

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 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 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 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 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 agree 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 Sidewalk

Remove Alley Pavement

Sewer Service

Water Service

Curb Outlet

Sidewalk Underdrain

Monumentation

- c. Furnish the necessary materials therefor, 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 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 100% of the total estimated cost of the work, and a payment 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 improvement, land development and landscape 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 the 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 or 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 therefor 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 a 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 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 therefor 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 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 concurrently or previously executed between the parties, or from entering into agreements with subdividers for the apportionment of costs of water and sewer mains pursuant to the provisions of the National City Municipal Code providing therefor, 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 travelling public of each and every dangerous condition existent in said improvements, and will protect the travelling 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 reason 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 extension 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 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 WHEREOF, 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 _____, 20 ____.

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

SUBDIVIDER

BY: _____
LESLIE DEESE
CITY MANAGER

SUBDIVIDER

APPROVED AS TO FORM:

CALUDIA G. SILVA
City Attorney

(NOTARIAL ACKNOWLEDGMENT OF EXECUTION OF OWNERS MUST BE ATTACHED)

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

O. 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

Folder 5/Sub improvement Agreement

PAYMENT BOND

NAME OF DEVELOPER: _____
DATE OF AGREEMENT: _____
TITLE OF AGREEMENT: _____
NAME OF DEVELOPMENT: _____
NAME OF SURETY: _____
ADDRESS: _____
AMOUNT OF BOND: _____
BOND NUMBER: _____ EFFECTIVE DATE: _____
PREMIUM: _____

WHEREAS, the City of National City, State of California, hereinafter referred to as CITY, and the DEVELOPER named on Page 1 hereof, hereinafter referred to as DEVELOPER, have entered into an agreement whereby DEVELOPER agrees to install and complete certain designated public improvements, which said agreement, dated as shown on Page 1 hereof and entitled as shown on Page 1 hereof, for public improvements appurtenant to the Development name on Page 1 hereof, is hereby referred to and made a part hereof; and

WHEREAS, under the terms of the agreement, DEVELOPER is required before entering upon the performance of the work to file a good and sufficient payment bond with the CITY of to secure the claims to which reference is made in Title 15 (commencing with section 3082) of Part 4 of Division 3 of the Civil Code of the State of California;

NOW, THEREFORE, we, DEVELOPER and the undersigned as

corporate Surety, are held and firmly bound unto the City and all contractors, subcontractors, laborers, materialmen, and other persons employed in the performance of the agreement and referred to in Title 15 of the Civil Code in the sum of \$_____, for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that Surety will pay the same in an amount not exceeding the amount set forth. If suit is brought on this bond, Surety will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the city in successfully enforcing the obligation, to be awarded and fixed by the Court, to be taxed as costs, and to be included in the judgment rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 15 (commencing with section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

If the condition of this bond is fully performed, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement or the specifications accompanying the agreement shall in any manner affect its obligations on this bond. The Surety

hereby waives notice of any such change, extension, alteration,
or addition.

IN WITNESS WHEREOF, this instrument has been duly
executed by DEVELOPER and The Surety above named on _____,
20____.

DEVELOPER

SURETY

DEVELOPER

SURETY

APPROVED AS TO FORM:

CLAUDIA G. SILVA
City Attorney

(Notarial acknowledgement of execution by DEVELOPER and SURETY
must be attached.)

FAITHFUL PERFORMANCE BOND

NAME OF DEVELOPER: _____
DATE OF AGREEMENT: _____
TITLE OF AGREEMENT: _____
NAME OF DEVELOPMENT: _____
NAME OF SURETY: _____
AMOUNT OF BOND: _____
BOND NUMBER: _____ EFFECTIVE DATE: _____
PREMIUM: _____

WHEREAS, the City of National City, State of California, hereinafter referred to as City, and the Developer named on Page 1 hereof, hereinafter referred to as DEVELOPER, have entered into an agreement whereby DEVELOPER agrees to install and complete certain designated public improvements, which said agreement, dated as shown on Page 1 hereof and entitled as shown on Page 1 hereof, for public improvements appurtenant to the Development named on Page 1 hereof, is hereby referred to and made a part hereof; and

WHEREAS, said DEVELOPER is required under the terms of said agreement to furnish a bond for the faithful performance of said agreement;

NOW, THEREFORE, WE, the DEVELOPER and the Surety named on Page 1 hereof, hereinafter referred to as SURETY, are held and firmly bound unto CITY in the penal sum of the amount stated on Page 1 hereof, lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bounden DEVELOPER,, his/her or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well truly keep and perform the covenants, conditions and provisions in the said agreement and any alteration thereof made as therein provided, on his/her or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the CITY, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the CITY in successfully enforcing such obligation, all to be taxed as costs and included in any judgement rendered.

The SURETY hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive of any change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

IN WITNESS WHEREOF, this instrument has been duly executed by the DEVELOPER and SURETY above named on _____, 20____.

DEVELOPER

SURETY

DEVELOPER

SURETY

APPROVED AS TO FORM:

CLAUDIA G. SILVA
CITY ATTORNEY

(NOTARIAL ACKNOWLEDGMENT OF EXECUTION BY DEVELOPER AND SURETY MUST BE ATTACHED)

SUBDIVISION MONUMENTATION BOND

NAME OF DEVELOPER: _____

DATE OF AGREEMENT: _____

NAME OF DEVELOPMENT: _____

NAME OF SURETY: _____

AMOUNT OF BOND: _____

BOND NO.: _____ EFFECTIVE DATE: _____

PREMIUM: _____

WHEREAS, the City of National City, State of California, hereinafter referred to as City, and Developer named on Page 1 hereof, hereinafter referred to as DEVELOPER, have entered into a subdivision improvement agreement whereby DEVELOPER agrees to install and complete certain subdivision monumentation, which said agreement, dated as shown on Page 1 hereof, for public improvements and subdivision monumentation appurtenant to the development named on page 1 hereof, is hereby referred to and made a part hereof; and

WHEREAS, said DEVELOPER is required under the terms of said agreement to furnish a bond for the faithful performance of said agreement; and

WHEREAS, the certificate of the engineer of surveyor on the subdivision map of said development provides that the monuments will be set on or before a specified later date; and

WHEREAS, the Subdivision Map Act of the State of California, Section 66496 of the Government Code, requires said DEVELOPER to file a good and sufficient bond guaranteeing payment of the cost of setting the monuments;

NOW, THEREFORE, WE, the DEVELOPER and the Surety named on Page 1 hereof, hereinafter referred to as SURETY, and held and firmly bound unto CITY in the penal sum of the amount stated on Page 1 hereof, lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

If said DEVELOPER, within 30 days after the setting of the said final monuments, furnishes written notice thereof to the City Engineer and pays the engineer or surveyor for setting said subdivision monumentation; and presents evidence of such payment and receipt thereof to the City Engineer, together with a request that this bond be released, then this obligation shall cease and be void; otherwise, it shall remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the CITY in successful enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The SURETY hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

IN WITNESS WHEREOF, this instrument has been duly executed by the DEVELOPER and SURETY above named, on _____, 20__.

SURETY

DEVELOPER

SURETY

DEVELOPER

APPROVED AS TO FORM:

CLAUDIA G. SILVA
City Attorney

(NOTARIAL ACKNOWLEDGMENT OF EXECUTION BY DEVELOPER AND SURETY MUST BE ATTACHED)