

Attachment D
Subdivision Improvement
Agreement for Tract Map
Nos. 15310-1 through
15310-4

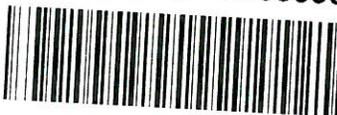


BOB DUTTON
ASSESSOR – RECORDER – CLERK

P Counter

3/22/2018
1:33 PM
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Doc# 2018-0100856



Titles	1	Pages	12
Fees		0.00	
Taxes		0.00	
CA SB2 Fee		0.00	
Others		0.00	
Paid		\$0.00	

RECORDING REQUESTED BY
CITY OF VICTORVILLE
Come Pruitt
WHEN RECORDED RETURN TO:
CITY OF VICTORVILLE
ENGINEERING DEPT.
14343 CIVIC DR.
VICTORVILLE, CA 92392
Sec. 27, T5N, R5, SBM

SPACE ABOVE FOR RECORDER'S USE
RECORDING OF THIS DOCUMENT IS FEE-EXEMPT
UNDER GOVERNMENT CODE SECTION 6103
NO DOCUMENTARY TRANSFER TAX IS DUE ON
THE DOCUMENT PURSUANT TO
REVENUE TAXATION CODE SECTION 11922

SUBDIVISION IMPROVEMENT AGREEMENT
Tract Map Nos. 15310-1 through 15310-4

THIS SUBDIVISION AGREEMENT ("Agreement") is made and entered into by and between the City of Victorville, hereinafter referred to as "City", and FH II, LLC, a California limited liability company, dba Frontier Communities, hereinafter referred to as "Subdivider". "City and Subdivider are sometimes hereinafter referred to individually as a "Party" and collectively referred to as the "Parties."

RECITALS

WHEREAS, Subdivider is currently the record fee owner of that certain real property situated in the City of Victorville, County of San Bernardino, State of California, as more particularly described in **Exhibit "A"**, attached hereto and incorporated herein by this reference (the "Subdivision"), and the successor in interest to those certain final Subdivision Tract Map Nos. 15310-1, 15310-2, 15310-3, and 15310-4 (the "Maps") originally recorded in the office of the San Bernardino County Recorder ("County Recorder's Office") by Standard Pacific Corp. ("Standard") as Document Nos. 2006-0132938, 2006-0273392, 2006-0273706 and 2006-0273756, respectively; and

WHEREAS, in order to receive approval from the City for said Maps, Standard had previously entered into a secured subdivision agreement with the City (recorded as Document No. 2006-0138884 and 2006-0276019 in the County Recorder's Office) promising to construct and install the public improvements required by the Maps and complete the related work for the Subdivision in accordance with the conditions of approval, all as required by the City's Planning Commission (the "Obligations"); and

WHEREAS, prior to performing the Obligations under its agreement, Standard sold the Subdivision and was released from the Obligations when the buyer, Pendergraft Victorville, LP ("Pendergraft"), entered into Lien Agreements with the City on July 20, 2010 (one for Tract Map No. 15310-1 and another for Tract Map No. 15310-3) recorded in the County Recorder's Office as Document Nos. 2010-0334652 and 2010-0334653, respectively, to secure Pendergraft's performance of the Obligations, and

WHEREAS, prior to performing the Obligations under such agreements, Pendergraft also subsequently sold the Subdivision, and was released from the Obligations when the buyer CV Communities, LLC ("CV") entered into Lien Agreements with the City on January 18, 2011 (one for Tract Map No. 15310-1 and another for Tract Map No. 15310-3) recorded in the County Recorder's Office as Document Nos. 2011-0041949 and 2011-0041950, respectively, to secure CV's performance of the Obligations; and

WHEREAS, pursuant to that certain Grant Deed recorded on November 12, 2011 as Document No. 2015-0486683 in the County Recorder's Office, CV subsequently transferred ownership of the Subdivision to VICTORVILLE 1 INV, LCC, a Delaware limited liability company, hereinafter called "VICTORVILLE 1"; and

WHEREAS, pursuant to that certain Grant Deed recorded on June 26, 2017 as Document No. 2017-0260286 in the County Recorder's Office, VICTORVILLE 1 subsequently transferred ownership to DIAMOND RIDGE INV, LLC, a Delaware limited liability company, hereinafter called ("DIAMOND RIDGE"); and

