

**CITY OF CLOVERDALE
CITY COUNCIL**

RESOLUTION NO. 029 -2022

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVERDALE APPROVING AN AMENDMENT
THE SUBDIVISION IMPROVEMENT AGREEMENT AND ASSOCIATED IMPROVEMENT SECURITIES**

WHEREAS, an application was submitted for approval of a Tentative Map which proposed to subdivide 28.42-acres of land for the Baumgardner Ranch residential development; and

WHEREAS, the City of Cloverdale Planning Commission recommended that the City Council approve the Tentative Map with conditions on July 7, 2020 (Planning Commission Resolution 008-2020); and

WHEREAS, the City of Cloverdale City Council approved the Tentative Map with conditions on August 26, 2020 (City Council Resolution 079-2020); and

WHEREAS, the Final Map for Baumgardner Ranch subdivision was approved on February 23, 2022 (City Council Resolution 021-2022) 28100 Highway 101, L.P., a California limited partnership ("Developer") for review to the City and has been found to be in conformance with the City's rules and regulations and those of the Subdivision Map Act, as well as those conditions of approval required to be completed prior to, or in conjunction with the Final Map recordation; and

WHEREAS, Developer has requested approval of the Final Map prior to the construction and completion of the public improvements ("Improvements"), which are a part of, appurtenant to, or outside of the limits of the Subdivision as approved or conditionally approved on the tentative map for the Subdivision and as required by Title 17 of the Cloverdale Municipal Code, all in accordance with the Subdivision construction plans titled "Public Improvement Plans for Baumgardner Ranch Development," ("Improvement Plans") as approved by and on file with the City Engineer; and.

WHEREAS, the City Council approved a Subdivision Improvement Agreement with the City requiring the Developer on February 23, 2022 (City Council Resolution 021-2022) to install and complete, at Developer's expense, the Improvements as required by City in connection with the Subdivision; and

WHEREAS, Developer has secured the Subdivision Improvement Agreement by the improvement security set amount forth in Section 5, below, which security is required by the Subdivision Map Act and relevant provisions of Title 17 of the Cloverdale Municipal Code; and

WHEREAS, an estimate of the cost of completion of the Improvements as shown on the Construction Plans for the Subdivision has been made by the Developer and has been approved by the City Engineer in the amount of \$2,936,303; and

WHEREAS, since the adoption of the Subdivision Agreement certain amendments related to the timing of scheduled improvements are required; and

NOW, THEREFORE, BE IT RESOLVED BY the City Council of the City of Cloverdale does hereby determine as follows:

The City Council hereby approves the amendment to the Subdivision Improvement Agreement in a form approved by the City Attorney and attached hereto as Exhibit A as well as the improvement securities offered as security for the faithful performance and the labor and materials in the amount of \$2,936,303.08 and authorizes the City Manager and City Attorney to execute the agreement.

REGULARLY PASSED AND ADOPTED by the City Council of the City of Cloverdale on this 23rd day of March, 2022 by the following vote:

AYES: (4) Mayor Lands, Vice Mayor Wolter, and Councilmembers: Bagby, Palla

NOES: (0)

ABSTAIN: (0)

ABSENT: (1) Councilmember Cruz

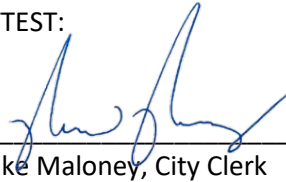
APPROVED:

Todd Lands

Todd Lands (Jun 15, 2022 09:56 PDT)

Todd Lands, Mayor

ATTEST:



Mike Maloney, City Clerk

Exhibit A – Amended Subdivision Improvement Agreement

**CITY OF CLOVERDALE
AGREEMENT FOR SUBDIVISION IMPROVEMENTS**

Baumgardner Ranch

THIS AGREEMENT FOR SUBDIVISION IMPROVEMENTS ("Agreement") is made and entered into by and between 28100 Highway 101, L.P., a California limited partnership ("Developer") and the City of Cloverdale, a municipal corporation in the County of Sonoma, State of California ("City").

