

SUBDIVISION IMPROVEMENT AGREEMENT

DATE OF AGREEMENT: _____

NAME OF SUBDIVIDER: _____

ADDRESS OF SUBDIVIDER: _____

NAME OF SUBDIVISION: _____

CITY COUNCIL/PLANNING COMMISSION RESOLUTION OF APPROVAL NO.: _____

ADOPTED: _____

IMPROVEMENT DRAWING NO.: _____

ESTIMATED TOTAL COST OF IMPROVEMENTS: (OFF-SITE AND ON-SITE): _____

ESTIMATED TOTAL COST OF MONUMENTATION. : _____

ESTIMATED TOTAL COST OF LANDSCAPING AND IRRIGATION: _____

TIME LIMIT FOR COMPLETION OF IMPROVEMENTS: _____

NAME OF SURETY AND BOND/LETTER OF CREDIT NUMBERS: _____

This agreement is made and entered into by and between the City of National City, California, a Municipal Corporation of the State of California, hereinafter referred to as City; and the Subdivider named on Page 1 hereof, hereinafter referred to as Subdivider.

RECITALS

WHEREAS, Subdivider has presented to City for approval and recordation, a final subdivision map/parcel map of a proposed subdivision as stated on Page 1 hereof pursuant to provisions of the Subdivision Map Act of the State of California, and in compliance with the provisions of Title 17 of the National City Municipal Code, hereinafter referred to as Code, relating to the filing, approval, and recordation of subdivision maps; and WHEREAS, a Tentative Map of the Subdivision has been approved, subject to the requirements and conditions contained in the resolution listed on Page 1 hereof. Said resolution is on the file in the office of the City Clerk and is incorporated herein by reference and made a part hereof; and

WHEREAS, the code provides that before the final subdivision or parcel map is approved by the City Council or the City Engineer, Subdivider must have complied with

the requirements of said resolution and must have entered into an agreement with the City, secured by an approved improvement security to insure the performance of the work and payment to the contractor and to all the persons furnishing labor, materials and equipment, pursuant to the requirements of the Code, agreeing at its own expense to install and complete, free of liens, all of the public improvements, land development and landscaping and irrigation work required in the subdivision within a definite period of time prescribed by the Council or City Engineer; and

WHEREAS, Subdivider, in consideration of the approval and recordation of this map by the Council or the City Engineer, desires to enter into this agreement wherein it is provided that the Subdivider will install and complete at its own expense, all of the improvement work required in connection with the proposed subdivision and will deliver to the City an improvement security as approved by the City Attorney; and

WHEREAS, complete plans and specifications for the construction, installation and completion of all of the improvement work have been prepared and approved by the City Engineer; as shown on the drawings listed on Page 1 hereof which have been filed in the office of the City Engineer and are incorporated by the reference herein and made a part hereof; and

WHEREAS, it is necessary that certain monuments and stakes as specified on the final map shall be installed within thirty days after completion of the required improvements and their acceptance by the City, and that street signs shall be placed at intersections, as required by the Code; and

WHEREAS, an estimate of the cost of constructing the public improvements, and the necessary land development work in connection therewith according to said plans and specifications has been made and has been approved by the City Engineer in an amount stated on Page 1 hereof, which estimate is attached hereto, marked Exhibit "A" and made a part hereof; and

WHEREAS, an estimate of the cost for the installation of all monuments has been approved by the City Engineer in an amount stated on Page 1 hereof, which estimate is attached hereto, marked Exhibit B and made a part hereof;

NOW, THEREFORE, in consideration of the approval and recordation by the City Council or the City Engineer of the final map of this subdivision, and other valuable consideration, Subdivider and City agrees as follows:

1. Subdivider shall:

- a. Comply with all the requirements of said tentative map resolution and any amendments thereto and with the provisions of the Code.
- b. Complete at its own expense, in accordance with the plans and specifications and to the satisfaction and approval of the City Engineer, all of the public improvement, land development, and landscaping and irrigation work required in and adjoining the subdivision as follows:

