

IMPROVEMENT AGREEMENT FOR
SUBDIVISION [9528]

THIS AGREEMENT, MADE THIS _____ day of _____, 2022 by and between MERITAGE HOMES OF CALIFORNIA, a California Corporation, hereinafter referred to as “**Subdivider**”, and the CITY OF RICHMOND, a municipal corporation, hereafter referred to as “**City.**”

WITNESSETH:

It is mutually agreed by both parties as follows:

1. Improvements to be Constructed.

Subdivider shall construct, or cause to be constructed, within or associated with Subdivision [9528], in the city of Richmond, California, all of the improvements referred to in Section 15.08.450 of the Municipal Code of City together with such other improvements desired by Subdivider or required by City as set forth on “Private Improvement Plans”, “Off-Site Improvement Plans”, “Production Landscape Construction Documents” and “Off-Site Landscape Plans” (the “Improvement Plans and Specifications”), all at Subdividers’ expense (the “Improvements”). Without limiting the generality of the foregoing:

- a. All such improvements shall be constructed in accordance with the Improvement Plans and Specifications prepared by Subdivider and approved by the City Engineer.
- b. The water and electric distribution systems, the telephone and cable television systems and the sanitary sewer and storm drain systems shall service the lots in said subdivision unless otherwise authorized by the City Engineer and shall be satisfactory to the appropriate utility company and City.
- c. Boundary and street monuments shall be installed at all points shown on the Final Map of said subdivision and corner stakes shall be set as required by Section 15.08.490 of the Municipal Code of the City. A street monument list shall be submitted, as detailed in paragraph 3, after the monuments have been installed and shall include the elevation and coordinates of each monument.
- d. All improvements to be constructed on property other than public property shall be constructed in accordance with the approved Improvement Plans and Specifications of said subdivision and approved by the Building Regulations and Planning Department.
- e. All planting for erosion control and all landscaping and planting as required by City and as shown on the Improvement Plans shall be installed to the satisfaction of the Parks and Landscaping Division and the Planning Department of the City.
- f. All offsite improvements required in connection with the subdivision, including paving, concrete work, utility work and landscaping, within any public right-of way

or City owned property shall be constructed in accordance with the Improvement Plans and Specifications prepared by Subdivider and approved by the City Engineer. City will provide access or easements necessary for the construction and use of Improvements on City owned property.

- g. In the course of building offsite improvements shown on the Improvement Plans, Subdivider shall replace, or have replaced, or repair or have repaired, as the case may be, all existing pipes, structures, mechanical equipment, landscaping, pavement, and monuments shown on the Improvement Plans which have been destroyed or damaged by any of the work done hereunder. Subdivider shall replace or have replaced, repair or have repaired, as the case may be, or pay the owner, the entire cost of replacement or repairs, of any and all property damaged or destroyed by reason of any work done hereunder, whether such property is owned by the City or any agency thereof, public or private corporation, or by any person whomsoever, or by any combination of such owners. Any such repair or replacement shall be completed to the satisfaction, and subject to the approval, of the City Engineer.

2. Construction Time.

Subdivider shall perform, or cause to be performed, all of the Improvements referred to in this Agreement within two (2) year from the date of this Agreement, and all of said Improvements shall be equal or superior to the applicable requirements of the Standard Specifications for Public Works Construction, as adopted by the Council of the City of Richmond by Ordinance No. 25-78 N.S., as amended, on file in the office of the City Engineer. After commencement of the Improvements, work on the Improvements shall be performed diligently on each working day, weather permitting, until completion. Scheduling of work on the Improvements shall be as approved by the City Engineer. Undue delays in completing the construction of the improvements shall be cause for City to take action on the Improvement Security required by Paragraph 8 of this Agreement.

3. Record Drawings.

Subdivider shall submit to the City Engineer, upon completion of all of the Improvements referenced herein, a set of the record drawings in both a reproducible hard copy version and electronic format. The electronic format should be on a standard compact disk (CD-R/CD-R/W) or DVD and provided in the following formats: CAD (.dwg) and Portable Document Format (.pdf). The attributes of these formats need to be stored as database fields. The geographic parameters required are: 1) precision (up to 10 digits), 2) coordinate system (State plane coordinate system), 3) unit of measurement (feet), 4) projection system (Lambert conformal conic), 5) Horizontal Datum (NAD83), and 6) Vertical Datum (NAVD1988) unless directed otherwise by the City Engineer.

4. Erosion Control.

Subdivider agrees to take all necessary precautions to prevent erosion and transportation of sediment from the site in connection with the construction of the Improvements. Temporary

erosion and sediment control plans and schedules in connection with the construction of the Improvements shall be (A) prepared by Subdivider and submitted to the City by August 15 of any year during which the Subdivider will be performing work pursuant to the Improvement Plans and Specifications and (B) approved by the City prior to the first day of September for each year wherein the Subdivider will be performing work pursuant to the Improvement Plans and Specifications. Implementation of the erosion and sediment control plans must be in accordance with the plans and schedules approved by City. A final erosion and sediment control plan must be implemented no later than two (2) years from the date of this Agreement.

5. Certification of Soils Engineer and Civil Engineer

Prior to acceptance of improvements, Subdivider shall furnish City a letter signed by the Subdivider's soils engineer and civil engineer stating that the improvements have been constructed in accordance with the Improvement Plans and Specifications, as amended by changes authorized by the City and the soils report prepared by the Subdivider's soils engineer.

6. Inspection Reimbursement.

Subdivider agrees to reimburse City for engineering inspection and testing services as established by Resolution No. 57-82 of the Council of the City of Richmond, including any amendments thereto.