RECITALS

A. Developer has presented to City for approval the Baumgardner Ranch Subdivision ("Subdivision") Final Map ("Map"), pursuant to provisions of the Subdivision Map Act of the State of California, California Government Code section 66410 and following, and Title 17 entitled "Subdivisions" of the Cloverdale Municipal Code. The Map is made a part of this Agreement by reference.

B. Developer has requested approval of the Map prior to the construction and completion of the public improvements ("Improvements"), which are a part of, appurtenant to, or outside of the limits of the Subdivision as approved or conditionally approved on the tentative map for the Subdivision and as required by Title 17 of the Cloverdale Municipal Code, all in accordance with the Subdivision construction plans titled "Public Improvement Plans for Baumgardner Ranch Development," ("Improvement Plans") pending approval by the City Engineer.

C. Developer will install and complete, at Developer's expense, the Improvements as required by City in connection with the Subdivision. Developer has secured this Agreement by the improvement security set forth in Section 1, below, which security is required by the Subdivision Map Act and relevant provisions of Title 17 of the Cloverdale Municipal Code.

D. A preliminary estimate of the cost of completion of the Improvements as shown on the preliminary Construction Plans for the Subdivision has been made by the Developer in the amount of \$2,936,303. Additional costs may be established pending approval by the City Engineer (final approved estimated costs),

E. Developer recognizes that, by approving the Map, the City has conferred substantial rights upon Developer, including the right to sell, lease, or finance lots within the Subdivision, subject to the requirements of this Agreement. As a result, the City will be damaged to the extent of the cost of the Improvements by the Developer's failure to perform its obligations under this Agreement, including, but not limited to, Developer's obligation to complete construction of the Improvements by the time established in this Agreement. The City reserves all remedies available pursuant to this Agreement and applicable law, in the event of a default by the Developer. It is specifically recognized that the determination of whether a reversion to acreage or rescission of the Subdivision

constitutes an adequate remedy for default by the Developer shall be within the sole discretion of the City.

NOW, THEREFORE, for and in consideration of the dedications offered in the Map and by any subsequent separate instrument, and in order to ensure satisfactory performance by Developer of Developer's obligations under this Agreement, the Subdivision Map Act and the Cloverdale Municipal Code, the parties agree as follows:

1. TYPES OF IMPROVEMENT SECURITY

Concurrently with the execution of this Agreement, Developer shall furnish to City improvement security ("Improvement Security") in accordance with section 66499 of the Subdivision Map Act and Title 17 of the Cloverdale Municipal Code. The Improvement Security will be one of the following, at the option and subject to the approval of the City, unless the Developer is a nonprofit corporation in accordance with section 66499.3, subdivision (c) of the Subdivision Map Act, in which case the security will be one of the following, subject to approval of the City: (1) a bond or bonds by one or more duly authorized corporate sureties; (2) a deposit, either with the local agency or a responsible escrow agent or trust company, at the option of the City, of money or negotiable bonds of the kind approved for security deposits of public moneys; (3) an instrument of credit from an agency of the state, federal or local government when an agency of the state, federal or local government provides at least 20 percent of the financing for the portions of the act or agreement requiring security, or from one or more financial institutions subject to regulation by the state or federal government and pledging that the funds necessary to carry out the act or agreement are on deposit and guaranteed for payment, or a letter of credit issued by such a financial institution; (4) a lien upon the property to be divided, created by contract between the owner and the City, if the City finds that it would not be in the public interest to require installation of the required improvement sooner than two years after the recordation of the map; or (5) any other customary and reasonable form of security, including security interest in real property, which is acceptable to the City and specified by City ordinance. Any contract or security interest in real property entered into as security for performance pursuant to (4) or (5) of this provision shall be recorded with the county in which the subject real property is located. From the time of recordation of the written contract or document creating a security interest, a lien shall attach to the real property particularly described therein and shall have the priority of a judgment lien in an amount necessary to complete the Improvements. The recorded contract or security document shall be indexed in the Grantor Index to the names of all record owners of the real property as specified on the map and in the Grantee Index to the City.

