

SUBDIVISION AGREEMENT – TRACT 3089 PHASES 2 & 3

THIS AGREEMENT is dated this _____ day of _____ 202__ by and between Avila Ranch Developers, Inc., a California Corporation, herein referred to as "Subdivider," with the consent of Avila Ranch Developers, Inc., a California Corporation; FG2 HOLDINGS, LLC, a California limited liability company; AVILA RANCH EA, LLC, a California limited liability company; and, CJ HOLDINGS, LP a California limited partnership herein collectively referred to as "Owners" and the CITY OF SAN LUIS OBISPO, herein referred to as the "City."

RECITALS

REFERENCE IS HEREBY MADE to that certain proposed subdivision of real property in the City of San Luis Obispo, County of San Luis Obispo, State of California, a description of which is shown on the Final Map of Tract 3089 Phases 2 & 3, City of San Luis Obispo, California, as approved by the City Council on the ____ day of _____, 202__, with the consent of Owners who own said real property.

The Subdivider desires that said Tract 3089 Phases 2 & 3 be accepted and approved as a Final Map pursuant to the Subdivision Regulations of the City of San Luis Obispo (Title 16 of the San Luis Obispo Municipal Code), and

It is a condition of said regulations that the Subdivider agree to install the improvements as set forth on the plans therefore.

TERMS AND CONDITIONS:

In consideration of the foregoing, the Subdivider does hereby agree to construct and install the following subdivision improvements (collectively "improvements") in accordance with said subdivision regulations, and in accordance with approved plans and

specifications on file in the office of the City Engineer, City of San Luis Obispo,
("Subdivision Improvement Plans and Specifications") to wit:

1. CURB, GUTTERS AND SIDEWALKS
 2. STREET BASE AND SURFACING
 3. WATER MAINS and SEWER MAINS, including sewer laterals to the property line and water services to the curb stop.
 4. LANDSCAPING
 5. DRAINAGE STRUCTURES
 6. STREET LIGHTS
 7. ELECTRIC, GAS, TELEPHONE AND CABLE TELEVISION: In addition to the inspection and approval of such facilities by the City, each public utility shall be required to file a letter stating that the developer has properly installed all facilities to be provided by him, and that the said utility is prepared to provide service to residents upon request.
 8. ANY & ALL OTHER IMPROVEMENTS shown on plans or required by project approvals.
- All of the above facilities shall be installed in the locations designated and to the plans and specifications on file and approved by said City Engineer.

The lines and grades for all of said improvements shall be established by the Subdivider in accordance with said approved plans and specifications.

The Subdivider agrees that the work of installing the above improvements shall begin within thirty (30) days from the date of recording of the final map, and that the work shall be completed within twenty-four (24) months of said recording date, unless an extension has been granted by the City, provided that if completion of said work is delayed by acts of God or labor disputes resulting in strike action, the Subdivider shall have an

additional period of time equivalent to such period of delay in which to complete such work. Any extension of time hereunder shall not operate to release the surety on the Improvement Security (“Improvement Security shall mean, collectively, the Performance Credit/Bond, Materials Bond, and/or Warranty Bond”) filed pursuant to this agreement. In this connection, the surety waives the provisions of Section 2819 of the Civil Code of the State of California.

No building permits will be issued nor occupancy granted after the expiration date of the agreement, taking into account any authorized extensions, until completion and acceptance of all subdivision improvements unless specifically approved by the City.

The Subdivider does also agree to comply with the conditions established by the City Council and has paid the necessary fees as indicated on the attached Exhibits 1 and 2.

Setting of new survey monuments or resetting of disturbed monuments shall be in accordance with Article 5, paragraph 8771 et seq., of the Professional Land Surveyors Act, Chapter 15 of the Business and Professions Code of the State of California.

The Subdivider attaches hereto, as an integral part hereof, and as security for the performance of this agreement, instrument(s) of credit or bond approved by and in favor of the City of San Luis Obispo, and conditional upon the **faithful performance** of this agreement (“Performance Credit/Bond”). Said instrument(s) of credit or bond is/are in the amount(s) shown in Exhibit 2, which is the amount of the estimated cost of said improvements.

Subdivider agrees to remedy any defects in the improvements arising from faulty workmanship or materials or defective construction of said improvements occurring within

twelve (12) months after acceptance thereof (“Warranty Period”). In accordance with Sections 66499.7 and 66499.9 of the Government Code of the State of California, upon final completion and acceptance of the work, City will release all but 10% of the improvement security in the form acceptable to the City as a warranty bond (“Warranty Bond”), with that amount being deemed sufficient to guarantee faithful performance by the Subdivider of his obligation to remedy any defects in the improvements arising within a period of **one year** following the completion and acceptance thereof. The Subdivider shall submit a formal request to the City at the end of the warranty period and City shall provide Subdivider with a comprehensive list of any outstanding defects to be remedied by Subdivider. City shall release the warranty bond upon re-inspection and confirmation of the completion of listed repairs.

