

SUBDIVISION IMPROVEMENT AGREEMENT

BETWEEN

THE CITY OF SAN JOSÉ

AND

ABC HOMES. LLC, a California Limited Liability Company

Agreement Date: _____

Subdivider Name: **ABC HOMES. LLC, a California Limited Liability Company**

(hereinafter "Subdivider")

Subdivision Name/Tract No.: **09-031803 IP Tract No. 12345** (No. of Lots: **20**)

(hereinafter "Subdivision")

Tentative Map No.: **T25-015**

(**Planning Director Approval Date:** **01/01/26**)

(hereinafter "Approved Tentative Map")

Improvement Plans Approved On: _____

(hereinafter "Improvement Plans")

Estimated Total Cost of Improvements: **\$200,000.00**

(including water improvements in public-right-of-way)

Estimated Total Cost of Monumentation: **\$4,000.00**

(based upon the Improvement Plans, including individual lots, subdivision boundary and public improvements)

Security:

Bond Nos.: _____

Surety: _____

- OR -

Irrevocable Standby Letter of Credit No.: _____

Financial Institution: _____

- OR -

Cash/Certificate of Deposit, Agreement Dated: _____

Financial Institution: _____

Designees for the Service of Written Notice:

CITY: Public Works Director/City Engineer Tel.: (408) 535-3555
City of San José
200 East Santa Clara Street
San José, CA 95113-1905

SUBDIVIDER: _____

Tel.: _____

SURETY: _____

Tel.: _____

City Project Inspector: Mike Duffy **Phone No.:** (408) 535-3555
(hereinafter "Project Inspector")
(subject to unilateral change by City without notice to the parties)

This Agreement is entered into by and between the Subdivider and the City of San José, a municipal corporation of the State of California (herein "City").

RECITALS

A. The Subdivider has requested the City approve and record a final map of the Subdivision pursuant to the Subdivision Map Act of the State of California and the City's ordinances and regulations relating to subdivision maps (collectively "Subdivision Laws").

B. Subdivider has prepared, and the Public Works Director (hereinafter "City Engineer") has approved, Improvement Plans for the completion of certain public improvements in connection with the Subdivision. The Improvement Plans are on file in the Office of the City Engineer and are incorporated into this Agreement by this reference. All references in this Agreement to the Improvement Plans include by reference any standard specifications for the construction and installation of improvements as approved by the City Engineer in effect on the date of approval of the Approved Tentative Map.

C. An estimate of the cost of construction of the public improvements according to the Improvement Plans has been made and has been approved by the City Engineer. The estimated amount is stated on Page 1 of this Agreement. The basis for the estimate is attached as Exhibit "A" to this Agreement (hereinafter "Engineer's Estimate").

D. As consideration for the approval and recordation by the City Engineer of the final map of the Subdivision, Subdivider desires to enter into this secured Agreement, whereby

Subdivider promises to complete, at its expense, all of the public improvements required by the Approved Tentative Map as reflected in the Improvement Plans.

E. Subdivider recognizes that by approval of the final map for Subdivision, City has conferred substantial rights upon Subdivider, including the right to sell, lease, or finance lots within the Subdivision. As a result, City will be damaged to the extent of the cost of installation of the improvements by Subdivider's failure to perform its obligations to commence construction of the improvements by the time established in this Agreement. The City shall be entitled to all remedies available to it pursuant to this Agreement and law in the event of default by Subdivider. The Subdivider specifically recognizes that the determination of whether a reversion to acreage or rescission of the Subdivision constitutes an adequate remedy for default by the Subdivider shall be within the sole discretion of the City.

NOW, THEREFORE, in consideration of the approval and recordation by the City Engineer of the final map of the Subdivision, Subdivider and City agree as follows:

1. Subdivider's Obligation to Construct Improvements. Subdivider shall:
 - a. Comply with all requirements of the Approved Tentative Map, and any amendments thereto, and with the provisions of the Subdivision Laws.
 - b. Complete, at Subdivider's own expense, all the public improvements required by the Approved Tentative Map in conformance with the Improvement Plans and all applicable standard specifications in effect on the date of the City's approval of the Approved Tentative Map (hereinafter "Public Improvements.")
 - c. Furnish all materials necessary to complete the Public Improvements in conformity with the Improvement Plans and all applicable standard specifications in effect on the date of the City's approval of the Approved Tentative Map.
 - d. Acquire and dedicate to the City all rights-of-way, easements, and other interests in real property for the construction and installation of the Public Improvements, or pay the cost of acquisition incurred by the City. All real property interests dedicated by the Subdivider to the City shall be free and clear of liens and encumbrances at the time of dedication. Subdivider shall remove all liens and encumbrances at its sole expense prior to dedication to the City and warrant such clear title at Subdivider's sole expense. The development agreement and/or tentative map for the Subdivision shall set forth the Subdivider's obligations with regard to any acquisition by City of off-site interests in real property. Subdivider shall also be responsible for obtaining any public or private utility easements or authorization to accommodate the Subdivision.

