

**Recording Requested By:
City of Alameda**

**When recorded, return to:
City of Alameda
Public Works Department
Scott Wikstrom, City Engineer
950 West Mall Square, Room 110
Alameda, CA 94501**

Assessor’s Parcel Numbers 072-0381-001-00 & 072-0381-002-00

Tract Map 8654

Document Exempt from Recording Fee: Government Code Section 6103

SUBDIVISION IMPROVEMENT AGREEMENT

This Subdivision Improvement Agreement (“**Agreement**”) dated as of this ____ day of December 2023 (“**Effective Date**”) is entered into by and between the City of Alameda, a municipal corporation in the County of Alameda, State of California (“**City**”), and TH GRAND STREET, LLC, a California limited liability company (“**Developer**”), with reference to the following facts and circumstances:

RECITALS

A. Developer has presented a proposed Tract Map to City, identified as Tract Map No. 8654. The Tract Map of the Subdivision has been reviewed by the City’s Public Works and Planning Directors and found to be in substantial compliance with the Final Development Plan approved by the City Planning Board on December 12, 2022 by Resolution No. PB-22-24; and

B. On December 12, 2022, the City Planning Board held a duly noticed public hearing and adopted Resolution No. PB-22-24 recommending approval of a Vesting Tentative Map for Tract No. 8654 with conditions which are on file in the Public Works Department and incorporated herein by this reference; and

C. On February 7, 2023, the Alameda City Council adopted Resolution No. 16028 (“**Resolution of Approval**”) approving Vesting Tentative Map for Tract No. 8654 (the “**Property**”) with conditions which are on file in the Public Works Department and incorporated herein by this reference; and

D. The California Subdivision Map Act (Government Code Section 66410, et seq.) (“**Map Act**”) and the City’s ordinances and regulations relating to the filing and recordation of subdivision and parcel maps (hereinafter the Subdivision Laws) provide that as a condition

precedent to the approval of a final map that the Developer must have complied with the Resolution of Approval and have either (1) completed, in accordance with City Standards, all of the improvements and land development work required by the Subdivision Laws and the Resolution of Approval or (2) entered into a secured agreement to the City to complete the improvements and land development within a period of time specified by the City; and

E. Construction of the required Public Infrastructure Improvements, however, has not been completed nor have such improvements been accepted by City. In accordance with the Subdivision Laws and in consideration of the approval of the proposed Tract Map and acceptance of the irrevocable offers of dedication of public right-of-way easements and acceptance of the permanent maintenance of the required Public Infrastructure Improvements, the parties desire to establish an agreement binding Developer to complete the required improvements as required by the Subdivision Laws, the Resolution of Approval and the terms and conditions set forth therein and to provide improvement security therefor as required by the Subdivision Laws and approved by the City Attorney.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the mutual covenants, promises and agreements herein contained, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto mutually agree as follows:

1. Approval: Approval of Tract Map No. 8654 by City shall be conditioned upon the recordation of this Agreement with the Alameda County Recorder.

2. Construction Obligation:

a. Developer agrees at Developer's sole cost and expense to cause all required off-site and on-site Public Infrastructure Improvements identified in the conditions to the approval of the Subdivision and shown on approved Improvement Plans (the "**Work**") to be prepared and completed to the City Public Works Director's satisfaction and approved by the City as set forth in Sections 16 and 17 below, within three (3) years from the effective date of grading or site improvement permit, for Phase-1 Public Infrastructure, and an additional three (3) years from the start of Phase-2 Public Infrastructure Improvements subject to delays due to Force Majeure Events (as defined in Section 21 below) and extreme weather events as described in Section 22 below. A copy of such conditions and Improvement Plans is on file in the Public Works Department.

b. Except for delays due to Force Majeure Events and extreme weather events, which may extend the time for performance under this Agreement as further described in Sections 21 and 22, no extension of time shall be made, except upon the basis of a written application made by Developer to the Public Works Director, stating fully the grounds of the application and facts relied upon for such an extension. The Public Works Director shall determine, in his or her sole and exclusive discretion, whether there is good cause for the extension, and upon a determination of good cause may extend the time for commencement or completion of improvements for a period or periods not exceeding a total of two (2) additional years. The extension shall be executed in writing by the Public Works Director. Any extension may be conditioned upon an increase in security and inspection fees to reflect current costs. Neither such extension nor other delay by City shall constitute a waiver of any of the obligations of Developer or Developer's surety. Any

extension may be granted without notice to the Developer's surety, shall not affect the validity of the bonds, and shall not relieve the surety's liability on any of the bonds required by this Agreement. In the event an extension is granted, Developer agrees to promptly extend the term of all surety bonds or other surety acceptable to City. All such bonds and/or other surety are subject to review and approval (not to be unreasonably withheld, conditioned, or delayed) by the City Attorney for legal sufficiency, and if no bonds or other surety acceptable to the City Attorney are provided to secure Developer's performance, the extension shall be void.