Completion of the work shall be deemed to have occurred on the date which the City Council shall, by resolution duly passed and adopted, accept said improvements according to said plans and specifications, and any approved modifications thereto. Neither periodic nor progress inspections or approvals shall bind the City to accept said improvements or waive any defects in the same or any breach of this agreement.

“AS-BUILT” record drawings are to be submitted within four weeks of completion of construction and prior to City acceptance of the public improvements.

If the Subdivider fails to complete the work within the prescribed time, the Subdivider agrees that City may, at its option, declare the instrument of credit or bond which has been posted by Subdivider to guarantee faithful performance, forfeited and utilize the proceeds to complete said improvements, or city may complete said improvements and recover the full cost and expense thereof from the Subdivider or his surety.

The Subdivider has deposited with the City a **labor and materials surety** or sureties in the amount of 50% of the above described subdivision improvements in accordance with State law ("Materials Bond").

Said Subdivider shall pay an inspection fee for City to inspect the installation of said subdivision improvements, and to verify that they have been completed in accordance with the plans and specifications.

If off-site dedication of property is necessary to facilitate the construction of the required subdivision improvements, the Subdivider and City shall adhere to the requirements of Section 6.04 of the Development Agreement adopted by the City Council on October 3, 2017 by Ordinance No. 1639 (2017 Series) with regards to acquiring said off-site dedication.

Title 16 of the San Luis Obispo Municipal Code, entitled "Subdivision," all plans and specifications on file with said City Engineer as a part of said Subdivision Map, and all other documents filed with the City by the Subdivider and approved by the City Engineer are hereby referred to for further particulars in interpreting and defining the obligations of the Subdivider under this agreement.

Pursuant to Government Code Section 66474.9(b), the subdivider shall defend, indemnify and hold harmless the City and/or its agents, officers and employees from any claim, action or proceeding against the City and/or its agents, officers or employees to attack, set aside, void or annul, the approval by the City of this subdivision, and all actions relating thereto, including but not limited to environmental review ("Indemnified Claims"). The City shall promptly notify the subdivider of any Indemnified Claim upon being presented with the Indemnified Claim and City shall fully cooperate in the defense against an Indemnified Claim.

It is understood and agreed by and between the Subdivider and the City hereto that this agreement shall bind the heirs, executors, administrators, successors and assigns of the respective Parties to this agreement.

[signatures on following page]

IN WITNESS WHEREOF, this agreement has been executed by:

SUBDIVIDER

Avila Ranch Developers, Inc.
a California Corporation

By: _____
Josh Peterson, President

OWNERS

The undersigned Owners hereby consent to Avila Ranch Developers, Inc., entering into this Subdivision Agreement

FG2 HOLDINGS, LLC
a California limited liability company

By: _____
Neema Assemi, Manager

AVILA RANCH EA, LLC
a California limited liability company

By: _____
Neema Assemi, Manager

By: _____
Nader Assemi, Manager

CJ HOLDINGS, LP
a California limited partnership

By: _____
Josh Peterson, President

CITY OF SAN LUIS OBISPO

See next page

CITY OF SAN LUIS OBISPO

MAYOR Erica A. Stewart

ATTEST:

CITY CLERK Teresa Purrington

APPROVED AS TO FORM:

CITY ATTORNEY Christine Dietrick

EXHIBIT 1
TRACT 3089 PHASES 2 & 3
SUBDIVISION AGREEMENT

1. The Subdivider has deposited a monumentation security in the amount of **\$80,000** to guarantee the installation of survey monuments in accordance with the approved map and payment for same. Said guarantee will be released once the installation of monuments has been verified and that existing monuments have not been disturbed, and upon receipt by the City of a letter from the Surveyor indicating that they have completed the work and have been paid. Subdivider shall adhere to the requirements of California Business and Professions Code Section 8771 with regards to monument preservation. The monumentation security also guarantees the replacement of any monuments that were disturbed during construction, along with filing of Records of Survey or Corner Records required by said Section 8771.
2. Phases 2 & 3 provide sufficient parkland and park improvements to meet City requirements based on the projected population and housing onsite, so there are no "in-lieu" park fees required. The subdivision improvement bonds include the requirement to pay for a biological, archeological and Native American monitor per the mitigation measures.
3. Water Impact Fees for irrigation water meters shown on the subdivision improvement plans shall be paid prior to subdivision improvement plan approval per Condition #59.
4. The Subdivider has elected to pay a roadway maintenance fee to satisfy the Conditions of Approval. The fee of **\$10,000** was approved by the City Engineer in accordance with City Engineering Standards and guidelines.
5. The Subdivider shall comply with all requirements of Council Resolution No. 10832 (2017 Series) approving the tentative map and Ordinance No. 1639 (2017 Series) approving the Development Agreement.
6. Condition 104 S.Higuera and Vachell (Phase 2) start construction prior to issuance of building permits.
7. Condition 109 Bike/Ped bridges over Tank Farm Creek
 - a. South of Buckley Rd: modify timing per FEIR Addendum to Phase 4
 - b. North of Buckley Rd: Completion of construction prior to occupancy of the 30th unit in Phases 2 & 3.
8. Condition 111 install sidewalk from LOVR to City; Design and construction of improvements between Los Osos Valley Road and the City limit shall be initiated prior to issuance of building permits for Phase 2 development. Improvements shall be completed prior to issuance of an occupancy permit for Phase 2 development.
9. Condition 116.g Buckley -Vachel fair share mitigation fee re traffic sign