2. PERFORMANCE AND LABOR AND MATERIALS SECURITY

Said Improvement Security, excluding amounts required to be deposited under Section 9 herein, shall be in the amounts and for the following purposes: (a) an amount equal to at least one hundred percent (100%) of the total estimated cost of Improvements, conditioned upon the faithful performance of this Agreement, including Developer's obligations under Section 9 herein, and (b) an additional amount equal to not less than

one-hundred percent (100%) of the total estimated cost of Improvements, securing payment to the contractor, subcontractors and to persons furnishing labor, materials or equipment to them for the Improvements. However, if the Developer is a California non-profit corporation funded by the United States of America, the State of California, or one of their agencies, the Developer may comply with the security requirements contained in section 66499.3 (c) of the Subdivision Map Act. Any reductions authorized to be made in the amount of the Improvement Security shall be effected by a refund from any cash deposits made or a partial release of any surety bond or instrument of credit, within the limitations established by the Subdivision Map Act or Title 17 of the Cloverdale Municipal Code. Performance bonds pursuant to this Agreement shall be in accordance with section 66499.1 of the Subdivision Map Act. Labor and materials bonds pursuant to this Agreement shall be in accordance with section 66499.2 of the Subdivision Map Act. In accordance with section 66499.4 of the Subdivision Map Act, Improvement Security pursuant to this Agreement shall include as part of the obligation guaranteed by the security and in addition to the face amount of the security, costs, fees and reasonable expenses, including reasonable attorneys' fees, incurred by the City in successful enforcement the obligation secured. Should additional security be required by final approved Improvement Plans and corresponding final approved cost estimate, Developer shall provide said additional security prior to City approval of final Improvement Plans.

3. MAINTENANCE SECURITY

The guarantee and conditions specified in Section 15 of this Agreement shall be secured by maintenance security ("Maintenance Security"). Such Maintenance Security may, at the option and subject to the approval of the City, be in any form allowed in Section 1 of this Agreement. Maintenance Security in accordance with this section shall be delivered by the Developer to the City prior to the acceptance of the Improvements by the City and before the release of other security pursuant to this Agreement. Such Maintenance Security shall guarantee the Improvements for a period of twelve (12) months from the date of acceptance of the Improvements by City, or longer if required pursuant to Section 4, below, and shall be ten percent (10%) of the final approved estimated total cost of Improvements.

4. RELEASE OF SECURITY

A. All security required pursuant to this Agreement, including any replacement security, shall remain in force until a written Release of Security is issued by the City Engineer as provided in this Section 4.

B. Performance and Labor and Materials Security. The Developer shall complete the Improvements in accordance with the Improvement Plans for the Subdivision prior to acceptance by the City and release of the required improvement security in accordance with this Section 4.

1) Performance Security

Performance security pursuant to this Agreement shall be released upon completion and acceptance of the Improvements in accordance with this section. The Developer shall provide written notice to the City that all Improvements are complete, including a list of Improvements completed ("Developer's Completion Notice"). Within 45 days of receipt of Developer's Completion Notice, the City shall review, comment, and approve, modify, or disapprove the Improvements. If the City Engineer determines that not all Improvements are complete in accordance with the Construction Plans for the Improvements, it shall, within such 45 day period, provide a written list to Developer of all work to be completed ("List of Remaining Improvements"); if the City does not provide a List of Remaining Improvements within such 45 day period, the City shall be deemed to have approved the Improvements. Within 30 calendar days of receipt of the written List of Remaining Improvements, the Developer shall provide cost estimates to the City for all remaining work. Upon receipt of such cost estimates, the City shall have 30 calendar days to review, comment, and approve, modify, or disapprove the cost estimates provided by the Developer. If the Developer resubmits a revised cost estimate, addressing any City comments or requested modifications, the City has 30 calendar days to review and approve. When the City approves the cost estimate, the City shall release all performance security except for security in an amount up to 200 percent of the cost estimate of the remaining work. The City shall not partially release the improvement security when the cost estimate of the remaining work exceeds 20 percent of the total original performance security including any additional security as set forth in Section 2, unless the City allows for a release at an earlier time. The Developer shall complete the Improvements until all remaining Improvements are accepted by the City. The Developer shall submit a Notice of Completion to the City upon completion of improvements. The City shall provide written notice to the Developer within 30 calendar days of its acceptance of the completion of all Improvements. Within 60 calendar days after the issuance of the written notification of completion, the City Engineer/public official/employee shall release any remaining performance security. The City reserves the right to partially release the improvement securities as it deems otherwise appropriate for Improvements that are complete. Developer covenants to keep in place during the entire period for which security is required in this Agreement the type and amounts of securities specified in Section 1, above. Should any type or amount of such security be, or become, compromised in the opinion of City, whether or not such compromise results from the actions or omissions of the Developer, upon request of City, Developer shall provide reasonably acceptable additional and/or replacement security.