WHEREAS, as evidenced by that certain Grant Deed recorded on February 9, 2018 as Document No. 2018-0049531 in the County Recorder's Office, DIAMOND RIDGE subsequently sold the Subdivision to Subdivider; and

WHEREAS, Subdivider, as the new owner of the Subdivision, is prepared to assume, secure and perform the Obligations associated with the Maps and the Subdivision (as updated and set forth in this new Agreement) in accordance with the Subdivision Map Act of the State of California and Chapter 17 of the Victorville Municipal Code; and

WHEREAS, this Agreement is executed pursuant to the provisions of the Subdivision Map Act of the State of California and Chapter 17 of the Victorville Municipal Code.

NOW THEREFORE, incorporating the above recitals and in consideration of the previously-approved Maps, the acceptance of the dedications therein offered, and in order to insure satisfactory performance by Subdivider of Subdivider's Obligations under said Subdivision Map Act and said Chapter 17, the Parties agree as follows:

1. Performance of Work

Subdivider will do and perform, or cause to be done and performed, at Subdivider's own expense, in a good and workmanlike manner, and furnish all required materials, all under the direction and to the satisfaction of the City Engineer of City, all of the work and improvements required by the City Planning Commission for this Subdivision in accordance with the plans and specifications on file as herein specified, or with any changes required or ordered by said Engineer, which in his opinion are necessary or required to complete the work. Any sewer work or water supply work shall be subject to the approval of the respective special districts having to do with the said types of work.

2. Work: Places and Grades to be Approved by Engineer

All of said work is to be done at the places, of the materials, in the manner, and at the grades, all as shown upon the plans and specifications therefor, heretofore approved by City Engineer and which are now on file in his office, and to the satisfaction of said City Engineer. The actual work of surveying shall be performed by the Subdivider's engineer.

3. Specifications

The work embraced herein shall be done in accordance with the provisions of the Standard Specifications of the State of California, Business and Transportation Agency, Department of Transportation, current edition, insofar as they may apply, and the City of Victorville Standard Specifications for Public Improvements, hereinafter referred to as the Standard Specifications. Whenever in the said State Standard Specifications the following terms are used, they shall be understood to mean the following:

- a) State, Department of Transportation, City or Owner: City of Victorville, California.
- b) Director: The City Engineer of the City of Victorville

- c) Engineer: Whenever not qualified, shall mean the City Engineer of the City of Victorville, California acting either directly or through his properly authorized agents, each agent acting only within the scope of the authority delegated to him.
- d) Laboratory: The laboratory to be approved by the City of Victorville to test materials and work involved in the construction provided for under this agreement.

In case of conflict between the State Standard Specifications and the Standard Specifications for Public Improvements of the City of Victorville, the Standard Specifications for Public Improvements of the City of Victorville shall prevail.

In case of conflict between the State Standard Specifications, the Standard Specifications for Public Improvements of the City of Victorville, and the plans and this agreement, the approved plans and this Agreement shall take precedence over and be used in lieu of such conflicting portions of the State Standard Specifications or Standard Specifications for Public Improvements of the City of Victorville.

4. Work: Time for Completion

City hereby fixes the time for the completion of said work to be within two years after the date this Agreement is fully executed by all Parties and is recorded with the County Recorder of San Bernardino County. At least two (2) calendar days prior to the commencement of work hereunder, Subdivider shall notify City Engineer of the date fixed by Subdivider for commencement thereof, so that city Engineer shall be able to provide services of inspection.

5. Time of Essence - Extension

Time is of the essence in this Agreement; provided, that in the event good cause is shown therefor, the City Council may extend the time for completion of the improvements hereunder. Any such extension may be granted without notice to the Subdivider's surety, and extensions so granted shall not relieve the surety's liability on the bond to secure the faithful performance of this agreement. The City Council shall be the sole and final judge as to whether or not good cause has been shown to entitle Subdivider to an extension.

6. Repairs and Replacements

Subdivider shall replace, or have replaced, or repair, or have repaired, as the case may be, all pipes and monuments shown on the map which have been destroyed or damaged, and Subdivider 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, or any and all property damaged or destroyed by reason of any work 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 person whomsoever, or by any combination of such owners. Any such repair or replacement shall be to the satisfaction, and subject to the approval, of the City Engineer.