e. Commence construction of the Public Improvements by the time established in Section 24 of this Agreement and complete the Public Improvements within eighteen (18) months following the date of this Agreement or as specified in any time extension granted by the City Engineer pursuant to Section 25 herein. The Public Improvements are deemed completed when the City Engineer accepts them as provided in Section 17 herein by recordation of a Notice of Acceptance. For the purposes of this Agreement, the phrase "Notice of Acceptance" by the City Engineer shall also include any final map approval determination of the City Council on appeal pursuant to Government Code section 66458(d) and the relevant provisions of Title 19 of the San José Municipal Code.

f. Install all subdivision public monuments required by law prior to recordation of the Notice of Acceptance. Subdivider shall install all subdivision boundary and individual property monuments within the time specified in the Engineer's Statement on the approved Final Map for the Subdivision.

g. Comply with all of the requirements in the special provisions attached hereto and incorporated herein by reference as Exhibit "B."

2. Acquisition and Dedication of Easements or Rights-of-Way. If any of the Public Improvements contemplated by this Agreement will be constructed on land not owned by Subdivider, the Subdivider shall not commence construction before:

a. The Subdivider makes an irrevocable offer of dedication to the City of appropriate rights-of-way, easements or other interests in real property, and obtains appropriate authorization from the property owner to allow construction of the improvements or work, or

b. The Subdivider dedicates to, and the City accepts, the appropriate rights-of-way, easements or other interests in real property, as determined by the City Engineer, or

c. The issuance to the City by a court of competent jurisdiction an order of possession. Subdivider shall comply with the order of possession.

Nothing in this Section 2 shall be construed as granting an extension of time to Subdivider.

3. Security. The Subdivider shall furnish to the City security for the purposes, in the amounts, and under the conditions that follow:

a. Type and Amounts.

(1) Performance Security. To assure the Subdivider's faithful performance of this Agreement to complete the public improvements in an amount of 100% of the estimated cost of the Public Improvements (hereinafter "Performance Security"); and

- (2) Payment Security. To secure Subdivider's payment to any contractor, subcontractor, person renting or supplying equipment, or furnishing labor and materials for completion of the Public Improvements in the additional amount of 100% of the estimated cost of the improvements (hereinafter "Payment Security"); and
 - (3) Warranty Security. To warranty the Subdivider's work for a period of one (1) year following recordation of the Notice of Acceptance against any defective work or labor done or defective materials furnished in the additional amount of 25% of the estimated cost of the improvements (hereinafter "Warranty Security"); and
 - (4) Monument Security. To secure the Subdivider setting the subdivision monuments as stated in Section 1.f above within the period of time specified in the Engineer's Statement on the approved Final Map for the Subdivision in the additional amount of 100% of the estimated cost of setting those monuments (hereinafter "Monument Security").
- b. Conditions.
- (1) The Subdivider shall provide the required security on forms approved by the City and from sureties authorized by the California Insurance Commissioner to transact the business of insurance.
 - (2) The terms of the security documents referenced on Page 1 of this Agreement are incorporated into this Agreement by this reference.
 - (3) A condition of the Subdivider's security is that any changes not exceeding 10% of the original estimated cost of the Public Improvements shall not relieve the security. In the event that changes to the Improvement Plans cause an increase of more than 10% over the original estimated cost of the Public Improvements, Subdivider shall provide security as required by Section 3(a) of the Agreement for 100% of the total estimated cost of the Public Improvements as changed.
 - (4) Notwithstanding Subsection b.(3) above, Subdivider's security shall compensate the City for the actual cost of completing the required Public Improvements in the event of default by the Subdivider in the performance of this Agreement, regardless of whether the City's cost of completion exceeds the estimated total cost of the Public Improvements.

- (5) A condition of the Subdivider's security is that any request by the Subdivider for an extension of time for the commencement or completion of the work under this Agreement may be granted by the City without notice to Subdivider's surety and such extensions shall not affect the validity of this Agreement or release the surety or sureties on any security given for this Agreement.
- (6) As a condition of granting any extension for the commencement or completion of the work under this Agreement, the City Engineer may require Subdivider to furnish new security guaranteeing performance of this Agreement, as extended, in an increased amount to compensate for any increase in construction costs as determined by the City Engineer.
- (7) If the Subdivider seeks to replace any security with another security, the replacement shall: (1) comply with all the requirements for security in this Agreement; (2) be provided by the Subdivider to the City Engineer; and (3) upon its written acceptance by the City Engineer, be deemed to be a part of this Agreement. Upon the City Engineer's acceptance of a replacement security, the former security may be released by the City.

4. Alterations to Improvement Plans.

a. The City and Subdivider may mutually agree upon changes to the Improvement Plans subject to the security requirements in Section 3 herein.

b. The Subdivider shall construct the improvements in accordance with the City standards in effect at the time of adoption of the Approved Tentative Map. City reserves the right to protect the public safety or welfare or comply with applicable Federal or State law or City zoning ordinances. If Subdivider requests and is granted an extension of time for completion of the improvements, City may apply the standards in effect at the time of the extension.