2) Labor and Materials Security

The security for labor and materials will be released in accordance with section 66499.7 (h) of the Subdivision Map Act, as the same may be amended from time to time.

C. Maintenance Security

The following conditions must be satisfied before a written Release of Security shall be issued to release the Maintenance Security specified in Section 3, above.

1) Not earlier than ten (10), nor later than twelve (12) months following acceptance of the public improvements by City pursuant to Section 23 below, Developer shall, at Developer's expense, provide City with unobstructed access (remove manhole covers, open meter boxes, etc.) to allow City to inspect all public improvements.

2) Not later than twelve (12) months following acceptance of the public improvements by City pursuant to Section 23 below, Developer shall repair or reconstruct any defective Improvements in accordance with Section 16 of this Agreement, including any items identified in the City's re-inspection of the public improvements as provided above.

If the period of time required to achieve satisfactory completion of the above conditions extends beyond twelve (12) months following acceptance of the public improvements by City pursuant to Section 23 below, then City has the right to require, and Developer shall provide, reasonably acceptable additional security to extend the period of Maintenance Security until such time as the City Engineer approves completion of the above conditions. Approval of the above conditions shall be evidenced by a Release of Security issued by the City Engineer.

5. INSURANCE REQUIREMENTS

Developer shall procure and maintain for the life of this Agreement, to the time of acceptance of the Improvements by the City pursuant to Section 23 below, insurance against claims for injuries to persons and damages to property which may arise from or in connection with the performance of the work hereunder by the Developer, his contractor, agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001).

Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).

Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

B. Minimum Limits of Insurance

Comprehensive General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage **including operations, products and completed operations**. If Commercial General Liability Insurance or other form with a general

aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Developer shall provide a financial guarantee reasonably satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

The City, its officers, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of Developer; and with respect to liability arising out of work or operations performed by or on behalf of 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, or as a separate owner's policy.

For any claims related to this project, 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 Developer's insurance and shall not contribute with it.

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given the City.

Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under subdivision (b) of section 2782 of the Civil Code.

E. Waiver of Subrogation

The workers' compensation policy is to be endorsed with a waiver of subrogation. The insurance company, in its endorsement, agrees to waive all rights of subrogation against

the City, its officers, officials, employees and volunteers for losses paid under the terms of this policy which arise from the work performed by the named insured for the City.

F. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of "A:VII" or better, and who are either "admitted" by the California Department of Insurance or who are listed on the "List of Eligible Surplus Line Insurers" as maintained by the California Department of Insurance. (Note: The List of Eligible Surplus Line Insurers is also known as the "LESLI List.")

6. EVIDENCE OF INSURANCE

A. Verification of Coverage

Developer shall furnish the City with original certificates and amendatory endorsements affecting coverage required by this clause. The endorsements should be on forms provided by the City or on other than the City's forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

B. Subcontractors

Developer shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

7. PERMITS AND FEES IN COMPLIANCE WITH CITY ORDINANCES

Developer shall, at Developer's expense, obtain all necessary permits and licenses for the construction of such Improvements, give all necessary notices and pay all fees and taxes required by law. All development, connection, and impact fees will be paid at the time the applicable building permit is issued.

8. COST OF ENGINEERING AND INSPECTION

Developer shall be required to pay all engineering and inspection fees, deposits and charges in accordance with the City Code.

