

RECORDING REQUESTED BY:

City of Merced, A California charter
municipal corporation

WHEN RECORDED MAIL TO:

City of Merced
City Clerk
678 West 18th Street
Merced, California 95340

**Exempt Recording Per Gov't Code
Section 6103**

(Above for Recorder's Use Only)

DEFERRED IMPROVEMENT AGREEMENT

For the Deferral of Certain Improvements Related to
Bellevue Ranch West, Village 12, Phase 1
Between the City of Merced
And
Stonefield Home, Inc.,
A California Corporation

DEFERRED IMPROVEMENT AGREEMENT

THIS AGREEMENT, made and entered into _____, 2018, between the City of Merced, a California Charter Municipal Corporation, hereinafter called "City," and Stonefield Home, Inc., a California Corporation, hereinafter called "Owner" mutually agree and promise and follows:

1. PURPOSE

Owner desires to construct a subdivision (Bellevue Ranch West, Village 12, Phase 1) on property it owns which is described in Exhibit "A" attached hereto and wishes to defer construction of permanent public improvements, and City agrees to such deferment if Owner constructs improvements as herein promised.

2. AGREEMENT BINDING ON SUCCESSORS IN INTEREST

This Agreement is an instrument affecting the title or possession of the real property described in Exhibit "A". All the terms, covenants and conditions herein imposed are for the benefit of City and the real property or interest therein which constitutes the City bike path and shall be binding upon and inure to the benefit of the land described in Exhibit "A" and the successor in interest of Owner. Upon sale or transfer of the property described in Exhibit "A," the terms on this Agreement shall apply to any purchaser or successor in interest to Owner who shall succeed to the obligations imposed on Owner by this Agreement.

3. DEFERRED IMPROVEMENTS

A. The improvements set forth in this section may be deferred by Owner as set forth in this Agreement, subject to acceptable security for such improvements being provided to the City.

B. The required bike path as approved with Tentative Subdivision Map #1304 shall be constructed prior to a Notice of Completion being recorded for Bellevue Ranch West, Village 12, Phase 7.

4. SECURITY—FILING OF THE SAME

The Owner shall file securities for these deferred improvements as follows and in the amounts shown on Exhibit "B" attached hereto:

A. To secure faithful performance of this Agreement, security in an amount equal to one hundred (100%) percent of the estimated cost of the work as determined by the City shall be filed with the City prior to the City Council taking action on this Agreement.

B. To secure payment to the contractor, his subcontractors, and to persons furnishing labor, materials, or equipment to them, security in an amount equal to fifty (50%) percent of the estimated cost of the work as determined by the City shall be filed with the City prior the City Council taking action on this Agreement.

C. To secure the guarantee and warranty of the work for a period of one (1) year following the completion and acceptance of the work, security in an amount equal to fifteen (15%) percent of the estimated cost of the work as determined by the City shall be filed with the City prior to final acceptance of the work by the City.

If security is furnished in the form of a bond or bonds, such bonds shall be executed by a corporate surety company authorized to transact surety business in the State of California. Liability for security furnished as described herein shall be limited as set forth in Government Code Sections 66499.9 and 66499.10.

5. SECURITY— RELEASE OF THE SAME

Release of Securities shall be as follows:

A. Security given for faithful performance may be released thirty-five (35) days after recording Notice of Completion of the work provided that evidence of recording of the Notice of Completion has been furnished to the City, the City has finally accepted the work, and provided the security has been furnished to the City to guarantee and warrant the work for one (1) year following the date of such acceptance of the work.

B. Security securing the payment to the contractor, his subcontractors, and to persons furnishing labor, materials, or equipment may be released six (6) months after recording Notice of Completion provided no claims have been filed with the City in accordance with the Subdivision Map Act.

C. The security guaranteeing that the completed work remains satisfactory during the required one-year warranty period may be released upon correction, by Owner, of any defects in the work existing at the end of the warranty period.

In the event that improvements do not conform to the plans and specifications or defects are not corrected within the time limits specified by City, the City shall have the authority to order the necessary work done and to recover the cost of such work, as well as any costs of enforcing such obligation, including attorney fees, from the Owner and the Owner's surety or the financial institution providing the Instrument of Credit.

6. INSURANCE

Owner further agrees that before commencing any work pursuant to this Agreement, Owner shall obtain, and at all times prior to final acceptance of all improvements hereunder, keep in full force and effect, insurance coverage in such limits and amounts, and covering such risks as shall be acceptable to City.

All policies of insurance must be issued by a company that is either:

- (1) Admitted to transact insurance business in the State of California;
- (2) On the "LESLI List," i.e., the List of Eligible Surplus Line Insurers; or,
- (3) In the form of a risk retention group ("RRG") so long as the RRG contains at least \$750,000 in capital, has been in operation for at least one year, and the reinsurance agreement associated with

the RRG contains AM Best A rated insurers with an attachment point of \$250,000 or less.

