Developer's relationship to the City, if any, arising herefrom is strictly that of an

independent contractor. Developer's contractors and subcontractors are exclusively and solely under the control and dominion of Developer. Further, there are no intended third party beneficiaries of any right or obligation assumed by the Parties.

21. Indemnification. Developer agrees to indemnify, defend and hold the City, its elective and appointed boards, commissions, officers, agents, employees and consultants, harmless from and against any and all claims, liabilities, losses, damages, injuries, penalties, fines, judgments, awards, decrees, attorneys' fees and related costs or expenses of any kind or nature (collectively, "**Claims**") arising out of this Agreement, including without limitation Developer's, or Developer's contractors', subcontractors', agents' or employees', acts, omissions, or operations under this Agreement, and the performance of the Work, whether such acts, omissions, or operations are by Developer or any of Developer's contractors, subcontractors, agents or employees. The aforementioned indemnity shall apply regardless of whether or not City has prepared, supplied or approved plans and/or specifications for the Work or Improvements and regardless of whether any insurance required under this Agreement is applicable to any Claims. The City does not and shall not waive any of its rights under this indemnity provision because of its acceptance of the bonds or insurance required under the provisions of this Agreement. Developer's obligation to indemnify City shall survive the expiration or termination of this Agreement.

22. Insurance. During the term of this Agreement, Developer shall maintain at its cost and expense the following insurance coverage against Claims, including Claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Work and the results of that Work by the Developer, its contractors, agents, representatives, employees or subcontractors, with insurers with an A.M. Best's rating of no less than A:VII unless otherwise accepted by the City in writing:

22.1 Commercial General Liability (CGL). Developer shall provide or cause to be provided Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to the Project and Property or the general aggregate limit shall be twice the required occurrence limit.

22.2 Automobile Liability Insurance. Developer shall provide or cause to be provided ISO Form Number CA 00 01 covering any auto (Code 1), or if Developer has no owned autos, hired (Code 8), and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.

22.3 Workers' Compensation Insurance. Developer shall provide, or cause to be provided, workers' compensation insurance as required by law, and shall cause its contractors and their subcontractors, agents and representatives to maintain workers' compensation insurance as required by the State of California, with statutory limits, and employer's liability insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease. For services deemed public works, by signing this agreement, Developer is certifying, pursuant to Section 1861 of the California Labor Code, that: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers'

compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this Agreement."

22.4 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

22.4.1 Additional Insured Status. The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Developer including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Developer's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).

22.4.2 Primary Coverage. For any Claims related to this Agreement, the Developer's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Developer's insurance and shall not contribute with it.

22.4.3 Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.

22.4.4 Waiver of Subrogation. Developer hereby grants to City a waiver of any right to subrogation which any insurer of said Developer may acquire against the City by virtue of the payment of any loss under such insurance. Developer agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

22.4.5 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Developer to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

22.5 Certificate of Insurance and Endorsements. Developer shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this Section. All certificates and endorsements are to be received and approved by the City before the Work commences. However, failure to obtain the required documents prior to the commencement of the Work shall not waive the Developer's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

22.6 Developer's Consultants and Contractors. Developer shall include all of their consultants and all prime contractors and subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each consultant and contractor. All coverages

for consultants and contractors shall be subject to all of the requirements stated in this Agreement, including but not limited to naming additional insureds.

22.7 Higher Limits. If the Developer maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Developer. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

23. Payments. Developer agrees that it will pay, when due, all those furnishing labor or materials in connection with the Work. Developer further agrees that pursuant to Government Code section 66499.7, the Labor and Materials Bond provided by Developer in accordance with Section 13.2 of this Agreement shall not be released if any mechanics liens or stop notices are outstanding, unless said liens are released by bond in compliance with Civil Code section 3143.

24. Notice of Breach and Default. The occurrence of any of the following constitutes a breach and default of this Agreement:

- (1) Developer refuses or fails to complete the Work within the time set forth herein or abandons the Work;
- (2) Developer assigns the Agreement without the prior written consent of City;
- (3) Developer is adjudged bankrupt or makes a general assignment for the benefit of creditors, or a receiver is appointed in the event of Developer's insolvency;
- (4) Developer or Developer's consultants, contractors, subcontractors, agents or employees, fail to comply with any terms or conditions of this Agreement or
- (5) There is any delay in the construction of any portion of the Work or repairs, which in the reasonable opinion of the City Engineer, endangers public or private property.

The City may serve written notice of breach and default upon Developer and the financial institution holding the bonds.

25. Breach of Agreement; Performance by City; Remedies. If the City gives Developer notice, under Section 24, of breach and default of this Agreement, the City may pursue any and all remedies available, including but not limited to, bringing legal action to compel performance of the Work, holding the financial institutions that issued the bonds liable to complete the Work and/or for the cost of the Work and/or proceeding to complete the Work by contract or other method the City considers advisable, at the sole expense of Developer. If City completes the Work, Developer, immediately upon demand, shall pay the costs and charges related to the Work and any subsequent repairs. City, without liability for doing so, may take possession of and utilize in completing the Work and repairs, if any, such materials and other property belonging to Developer as may be on or about the Property and necessary for

completion of the work. In the event of default, the financial institution holding the bonds shall be liable to City to pay the face amount of the bonds, as specified in this Agreement. As noted above, City may bring legal action to compel performance of this Agreement and recover the costs of completing the Work and/or repairs, if any, including City's administrative and legal costs. Developer agrees that if legal action is brought by City under this Section of the Agreement, Developer shall pay all of the costs of suit, reasonable attorney fees, arbitration costs and such other costs as may be determined by the court or arbitrator. No failure on the part of City to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that City may have hereunder.