9. ELECTRIC SYSTEM IMPROVEMENTS

A. It is agreed that the Developer will construct or cause to be constructed all electrical system improvements and extensions, both on-site and off-site and required street lighting, to meet City specifications and standards to serve the Subdivision. The

preliminary estimated cost of such construction shall be shown on the Engineer's estimate which is subject to approval.

10. COMMENCEMENT OF CONSTRUCTION

Work shall not commence on any portion of the Improvements specified in this Agreement or as required by the City until the following items as prescribed by this Agreement have been satisfied.

- a. Approval by the City Engineer of the Construction Plans.
- b. Security and insurance certificate(s) approved by the City Attorney.
- c. Payment of deposit for electric system improvements.
- d. Payment of engineering and inspection fees, deposits and charges.

Paving and sidewalk construction shall not commence until approval of all required electrical work including any undergrounding.

11. PERFORMANCE OF WORK

Developer will do and perform, or cause to be done and performed, at Developer's own expense, in a good and workmanlike manner, and furnish all required materials, all to the satisfaction of the City Engineer, all of the work and Improvements within and without the development, in accordance with tentative map conditions of approval, as appropriate, for this Subdivision, the Construction Plans and in accordance with the most recent edition of the City Standard Specifications and Details (hereinafter referred to as the "City Standards") and with any changes necessary or required to complete the work to the satisfaction of City Engineer.

Developer will do and perform, or cause to be done and performed, inspection of all private improvements by a California licensed civil engineer or other qualified special inspector (hereinafter referred to as "Special Inspector"). Prior to acceptance of this Subdivision, the Special Inspector shall provide a letter of review to the City evidencing that all private improvements have been constructed in accordance with the Construction Plans and all other governing regulations.

12. TIME OF ESSENCE/TIME FOR PERFORMANCE

Time is of the essence for this Agreement; therefore, Developer hereby agrees to complete Improvements and satisfy all provisions of this Agreement within one (1) year after the execution of this Agreement. At the discretion of the City Engineer, the one (1) year time for completion may be extended by letter from the City Engineer clearly stating the new expiration date. Any such extension of time shall not relieve or reduce the surety's liability on the security provided to insure performance of this Agreement. The

City shall be the sole and final judge as to whether or not good cause has been shown to entitle Developer to an extension.

In the event that the Developer fails to satisfy all provisions of this Agreement, including satisfactory completion of the Improvements, within the one (1) year time for completion or by a subsequent date established by an approved extension, City services performed in connection with this Subdivision shall be suspended, including but not limited to, Public Works engineering review, Public Works inspections, Building Department inspections, and issuance and final approval of building permits. These City services shall be resumed, in total or in part, only after the Developer has prepared and the City Engineer has approved a written proposal for the timely completion of the Improvements and the provisions of this Agreement.

13. SUPERINTENDENCE BY DEVELOPER

Developer shall give personal superintendence to the work or have a competent foreman or superintendent on the work at all times during progress, with authority to act for Developer.

14. INSPECTION BY CITY

Developer shall at all times maintain proper facilities, and provide safe access for inspection by City to all parts of the Improvements and to the shops wherein the work is in preparation.

15. REPAIRS AND REPLACEMENTS

Developer shall replace, or have replaced, or repair, or have repaired, as the case may be, all Improvements which have been destroyed, damaged or are rejected by the City Engineer, and Developer shall replace or have replaced, repair or have repaired, as the case may be, or pay to the owner, the entire cost of replacement or repairs of any and all property destroyed, damaged or not acceptable to the City Engineer by reason of any work done or being done hereunder, whether such property be owned by the United States or any agency thereof, or the State of California, or any agency or political subdivision thereof, or by the City or by any public or private corporation, or by any persons whomsoever, or by any combination of such owners. Any such repair or replacement shall be performed and completed in accordance with the approved Construction Plans and City Standards and are subject to the approval of the City Engineer.

Should the Developer fail to act within fifteen (15) days of destruction, damage, or written notification of rejection by the City Engineer of any Improvements, or should the exigencies of the case require repairs or replacements to be made before the Developer can be notified or before the Developer has acted, the City may, at its option, do the necessary work and the Developer and his surety shall be liable to the City for the direct cost of such work (includes the cost of materials, engineering, inspection, testing and

superintendence) plus fifty percent (50%) for normal overhead charges (“indirect costs”) associated with the cost of performing such work.