3. Easements and Permits: Developer shall, at Developer's sole cost and expense, in connection with the Work: a) provide any and all rights of way and easements which may be necessary or convenient for the Subdivision and its required improvements; b) obtain all necessary permits and licenses for the construction of the required improvements; c) give all necessary notices; and d) pay all fees and taxes required by law. The description and title to any rights of way or easements not shown on the final map shall be subject to approval as to form by the City Attorney and shall not be subject to any prior rights or liens, unless approved by the City Engineer and the City Attorney. If rights of way are required to be obtained from the City for the Work, then the City agrees to reasonably cooperate with Developer to provide such rights of way.

4. Performance of the Work: Construction of the Work shall commence within a reasonable time after the City issues the Phase-1 Site Improvement permit. Developer agrees to perform the Work in a workmanlike and professional manner, in accordance with all requirements of State and local law, including the Alameda Municipal Code, Public Works Standard Specifications, or any subsequent revisions thereof, and according to the plans and specifications approved by the Public Works Director, prepared by Carlson, Barbee & Gibson, Inc. entitled "2015 Grand Street" permitted as PWD23-0003 and filed in the office of the Public Works Director. Developer agrees that all details and notes shown on the Improvement Plans shall be made a part of the improvements, unless a change is approved by the Public Works Director.

5. Modifications: Developer may modify such plans and specifications as the development progresses should unforeseen conditions occur, provided advance written approval is obtained from the Public Works Director. City reserves the right to make or require reasonable modifications to the plans and specifications whenever field conditions and/or public safety require such modifications. Developer shall pay City for all costs including, without limitation, plan check and inspection costs resulting from any such modifications. Developer shall provide personal supervision of the Work or have a competent contractor, foreman or superintendent on the Work at all times during work progress with authority to act for Developer.

6. Compliance and Inspection: All development activity shall be in compliance with conditions of approval of the Subdivision and measures imposed to mitigate adverse environmental effects of the project including any monitoring program(s). All improvements shall be inspected by City for strict compliance with City permits, standards, plans, specifications, performance criteria and Subdivision regulations. Concurrent with the execution of this Agreement, Developer shall pay to City a deposit to cover ongoing Public Works plan check and inspection costs in accordance with the then current City of Alameda Master Fee Schedule.

7. Access to Work: Developer shall allow City's duly authorized representatives' access to the Work at all times and shall furnish them with every reasonable facility for ascertaining

that the methods, materials and workmanship comply with the requirements and intent of the approved plans. Developer is required to give at least one day's advance notice of the date upon which the Work is commenced and the date upon which the Work is to be completed. City may reject defective Work and require its repair, replacement or removal by Developer, all at no expense to City.

8. City Services: Developer agrees to and shall be financially responsible for all required City services provided to the Subdivision or to Subdivision residents for use within the Subdivision, to the extent relating to the Work, prior to acceptance of improvements by City. Notwithstanding the foregoing, as homes are sold to third-party homebuyers, such homebuyers shall be responsible directly for the City services provided to the homes acquired by such home buyers and Developer shall not be responsible for such City services.

9. Developer Not Agent of City: Neither Developer nor any of Developer's agents or contractors are or shall be considered to be agents of City in connection with the performance of Developer's obligations under this Agreement.

10. Developer Responsibility for Work: Until such time as the improvements are accepted by City, Developer shall be responsible for, and bear the risk of loss to, any of the improvements constructed or installed. Until such time as all improvements required by this Agreement are fully completed, passed final inspection and, if to be dedicated to City, are actually dedicated and accepted by City, Developer will be responsible for the care, maintenance of, and any repairs or reconstruction to remedy any damage to such improvements. City shall not, nor shall any officer or employee thereof, be liable or responsible for any accident, loss or damage, regardless of cause, happening or occurring to the Work specified in this Agreement prior to the completion and acceptance of the Work, except to the extent resulting from the gross negligence or willful misconduct of the City or any City Parties (as defined in Section 24.c.). City agrees to reasonably and promptly inspect the Work and to take steps to either (i) identify defects in the Work, or (ii) if no defects exist, to promptly act upon a request to accept phases of the Work as set forth in Sections 16 and 17 below.

11. Obligation to Warn Public: Until final acceptance of the improvements, Developer shall give good and adequate warning to the public of each and every potentially defective or dangerous condition which exists or arises in said improvements, and will take all reasonable actions to protect the public from such unsafe condition(s).

