

CITY OF FAIRFIELD
LANDSCAPE IMPROVEMENT AGREEMENT

Canon Station Planning Area 4 – Neighborhood 7 - Landscaping
ONE LAKE HOLDING, LLC

THIS AGREEMENT ("Agreement"), for purposes of identification, dated _____, 2020 is made and entered into by and between the CITY OF FAIRFIELD, a municipal corporation, hereinafter referred to as "City," and **ONE LAKE HOLDING, LLC**, a **Delaware Limited Liability Company** hereinafter referred to as "Subdivider."

RECITALS:

- A. Subdivider has presented to City a Development Plan of land located within the corporate limits of City, said plan having been prepared in accordance with the requirements of the City Engineer.
- B. The proposed development of land is commonly known and described as **Canon Station Planning Area 4 – Neighborhood 7 - Landscape**. Said development is hereinafter referred to as "the Development."
- C. Subdivider has requested approval of the plans prior to the construction and completion of improvements, including, but not limited to, landscaping, irrigation, fencing, and other public facilities required by the City Engineer and the Ordinance of the City heretofore approved by the City Council of the City of Fairfield. Said improvements are hereinafter referred to as "the Required Improvements."

AGREEMENTS:

The parties hereto agree as follows:

- 1. **Performance of Work:** Subdivider agrees to furnish, construct, and install at his own expense all Required Improvements as shown on the plans and specifications of said development, a copy of which is on file in the Office of the City Engineer and is incorporated herein by reference, along with any changes and modifications as may be required by the City Engineer due to errors of omission on the plans.

2. Work; Satisfaction of the City Engineer: All of the work on the Required Improvements is to be done at the places, of the materials, and in the manner and at the grades, all as shown upon the approved plans and specifications and the City's Standard Specifications, and to the satisfaction of the City Engineer. No occupancy will be allowed for any building which fronts on improvements required by this improvement agreement until those improvements are constructed and approved by the City Engineer. The Subdivider shall attempt to construct the Required Improvements on a block by block basis.
3. Work; Time for Commencement and Performance: City fixes the time for the commencement of the work to be done on the day following approval of the agreement, and for its completion to be within 730 calendar days thereafter. At least fifteen (15) calendar days prior to the commencement of work hereunder, Subdivider shall notify the City Engineer in writing of the date fixed by Subdivider for commencement thereof, so that the City Engineer shall be able to provide services of inspection. A pre-construction meeting, to be held prior to start of construction, is required.
4. Time of Essence; Extension: Time is of the essence of this Agreement, but the dates for commencement and completion of the work of construction may be extended as herein provided. The City Engineer shall be the sole and final judge as to whether good cause has been shown to entitle Subdivider to an extension.
5. Request for Extension; Granting: Requests for extension of commencement and completion date shall be in writing, shall be delivered to City in the manner hereinafter specified for services of notices. Extensions shall be granted in writing and an oral extension shall not be valid for any purpose whatsoever.

6. Extension; No Release of Obligations: In the event it is deemed necessary by the City to extend the time of commencement or completion of the work to be done under this Agreement beyond the dates specified herein, such extension as shall be granted shall in no way release any guarantee given by Subdivider pursuant to this Agreement, or to relieve or release those providing improvement security pursuant to this Agreement. The sureties in executing the bonds shall be deemed to have expressly agreed to any such extension of time.
7. Extension; Conditions: The granting of any extension may be conditioned upon Subdivider providing City with new or amended surety bonds in amounts increased to reflect increases in the costs of constructing the Required Improvements that have occurred prior to the granting of the extension or are likely to occur prior to the completion of work.
8. Improvement Security: Concurrently with the execution hereof, Subdivider shall furnish City:
 - a. Improvement security in the sum of \$122,000, which sum is equal to one hundred ten percent (110%) of the estimated cost of constructing the Required Improvements and the cost of any other obligation to be performed by Subdivider hereunder, securing the faithful performance of this Agreement.
 - b. Separate improvement security in the sum of \$61,000, which sum is equal to fifty-five percent (55%) of the estimated cost of constructing the Required Improvements, securing payment to the Subdivider, his subcontractor, and to persons furnishing labor, materials, or equipment to them for the construction of the Required Improvements.

The form of the improvement security shall be subject to the approval of the City Attorney. Improvement security shall be reduced or released by City only in the manner provided by the Ordinance of City. No change, alteration, or addition to the terms of this Agreement or the plans and specifications accompanying the same shall in any manner affect the

obligation of those providing improvement security pursuant to this Agreement.

