

CITY OF FAIRFIELD
SUBDIVISION IMPROVEMENT AGREEMENT
MONTE VERDE
CENTURY COMMUNITIES OF CALIFORNIA, LLC

THIS AGREEMENT ("Agreement"), for purposes of identification, dated _____, 2021 is made and entered into by and between the CITY OF FAIRFIELD, a municipal corporation, hereinafter referred to as "City," and **CENTURY COMMUNITIES OF CALIFORNIA, a Delaware Limited Liability Company** hereinafter referred to as "Subdivider."

RECITALS:

- A. Subdivider has presented to City a certain parcel map or final map of a proposed subdivision of land located within the corporate limits of City, said map having been prepared in accordance with the Subdivision Map Act of the State of California, the Subdivision Regulations of the City of Fairfield (Chapter 25, Fairfield City Code), and the tentative map of the subdivision heretofore approved by the City Council of the City.
- B. The proposed development of land is commonly known and described as **Monte Verde Subdivision**. Said subdivision is hereinafter referred to as "the subdivision."
- C. The map of the subdivision was filed with the City Clerk for presentation to the City Council of the City for its approval, which map is referred to and incorporated herein.
- D. Subdivider has requested approval of the map prior to the construction and completion of improvements, including, but not limited to, streets, highways, or public ways, public utility facilities, and design standards which are part of the provisions for lot grading and drainage in or appurtenant to the subdivision, that are required by the Subdivision Map Act, the Subdivision Regulations of the City, the tentative map (and approvals given in connection therewith), and final grading plan, if any, heretofore approved by the City Council of the City. Said improvements are hereinafter referred to as "the Required Improvements."

- E. City Council, by the adoption of Resolution No. 2021-_____, incorporated herein by reference, has approved the map of the subdivision and accepted all offers of dedication made in connection therewith (except as otherwise provided in said resolution), on condition that Subdivider first enter into and execute this subdivision improvement agreement with City and meet the requirements of said Resolution.

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 subdivision, 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 (including energizing of streetlights) required by this subdivision agreement until those improvements are constructed and approved by the City Engineer.

No building permits will be issued until the following conditions are satisfied:

- a. The water system shall be constructed, tested (bacteriologically and pressure), final rock grade shall be attained, and fire hydrants brought to grade.
- b. Curb and gutter shall be constructed along the frontage of the lots for which building permits are being requested.
- c. An all-weather access to the building area within the right-of-way, as approved by the Fire Marshal, shall be constructed consisting of a minimum six inches of aggregate base rock.

- d. See Section 20, "Additional Terms and Conditions", for additional building permit restrictions.
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 365 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.
 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 \$3,886,126, 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 \$1,943,063, which sum is equal to fifty-five percent (55%) of the estimated cost of constructing the Required Improvements, securing payment to the contractor, 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 Subdivision regulations 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 and Inspection Fee:

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

$$(1.35\% \times \$3,532,841.25) - \$32,928.97 = \underline{\$14,764}.$$

- 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, rounded up to the nearest whole number, as estimated by the City Engineer, being:

$$5.5\% \times \$3,532,841.25 = \underline{\$194,306}.$$

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 defend the City of Fairfield, its officers, employees, agents, and elective and appointive boards from all claims, losses, damages (including property damage, personal injury, and death), and liabilities of every kind, directly or indirectly arising from the operations of Subdivider, its contractor or any subcontractor, or of any person directly or indirectly employed by, or acting as agent for Subdivider, its contractor or subcontractor, but not including the sole negligence or willful misconduct of the City of Fairfield. This indemnification shall extend to claims, losses, damages, or liabilities occurring after completion of the Required Improvements as well as during the work's progress. This indemnification, however, shall not apply to any claims, losses, damages, or liabilities occurring after the completion of the Required Improvements by the Subdivider and their acceptance by the City which are not related directly or indirectly to the Subdivider's operations under this Agreement and the construction of the Required Improvements.

Acceptance of insurance certificates required under this agreement does not relieve Contractor 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, contractor'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 contractor or 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, and in case any work is sublet, Subdivider shall require any contractor or subcontractor similarly to provide workers' compensation insurance for all contractor's or subcontractor's 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 contractor and 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 either Subdivider or any contractor or 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

affected 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, Contractor 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 public 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 public improvement work performed under this Agreement, any public improvement or part of any public 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 contractors, 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. 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.

18. 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

Fairfield, California 94533

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

Century Communities

6700 Koll Center Parkway, Suite #210

Pleasanton, CA 94566

Attn: Nicholas Arenson

(To be completed by Subdivider)

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

(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.

19. 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.
20. 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.
 - b. Community Facilities District #2012-2: The Subdivider is required to annex to Community Facilities District #2012-2, an Open Space, Public Safety and Park Maintenance Mello Roos District. Property owners within the District will be required to pay special on-going annual assessments to be used for the following:
 - Operation of Open Space
 - Police/Fire Protection, incl. personnel, equipment & supplies
 - Ongoing Maintenance of Neighborhood ParksThe Subdivider shall furnish the necessary processing fees, documents and boundary map required to annex to the District prior to the recordation of the Final Map. The annexation process must have gone through the second reading at the City Council prior to the issuance of any building permits. The Assessments will have an annual inflation adjustment.
21. 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

Century Communities of California,
a Delaware limited liability company

By: 

Name: NICHOLAS ARONSON

Title: VICE PRESIDENT

CITY OF FAIRFIELD
SUBDIVISION IMPROVEMENT AGREEMENT CHECK LIST

SUBDIVISION: Monte Verde Subdivision

OWNER: Century Communities, LLC

ADDRESS: 900 E. Hamilton Ave. Suite 500 Campbell, CA 95008

COUNCIL MEETING DESIRED: June 15, 2021

SUBMISSION DEADLINE: noon May 24, 2021

DESCRIPTION	QUANTITY	UNIT COST	AMOUNT	RECD BY	DATE
Plan Check Fee (less initial PC)	1.35%	\$3,532,841	\$14,764		
Engineering/Inspection Fee	5.5%	\$3,532,841	\$194,306		
Community Facilities District	1	\$6,500	\$6,500		
		TOTAL:	\$209,071		
Engineer's Estimate			\$3,532,841		
Faithful Performance Bond	110%		\$3,886,126		
Labor and Materials Bond	55%		\$1,943,063		
Insurance Certificate			\$3 Million		
Signed Agreement					
Construction Plans					

Distribution:
City Manager
City Engineer
Subdividerv

CALIFORNIA ALL-PURPOSE 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 Santa Clara

On May 26, 2021 before me, T.S. Robinson, Notary Public, personally appeared Nicholas Arenson, 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 of Notary Public