12. Sale or Disposition of Subdivision: This Agreement runs with and encumbers the Subdivision, and the sale or other disposition of the Property will not relieve such parties from the obligations set forth herein. If the Property or any portion of the Property within the Subdivision is sold to any other person, Developer may request from City a novation of this Agreement and a substitution of security. Upon approval of the novation by the Public Works Director and substitution of securities from City, which approval shall not be unreasonably withheld, conditioned, or delayed, Developer may obtain a release or reduction of the securities required by this Agreement. Nothing in the novation shall relieve Developer of the obligations under this Agreement for the Work done by or on behalf of Developer. Developer shall give written notice to City within ten (10) days after close of escrow of any sale or transfer of all or any portion of the Property and any assignment of this Agreement, specifying the name or names of the assignee, the

Assignee's mailing address, the amount and location of the land sold or transferred, evidence of the express assumption of the obligations hereunder, and the name and address of a single person or entity to whom any notice relating to this Agreement shall be given. Notwithstanding the foregoing, upon the closing of a sale of a completed home in the Subdivision to a member of the homebuying public, this Agreement shall be deemed to be terminated and released with respect to the home and lot that is transferred to such homebuyer, except for those conditions and obligations that expressly survive the expiration or termination of this Agreement.

13. Improvement Security:

a. To insure full and faithful performance of this Agreement and in accordance with the requirements of the Subdivision Laws, Developer shall file with this Agreement the following security in the type and amounts specified:

(1) Faithful performance security(ies) phased in the sum of \$1,975,000 (Phase 1); \$363,000 (Phase 2); to cover all costs of public and private improvements, which is equivalent to one hundred percent (100%) of the approved estimate for the cost of improvement.

(2) Labor and materials security in the sum of \$1,975,000 (Phase 1); \$363,000 (Phase 2) to ensure payment in full of all persons, firms and corporations who perform labor or furnish materials for work done on said public and private improvements, which is equivalent to one hundred percent (100%) of the approved estimate for the costs of labor and materials.

b. Developer shall furnish the above-referenced bonds from a bonding company acceptable to the City Attorney.

14. Form of Security: All security shall be of a type specified in Government Code Sections 66499(a)(1), (2) or (3), and must be satisfactory to and approved by the City Attorney (or Public Works Director) as to form. In conjunction with the submittal of bonds, Developer shall also furnish the following information:

a. The original or a certified copy of the unrevoked appointment, power of attorney, bylaws or other instrument entitling or authorizing the person who executed the bonds to do so;

b. A certificate from the Clerk of Alameda County that the certificate of authority of the insurer has not been surrendered, revoked, canceled, annulled or suspended, or in the event that it has, that renewed authority has been granted; and

c. Certificates of deposit shall not be deemed to be satisfactory security unless such certificates provide that City is the owner of record of such funds. City shall be the sole indemnitee named on any instrument required by this Agreement. In addition to the full amount of the security, there shall be included costs and reasonable expenses and fees, including reasonable attorney's and expert witness fees, incurred in enforcing the obligation secured.

15. Acceptance of Improvements: No improvement shall be accepted by City unless and until it is free of all liens and encumbrances (other than encumbrances created by or on behalf of the City), free of all material defects and conditions which may create a hazard to the public health, safety or welfare and until Developer has set and established survey monuments in accordance with the Tract Map and to the reasonable satisfaction of the Public Works Director. Upon completion of final inspection of the improvements described herein, Developer shall comply with Section 8180 of the Civil Code and shall immediately deliver to the Public Works Director a copy of the notice of completion required by said section bearing certification of recordation by the County Recorder. In addition, all properties, rights-of-ways, easements and other interests to be dedicated to City shall be, before acceptance thereof by City, free and clear of all liens and encumbrances of any kind or character whatsoever (other than encumbrances created by or on behalf of the City) and free of any and all material defects and conditions creating a hazard to public health or public safety.

16. Final Acceptance of Work: No phase of the Work shall be accepted by the City unless and until Developer submits a warranty bond and such Work is free of all liens and encumbrances, free of all material defects and conditions which may create a hazard to the public health, safety, or welfare. Upon completion of final inspection of a phase of the Work, Developer shall comply with Section 3093 of the Civil Code and shall forthwith deliver to the Public Works Director a copy of the notice of completion required by said section bearing certification of recordation by the County Recorder. In addition, all properties, rights-of-ways, easements, and other interests to be dedicated to the City shall be, before acceptance thereof by the City, free and clear of all liens and encumbrances of any kind or character whatsoever and free of any and all material defects and conditions creating a hazard to public health or public safety.

City shall release any and all security provided by Developer for a phase of the Work in the manner described in Government Code Section 66499.7

17. Guarantee and Security: Developer guarantees that all improvements shall be free from defects of materials or work quality and shall perform satisfactorily for a period of at least one (1) year from and after acceptance of such improvements by City as complete, and Developer shall repair any defects in any such improvements and replace any defective improvements which cannot be repaired and which occur or arise within the one (1) year period at Developer's own expense. Should Developer fail to act promptly or in accordance with this requirement, or should the exigencies of the case require repairs or replacements to be made before Developer can be notified, City may, at its option, make the necessary repairs or replacements or contract for the necessary work and Developer shall pay to City the actual cost of such repairs as well as all administrative expenses incurred by City.