16. REPAIR OR RECONSTRUCTION OF DEFECTIVE WORK

The Developer shall guarantee the entire work constructed by it under this Agreement to be free of defects in materials and workmanship for a period of one (1) year following the date of acceptance of the Subdivision by the City. The Developer shall agree to make, at its own expense, any repairs or replacements or to reconstruct defects in material, or workmanship, or both, which become evident within said guarantee period. The Developer shall further agree to indemnify and hold harmless the City and City staff against and from all claims and liability arising from damage and injury due to said defects. Should the Developer fail to act promptly or in accordance with the written order of the City or should the exigencies of the case require repairs or replacements to be made before the Developer can be notified or before the Developer has acted, the City may, at its option, do the necessary work and the Developer and his surety shall be liable to the City for the direct cost of such work (includes the cost of materials, engineering, inspection, testing and superintendence) plus fifty percent (50%) for indirect costs.

17. USE OF IMPROVEMENTS

At all times prior to the City’s acceptance of the Subdivision, the use of any or all Improvements, including streets, shall be at the sole and exclusive risk of Developer. The issuance of any occupancy permit by City for dwellings located within the Subdivision shall not be construed in any manner to constitute a partial or final acceptance or approval of any or all such Improvements by City. Developer agrees that City's Building Official may withhold the issuance of occupancy permits when the work or its progress may substantially and/or detrimentally affect public health, safety, or welfare, as determined by said Building Official.

18. SAFETY DEVICES

Developer shall provide and maintain such guards, watchmen, fences, barriers, regulatory signs, warning lights, and other safety devices as may be necessary to reduce the risk of harm to the public and/or damage to property. Developer shall furnish, place, and maintain all lighting necessary for illuminating said fences, barriers, signs, and other safety devices. At the end of all work to be performed under this Agreement, all fences, barriers, regulatory signs, warning lights, and other safety devices (except such items as may be shown on the Construction Plans and included in the Improvements) shall be removed from site of the work by the Developer, and the entire site left clean and orderly.

19. RECORD DRAWINGS

Upon completion of the Improvements, prior to final inspection of the Subdivision and prior to City acceptance of the Subdivision, the Developer shall provide or cause to be

provided record drawings of the Construction Plans. The final record drawings shall be completed on mylar in accordance with City Standards.

20. NOTICE OF BREACH AND DEFAULT

If Developer refuses or fails to make expected progress toward completion of the Subdivision, or any severable part thereof, with such diligence as is likely to result in its completion within the time specified, or any extensions thereof, or fails to complete said work within such time, or if the Developer should be adjudged bankrupt, or Developer should make a general assignment for the benefit of Developer's creditors, or if a receiver should be appointed in the event of Developer's insolvency, any such occurrences shall be deemed a material breach of this Agreement. If Developer, or any of Developer's contractors, subcontractors, agents or employees should violate any of the provisions of this Agreement, including the provisions of this section, such violation(s) shall constitute a default of this Agreement, and City may serve written notice of such default on Developer and Developer's surety. Any such notice of default shall be deemed "served" upon delivery, in the event of personal service, or upon deposit when delivery is by the U.S. Postal Service or other commercial courier, as described in Section 27, below.

Developer's investor limited partner ("Investor") shall have the right, but not the obligation, to cure any deficiency under this Agreement and may complete or cause completion of the required improvements, and the City agrees to accept any such cure performed as if performed by the Developer, and the Investor shall be reimbursed from the Developer for the same.

21. DUTY OF SURETY UPON NOTICE OF DEFAULT

In the event that City serves a Notice of Default upon Developer's surety, Developer's surety shall have the duty to take over and complete the Improvements herein specified; provided, however, that if the surety, within five (5) days after such notice by City fails to provide City with a written acknowledgment that the surety will take over and complete such Improvements, then by further written notice to the surety by City, City may elect to take over the work and prosecute the same to completion, by contract or by any other method City may deem advisable, for the account and at the expense of the Developer and Developer's surety. Developer and Developer's surety shall be liable to the City for any cost or damages occasioned City thereby, including those costs and expenses described in Government Code section 66499.4; and in such event, City, without liability for so doing, may take possession of, and utilize in completing the Improvements, such materials, appliances, plans and other property belonging to Developer as may be on the site of the work and necessary therefor.