All insurance companies must have an A.M. Best's rating of at least A- and a financial size of IX or X. All required policies shall contain an endorsement adding the Indemnified Parties under the agreement, specifically including but are not limited to, the City, its officers, employees, and agents, as additional insureds. The required policies shall stipulate that this insurance will operate as primary insurance for work performed by Developer and its sub-contractors, and that no other insurance effected by City or other named insureds will be called on to cover a loss covered thereunder. The General Liability insurance shall be provided by an ISO Commercial General Liability policy, with edition dates of 1985, 1988, or 1990. The additional insured endorsement required hereunder must be issued using ISO form CG 20 10 11 85, or the same form with an edition date no later than 1990. In lieu of CG 20 10 11 85, City will accept alternate additional insured endorsements on ISO forms CG 20 10 10 01 and CG 20 37 10 01, but only if both forms are used together and provided to City. The minimum coverage and limits shall be as follows:

COVERAGE	LIMITS
Workers Compensation	Statutory
Comprehensive General Liability, including or separately insuring liability assumed by contract	
Bodily Injury	\$1,000,000 per person \$1,000,000 per occurrence
Property Damage	\$ 500,000 per occurrence

Owner shall, prior to commencement of construction work, furnish to City a certificate of insurance, which shall provide that the above insurance shall not be cancelled without thirty (30) days prior written notice to City. Prior to acceptance of the improvements, the Owner shall provide the City with a copy of the endorsements required herein.

7. AS-BUILTS

Owner shall submit one (1) reproducible print (mylar) of the improvements "as-built" to City prior to release of securities.

8. NOTICE OF COMPLETION

City shall record a Notice of Completion with the Merced County Recorder immediately following City's acceptance of the improvements.

9. APPROVALS

This Agreement is subject to approval by the City Manager of City as to substance, and by the City Attorney as to form. Any improvement securities tendered hereunder shall be subject to approval by the City Manager as to amount, and by the City Attorney as to form and legal sufficiency.

10. WAIVER

In the event that either City or Owner shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

11. VENUE

This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Merced.

12. AMENDMENT

This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

13. INTEGRATION

This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

14. AUTHORITY TO EXECUTE

The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

15. COUNTERPARTS

This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

IN WITNESS WHEREOF, three (3) identical counterparts of this Agreement, each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties hereinabove named, on the day and year first herein written.

CITY OF MERCED
A California Charter Municipal
Corporation

By: _____
City Manager

ATTEST:
STEVE CARRIGAN, CITY CLERK

By: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

By: K. Haas 2-6-18
City Attorney Date

FUNDS/ACCOUNTS VERIFIED BY:

Finance Officer	Date
-----------------	------

OWNER:
STONEFIELD HOME, INC.,
A California Corporation

By: _____
Greg Hostetler

Its: President

Address: 923 E. Pacheco Blvd.
Suite C
Los Banos, CA 93665
Telephone: (209) 826-6200

Taxpayer I.D. Number _____

ATTEST:
STEVE CARRIGAN, CITY CLERK

By: _____
Assistant/Deputy City Clerk

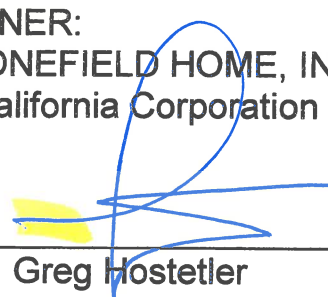
APPROVED AS TO FORM:

By: H. Glass 2-6-18
City Attorney Date

FUNDS/ACCOUNTS VERIFIED BY:

Finance Officer Date

OWNER:
STONEFIELD HOME, INC.,
A California Corporation

By: 
Greg Hostetler

Its: President

Address: 923 E. Pacheco Blvd.
Suite C
Los Banos, CA 93665
Telephone: (209) 826-6200

Taxpayer I.D. Number 32-0439641

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 Merced

On March 9, 2018 before me, A. Gonzalez, Notary Public
(insert name and title of the officer)

personally appeared Greg Hostetler,
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.

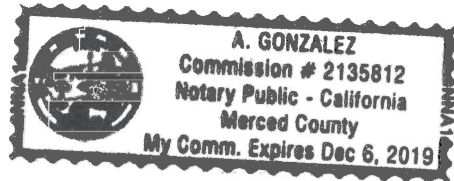
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)



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 _____

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____
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 _____ (Seal)

EXHIBIT A

A portion of Lot 2, Parcel 3, and the designated remainder as shown on the map entitled "Parcel Map, City of Merced Subdivision No. 04-02," recorded in Volume 95, Page 50 of Merced County Records; also known as Assessor's Parcel Number (APN) 224-030-018.

Reference Tentative Subdivision Map #1304 for Bellevue Ranch West, Village 12

EXHIBIT B

The securities on this subdivision shall be according to, or equivalent to, either Method 1 or Method 2.

	Method 1		Method 2
	<u>Performance Bond</u>	<u>Labor/Material Bond</u>	<u>Letter of Credit</u>
Bike Path	\$141,478	\$70,739	\$169,774
One-Year Warranty	\$21,222		