Concurrent with acceptance of Subdivision improvements, Developer shall provide a warranty security equivalent to ten percent (10%) of the improvement security for the guarantee and warranty of the work for a period of one (1) year following the completion and acceptance thereof against any defective work or labor done, or defective materials furnished, subject to the limitations of Section 66499.9 of the Map Act.

18. Exoneration of Surety: Subject to the requirements of Government Code Section 66499.7, City shall not be required to exonerate any surety, release any security relating to

satisfactory completion of a phase of the Work until acceptance of such phase of the Work by the City or, in the case of improvements which will not be dedicated to and accepted by City, until the improvements have passed final inspection by City; provided, however, that, where the necessary Work for permanent access and utility services to serve any particular phase have been completed, City shall not delay final inspection of such portion of the Work or withhold occupancy permits applicable to such phase. In addition, the release of security, exoneration of sureties and issuance of occupancy permits will be predicated upon the receipt of required maintenance and/or warranty agreements and security required under Section 17, as well as payment of all outstanding fees, penalties, accrued interest, and reimbursements due City. Upon receipt of the above referenced warranty security, and the satisfaction of the other requirements of this Section 18, the City shall promptly release the subdivision bonds and exonerate the sureties.

19. Building Permit Requirements: Prior to issuance of any building permit, Developer shall comply with all conditions precedent to issuance, including without limitation, the Uniform Fire Code requirements relating to access and water supply. Developer shall also pay the applicable Improvement Tax (as set forth in Section 3-62 of the Alameda Municipal Code), as well as all required fees. No building permit for homes in a phase shall be issued until all of the necessary tract improvements for the construction of such phase are installed and inspected by the City Engineer, except as otherwise permitted by the Map Act and as approved by the City Engineer; provided that City acknowledges that building permits and occupancy permits shall be issued with respect to homes in a phase prior to the final completion and acceptance by the City of all Work relating to such phase, such as the installation of asphalt (or the final left of asphalt with respects to certificates of occupancy), landscaping, the repair of sidewalks and other portions of the Work that typically are performed after the construction and completion of homes, and/or after the completion and sale of homes. The subdivider shall pay all applicable impact fees and all other fees due to the City and related to the Tract Map and associated improvements.

20. Default of Developer: Default of Developer under this Agreement shall include, but not be limited to, Developer's failure to timely commence construction of the development; Developer's failure to timely complete construction of the improvements; Developer's failure to timely cure any defect in the improvements; Developer's failure to perform substantial construction work for a period of thirty (30) consecutive calendar days after commencement of the Work; Developer's insolvency, appointment of a receiver or the filing of any petition in bankruptcy either voluntary or involuntary which Developer fails to discharge within thirty (30) days; the commencement of a foreclosure action against Developer or any owner or member of all or a portion thereof or any conveyance in lieu or in avoidance of foreclosure; or Developer's failure to perform any other obligation under this Agreement. Developer shall timely notify the Public Works Director of Developer's insolvency, appointment of a receiver, the filing of a petition for bankruptcy, the commencement of a foreclosure action or any conveyance in lieu thereof.

In addition to specific provisions of this Agreement, performance by either party shall not be deemed to be in default where delays or defaults are for reasons beyond the commercially reasonable control of such party due to war; insurrection or acts of civil disobedience; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; the pendency of any mediation, arbitration, litigation or other administrative or judicial

proceeding affecting the Property or a party's ability to perform its obligations under this Agreement (excluding financial inability); inability to secure necessary labor, materials or tools; acts or the failure to act of any public or governmental agency or entity (except that acts or the failure to act of the City shall not excuse performance by the City) or any other causes beyond the commercially reasonable control or without the fault of the party claiming an extension of time to perform which substantially interferes with such party's performance under this Agreement (collectively, "**Force Majeure Events**"). An extension of time for any such cause shall only be for the period of the Force Majeure Event, which period shall commence to run from the time of the commencement of the Force Majeure Event. A party claiming an extension due to a Force Majeure Event shall notify the other party in writing within thirty (30) days after commencement of the Force Majeure Event. If, however, notice by the party claiming such extension is sent to the other parties more than thirty (30) days after the commencement of the Force Majeure Event, then, unless otherwise agreed by the parties (which agreement may be made by the Public Works Director on behalf of the City), the extension period shall commence to run only thirty (30) days prior to the giving of such notice.

21. Weather Delays: Developer shall not be deemed to be in breach of this Agreement if the cause of a delay in the time for performance is caused by extreme weather conditions that prevent the Work from being performed pursuant to the Agreement. Such delay shall be evidenced by actual weather and rainfall surveys and such delayed components of the Work must be shown to be critical path items in the completion of the Work. If Developer claims an extension due to extreme or long-duration weather conditions Developer shall notify City in writing within thirty (30) days after the commencement of such extreme or long-duration weather conditions. If, however, notice by Developer is sent to City more than thirty (30) days after the commencement of such extreme weather conditions, then, unless otherwise agreed by the parties, the extension period shall commence to run only thirty (30) days prior to the giving of such notice.