5. Inspection. Subdivider shall at all times maintain proper facilities and safe access for inspection of the Public Improvements by City inspectors and to the shops and facilities wherein any work is in preparation. Upon completion of the Public Improvement work, the Subdivider may request a final inspection by the City Engineer or the City Engineer's authorized representative. The City Engineer shall not execute or record the Notice of Acceptance unless the Subdivider has completed all aspects of the work in accordance with the Improvement Plans. When applicable law requires an inspection at a particular stage of construction of the Public Improvements, Subdivider shall not proceed with additional work until the inspection has been made and the work approved.

6. Release of Securities. The City shall release the securities required by this Agreement as follows:

a. Performance Security. The City shall release the Performance Security upon recordation of the Notice of Acceptance or as may otherwise be authorized in accordance with Government Code section 66499.7.

b. Payment Security. The City shall release the Payment Security in accordance with Government Code section 66499.7.

c. Warranty Security. The City shall release the Warranty Security upon expiration of the warranty period and settlement of any claims filed during the warranty period.

d. The City may retain from any security released, an amount sufficient to cover costs and reasonable expenses and fees, including reasonable attorney's fees.

7. Injury to Public Improvements, Public Property or Public Utility Facilities. Until recordation of the Notice of Acceptance of the public improvements, Subdivider assumes responsibility for the care and maintenance of, and any damage to, the Public Improvements. Subdivider shall replace or repair all Public Improvements, public utility facilities, and surveying or subdivision monuments and benchmarks which are destroyed or damaged for any reason, regardless whether resulting from the acts of the Subdivider, prior to the recordation of the Notice of Acceptance. Subdivider shall bear the entire cost of such replacement or repairs regardless of what entity owns the underlying property. Any repair or replacement shall be to the satisfaction, and subject to the approval, of the City Engineer.

Neither the City, nor any officer or employee thereof, shall be liable or responsible for any accident, loss or damage, regardless of cause, occurring to the work or Public Improvements prior to recordation of the Notice of Acceptance of the work or improvements.

8. Permits. Subdivider shall, at its expense, obtain and comply with the conditions of all necessary permits and licenses for the construction of the Public Improvements (a list of such permits and licenses that may apply to the work required hereunder is listed in Exhibit "B" hereto for convenience only, but may not be complete for the purposes of this compliance requirement). The Subdivider shall also give all necessary notices and pay all fees and taxes required by law.

9. Default by Subdivider.

a. Default of Subdivider shall include, but not be limited to:

(1) Subdivider's failure to timely commence construction of Public Improvements under this Agreement;

- (2) Subdivider's failure to timely complete construction of the Public Improvements;
- (3) Subdivider's failure to timely cure any defect in the Public Improvements;
- (4) Subdivider's failure to perform substantial construction work for a period of 20 consecutive calendar days after commencement of the work;
- (5) Subdivider's insolvency, appointment of a receiver, or the filing of any petition in bankruptcy, either voluntary or involuntary, which Subdivider fails to discharge within 30 days;
- (6) The commencement of a foreclosure action against the subdivision or a portion thereof, or any conveyance in lieu or in avoidance of foreclosure; or
- (7) Subdivider's failure to perform any other obligation under this Agreement.

b. The City reserves all remedies available to it at law or in equity for breach of Subdivider's obligations under this Agreement. The City shall have the right, subject to this Section, to draw upon or use the appropriate security to mitigate the City's damages in the event of default by Subdivider. The City's right to draw upon or use the security is in addition to any other remedy available to City. The parties acknowledge that the estimated costs and security amounts may not reflect the actual cost of construction of the improvements and, therefore, City's damages for Subdivider's default shall be measured by the cost of completing the required improvements. The City may use the sums provided by the securities for the completion of the Public Improvements in accordance with the Improvement Plans and Specifications contained herein. In the event Subdivider fails to cure any default under this Agreement within twenty (20) days after the City mails written notice of such default to the Subdivider and the Subdivider's surety, Subdivider authorizes City to perform the obligation for which Subdivider is in default and agrees to pay the entire cost of such performance by the City.

City may take over the work and complete the Public Improvements, by contract or by any other method City deems appropriate, at the expense of Subdivider. In such event, City, without liability for so doing, may complete the Public Improvements using any of Subdivider's materials, appliances, plans and other property that are at the work site and that are necessary to complete the Public Improvements.

c. The Subdivider's failure to comply with the terms of this Agreement constitutes Subdivider's consent for the City to file a notice of violation against all the lots in the Subdivision, or to rescind or otherwise revert the Subdivision to acreage. Subdivider specifically recognizes that the determination of whether a reversion to acreage or rescission of the Subdivision constitutes an adequate remedy for default by the Subdivider shall be within the sole discretion

of the City. The remedy provided by this Subsection c is in addition to all other remedies available to City. Subdivider agrees that the choice of remedy or remedies for Subdivider's breach shall be in the discretion of City.

d. In the event the Subdivider fails to perform any obligation hereunder, Subdivider agrees to pay all costs and expenses incurred by City in securing performance of such obligations, including but not limited to fees and charges of architects, engineers, attorneys, and other professionals, and court costs.

e. The failure of City to take enforcement action with respect to a default, or to declare a breach, shall not be construed as a waiver of that default or breach or any subsequent default or breach of Subdivider.