22. TITLE TO IMPROVEMENTS

Developer warrants that it has the right, power and authority to, and in executing this Agreement does hereby offer to dedicate, convey, and transfer to City fee title to and

ownership of all public improvements as provided in the Construction Plans, without lien, encumbrance or other burden. Clear title to, and ownership of, said public improvements constructed hereunder by Developer shall vest absolutely in City upon acceptance of such public improvements by the City. Developer shall include the following language in the dedication clause on the final map and any separate instrument conveying title to the City: "The real property described below is dedicated in fee for public purposes: Foothill Boulevard, Street "A", Parcel 5 for a public park, a conservation easement for parcels 1 and 7, as shown on the final map titled "Baumgardner Ranch".

23. ACCEPTANCE OF PUBLIC IMPROVEMENTS BY CITY

City shall only accept those public improvements that have been constructed, installed, maintained, replaced, and/or repaired in accordance with all applicable federal, state, county and local laws, regulations and standards, including the tentative map conditions of approval for this Subdivision, Construction Plans and City Standards. The determination of compliance with applicable federal, state, county and local laws, regulations and standards, including the tentative map conditions of approval for this Subdivision, Construction Plans, and City Standards shall be made by the City Engineer in his/her discretion. The offer of dedication of public improvements by the Developer can be accepted only by resolution of the City Council.

24. DEVELOPER NOT AGENT OF CITY/NO ASSIGNMENT

Neither Developer nor any of Developer's agents, contractors, or subcontractors are or shall be considered to be agents of City in connection with the performance of Developer's obligations under this Agreement. This Agreement shall not be assigned by Developer without the prior written consent of City. Any attempted assignment without such prior written consent shall be null and void.

25. HOLD-HARMLESS AGREEMENT

Developer hereby agrees to, and shall, hold City, City staff, its elective and appointive boards and commissions and volunteers, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Developer's or Developer's contractors', subcontractors', agents' or employees' operations under this Agreement, whether such operations be by Developer or by any of Developer's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for, Developer or any of Developer's contractors or subcontractors, except to the extent caused by the gross negligence or willful misconduct of the City, City staff, and its elective and appointive boards and commissions and volunteers. Developer agrees to, and shall, defend and indemnify City and its elective and appointive boards, commission, officers, agents, employees, and volunteers from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid operations; provided as follows:

A. That City does not, and shall not, waive any rights against Developer which it may have by reason of the "Hold Harmless" provisions of this Agreement, by virtue of its acceptance of this Agreement nor by accepting any deposit made by Developer, or by approving any of the insurance policies described in Section 5 hereof.

B. That the Hold-Harmless provisions of this Agreement shall apply to all damages and claims for damages of every kind suffered or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this section, regardless of whether or not City has prepared, supplied or approved of any portion of the Construction Plans, or regardless of whether or not insurance policies as required in this Agreement shall have been determined to be applicable to any such damages or claims for damages; provided, however, that this Hold Harmless provisions shall not apply to any damages or claims caused by the gross negligence or willful misconduct of the City, City staff, its elective and appointive boards, commissions or volunteers.

26. LABOR CODE

Please be on notice that the construction of these facilities may be subject to Labor Code sections 1720-1861.

27. NOTICE TO PARTIES

All notices herein required shall be in writing, and delivered in person to the addressee's normal place of business, or sent by registered mail, or other commercial courier where date and place of delivery can be confirmed, postage prepaid.