<u>IMPROVEMENT</u>	<u>DEADLINE DATE</u>
_____	_____
_____	_____
_____	_____
_____	_____

IMPROVEMENTS

DEADLINE DATE

Curb & Gutter	_____
Sidewalk	_____
Alley Pavement	_____
Pedestrian Ramp	_____
Remove Curb & Gutter	_____
Remove Alley Pavement	_____
Sewer Service	_____
Water service	_____
Curb Outlet	_____
Sidewalk Underdrain	_____
Monumentation	_____

IMPROVEMENT

DEADLINE DATE

Including East Half of Street	_____
Export	_____
Curb & Gutter	_____
Cutoff Wall	_____
Driveway	_____
A/C3' on 6' Base CTB	_____
Water Main	_____
Valves and Trees	_____
New Sewer Laterals	_____
New Water Services	_____
Remove Water Services	_____
A/C Overlay	_____
Sidewalk	_____
Street Lights	_____
Fire Hydrant	_____
Relocate Gas Main (1-1/2"HP)	_____
Repair/Replace Existing Driveways	_____
Area Drain	_____
D-27 Sidewalk Underdrain	_____
Swale (ABM/Concrete)	_____
Sound Wall	_____
Retaining Wall	_____
Erosion Control/BMPs	_____
Monumentation	_____
Rip Rap Dissipator	_____

- c. Furnish the necessary materials therefore, in conformity with the plans and specifications on file in the office of the City Engineer.
 - d. Notify City Engineer in writing at least fifteen days prior to the commencement of the work hereunder. No construction shall begin until approved authorization has been obtained and the official Preconstruction conference has been held
 - e. Complete the improvements listed in 1.(b) above, under this contract on or before the time limits stated hereof.
 - f. Install all the monuments required by law within thirty days after the completion and acceptance of the improvements by the City Engineer.
 - g. Install temporary street name signs if permanent street name signs have not been installed.
2. All utilities shall be underground as per National City Municipal Code Section 17.07.032 and SDG&E approval. Cable for TV shall be provided.
3. Subdivider agrees to install and maintain landscaping and irrigation as per City approved plans (_____ sheets) dated _____. Such work shall be secured by a faithful performance security in the amount of work shall be secured by a faithful performance security in the amount of 50% of the total estimated cost of the work. (See Exhibit "C" for an estimate of the landscape and irrigation work). Subdivider shall maintain all areas of landscape in a manner that is satisfactory and acceptable to the City, and shall indemnify and save City harmless from original or developed defects in materials and workmanship supplied by the developer appearing within one year from the date of acceptance of the work by the City.

4. If any of the public improvements, lead development and landscaping and irrigation work contemplated by this agreement is to be constructed or installed on land not owned by Subdivider, no construction or installation shall be commenced prior to the dedication and acceptance by the City of the appropriate easements.
5. The City Engineer or his duly authorized representative, upon request of the Subdivider, shall inspect at Subdivider's expense, the improvements herein agreed to be constructed and installed by Subdivider, and if determined to be in accordance with applicable City standards and the terms of this agreement, shall recommend the acceptance of such improvements by the 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 he work is in preparation.
6. Subdivider shall furnish to the City good and sufficient security on forms approved by the City, in the amount of **100%** of the estimated cost of said improvements as stated on Page 1, hereof, to assure faithful performance of this agreement in regard to said improvements; and in the additional amount of 50% of said amount for securing payment to contractor, his subcontractors and persons renting equipment or furnishing labor or materials to them for the improvements required to be constructed or installed hereby. **Ten percent (10%)** of the amount of the faithful performance bond shall continue in effect to guarantee or warranty the work done pursuant to this agreement for a period of one year following acceptance thereof by the City against any defective work or labor done or defective materials furnished. Subdivider shall furnish to the City such security in the amount of 100% of the estimated cost of setting subdivision monuments as stated on Page 1, hereof and as required by this agreement. The securities required by this agreement shall be filed with the City Clerk of the Director of Finance Department and when so filed, shall be incorporated by reference herein.