7. Permits: Compliance with Law

Subdivider shall, at Subdivider'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. Subdivider agrees to procure, at his expense, any necessary permits required for the opening of any state or county roads or easements outside the jurisdiction of City.

8. Superintendence by Subdivider

Subdivider shall give personal superintendence to the work on said improvement, or have a competent foreman or superintendent, satisfactory to the City Engineer, on the work at all times during progress, with authority to act for Subdivider.

9. Inspection by City

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

10. Contract Security

Concurrently with the execution hereof, Subdivider shall furnish a bond in an amount equal to at least one hundred percent of the approved Engineer's estimate as security for the faithful performance of this Agreement.

Similarly, Subdivider shall furnish a bond in an amount equal to at least fifty percent of the said price as security for the payment of all persons performing labor and furnishing materials in the construction of this tract, including any claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the State Civil Code.

The said bonds shall be in cash, letter of credit, or bonds provided by a surety satisfactory to the City, or in such other form as may be provided for by law. The said bonds shall be worded and dated to become effective immediately upon failure of the Subdivider to complete the work subject to the bonds within the two-year period allowed or any extensions thereof allowed by the City.

11. Hold-Harmless Agreement

Subdivider hereby agrees to, and shall, hold City, its elective and appointive boards, commissions, officers, agents and employees, 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 Subdivider's or Subdivider's contractors', subcontractors', agents', or employees' operations under this Agreement, whether such operations be by Subdivider or by any of Subdivider's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for Subdivider or any of Subdivider's contractors, or subcontractors. Subdivider agrees to, and shall defend City and its elective and appointive boards, commissions, officers, agents and employees 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 the aforesaid hold-harmless agreement by Subdivider 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, plans and/or specifications for the Subdivision, or regardless of whether or not any of the insurance policies described herein shall have been determined to be applicable to any of such damages or claims for damages.
- b) Acceptance by the City of the subject improvements, the deposit of certain moneys made pursuant to this Agreement by Subdivider, or the existence of any of the insurance policies required by the Agreement do not and shall not waive any rights the City may have against Subdivider.

12. Subdivider's Insurance

All insurance requirements contained in this Agreement are applicable to any contract entered into by Subdivider and/or any of Subdivider's contractors, subcontractors, agents and/or employees. Subdivider shall not commence work under this Agreement until Subdivider has obtained all insurance required under this Section, nor shall Subdivider allow any contractor or subcontractor to commence work on his contract or subcontract until all similar insurance required of the contractor or subcontractor shall have been so obtained and approved. Subdivider shall provide the City with not less than thirty (30) days notice prior to the cancellation, reduction or termination of any insurance coverages required by this

section. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.

a) Comprehensive General Liability Insurance

Subdivider shall procure and maintain at its own expense, during the initial term of this Agreement (and during any extension periods), Comprehensive General Liability insurance (including contractual liability), of not less than One Million Dollars (\$1,000,000) per occurrence, and Two Million Dollars (\$2,000,000) in the aggregate, for bodily injury, personal injury, death, loss, or damage resulting from the wrongful or negligent acts by Subdivider or its officers, employees, servants, volunteers, and agents and independent contractors.

b) Commercial Vehicle (Automobile) Liability Insurance

Subdivider shall further procure and maintain, at its own expense, during the initial term of this Agreement (and during any extension periods) Commercial Vehicle Liability insurance covering personal injury and property damage, of not less than One Million Dollars (\$1,000,000) combined single limit, covering any vehicle utilized by Subdivider or its officers, employees, servants, volunteers, agents and independent contractors in performing the services required by this Agreement.

c) Workers' Compensation Insurance

Subdivider shall procure and maintain at its own expense, during the initial term of this Agreement (and during any extension periods), Workers' Compensation insurance, providing coverage as required by the California State Workers' Compensation Law. If any class of employees employed by the Subdivider pursuant to this Agreement is not protected by the California State Workers' Compensation Law, Subdivider shall provide adequate insurance for the protection of such employees to the satisfaction of the City.

d) Additional Named Insured

Notwithstanding any inconsistent statement in any required insurance policies or any subsequent endorsements attached thereto, all insurance policies, except for the Workers' Compensation policy, shall be endorsed to name the City and its officers, employees, servants, volunteers, agents and independent contractors, including, without limitation, the City Attorney, as Additional Insureds.