Notices required to be given to City shall be addressed as follows:

City of Cloverdale
Attn: City Engineer
124 North Cloverdale Blvd.
Cloverdale, CA 95425

Notices required to be given to Developer shall be addressed as follows:

28100 Highway 101, L.P.
c/o Corporation for Better Housing
20750 Ventura Boulevard, Suite 155
Woodland Hills, CA 91364

With a copy to:

Chernove & Associates, Inc.
16027 Ventura Boulevard, Suite 515
Encino, CA 91436

Notices required to be given to the Developer's surety shall be addressed as follows:

Philadelphia Indemnity Insurance Company
A Member of the Tokio Marine Group
800 E. Colorado Blvd., 6th Floor
Pasadena, CA 91101

Additionally, any notice required by law or under this Agreement shall be given to the Investor in the same manner as set forth above at the following address:

To the Investor: Alliant Credit Facility II, LLC
and Alliant Credit Facility ALP II, LLC
21600 Oxnard Street, Suite 1200
Woodland Hills, CA 91367
Attention: General Counsel

With a copy to: Kutak Rock LLLP
1650 Farnam Street
Omaha, NE 68102
Attention: Max Crawford, Esq.

Any party or the surety may change such address by notice in writing to the other parties and thereafter notices shall be addressed and transmitted to the new address.

28. SUCCESSORS IN INTEREST

All of the terms, covenants and conditions contained herein shall continue and bind all successors-in-interest of Developer.

29. SEVERABILITY

Every provision of this Agreement is intended to be severable. If a court of competent jurisdiction shall hold any provision of this Agreement invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

30. BINDING EFFECT AND ASSIGNMENT PROHIBITION

This Agreement is binding upon City, Developer, and their successors. Except as otherwise provided herein, neither City nor Developer may assign, sublet or transfer its interest in this Agreement or any part thereof without the prior written consent of the other, and any purported assignment without such consent will be void.

31. INTEGRATION AND AMENDMENT

This Agreement represents the entire and integrated agreement between City and Developer and supersedes all prior negotiations, representations or agreements, whether written or oral. If a discrepancy, disagreement, ambiguity, inconsistency or difference in interpretation of terms arises as between terms or provisions of this Agreement and any Exhibit(s) made a part of this Agreement, this Agreement shall control and shall be deemed to reflect the intent of the Parties with respect to the subject matter hereof. This Agreement may only be amended by a writing signed by a representative authorized to bind the Developer and a representative authorized to bind the City.

32. APPLICABLE LAW

The laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and the interpretation of this Agreement. Any action or proceeding that is initiated or undertaken to enforce or interpret any provision, performance, obligation or covenant set forth in this Agreement shall be brought in a state court in Sonoma County.

33. RECOVERY OF ATTORNEY'S FEES

If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret any term of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

34. NON-DISCRIMINATION

During the performance of this Agreement, Developer will not discriminate against any employee of the Developer or applicant for employment because of race, religion, creed, color, national origin, sex, or age. Developer will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, creed, color, national origin, sex or age.

DATED: This _____ day of _____, 2022.

DEVELOPER:

28100 HIGHWAY 101, L.P.,
a California limited partnership

By: Corporation for Better Housing,
a California nonprofit public benefit corporation,
Its Managing General Partner

By: _____
Name: Lori Koester
Title: Executive Director

CITY:

CITY OF CLOVERDALE,
a municipal corporation

BY: _____
City Engineer

ATTEST:

Myra Lazio, Deputy City Clerk

APPROVED AS TO FORM:

Jose Sanchez, City Attorney

12/05/08
1405810.1

029-2022

Final Audit Report

2022-06-15

Created:	2022-06-15
By:	Mike Maloney (Mmaloney@ci.cloverdale.ca.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAaF-MKnqIHLFXonCGnGkLh-V4AH4jT8M-

"029-2022" History

-  Document created by Mike Maloney (Mmaloney@ci.cloverdale.ca.us)
2022-06-15 - 4:33:14 PM GMT
-  Document emailed to Todd Lands (tlands@ci.cloverdale.ca.us) for signature
2022-06-15 - 4:33:30 PM GMT
-  Email viewed by Todd Lands (tlands@ci.cloverdale.ca.us)
2022-06-15 - 4:55:36 PM GMT
-  Document e-signed by Todd Lands (tlands@ci.cloverdale.ca.us)
Signature Date: 2022-06-15 - 4:56:15 PM GMT - Time Source: server
-  Agreement completed.
2022-06-15 - 4:56:15 PM GMT