22. Remedies in Event of a Default: In the event of Developer's default (beyond any reasonable cure periods and subsequent to City's written notice to Developer of such default, which notice shall be not less than thirty (30) days prior to the City taking further action):

a. City reserves to itself all remedies available to it at law or in equity. Any remedies specified herein are in addition to and not in lieu of other remedies available to City. Developer agrees that City has full discretion in choosing the remedy or remedies to pursue and that the failure of City to take enforcement action shall not be construed as a waiver of that or any subsequent default or breach.

b. Developer, the surety and any person, firm, partnership, entity, corporation, or association claiming any interest in the Property and each of them shall totally reimburse City for its reasonable costs and expenses (including reasonable attorneys' fees and costs), including interest thereon at the maximum rate allowed by law, from the date of notification of such cost and expense until paid. Such obligation for reimbursement shall not be limited by the amount of the estimates set forth or by such security as may have been provided to City in connection with this Agreement. Such amounts and interest accrued thereon shall constitute a lien on the Property.

c. Upon not less than thirty (30) days' notice to Developer, City may enter onto the Property, take over the Work and prosecute the same to completion by contract or any

other method City deems advisable, and, in such event, City, without liability for so doing, may take possession of and utilize in completing the Work, such materials, appliances, plant and other property belonging to Developer which may be on the site of the work and necessary performance of the Work.

d. City may record a Notice of Violation against all lots in the Subdivision, revert the Subdivision to acreage and/or withhold or revoke all building, zoning and occupancy permits.

23. Indemnity/Hold Harmless:

a. Developer shall be solely responsible and save City harmless for all matters relating to the payment of Developer's employees and agents, including compliance with social security, withholding and all other regulations governing such matters.

b. To the maximum extent permitted by law, Developer shall hold harmless, defend (with counsel acceptable to the City) and indemnify City, its City Council, boards, commissions, officials, employees, agents, and volunteers (collectively, "**Indemnitees**") from and against any claim, action or proceeding against Indemnitees to attack, set aside, void or annul an approval of City concerning the Property or any portion thereof, which action is brought within the time period provided for in Government Code Section 66499.37. City shall promptly notify Developer of any claim, action or proceeding and City shall cooperate fully in the defense.

c. Developer further agrees that it will hold harmless, defend (with counsel acceptable to the City) and indemnify the Indemnitees from and against any and all loss, liability, obligations, expense, claim, lawsuit, judgment, costs (including costs of defense and attorneys' fees) and damages of every kind caused to any person or to the property of any person arising from or in any manner connected to Developer's performance of its obligations under this Agreement or out of the operations conducted by Developer. The foregoing indemnity shall exclude any indemnified matters to the extent they result from (x) the gross negligence or willful misconduct of the City or its boards, commissions, councils, departments including the electric utility Alameda Municipal Power, officers, employees, and agents (collectively, "**City Parties**"); or (y) the mere discovery by Developer or its agents of any preexisting condition of Hazardous Materials in, on, under or about the Subdivision, except to the extent Developer or its agents or employees exacerbate such pre-existing condition of Hazardous Materials.

d. Developer's obligation to indemnify, defend and hold harmless Indemnitees shall expressly survive the expiration or early termination of this Agreement.

24. Insurance: Without limiting Developer's indemnification provided herein, Developer shall procure and maintain at all times during the life of this Agreement the following policies of insurance with insurers (if other than the State Compensation Fund) licensed to offer insurance business in the State of California with a current A.M. Best's rating of no less than A:VII or Standard & Poor's Rating (if rated) of at least BBB, unless otherwise acceptable to City. Developer shall deliver updated insurance certificates to the City at the address described in Section 25 prior to the expiration of the existing insurance certificate for the duration of the term of Agreement. Endorsements naming the City, its City Council, boards, commissions, officials,

employees, agents, and volunteers as additional insured shall be submitted with the insurance certificates.

Developer Initials

a. Developer's Coverage: Developer shall maintain insurance coverage and limits at least as broad as the following requirements, and the policies shall contain, or be endorsed with, the provision that coverage shall not be canceled nor reduced in coverage without thirty (30) days prior written notice (ten (10) days for non-payment of premium) to City by certified mail:

(1) Workers' Compensation: Statutory coverage as required by the State of California Workers' Compensation with statutory limits as required by the California Labor Code. Said policy shall contain or be endorsed to provide that the policy shall not be canceled without thirty (30) days prior written notice to City and that the policy shall provide for a waiver of subrogation against City, its City Council, boards, commissions, officials, employees, agents and volunteers.