e) Waiver of Subrogation Rights

Subdivider shall require the carriers of all required insurance policies to waive all rights of subrogation against the City and its officers, employees, servants, volunteers, agents, and independent contractors and subcontractors. Each policy of insurance shall be endorsed to reflect such waiver.

f) Proof of Insurance Coverage; Required Endorsements

Subdivider shall secure from a good and responsible company or companies authorized to transact insurance business in the State of California, the policies of insurance required by this Agreement and furnish to the City Clerk certificates of insurance evidencing the required coverage, and policy endorsements at least one (1) business day prior to commencement of any services to be performed under this Agreement.

The policies and certificates of insurance shall be endorsed to provide that in the event of cancellation or amendment of any required insurance policy for any reason whatsoever, the City shall be notified by mail, postage prepaid, not less than thirty (30) days before the cancellation or

amendment is effective. In the case of cancellation for non-payment, ten (10) days advance written notice shall be given.

Each policy and certificate of insurance shall be endorsed to provide that the policy shall not be terminated or expire without first providing thirty (30) days written notice to the City of such termination or expiration.

Each policy and certificate of insurance shall be endorsed to provide that the policy will be maintained throughout the initial term (and during any extension periods) of this Agreement.

The Comprehensive General Liability and Commercial Vehicle liability policies shall be endorsed to contain the following provision: "For any claims related to this Agreement, Subdivider's coverage shall be primary with respect to the City. Any insurance maintained by the City shall be in excess of Subdivider's insurance and shall not contribute with it."

13. Title to Improvements

Title to, and ownership of, all street improvements and sewers constructed hereunder by Subdivider shall vest absolutely in City, upon completion and acceptance of such improvements by City. Title to water works shall vest in the special district.

14. Repair or Reconstruction of Defective Work

If, within a period of one year after final acceptance of the work performed under this Agreement, any structure or part of any structure furnished and/or installed or constructed, or caused to be installed or constructed by Subdivider, or any of the work done under this Agreement, fails to fulfill any of the requirements of this Agreement or the specifications referred to herein, Subdivider shall without delay and without any cost to City, repair or replace or reconstruct any defective or otherwise unsatisfactory part or parts of the work or structure. Should Subdivider 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 Subdivider can be notified, City may, at its option, make the necessary repairs or replacements or perform the necessary work and Subdivider shall pay to City the actual cost of such repairs plus fifteen percent (15%).

15. Subdivider not Agent of City

Neither Subdivider nor any of Subdivider's agents or contractors are or shall be considered to be agents of City in connection with the performance of Subdivider's Obligations under this Agreement.

16. Cost of Engineering and Inspection

Subdivider shall pay City in accordance with Chapter 17, of the Victorville Municipal Code, for all engineering, inspection, and other services furnished by City in connection with the Subdivision.

17.

17. Notice of Breach and Default

If Subdivider refuses or fails to obtain prosecution of the work, or any severable part thereof, with such diligence as will insure its completion within the time specified, or any extensions thereof, or fails to obtain completion of said work within such time, or if the Subdivider should be adjudged a bankrupt, or Subdivider should make a general assignment for the benefit of Subdivider's insolvency or if Subdivider, or any of Subdivider's contractors, subcontractors, agents, or employees, should violate any of the provisions of this Agreement, City Engineer or City Council may serve written notice upon Subdivider and Subdivider's surety of breach of this Agreement, or of any portion thereof, and default of Subdivider.

18. Breach of Agreement; Performance by Surety or City

In the event of any such notice, Subdivider's surety shall have the duty to take over and complete the work and the improvements herein specified; provided, however, that if the surety, within five (5) days after the serving upon it of such notice of breach, does not give City written notice of its intention to take over the performance of the contract, and does not commence performance thereof within five (5) days after notice to City of such election, City may 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 Subdivider, and Subdivider's surety shall be liable to City for any excess cost or damages occasioned City thereby; 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 Subdivider as may be on the site of the work and necessary therefor.