10. Warranty. Subdivider warrants the Public Improvements for a period of one (1) year after recordation of the Notice of Acceptance against any defective work or labor or defective materials. If, within the warranty period, any Public Improvement in whole or in part fails to fulfill any of the requirements of this Agreement, Subdivider shall cure such defect without delay and without cost to the City. Should Subdivider fail to cure any defect or commence diligently curing a defect within twenty (20) days after the City mails Subdivider and its surety written notice of a default under this provision, Subdivider authorizes the City, at City's option, to cure the defect and agrees to pay the cost of such work by City. Should the City determine that the public health or safety requires curing any defect before Subdivider can be notified or adequately respond, City may, in its sole discretion, perform such work as is reasonably necessary to protect public health or safety, and Subdivider shall pay to City the cost of such work.

11. Subdivider Not Agent of City. Neither Subdivider nor Subdivider's agents, contractors, or subcontractors are agents of the City in connection with the performance of Subdivider's obligations under this Agreement.

12. Environmental Warranty.

a. Prior to the acceptance of any dedications or Public Improvements by City, Subdivider shall provide City with a written warranty in a form substantially similar to Exhibit "D," attached hereto and incorporated herein by reference, that:

- (1) Neither the property to be dedicated nor Subdivider are in violation of any environmental law, and neither the property to be dedicated nor the Subdivider are subject to any existing, pending or threatened investigation by any federal, state or local governmental authority under or in connection with the environmental laws relating to the property to be dedicated.

- (2) Neither Subdivider nor any other person with Subdivider's permission to be upon the property to be dedicated shall use, generate, manufacture, produce, or release, on, under, or about the property to be dedicated, any Hazardous Substance except in compliance with all applicable environmental laws. For the purposes of this Agreement, the term "Hazardous Substances" shall mean any substance or material which is capable of posing a risk of injury to health, safety or property, including all those materials and substances designated as hazardous or toxic by any federal, state or local law, ordinance, rule, regulation or policy, including but not limited to, all of those materials and substances defined as "Toxic Materials" in Sections 66680 through 66685 of Title 22 of the California Code of Regulations, Division 4, Chapter 30, as the same shall be amended from time to time, or any other materials requiring remediation under federal, state or local laws, ordinances, rules, regulations or policies.
- (3) Subdivider has not caused or permitted the release of, and has no knowledge of the release or presence of, any Hazardous Substance on the property to be dedicated or the migration of any hazardous substance from or to any other property adjacent to, or in the vicinity of, the property to be dedicated.
- (4) Subdivider's prior and present use of the property to be dedicated has not resulted in the release of any hazardous substance on the property to be dedicated.
- b. Subdivider shall give prompt written notice to City of:
- (1) Any proceeding or investigation by any federal, state or local governmental authority with respect to the presence of any hazardous substance on the property to be dedicated or the migration thereof from or to any other property adjacent to, or in the vicinity of, the property to be dedicated.
- (2) Any claims made or threatened by any third party against City or the property to be dedicated relating to any loss or injury resulting from any hazardous substance; and
- (3) Subdivider's discovery of any occurrence or condition on any property adjoining or in the vicinity of the property to be dedicated that could cause the property to be dedicated or any part thereof to be subject to any restrictions on its ownership, occupancy, use for the purpose for which it is intended, transferability or suit under any environmental law.

13. Other Agreements. 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 other subdividers for the apportionment of costs of water and sewer mains, or other improvements pursuant to the provisions of the City ordinances providing therefore. Nor shall anything in this Agreement commit City to any such apportionment.

14. Subdivider's Obligation to Warn Public During Construction. Until recordation of the Notice of Acceptance of the Public Improvements, Subdivider shall give good and adequate warning to the public of any dangerous condition of the Public Improvements, and shall take reasonable actions to protect the public from such dangerous condition. Until recordation of the Notice of Final Acceptance, Subdivider shall provide 48 hours advance written notice to all neighboring property owners and tenants affected by Subdivider's operations or construction of the hours, dates and duration of any planned construction activities.

15. Fees. Subdivider agrees to pay to City the fees set forth in Exhibit "C" attached hereto and incorporated herein by reference.

16. Vesting of Ownership. Upon recordation of the Notice of Acceptance of Public Improvements, ownership of the Public Improvements shall vest in the City.

17. Final Acceptance of Work. The City Engineer shall make a certification of completion and acceptance of the Public Improvements by recordation of a Notice of Acceptance on behalf of the City after final completion and inspection of all improvements, as provided in Section 5. The recordation of the Notice of Acceptance shall not constitute a waiver of defects by the City.