(2) Liability: Commercial general liability coverage in the following minimum limits:

Bodily Injury:	\$1,000,000 each occurrence \$2,000,000 aggregate - all other
Property Damage:	\$1,000,000 each occurrence \$2,000,000 aggregate

If submitted, combined single limit policy with per occurrence limits in the amounts of \$2,000,000 and aggregate limits in the amounts of \$4,000,000 will be considered equivalent to the required minimum limits shown above.

(3) Automotive: Comprehensive automobile liability coverage (any auto) in the following minimum limits:

Bodily injury:	\$1,000,000 each occurrence
Property Damage:	\$1,000,000 each occurrence

or

Combined Single Limit:	\$2,000,000 each occurrence
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The amount of any deductible or self-insured retention over \$25,000 shall be declared to and security posted guaranteeing payment of losses and defense costs.

(4) Pollution Prevention: Legal liability required for exposure to hazardous materials in the amount of \$2,000,000 each occurrence.

(5) **Builders Risk:** Insurance utilizing an “All Risk” (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.

b. **Subrogation Waiver:** Developer hereby agrees to waive rights of subrogation which any insurer of Developer may acquire from Developer by virtue of the payment of any loss. Developer agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether the City has received a waiver of subrogation endorsement from the insurer. The Workers’ Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Developer, its employees, agents and subcontractors.

c. **Failure to Secure:** If Developer at any time during the term hereof should fail to secure or maintain the foregoing insurance, upon not less than ten (10) days’ notice to Developer, City shall be permitted to obtain such insurance in Developer’s name or as an agent of Developer and shall be compensated by Developer for the costs of the insurance premiums, plus interest at the maximum rate permitted by law, and computed from the date written notice is received that the premiums have not been paid.

d. **Additional Insured:** City, its City Council, boards, commissions, officials, employees, agents and volunteers shall be named as an additional insured under all insurance coverages, except worker’s compensation insurance and professional liability insurance. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

e. **Multiple Insured:** The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the insurer’s liability.

f. **Primary Coverage:** For claims related to this project, Developer’s insurance shall be primary and non-contributory and will not seek contribution from the City’s insurance or self-insurance.

g. **Failure or Breach by Developer:** Any failure by Developer to comply with reporting or other provisions of this Agreement, including breach of warranties, shall not affect coverage provided to City, its officers, employees and agents.

h. **Professional Liability/Engineering Consultants:** Developer shall cause any of its geotechnical and civil engineering consultant to maintain professional liability insurance, which includes coverage for the professional acts, errors and omissions of each consultant in the amount of at least \$2,000,000 per occurrence or claim. Such professional liability insurance will have an inception date or a retroactive date coinciding with or prior to the date services are first

performed and coverage shall be provided for at least five (5) years after the date the Work or the services are accepted. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective, or start of work date, the Developer must purchase extended reporting period coverage for a minimum of five (5) years after completion of contract work.

i. Contractor's Insurance: Before construction begins, Developer shall provide City with a letter stating its general contractor ("**Contractor**") for the project in the Subdivision. Work on the project may then begin and continue as long as that Contractor is engaged as the Contractor on the job. No other Contractor may be substituted unless and until a letter naming the new general contractor is provided to City along with the necessary evidence of all required insurance. Developer shall cause the Contractor and all subcontractors to provide the following insurance coverages:

(1) On or before the commencement of the agreement between the Developer and Contractor, Contractor shall furnish City with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with paragraphs below. Such certificates, which do not limit Contractor's indemnification, shall also contain substantially the following statement: "Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days' advance written notice to City by certified mail, Attention: Risk Manager." Contractor shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to City and licensed to do insurance business in the State of California. Endorsements naming City, its City Council, boards, commissions, officials, employees, agents and volunteers as additional insured shall be submitted with the insurance certificates.

- Contractor shall maintain the following insurance coverage:
 - Workers' Compensation: Statutory coverage as required by the State of California.
 - Liability: Commercial general liability coverage in the following minimum limits:

Bodily Injury:	\$1,000,000 each occurrence \$2,000,000 aggregate - all other
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Property Damage:	\$1,000,000 each occurrence \$2,000,000 aggregate
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If submitted, combined single limit policy with per occurrence limits in the amounts of \$2,000,000 and aggregate limits in the amounts of \$4,000,000 will be considered equivalent to the required minimum limits shown above.

- Automotive: Comprehensive automobile liability coverage (any auto) in the following minimum limits:

Bodily injury: \$1,000,000 each occurrence
 Property Damage: \$1,000,000 each occurrence

or

Combined Single Limit: \$2,000,000 each occurrence

- Pollution Prevention: Legal liability required for exposure to hazardous materials in the amount of \$2,000,000 each occurrence.
- Builders Risk: Insurance utilizing an “All Risk” (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.