19. Completion

Upon completion of all the work described in the said Agreement, and upon the City Council authorizing a written Notice of Completion and Acceptance of said work, the City will release all hold and any claims to **80%** of the amount specified above, for faithful performance. The remaining **20%** shall be held by the City for a period of one (1) year after the date of the Notice of Completion and shall thereafter be released. The amount specified above for labor and materials shall be reduced or released pursuant to the provisions of California Government Code §66499.7(h).

20. Notices

All notices required by or provided for under this Agreement shall be in writing and delivered in person or sent by certified or registered mail, postage prepaid and addressed as provided in this Section. Notice shall be effective on the date it is delivered in person, or, if mailed, on the date of deposit in the United States Mail. Notices shall be addressed as follows:

If to City: City of Victorville
Attention: City Engineer
P.O. Box 5001
14343 Civic Drive
Victorville, CA 92393-5001

With a copy to: Green de Bortnowsky LLP
23801 Calabasas Road, Suite 1015
Calabasas, CA 91302
Attn: Andre de Bortnowsky, City Attorney

If to Subdivider: FH II, LLC
2151 E. Convention Center Way #100
Ontario, CA 91764
Attn: Legal Counsel

With a copy to: _____

If to surety: _____

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

21. Binding Effect of Agreement

This Agreement shall be binding on and inure to the benefit of the Parties to this Agreement and their heirs, personal representatives, successors and assigns.

22. Severability; Modification; Entire Agreement

The provisions of this Agreement are severable. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect unless amended or modified in writing by the mutual consent of the Parties. This Agreement constitutes the entire agreement of the Parties and supersedes any prior written or oral agreements between them with respect to the subject matter hereof. All modifications, amendments, or waivers of the terms of this Agreement must be in writing and signed by the appropriate representatives of the Parties.

23. Authority of Executing Parties

The persons executing this Agreement warrant and represent that they are duly authorized to execute this Agreement on behalf of and bind the Party each purports to represent.

24. Incorporation of Recitals

The Recitals to this Agreement are hereby incorporated into in the terms of this Agreement.

**[END OF THIS PAGE]
[SIGNATURES TO FOLLOW]**

DATED this _____ day of _____ 20____

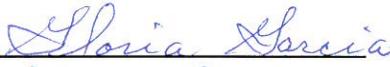
SUBDIVIDER

CITY

FH II, LLC, a California limited liability company, dba Frontier Communities

City of Victorville

By: 
Name: Richard Munkvold
Title: CFO
Date: February 15, 2018

By: 
Name: Gloria Garcia
Title: Mayor

ATTEST:

(Proper Notarization of Subdivider's Signature is required and shall be attached)

By: 
Victorville City Clerk

APPROVED AS TO FORM:


Andre de Bortnowsky, City Attorney

City of Victorville Risk Manager


Chuck Buquet

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.

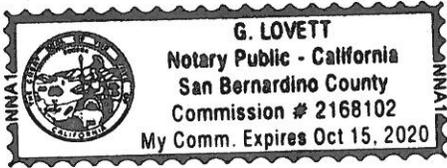
STATE OF CALIFORNIA)
COUNTY OF San Bernardino) ss.

On February 15, 2018, before me, G. Lovett

a Notary Public, personally appeared Richard Munkvold,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.



G. Lovett

ACKNOWLEDGMENT

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 San Bernardino)

On 3/6/18 before me, Heidi Roche, Notary Public
(insert name and title of the officer)

personally appeared Gloria Garcia,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Heidi Roche (Seal)



EXHIBIT "A"

LEGAL DESCRIPTION

Tract 15310-1: Lots 3 through 23, inclusive, of Tract Map No. 15310-1, recorded in Map Book No. 317, pages 4 through 6, inclusive, in the Office of the San Bernardino County Recorder; and

Tract 15310-2: Lots 68, 69 and 73, inclusive, of Tract Map No. 15310-2, recorded in Map Book No. 318, pages 42 through 44, inclusive, in the Office of the San Bernardino County Recorder; and

Tract Map No. 15310-3: Lots 74 through 110, inclusive, of Tract Map No. 15310-3, recorded in Map Book No. 318, pages 45 through 48, inclusive, in the Office of the San Bernardino County Recorder; and

Tract 15310-4: Lots 111 through 113, inclusive, of Tract Map No. 15310-4, recorded in Map Book No. 318, pages 49 through 51, inclusive, in the Office of the San Bernardino County Recorder