9. Engineering & Inspection Fees:

- a. Subdivider shall pay to the City an engineering plan check fee of 1.35% of the total cost of the Required Improvements, as estimated by the City Engineer, less the initial plan check fee of one percent (1%) of the total cost paid upon submittal of improvement plans, rounded to the nearest whole number. The total amount of this fee still due is

$$(1.35\% \times \$110,815.38) - \$0.00 = \underline{\$1,496}.$$

- b. Subdivider shall pay to the City an engineering and inspection fee of five and a half percent (5.5%) of the total cost of the Required Improvements, as estimated by the City Engineer, rounded to the nearest whole number, being

$$(5.5\% \times \$110,815.38) = \underline{\$6,095}.$$

It is understood that such fee covers only those inspections and engineering work performed by the City during the normal working hours of the City.

10. Hold Harmless Agreement: The Subdivider will indemnify, hold harmless, and assume defense of, in any actions of law or in equity, the City of Fairfield, its officers, employees, agents, and elective and appointive boards from all claims, losses, damages, including property damage, personal injury, including death, and liabilities of every kind, directly or indirectly arising from the operations of Subdivider, its subcontractor, or any person directly or indirectly employed by, or acting as agent for Subdivider or any subcontractor, but not including the sole or active negligence or willful misconduct of the City of Fairfield. This indemnification shall extend to claims, losses, damages, injury or liability for injuries occurring after completion of the Required Improvements as well as during the work's progress.

Acceptance of insurance certificates required under this agreement does not relieve Subdivider from liability under this indemnity and hold harmless clause. This indemnity and hold harmless clause shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of Subdivider's or any subcontractor's operations regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

11. Subdivider's Insurance: Subdivider shall not commence work under this Agreement or permit his subcontractor to commence work thereunder until Subdivider shall have obtained or caused to be obtained all insurance required under this paragraph and such insurance shall have been approved by the City Engineer of City as to form, amount, and carrier. Subdivider shall not allow any subcontractor to commence work on this contract until all insurance required of the subcontractor shall have been so obtained and approved. Said insurance shall be maintained in force and effect until the completion of work under this Agreement and the acceptance thereof by City. 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. WORKER'S COMPENSATION INSURANCE: Subdivider shall obtain and maintain (or cause to be obtained and maintained) workers' compensation insurance for all Subdivider's employees employed at the site of improvement. Proof of a qualified self-insured program is acceptable. Subdivider shall require any subcontractor similarly to provide workers' compensation insurance for all subcontractors' employees, unless such employees are covered by the protection afforded by Subdivider. In case any class of employees engaged in work under this Agreement at the site of the project is not protected under any workers' compensation law, Subdivider shall provide, and shall cause each subcontractor to provide, adequate insurance for the protection of employees not otherwise protected. Subdivider hereby

agrees to indemnify City for any damage resulting to it from failure of any subcontractors to take out or maintain such insurance. Subdivider shall provide the Director of Public Works with a certificate of insurance indicating workers' compensation coverage prior to engaging in any activity required by this Agreement.

- b. **LIABILITY INSURANCE:** Subdivider, at his sole expense, shall obtain and maintain (or cause to be obtained and maintained) an insurance policy or policies, issued by an admitted insurer or insurers as defined by the California Insurance Code, providing the City, its officers, employees, and agents, named as additional insureds under the policy, broad form property damage, personal injury, automobile, employers', and comprehensive form liability insurance in the amount of not less than \$3 million per occurrence. By the terms of said insurance policy or policies, such insurance shall be deemed primary insurance, and no other insurance effected by the City or other named insureds will be called upon to cover a loss covered thereunder.

In the event that any of the aforesaid insurance policies provided for in this paragraph 11 insures any entity, persons, boards, or commissions other than those mentioned in this paragraph, such policy shall contain a standard form of cross-liability endorsement, insuring on such policy City, its elective and appointive boards, commissions, officers, agents, and employees, Subdivider and any subcontractor performing work covered by this Agreement.

- 12. **Evidence of Insurance:** Subdivider shall furnish the City Engineer concurrently with the execution hereof:
 - a. A certificate of insurance providing that no cancellation, major change in coverage, expiration or renewal shall be made during the term of this agreement, without thirty (30) days written notice to the Director of Public Works prior to the effective date of such cancellation, change in coverage, expiration or nonrenewal;

- b. A City standard endorsement form for insurance coverage (attached hereto) naming the City of Fairfield, its officers, employees, agents and volunteers ad additional insureds.
13. Title to Improvements: Title to and ownership of all improvements constructed hereunder by Subdivider shall vest absolutely in City upon completion and acceptance of such improvements by City. All common private improvements constructed hereunder by Subdivider shall vest absolutely in the Homeowner Association ("HOA") upon completion and acceptance of such improvements by the HOA.
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 improvement or part of any improvement 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%) within thirty (30) days of the date of billing for such work by City.