(2) Subrogation Waiver: Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether the City has received a waiver of subrogation endorsement from the insurer. The Workers’ Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

(3) Failure to Secure: If Contractor at any time during the term hereof should fail to secure or maintain the foregoing insurance, upon not less than ten (10) days’ notice to Developer and Contractor, City shall be permitted to obtain such insurance in the Contractor’s name or as an agent of the Contractor and shall be compensated by the Contractor for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

(4) Additional Insured: City, its City Council, boards, commissions, officials, employees, agents and volunteers shall be named as an additional insured under all insurance coverages, except worker’s compensation insurance. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

j. Sufficiency of Insurance: The insurance limits required by City are not represented as being sufficient to protect Contractor. Contractor is advised to consult Contractor’s insurance broker to determine adequate coverage for Contractor. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements

for each subcontractor. All coverage for subcontractors shall be subject to all the requirements stated herein.

25. Notices: All notices, demands, requests, or approvals to be given under this Agreement shall be given in writing and conclusively shall be deemed served when delivered personally or on the second business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed to City or Developer as hereinafter provided.

City: City of Alameda
City Attorney's Office
City Attorney
2263 Santa Clara Avenue, Room 280
Alameda, CA 94501
510-747-4750

With copy to: City of Alameda
Public Works Department
City Engineer
950 W. Mall Square, Room 110
Alameda, CA 94501
510-747-7900

Developer: TH Grand Street LLC (Trumark Homes)
3001 Bishop Drive, Suite 100,
San Ramon CA, 94583

26. Prohibition Against Transfers.

a. Developer shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of the City Manager. Developer shall submit a written request for consent to transfer to the City Manager at least thirty (30) days in advance of the desired transfer. The City Manager or their designee may consent or reject such request in their sole and absolute discretion. Any attempt to do so without said consent shall be null and void, and any assignee, sublessee, hypothecate or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. However, claims for money against the City under this Agreement may be assigned by Developer to a bank, trust company or other financial institution without prior written consent. Notwithstanding the foregoing, the City agrees to reasonably approve the transfer of this Agreement to a party that acquires the Property (or any remaining portion thereof) from Developer provided that such party qualifies under the City's standard requirements for the approval of a subdivision improvement agreement with the City.

b. Except in connection with the sale or transfer of all or substantially all of the assets of Developer, or a merger or other corporate combination or sale or transfer of the business of Developer as a whole, the sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock, membership interest, partnership interest, or the equivalent,

which shall result in changing the control of Developer, shall be construed as an assignment of this Agreement. Control means fifty percent or more of the voting power of Developer.

27. Safety.

a. Developer will be solely and completely responsible for conditions of all vehicles owned or operated by Developer, including the safety of all persons and property during performance of the services and tasks under this Agreement. This requirement will apply continuously and not be limited to normal working hours. In addition, Developer will comply with all safety provisions in conformance with U.S. Department of Labor Occupational Safety and Health Act, any equivalent state law, and all other applicable federal, state, county and local laws, ordinances, codes, and any regulations that may be detailed in other parts of the Agreement. Where any of these are in conflict, the more stringent requirements will be followed. Developer's failure to thoroughly familiarize itself with the aforementioned safety provisions will not relieve it from compliance with the obligations and penalties set forth herein.

b. Developer will immediately notify the City within 24 hours of any incident of death, serious personal injury or substantial property damage that occurs in connection with the performance of this Agreement. Developer will promptly submit to the City a written report of all incidents that occur in connection with this Agreement. This report must include the following information: (i) name and address of injured or deceased person(s); (ii) name and address of Developer's employee(s) involved in the incident; (iii) name and address of Developer's liability insurance carrier; (iv) a detailed description of the incident; and (v) if applicable, a police report.

28. No Recovery of Litigation Fees and Costs: In the event of any litigation, including administrative proceedings, relating to this Agreement, including but not limited to any action or suit by any party, assignee or beneficiary against any other party, beneficiary or assignee, to enforce, interpret or seek relief from any provision or obligation arising out of this Agreement, the parties and litigants shall bear their own attorney's fees and costs. No party or litigant shall be entitled to recover any attorneys' fees or costs from any other party or litigant, regardless of which party or litigant might prevail.

29. Compliance with All Applicable Laws: During the term of this Agreement, Developer shall keep fully informed of all existing and future state and federal laws and all municipal ordinances and regulations of the City of Alameda which affect the manner in which the services or tasks are to be performed by Developer, as well as all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. Developer shall comply with all applicable laws, state and federal and all ordinances, rules and regulations enacted or issued by the City.

30. Governing Law: This Agreement shall be interpreted under, and enforced by the laws of the State of California without regard to any choice of law rules which may direct the application of laws of another jurisdiction. The Agreement and obligations of the parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities). Any suits brought pursuant to this Agreement shall be filed with the courts of the County of Alameda, State of California.