7. Any changes, alterations or additions to the improvement plans and specifications or to the improvements, not exceeding 10% of the original estimated cost of the improvement, which are mutually agreed upon by City and Subdivider, shall not require additional improvement security given for faithful performance of the improvement. In the event such changes, alterations, or additions exceed 10% of the original estimated cost of the improvement, Subdivider shall provide improvement security for faithful performance as required by this agreement for 100% of the total estimated cost of the improvement as changed, altered, or amended, minus any completed partial releases thereof as allowed by this agreement.

8. The securities required by this agreement shall be released as follows:
 - a. Security given for faithful performance of any act or agreement shall be released upon the final completion and acceptance of the act or work, subject to the provisions of Subsection (b) hereof.
 - b. The City Engineer may release a portion of the security in conjunction with the acceptance of the performance of this act or work as it progresses upon application therefore by the Subdivider; provided, however, that no such release shall be for an amount less than 25% of the total improvement security given for faithful performance of the act or work and that the security shall not be reduced to an amount less than 50% of the total improvement security given for faithful performance until final completion and acceptance of the act or work. In no event shall the City Engineer authorize s release of the improvement security which would reduce such security to an amount below that required to guarantee the completion of the act or work and any other obligation imposed by the Code, the Subdivision Map Act or this agreement.
 - c. Security given to secure payment to the contractor, his subcontractors and to the persons furnishing labor, materials or equipment shall, six months after the completion and acceptance of the act or work, be reduced to an amount equal to the

amount of all claims therefore filed and of which notice has been given to the legislative body plus an amount reasonably determined by the City Engineer to be required to assure the performance of any other obligations secured thereby. The balance of the security shall be released upon the settlement of all such claims and obligations for which the security was given.

d. No security given for the guarantee or warranty of work shall be released until the expiration of the period thereof and until any claims filed during said period have been settled.

9. 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 the Subdivider shall replace or have replaced, repaired, or have repaired, as the case may be, or pay to the owner, the entire cost of replacement or repairs of 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 cash repair or replacement shall be to the satisfaction, and subject to the approval, of the City Engineer.

10. 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.

11. In the event that subdivider fails to perform any obligation hereunder, Subdivider authorizes City to perform such obligation twenty days after mailing written notice of default to subdivider and to Subdivider's Surety, and agrees to pay the entire cost of such performance by the city.

The sums provided by the improvement security may be used by the city for the completion of the required improvements within the subdivision in accordance with specifications contained herein.

City may take over the work and prosecute the same to completion, by contract or by any other method the City may deem advisable, all costs shall be at the expense of subdivider, and the subdivider's Surety shall be liable to the City for any excess cost or damages occurred by the city; and, in such event, the 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.

12. In the event that the Subdivider fails to perform any obligation hereunder, Subdivider agrees to pay all costs and expenses incurred by the City in securing performance of such obligations, including costs of suit and reasonable attorney's fees.

13. Subdivider shall guarantee or warranty the work done pursuant to this agreement for a period of one year after final acceptance of said work against any defective work or labor done or defective materials furnished. If within said period 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 plans and 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, Subdivider hereby authorizes City, at City's option, to perform the work twenty days after mailing written notice of default to Subdivider and agrees to pay the cost of such work by City. 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 replacement or perform the necessary work and Subdivider shall pay to City the cost of such repairs.

14. 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.

15. Nothing contained in this agreement shall preclude City from expending monies pursuant to agreements with subdividers for the apportionment of costs of water and sewer

mains pursuant to the provisions of the National City Municipal Code providing therefore, nor shall anything herein stated commit City to any such apportionment.

16. Until such time as all improvements required by this agreement are fully completed and accepted by the City, Subdivider will be responsible for the care, maintenance of and any damage to such improvements. Subdivider shall give good and adequate warning to the traveling public of each and every dangerous condition existent in said improvements, and will protect the traveling public from such defective or dangerous conditions. The subdivider hereby agrees to pay for such inspection of such improvements as may be required by the City Engineer of the City.

17. Upon acceptance of the work on behalf of the City and recordation of the Notice of Completion, ownership of the improvements constructed pursuant to this agreement shall vest in the City.