EXHIBIT 2

**TRACT 3089 PHASES 2 & 3 - FEE AND BOND LIST
175 VENTURE**

	Amount	Form	Date Received	Bond Release Status
<i>Bonds and Guarantees:</i>				
On-Site Faithful Performance:	Can be released upon City Council acceptance of improvements, deposit of one-year warranty surety, and approval of record drawings.			
Subdivision Improvements (FMAP-0488-2022) Includes all Parks	\$ 11,579,800	Bond		Bold = confirmed (typ.)
Off-Site Faithful Performance:	Can be released upon Public Works Director acceptance of improvements, deposit of one-year warranty surety, and approval of record drawings.			
S. Higuera at Vachell Phase 2 Improvements (FMAP-1537-2018)	\$165,700	Bond		
Bicycle Bridge over Tank Farm Creek North of Buckley Road	\$TBD	Bond		
South Higuera Sidewalks; COA 111; (FMAP-0479-2021)	\$79,000	Bond		
Labor & Materials (50% of cost of each of the above improvements)				Can be released 90 days after acceptance of improvements, if no claims. (Civil Code Section 8412)
Subdivision Improvements (FMAP-0488-2022) Includes all Parks	\$ 11,579,800/2 = \$ 5,789,900	Bond		
Off-Site Labor & Materials:	Can be released upon Public Works Director acceptance of improvements, deposit of one-year warranty surety, and approval of record drawings.			
S. Higuera at Vachell Phase 2 Improvements (FMAP-1537-2018)	\$165,700/2 = \$ 82,850	Bond		
South Higuera Sidewalks Vachell to South City Limits	\$79,000/2 = \$39,500	Bond		
Bicycle Bridge over Tank Farm Creek North of Buckley Road	\$TBD	Bond		
Monument Guarantee	\$80,000	CD or Letter of Credit		Can be released upon verification that monuments have been set and surveyor has been paid.
10% Warranty	10% of On-Site Faithful Performance above To be collected prior to release of Faithful Performance Bonds			Can be released one-year after acceptance of improvements.

Fees:					
Plan and Map Check Fees:					
Map Check Fee FMAP-0562-2022 Balance Due	\$40,969.48 0	Check	date	Paid in Full	
Improvement Plancheck Base Fee: FMAP- 0488- 2022 Balance Due	\$90,308.86	Check	Oct 2023	Paid in Full	
IT surcharge	\$2,764.51				
Total	\$93,073.37	Check	Oct 2023	Paid in Full	
Improvement Plancheck Remainder Fee: FMAP- 0488- 2022	\$12,712.71 \$387.74	Check	Oct 2023	Paid in Full	
\$13,100.45					
Bicycle Bridge over Tank Farm Creek North of Buckley Road Plan Check Fees Construction Inspection Fees					
Construction Inspection Fees					
Construction Inspection Fee: FMAP- 0488- 2022 Balance Due IT surcharge: N/A	\$290,722.91	Check	Oct 2023	Paid in Full	
Construction Inspection Fee: FMAP- 0636- 2022 S. Higuera at Vachell Phase 2 Improvements Balance Due IT surcharge: N/A	\$22,186.75			Amount determined by approved FMAP-1537-2018 plan set and engineers estimate	
Impact Fees					
Roadway Maintenance Fee	\$10,000	Check		To be deposited in Acct # 40050300- 90346953 Streets Reconstruction and Resurfacing Master per Matt Horn	
Water Impact Fees for irrigation meters					
Parkway, 1" meter fee	\$29,312.41			Calculated at current schedule 7/5/23	
Park, 1" meter fee	\$29,312.41			Calculated at current schedule 7/5/23	

Ad Hoc and Mitigation Fees				
Highway 227/Buckley Fair Share Mitigation	\$TBD			Portion was paid this at Phase 1 map recordation but need to be an additional increment with Phase 2-3 map recordation for the additional units/traffic generated.
Buckley/Vachell Fair Share Mitigation	\$18,651.16			Due with map recordation of each phase based on % of total unit count in that phase. Portion of \$107,250.
Buckley Road Corridor Improvements (at Davenport)	\$TBD			Portion was paid this at Phase 1 map recordation but need to be an additional increment with Phase 2-3 map recordation for the additional units/traffic generated.
Other Ad Hoc and Mitigation Fees				Paid with Phase 1 Avila Ranch
Affordable Housing Requirements				See Affordable Housing Agreement
Water Impact Fee ¹				To be collected with building permit
Wastewater Impact Fee ¹				To be collected with building permit
Transportation Impact Fee ¹				To be collected with building permit
				To be collected with building permit

¹ All Impact Fees are adjusted annually (July 1) based on CPI. Credit given for demolished units.
Subdivision Agreement - Tract 3089, Phase 2 & 3