31. Waiver: A waiver by the City of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.

32. Time of Essence: Time is of the essence.

33. Severability: The provisions of this Agreement are severable. If any portion is held invalid by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.

34. Entire Agreement: This Agreement constitutes the entire agreement with respect to the subject matter and all modifications, amendments or waivers under this Agreement must be in writing and signed by the authorized representatives of the parties. In the case of City, the appropriate party shall be the Public Works Director.

35. Reference: Any reference to a department manager shall include his or her duly authorized designee, deputy or representative.

36. Recordation: Upon request by City, Developer agrees to execute and acknowledge a memorandum of this Agreement for recordation with the Alameda County Recorder. By recordation of this Agreement or a memorandum hereof, it is the parties' intent to provide notice to future purchasers that the obligations and benefits set forth shall run with the land. At its option City may record the Agreement or memorandum or may require Developer, at Developer's cost, to record such Agreement or memorandum and may withhold City permits until proof of recordation is provided to City. City agrees to record a supplement to this Agreement, if requested by Developer, confirming the final acceptance by the City of the Work.

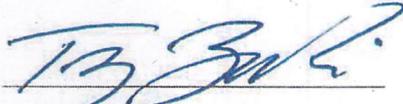
37. Counterparts: This Agreement may be executed in any number of counterparts (including by fax, PDF or other electronic means), each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

38. Agreement runs with the Real Property: This Agreement pertains to and runs with the real property included within Tract Map 8654 which land is expressly agreed to benefit from the privileges granted to Developer under this Agreement, and binds the beneficiaries, heirs, assigns, successors in interest of Developer.

IN WITNESS WHEREOF, Developer and City have hereunto caused their hands to be subscribed through their duly authorized officers:

TH GRAND STREET, LLC,
a California limited liability company

CITY OF ALAMEDA
a municipal corporation

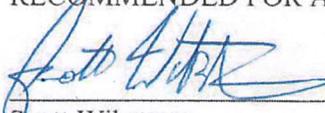
By: 

Name: Tony Bosowski

Jennifer Ott
City Manager

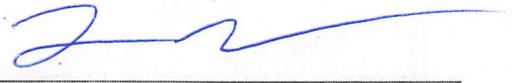
Its: Authorized Agent

RECOMMENDED FOR APPROVAL:



Scott Wikstrom
City Engineer

APPROVED AS TO FORM:



Len Aslanian
Assistant City Attorney

CALIFORNIA ALL-PURPOSE NOTARY ACKNOWLEDGEMENT

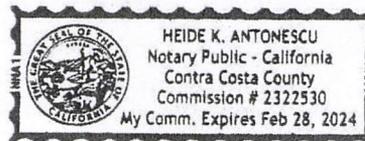
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

On November 13, 2023 before me, Heide K. Antonescu, Notary Public, personally appeared Tony Bosowski, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.



Signature Heide K. Antonescu (Seal)

DESCRIPTIONS (Continued from Page 1)

Trumark Construction Service Inc
Trumark Commercial LLC
Trumark Properties LLC
Trumark Homes Colorado LLC, A Colorado Limited Liability Company

Certificate is subject to policy limits, conditions and exclusions.

Project: Alameda Shell / TH Grand Street LLC. City of Alameda, its City Council, boards, commissions, officials, employees, agents and volunteers are included as Additional Insured as respects General Liability as required by written contract. General Liability is Primary and Noncontributory as required by written contract.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
As required by written contract with the Named Insured that is executed by the parties to the contract prior to the commencement of work that is called for in the contract.	All locations which are afforded coverage under this policy.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – MANAGERS OR LESSORS OF PREMISES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

<p>Designation Of Premises (Part Leased To You): All locations which are afforded coverage under this policy.</p>
<p>Name Of Person(s) Or Organization(s) (Additional Insured): As required by written contract with the Named Insured that is executed by the parties to the contract prior to the commencement of work that is called for in the contract.</p>
<p>Additional Premium: Included</p>
<p>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</p>

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by you or those acting on your behalf in connection with the ownership, maintenance or use of that part of the premises leased to you and shown in the Schedule and subject to the following additional exclusions:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to be a tenant in that premises.
2. Structural alterations, new construction or demolition operations performed by or on behalf of the person(s) or organization(s) shown in the Schedule.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and

2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and

- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

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**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT-CALIFORNIA
BLANKET BASIS**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

The additional premium for this endorsement shall be calculated by applying a factor of 2% to the total manual premium, with a minimum initial charge of \$350, then applying all other pricing factors for the policy to this calculated charge to derive the final cost of this endorsement.

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

Blanket Waiver

Person/Organization Blanket Waiver – Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

Job Description	Waiver Premium (prior to adjustments)
All CA Operations	3,828.00

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective: 12/01/2022

Policy No.: TRWC328156

Endorsement No.:

Insured:

Premium \$

Insurance Company: Berkshire Hathaway Homestate Ins Co

Countersigned by _____