18. Indemnity/Hold Harmless. City or any officer, employee or agent thereof shall not be liable for any injury to persons or property occasioned by reason of the acts or omissions of Subdivider, its agents, employees, contractors and subcontractors in the performance of this Agreement. Subdivider further agrees to protect, defend, indemnify and hold harmless City, its officials, boards and commissions, and members thereof, agents, 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 Subdivider, its agents, employees, contractors and subcontractors in the performance of this Agreement, except for such claims, demands, causes of action, liability or loss arising out of the sole active negligence of the City, its officials, boards, commissions, the members thereof, agents and employees, 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. This 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 public improvements as provided herein, and in addition, to adjacent property owners as a consequence of the diversion of waters from the design and construction of public drainage systems, streets and other improvements. Recordation of the Notice of 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 Section. City shall not be responsible for the design or construction of the property to be dedicated or the improvements pursuant to the approved Improvement Plans or map, regardless of any negligent action or inaction taken by the City in approving the plans or map, unless the particular improvement design was specifically required by City over written objection by Subdivider submitted to the City Engineer before approval of the particular improvement design, which objection indicated that the particular improvement design was dangerous or defective and suggested an alternative safe and feasible design.

After recordation of the Notice of Acceptance of the Public Improvements, the Subdivider shall remain obligated to eliminate any latent defect in design or dangerous condition caused by the design or construction defect; however, Subdivider shall not be responsible for routine maintenance. The provisions of this paragraph shall remain in full force and effect for ten (10) years following the recordation of the Notice of Acceptance by the City of the improvements. It is the intent of this section that Subdivider shall be responsible for all liability for design and construction of the improvements installed or work done pursuant to this Agreement and that City shall not be liable for any negligence, nonfeasance, misfeasance or malfeasance in approving or reviewing any work or construction. The improvement security shall not be required to cover the provisions of this Paragraph.

Subdivider shall reimburse the City for all costs and expenses, including but not limited to fees and charges of architects, engineers, attorneys, and other professionals, and court costs, incurred by City in enforcing this Section.

19. Subdivider's Indemnity of Project Approval. Subdivider shall defend, indemnify, and hold harmless the City and its agents, officers, and employees from any claim, action, or proceeding against the City or its agents, officers, or employees to attack, set aside, void, or annul, an approval of the City, advisory agency, appeal board, or legislative body concerning the Subdivision. The City shall promptly notify the Subdivider of any claim, action, or proceeding and cooperate fully in the defense of any such claim, action, or proceeding. In the event City fails to promptly notify the Subdivider of any claim, action, or proceeding, or if the City fails to cooperate in the defense, the Subdivider shall not thereafter be responsible to defend,

indemnify, or hold harmless the City. Nothing in this Section prohibits the City from participating in the defense of any claim, action, or proceeding if City bears its own attorney's fees and costs and defends the action in good faith. Subdivider shall not be required to pay or perform any settlement unless the settlement is approved by the Subdivider.

20. Insurance Requirements. Subdivider, at Subdivider's sole cost and expense and for the full term of this Agreement and any extensions thereto, shall obtain and maintain all of the following minimum insurance requirements in a form approved by the City's Human Resources Director or the Human Resources Director's authorized designee ("Risk Manager") prior to commencing any work:

a. Commercial General Liability policy with a minimum \$1 million combined single limit for bodily injury and property damage providing all of the following minimum coverage without deductibles:

- (1) Premises operations; including X, C, and U coverage;
- (2) Owners' and contractors' protection;
- (3) Blanket contractual;
- (4) Completed operations; and
- (5) Products.

b. Commercial Business Auto policy with a minimum \$1 million combined single limit for bodily injury and property damage, providing all of the following minimum coverage without deductibles:

- (1) Coverage shall apply to any and all leased, owned, hired, or non-owned vehicles used in pursuit of any of the activities associated with this Agreement; and
- (2) Any and all mobile equipment including cranes which are not covered under the above Commercial Business Auto policy shall have said coverage provided under the Commercial General Liability policy.

c. Workers Compensation and Employers' Liability policy in accordance with the laws of the State of California and providing coverage for any and all employees of the Subdivider:

- (1) This policy shall provide coverage for Workers' Compensation (Coverage A); and
- (2) This policy shall provide coverage for \$1,000,000 Employers' Liability (Coverage B).

- (3) Pursuant to Labor Code section 1861, Subdivider by executing this Agreement certifies:

“I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers’ Compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this contract.”