All common private improvements that will be maintained by the HOA are covered under this Agreement. The Subdivider shall submit performance and labor and material bonds for the common private improvements. At the time these improvements are completed to the satisfaction of the City Engineer, a warranty bond shall be submitted to release the original bonds.

15. Subdivider Not Agent of City: Neither Subdivider nor any of Subdivider's agents or subcontractors are or shall be considered to be agents of City in connection with the performance of Subdivider's obligations under this Agreement.
16. 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 ensure its completion within the time specified, or any extension thereof, or fails to obtain completion of said work within such time, or if Subdivider should be adjudged a bankrupt, or Subdivider should make a general assignment for the benefit of Subdivider's creditors, or if a receiver should be appointed in the event of Subdivider's insolvency, or if Subdivider or any of Subdivider's subcontractors, agents, or employees should violate any of the provisions of this Agreement, City Engineer may serve written notice upon Subdivider and Subdivider's surety of breach of this Agreement, or of any portion thereof, and default of Subdivider.
17. Assignment:
- A. Subdivider shall not assign this Agreement, or any portion thereof without the prior written consent of the City. Any attempted or purported assignment in violation of this subparagraph A shall be null and void and shall have no force or effect.
- B. If Subdivider intends to sell the Subdivision, or any portion thereof, to any other person or entity, Subdivider may be relieved of its obligations included in this Agreement only with the Director of Public Works' approval of Subdivider's request for assignment and assumption of this Agreement and a substitution of improvement security. Upon (i) the execution of any assignee's agreement with the City, (ii) approval of the assignment and (iii) substitution of improvement security, Subdivider will be fully released from all of the duties and obligations under this Agreement, and may request a release or reduction of the improvement security

furnished pursuant to this Agreement, which shall not be unreasonably withheld by the City.

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 improvement herein specified; provided, however, that if the surety within fifteen (15) days after the serving of such notice of breach upon it does not give City written notice of its intention to take over the performance of the contract, and does not commence performance thereof within fifteen (15) 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 of 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. Notices: All notices herein required shall be in writing, and delivered in person or sent by registered mail, postage prepaid.

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

_____	City Engineer
_____	Fairfield City Hall
_____	1000 Webster Street, Suite #300
_____	Fairfield, California 94533

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

_____	ONE LAKE HOLDING LLC, C/O DAN AGUILAR
_____	2121 N. CALIFORNIA BLVD, STE #1010
_____	WALNUT CREEK, CA 94596

(To be completed by Subdivider)

Notices to be given surety of Subdivider shall be addressed as follows:

ONE LAKE HOLDING LLC, C/O DAN AGUILAR

2121 N. CALIFORNIA BLVD, STE #1010

WALNUT CREEK, CA 94596

(To be completed by surety of Subdivider)

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 the new address.

20. Public Improvement Oversizing: Public improvement oversizing and/or reimbursement as defined in City Code Chapter 6B, Chapter 10, Article IV, Sections 10.56 through 10.65; and Chapter 25, Article III, Section 25.166.79 through 25.166.81 is not applicable.
21. Additional Terms and Conditions: This Agreement is subject to the following additional terms and conditions:
 - a. Approval of this improvement agreement shall not obligate the City to subsequently accept improvements which strictly conform to the plans referenced by this agreement. All costs associated with modifications resulting from subsequent improvement plan changes required by the City shall be borne by the Subdivider.
22. Prohibited Interest: No employee of the City shall have any direct financial interest in this agreement. This agreement shall be voidable at the opinion of the City if this provision is violated.

22. Local Employment Policy: The City of Fairfield desires, wherever possible, to hire qualified local residents to work on city projects. Local resident is defined as a person who resides in Solano County.

The City encourages an active affirmative action program on the part of its contractors, consultants, and developers. When local projects require, subcontractors, contractors, consultants, and developers will solicit proposals from qualified local firms where possible. As a way of responding to the provisions of the Davis-Bacon Act and this program, contractor, consultants, and developers will be asked to provide no more frequently than monthly, a report which lists the employee's name, job class, hours worked, salary paid, city of residence, and ethnic origin.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date set forth opposite their respective signatures.

Dated: _____

City of Fairfield,
a municipal corporation

ATTEST:

By: _____
City Clerk

By: _____
City Manager

One Lake Holding, LLC.,
a Delaware Corporation

By:  _____

Name: Dan Aguilar

Title: Co-President