7. Utility Guarantees

Upon execution of this Agreement, Subdivider shall furnish City copies of bonds and/or proof of deposits when required by East Bay Municipal Utility District, Pacific Gas and Electric Company, AT&T and the appropriate cable television company. Prior to the acceptance of the subdivision the Subdivider shall furnish the City with a letter stating that each lot within the subdivision is served by all required utilities as required by City ordinance or the Improvement Plans and Specifications.

8. Improvement Security.

Upon execution of this Agreement, Subdivider shall furnish City a bond or bonds by one or more duly authorized corporate sureties in the amount of \$3,397,000 (for Private Improvements); \$248,000 (for Off-Site Improvements); \$4,816,783 (for Private Landscape Improvements); and \$78,694 (for Off-Site Landscape Improvements) to secure the performance of the acts set forth in this Agreement and in the amount of \$3,397,000 (for Private Improvements); \$248,000 (for Off-Site Improvements); \$4,816,783 (for Private Landscape Improvements); and \$78,694 (for Off-Site Landscape Improvements) for the security of laborers and materialmen. Security given for faithful performance of the acts set forth in this Agreement shall be released upon the acknowledgment by the City Council of the performance of the act or the completion and acceptance of the work required pursuant to the Improvement Plans and Specifications (City Acknowledgement/Acceptance). Security securing the payment to the contractor, his subcontractors, and to persons furnishing labor,

materials, or equipment for work under taken pursuant to the Improvement Plan and Specifications shall, six months after City Acknowledgment/Acceptance, be reduced to an amount not less than the total of all claims on which an action has been filed and notice thereof given in writing to the Council of the City of Richmond, and if no such actions have been filed, the security shall be released in full.

9. Guarantee Security

Prior to City Acknowledgment/Acceptance, Subdivider shall furnish City, at the option and subject to the approval of City (A) a bond or bonds by one or more duly authorized corporate sureties (B) a deposit of money or negotiable bonds of the kind approved for security deposits of public monies, or (C) an instrument of credit from one or more financial institutions subject to regulations 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, in the amount of \$339,700 (for Private Improvements); \$24,800 (for Off-Site Improvements); \$481,678 (for Private Landscape Improvements); and \$7,869 (for Off-Site Landscape Improvements) for the guarantee and warranty of the work for a period of one year following said acknowledgment against any defective work or labor done, or defective materials furnished. The guarantee security shall be released upon satisfactory completion of the guarantee period provided all deficiencies appearing on the final deficiency list for the subdivision have been corrected.

10. Prevailing Wages

The Subdivider and any contractor or subcontractor under him shall pay not less than the specified prevailing rates of wages to all workers involved in the completion of any improvements under this agreement that require the payment of prevailing wage under the California Labor Code Section 1720 et. Seq. and shall otherwise comply with California Labor Code Section 1720 et. seq.

11. Homeowner's Association

Subdivider shall form a Homeowner's Association and record covenants, conditions, and restrictions ("CC&Rs") requiring Homeowners Association's management, maintenance and control of the common properties, including but not limited to the fences, subdrains, retaining walls, landscaping and irrigation in the common areas, court yards, paths, and private streets located within Subdivision [9528] maintaining all site landscaping and allowing the enforcement of the CC&Rs by the City. Subdivider agrees not to sell any lots, parcels, or units within said subdivision until said Homeowner's Association is formed and said CC&Rs are approved by the City and recorded. The City may withhold the issuance of any occupancy permit for said subdivision or withhold acceptance of said improvements until such has been accomplished.

12. Permission to File Final Map

City hereby consents that Subdivider may file and record Final Map of said subdivision only after the Subdivider has furnished to the City and the City has accepted the performance and

laborers and materialmen bonds required by Paragraph 8 of this Agreement. The City hereby acknowledges that said subdivision is a subdivision in compliance with the laws of the State of California.

13. Archaeological Resources

In the event that subsurface archaeological resources are encountered during grading, work within thirty (30) yards of the encounter shall be halted and a qualified archaeologist and/or a representative of the American Indian Council, San Pablo, shall be contacted to evaluate the finds and recommend further mitigation.

14. Hold Harmless Agreement - General

Subdivider shall indemnify and save the City, its agents, officers and employees harmless from and against any and all liability, claims, suits, actions, damages, penalties, and/or causes of action for any personal injury, bodily injury, loss of life or damage to property, violation of any federal, state or municipal law or ordinance or other cause arising from or in connection with the activities of Subdivider, contractors, subcontractors, agents, and employees under said Agreement (collectively "Claims"), including without limitation Claims filed on account of the performance or character of the work performed under this Agreement, unforeseen difficulties, accidents, occurrences or other causes related to the performance or character of the work under this Agreement and from and against all costs, counsel fees, expenses incurred in obtaining expert testimony and the attendance of witnesses, expenses, and liability incurred in and about the claims, the investigation thereof or the defense of any action or proceedings brought thereon, and from and against any orders, judgments or decrees which may be entered therein unless arising out of the sole negligence or willful misconduct of the City.

It is understood and agreed that this Agreement binds each of us, ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

IN WITNESS WHEREOF the parties hereto have executed these presents the day and year first above written.

CITY OF RICHMOND, a municipal
Corporation

Title _____

Approved as to form:

By _____
Mayor

City Attorney

Attest:

City Clerk

SUBDIVIDER:

MERITAGE HOMES OF CALIFORNIA, a
California Corporation

By _____

Title Vice President

By _____

Title _____