- (4) Prior to commencement of work, the Subdivider shall file with the City’s Risk Manager a Certificate of Insurance or certification of permission to self-insure workers’ compensation conforming to the requirements of the Labor Code.

d. Endorsements. All of the following endorsements are required to be made a part of each of the above-required policies as stipulated below:

- (1) “The City of San José, its officers, employees and agents are hereby added as additional insureds.”
- (2) “This policy shall be considered primary insurance with respect to any other valid and collectible insurance the City may possess, including any self-insured retention the City may have and any other insurance the City does possess shall be considered excess insurance only.”
- (3) “This insurance shall act for each insured and additional insured as though a separate policy has been written for each. This, however, will not act to increase the limit of the insuring company.”
- (4) “Thirty (30) days prior written notice of cancellation shall be given to the City of San José in the event of cancellation and/or reduction in coverage, except that ten (10) days prior written notice shall apply in the event of cancellation for non-payment of premium.” Such notice shall be sent to the Risk Manager at the address indicated in Subsection f below.
- (5) Subsection d(4) hereinabove “Cancellation Notice” is the only endorsement required of the Workers’ Compensation and Employers’ Liability policy.

e. Admitted Insurers. All insurance companies providing insurance to the Subdivider under this Agreement shall be admitted to transact the business of insurance by the California Insurance Commissioner.

f. Proof of Coverage. Copies of all required endorsements shall be attached to the Certificate of Insurance which shall be provided by the Subdivider’s insurance company as evidence of the coverage required herein and shall be mailed to:

City of San José - Human Resources
Risk Management
200 East Santa Clara Street, 2nd Floor Wing
San José, CA 95113-1905

21. Personal Nature of Subdivider's Obligations. Subdivider's obligations under this Agreement are personal obligations of Subdivider notwithstanding a transfer of all or any part of the property within the Subdivision subject to this Agreement. Subdivider shall not be entitled to assign its obligations under this Agreement to any transferee of all or any part of the property within the Subdivision or any other third party without the express prior written consent of the City.

22. Sale or Disposition of Subdivision. Seller or other Subdivider may request a novation of this Agreement and a substitution of security. Upon approval of the novation and substitution of securities, the Subdivider may request a release or reduction of the securities required by this Agreement. Nothing in the novation shall relieve the Subdivider of the obligations under Section 18 for the work or improvement done by the Subdivider.

23. Time is of the Essence. Time is of the essence in the performance of this Agreement by Subdivider.

24. Time for Commencement of Work; Time Extensions. Subdivider shall not begin construction of the improvements hereunder until receipt of a Development Clearance from the City Engineer, which is issued upon receipt of all completed documents and payment of fees incident to the approval of the final map by the City. The Subdivider shall give twenty-four (24) hours prior notice either in writing to the Public Works Development Services Division or by telephone during normal working hours to the City Project Inspector at the telephone number listed on Page 2 of this Agreement prior to commencement of work under this Agreement.

Subdivider shall commence substantial construction of the improvements required by this Agreement not later than three (3) months after the date of this Agreement. In the event good cause exists as determined by the City Engineer, the time for commencement of construction or completion of the Public Improvements hereunder may be extended for a period or periods not exceeding a total of two additional years. The extension shall be executed in writing by the City Engineer. The City Engineer, in his or her sole discretion, determines whether or not the Subdivider has established good cause for an extension. As a condition of such extension, the City Engineer may require Subdivider to furnish new security guaranteeing performance of this Agreement, as extended, in an increased amount to compensate for any increase in construction costs as determined by City Engineer.

25. Extension of Time for Completion of Work. Delay, other than delay in the commencement of work, resulting from an act of God, by storm or inclement weather, strikes, boycotts, or similar political actions which prevent the conduct of work, which Subdivider could not have reasonably foreseen, and furthermore were not caused by or contributed to by Subdivider, shall constitute good cause for an extension of the time for completion. The City Engineer may, in his or her sole discretion, extend the time for completion of the public improvements beyond the eighteen (18) months specified in Section 1.b in six (6) month increments unless or until the improvements are needed for public health, safety, welfare or for the orderly development of the City. The Subdivider shall pay to the City the amount of the cost recovery fee in effect at the time of the request for extension, provided, however, that this fee shall not be charged for delays caused by the City beyond the control of the Subdivider. As a condition of such extension, the City Engineer may require Subdivider to furnish new security guaranteeing performance of this Agreement, as extended, in an increased amount to compensate for any increase in construction costs as determined by City Engineer.

26. No Vesting of Rights. Performance by the Subdivider of this Agreement shall not be construed to vest Subdivider's rights with respect to any change in any zoning or building law or ordinance.

27. Notices. Unless otherwise specified in this Agreement, all notices required or provided for under this Agreement shall be in writing and delivered in person or sent by mail, postage prepaid and addressed as provided in this Section. Notice shall be effective on the date it is delivered in person, or, if mailed, on the date of deposit in the United States Mail. Notices shall be addressed to the persons listed on Pages 1 and 2 of this Agreement by the parties for this purpose.

28. Compliance with Laws. Subdivider, its agents, employees, contractors, and subcontractors shall comply with all federal, state and local laws in performing this Agreement.