26. Erosion Control. Developer shall take all necessary actions during the Work to prevent erosion damage and to prevent migration of soil or silt- or sediment-contaminated storm water run-off onto streets or other properties or into creeks, seasonal drainage courses or the public storm drain system. It is understood and agreed that in the event of failure on the part of Developer to prevent erosion or soil migration or storm water contamination, City may implement any and all erosion or storm water protection and/or mitigation measures it determines to be necessary on an emergency basis and Developer shall, within thirty (30) days of receiving notice in writing from the City Engineer, reimburse City for all of City's actual expenses incurred (including administrative and/or legal expenses) in implementing such erosion protection and/or mitigation measures. If Developer fails to timely reimburse City, City may proceed against the Performance Bond described in Section 13.1 to cover all of City's actual expenses.

27. Final Drawings. Upon completion of the Work and prior to final acceptance and approval, Developer shall deliver to City a set of "as-built" drawings. These drawings shall be in a form acceptable to the City Engineer, shall be certified as being "as-built" and shall reflect the Work as actually constructed, with any and all changes incorporated therein. The drawings shall be signed and sealed as accurate by the engineer of record.

28. Attorneys' Fees. Should any legal action or arbitration be brought by either party because of breach of this Agreement or to enforce any provision of this Agreement, the prevailing party shall be entitled to all costs of suit, reasonable attorneys' fees, arbitration costs and such other costs as may be determined by the court or arbitrator.

29. Notices. Formal written notices, demands, correspondence and communications between City and Developer shall be sufficiently given if: (a) personally delivered; (b) dispatched by next day delivery by a reputable carrier such as Federal Express to the offices of City and Developer indicated below, provided that a receipt for delivery is provided; or (c) if dispatched by first class mail, postage prepaid, to the offices of City and Developer indicated below. Such written notices, demands, correspondence and communications may be sent in the same manner to such persons and addresses as either party may from time-to-time designate by next day delivery or by mail as provided in this Section.

City: CITY OF HOLLISTER
375 Fifth Street,
Hollister, California
95023 Attention: City
Engineer

Developer:

Notices delivered by deposit in the United States mail as provided above shall be deemed to have been served two (2) business days after the date of deposit if addressed to an address within the State of California, and three (3) business days if addressed to an address within the United States but outside the State of California.

30. Transfers; Assignments. Developer may assign its obligations under this Agreement to successor owner(s) of the Property only with the prior written consent of the City. In connection with any such assignment, Developer and its assignee shall execute and deliver to City a written assignment and assumption agreement in a form acceptable to the City Attorney.

31. Binding Upon Heirs, Successors and Assigns. The terms, covenants and conditions of this Agreement shall be binding upon all heirs, successors and assigns of the parties hereto; provided, however, that this Agreement shall not be binding upon a purchaser or transferee of any portion of the Property unless this Agreement has been assigned pursuant to Section 30. If this Agreement has not been assigned or if the assignment has not been consented to by City, it shall remain binding on Developer.

32. Headings. Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions contained in this Agreement.

33. Severability. If any provision of this Agreement is held, to any extent, invalid, the remainder of this Agreement shall not be affected, except as necessarily required by the invalid provision, and shall remain in full force and effect.

34. Entire Agreement. The terms and conditions of this Agreement constitute the entire agreement between City and Developer with respect to the matters addressed in this Agreement. This Agreement may not be altered, amended or modified without the written consent of both parties.

35. Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California, without reference to choice of law

provisions. Any legal actions under this Agreement shall be brought only in the Superior Court of the County of San Benito, California, State of California.

36. Authority. Each party executing this Agreement on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind and if such party is a partnership, corporation or trustee, that such partnership, corporation or trustee has full right and authority to enter into this Agreement and perform all of its obligations hereunder.

37. Time is of the Essence. Time is of the essence of this Agreement and of each and every term and condition hereof.

38. Runs with the Land; Recordation. This Agreement pertains to and shall run with the Property. Upon execution, this Agreement shall be recorded in the Official Records of San Benito County.

IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the Effective Date.

CITY

CITY OF HOLLISTER, a California
municipal corporation

By: _____
William Avera, City Manager

ATTEST:

Thomas A. Graves, City
Clerk

APPROVED AS TO FORM:

E. Soren Diaz, City Attorney

DEVELOPER

By: _____
Name:

Its: _____

Exhibit A

**Legal Description of the
Property**

Exhibit B

Improvement Plans

[To Be Inserted]

ACKNOWLEDGEMENTS

STATE OF CALIFORNIA)

COUNTY OF _____)

On _____, 2017 before me, _____,
Notary Public, personally appeared _____,
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.

_____(SEAL)
Notary Public

* * * * *

STATE OF CALIFORNIA)

COUNTY OF _____)

On _____, 2017 before me, _____,
Notary Public, personally appeared _____,
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.

_____(SEAL)
Notary Public