18. Acceptance of the work on behalf of the City shall be made by the City Engineer upon authorization of the City Council. Such acceptance shall not constitute a waiver of defects by the City.

19. The City or any officer or employee thereof shall not be liable for any injury to persons or property occasioned by reason of the acts or omissions of the Subdivider, its agents or employees in the performance of this agreement. Subdivider further agrees to protect and hold harmless the City, its officials and employees from any and all claims, demands,, causes of action, liability or loss of any sort because of, or arising out of acts or omissions of the Subdivider, its agents or employees in the performance of this agreement, including all claims, demands, causes of action, liability, or loss because of, or arising out of, in whole or in part, the design or construction of the improvements: provided,

however, that the approved improvement security shall not be required to cover the provisions of this paragraph.

Said indemnification and agreement to hold harmless shall extend to injuries to persons and damages or taking of property resulting from the design or construction of said subdivision and the improvements as provided herein, to adjacent property owners as a consequence of the diversion of waters from the design, construction or maintenance of drainage systems, streets and other improvements. Acceptance by the City of the improvements shall not constitute an assumption by the City of any responsibility for any damage or taking covered by this paragraph. City shall not be responsible for the design or construction of the subdivision or the improvements pursuant to the approved improvement plans regardless of any action taken by the City on approval of the plans. The Subdivider shall remain obligated to eliminate any defect in design or dangerous condition caused by the design, other than routine maintenance, or damage to the improvements by an act of God for the time period specified in this agreement. Provisions of this paragraph shall remain in full force and effect for ten years following the acceptance by the City of the improvements.

20. City shall not, nor shall any officer or employee thereof, be liable or responsible for any accident, loss or damage happening or occurring to the work or improvements specified in this agreement prior to the completion and acceptance of same, nor shall said City, nor any officer or employee thereof, be liable for any persons or property injured by reasons of said work or improvements, but all of said liabilities shall be assumed by Subdivider.

21. Sale or other disposition of this property will not relieve Subdivider from the obligations set forth herein.

22. Time is of the essence of this agreement. Subdivider shall commence substantial construction of the improvements required by this agreement not later than nine months prior to the time for completion. Provided that in the event good cause exists as determined by the City Engineer, the time for commencement of construction or completion of the improvements hereunder may be extended. Any such extensions may be granted without notice to Subdivider's Surety and shall in no way affect the validity of This agreement or release the Surety or Sureties on any bond given for the faithful performance of this agreement. The City Engineer shall be the sole and final judge as to whether or not good cause has been shown to entitle Subdivider to an extension. As a condition of such extensions the City Engineer may require Subdivider to furnish new security guaranteeing performance of this agreement as extended in an increased amount as necessary to compensate for any increase in construction costs as determined by the City Engineer.

Failure of Subdivider to comply with the terms of this agreement shall constitute consent to the filing by the City of notice of violation against all the lots in the Subdivision.

23. In the event that suit is brought by City to enforce the terms of this contract, City shall be entitled to process such suit and a reasonable sum as attorney's fees.

IN WITNESS THEREOF, the City has caused this agreement to be executed by having affixed thereto the signature of an authorized City representative and the Subdivider

has caused this agreement to be executed, as duly authorized, the day and year first hereinabove written.

Dated this _____ day of _____

CITY OF NATIONAL CITY, a
Municipal Corporation
Of the State of California

Subdivider

Subdivider

By: _____
Leslie Deese, City Manager

APPROVED AS TO FORM:

CLAUDIA G. SILVA, CITY ATTORNEY

(NOTARIAL ACKNOWLEDGMENT OF EXECUTION OF OWNERS MUST BE ATTACHED)

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

On this _____ day of _____, 20_____, before me the undersigned, a Notary Public in and for said County and State, personally appeared _____ and known _____ to me to be the persons whose name are subscribed to the within instrument, and acknowledged to me that they executed the same.

WITNESS whereof, my hand and affixed my notarial seal, the day and year in this certificate first above written.

My Commission Expires

Notary Public