29. Compliance with Labor Code. This Agreement is subject to, and Subdivider agrees to comply with, all of the applicable provisions of the Labor Code including, but not limited to, the wage and hour, prevailing wage, workers compensation, and various other labor requirements in Division 2, Part 7, Chapter 1, including Sections 1720 to 1740, 1770 to 1780, 1810 to 1815, 1860 and 1861, which provisions are specifically incorporated herein by reference as though set forth herein in their entirety. Subdivider shall expressly require compliance with the provisions of this Section in all agreements with contractors and subcontractors for the performance of the improvements hereunder.

30. Nondiscrimination. Subdivider, its agents, employees, contractors, and subcontractors shall not discriminate, in any way, against any person on the basis of age, sex, race, color, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin in connection with or related to the performance of this Agreement. Subdivider shall expressly require compliance with the provisions of this Section in all agreements with contractors and subcontractors for the performance of the improvements hereunder.

31. Severability. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect unless amended or modified by mutual written consent of the parties.

32. Captions. The captions of this Agreement are for convenience and reference only and shall not be used in the interpretation of any provision of this Agreement.

33. Incorporation of Recitals. The information contained on Pages 1 and 2 of this Agreement and the recitals to this Agreement are hereby incorporated into the terms of this Agreement.

34. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter. All amendments or waivers of the terms of this Agreement must be in writing and signed by the appropriate representative of the parties.

35. Interpretation. This Agreement shall be interpreted in accordance with the laws of the State of California.

[Remainder of Page Intentionally Left Blank]

36. Jurisdiction. Jurisdiction of all disputes over the terms of this Agreement shall be in the County of Santa Clara, State of California.

IN WITNESS WHEREOF, this Agreement is executed by the parties as of the date hereinabove first written.

SUBDIVIDER*:

CITY OF SAN JOSÉ:

Print Name of Subdivider and Type of Entity

KATY ALLEN
Public Works Director/ City Engineer

By: _____

Approved as to Form:

Title: _____

By: _____

Senior Deputy City Attorney

Title: _____

*Proof of authorization for Subdivider's signatures is required to be submitted concurrently with this Agreement.

*All Subdivider's signatures must be accompanied by an attached notary acknowledgement.

Attachments:

- Exhibit "A" - Improvements Required - Cost
- Exhibit "B" - Special Provisions
- Exhibit "C" - Fees Required
- Exhibit "D" - Environmental Warranty Form
- Exhibit "E" - Water Rights Quitclaim Deed (if applicable)

EXHIBIT "A"
SUBDIVISION IMPROVEMENT AGREEMENT

SUBSTITUTE COPY OF CITY PREPARED ENGINEER'S ESTIMATE FOR PAGES 19 & 20

Sample Document

Sample Document

EXHIBIT "B"
SUBDIVISION IMPROVEMENT AGREEMENT

09-031803 IP TRACT NO. 12345
(Subdivision/Unit No.)

ABC HOMES. LLC, a California Limited Liability Company
(Subdivider)

SPECIAL PROVISIONS

Subdivider shall comply with all of the following provisions:

1. Provide a computer diskette (compatible with the City's CAD system) of subdivision and improvement information to the Public Works Department prior to the City Engineer's consideration of this Agreement.
2. Provide the City Engineer with a copy of videotape inspections of the sanitary and storm drain systems upon their completion and rectify any problems identified by the City; the video taping of the storm drain system shall be done just prior to execution and recordation of the Notice of Acceptance to ensure said system is problem free and clear of debris.
3. Subdivider shall, at its own expense, obtain and comply with the conditions of all necessary permits and licenses for the construction of the Public Improvements which include, but are not limited to, all of the following:
 - a.
 - b.
 - c.
4. Municipal Water System - Water Main Extension Contract.
 - (a) This Agreement specifically incorporates by reference the provisions of Chapter 15.08 of the San Jose Municipal Code ("SJMC") and constitutes the water main extension contract required by SJMC Sections 15.08.770 and 15.08.780 whenever the Subdivision shall obtain water service from the municipal water system and water main extension is required to serve the Subdivision.
 - (b) Subdivider shall indicate all water main extensions to the municipal water system on the Improvement Plans.
 - (c) All applicable fees, charges and deposits required of the Subdivider for water main extension to the municipal water system are indicated on Exhibits "A" and "C" hereto and are subject to adjustment upon completion of the installation and determination of actual cost.
 - (d) Where the Subdivider is required to install the main extension to the municipal water system, the liability insurance required by this Agreement and the bonds required by this Agreement to secure the work and improvements on the Improvement Plans shall also be issued in sufficient amount to include the estimated cost of the work and improvements for the installation of all water main extensions to the municipal system.

(e) Subdivider shall, concurrently with the recordation of the final map for the Subdivision, convey or cause to be conveyed by the owners of all of the real property lying within the Subdivision to the City in the form of Quitclaim Deed and Authorization, attached hereto and incorporated herein by reference as Exhibit "E," the right to take waters from any sources including but not limited to the underground basin. Such Quitclaim Deed and Authorization shall be recorded with the final map for the Subdivision.

5.

[Include project-specific requirements here that are impracticable or impossible to show on the final map or that are deviations from or are not included in the standard specs.]

[Add]

EXHIBIT "C"
SUBDIVISION IMPROVEMENT AGREEMENT

09-031803 IP TRACT NO. 12345
(Subdivision/Unit No.)

ABC HOMES. LLC, a California Limited Liability Company
(Subdivider)

FEES REQUIRED

Subdivider shall pay all fees required by the City, including all of the following fees and reimbursements prior to final map approval by the City Engineer, unless otherwise indicated below. The fees may change and may require recalculation at any time prior to payment in full.

	Amount Due
1. Sewage Treatment Plant (STP) Connection	\$0.00
2. Sanitary Sewer Connection Fee	\$0.00
a) Excess Units Charge	\$0.00
3. Storm Drainage Fee	\$0.00
4. Engineering and Inspection (E&I) Fee	\$25,230.00
5. Underground Service Alert (USA) Fee	\$3,034.00
6. Electrical Design/Review Fee	\$3,472.00
7. Electrical Inspection Fee	\$3,426.00
8. Pavement Design Fee	\$0.00
9. Materials Laboratory Testing Fee	\$4,751.00
10. Benchmark Maintenance Fee	\$150.00
11. Traffic Signal Design/Review Fee	\$0.00
12. Traffic Signal Inspection Fee	\$0.00
13. Traffic Signal Controller Fee	\$0.00
14. Geometric Design Fee	\$3,000.00
15. Pavement Marking Fee	\$0.00
16. Traffic Signs Fee	\$0.00
17. Street Name Signs Fee	\$0.00
18. Stormwater Maintenance Fee	\$24,000.00
19. Public Works Record Retention Fee	\$1,500.00
20. Municipal Water - E&I Fee	\$0.00
21. Municipal Water - Area & Frontage Fee	\$0.00
22. Municipal Water - Water Meter Fee	\$0.00
23. Municipal Water - Major Water Facilities Fee	\$0.00
24. Arterial Reimbursement Fee	\$0.00
25. Utility Undergrounding In-Lieu Fee	\$0.00
26. Traffic Signal In-Lieu Fee	\$0.00
27. Street Improvement In-Lieu Fee	\$0.00
28. North San Jose Deficiency Plan Fee	\$0.00
29. Depositors Fund	\$0.00

Total Fees to the City:	\$68,563.00
Fees Previously Paid:	\$0.00
Outstanding Fees Due:	\$68,563.00

EXHIBIT "D"
SUBDIVISION IMPROVEMENT AGREEMENT

09-031803 IP TRACT NO. 12345
(Subdivision/Unit No.)

ABC HOMES. LLC, a California Limited Liability Company
(Subdivider)

ENVIRONMENTAL WARRANTY

As a condition precedent to acceptance of the dedications and public improvements to be conveyed by the above-named Subdivider to the City of San Jose for the above-referenced Subdivision, Subdivider hereby warrants to the City of San Jose that:

1. Neither the property to be dedicated nor Subdivider are in violation of any environmental law, and neither the property to be dedicated nor the Subdivider are subject to any existing, pending or threatened investigation by any federal, state or local governmental authority under or in connection with the environmental laws relating to the property to be dedicated.
2. Neither Subdivider nor any other person with Subdivider's permission to be upon the property to be dedicated has used, generated, manufactured, produced, or released, on, under, or about the property to be dedicated, any Hazardous Substance except in compliance with all applicable environmental laws. For the purposes of this warranty, the term "Hazardous Substances" shall mean any substance or material which is capable of posing a risk of injury to health, safety or property, including all those materials and substances designated as hazardous or toxic by any federal, state or local law, ordinance, rule, regulation or policy, including but not limited to, all of those materials and substances defined as "Toxic Materials" in Sections 66680 through 66685 of Title 22 of the California Code of Regulations, Division 4, Chapter 30, as the same shall be amended from time to time, or any other materials requiring remediation under federal, state or local laws, ordinances, rules, regulations or policies.
3. Subdivider has not caused or permitted the release of, and has no knowledge of the release or presence of, any Hazardous Substance on the property to be dedicated or the migration of any hazardous substance from or to any other property adjacent to, or in the vicinity of, the property to be dedicated.
4. Subdivider's prior and present use of the property to be dedicated has not resulted in the release of any Hazardous Substance on the property to be dedicated.
5. All persons executing this warranty hereby represent and warrant to the City of San Jose, and Subdivider hereby represents and warrants, that the signators hereto have the legal

power, right and authority to execute this warranty on behalf of the Subdivider and that the signators hereto have sufficient knowledge or expertise, either personally, through reasonable inspection and investigation of the property, or through reasonable reliance upon the investigation and professional opinion of Subdivider's environmental experts, to make the representations herein, and that no consent of any other party is required to execute this warranty and make the representations herein on behalf of the Subdivider to the City of San Jose.

Each of the undersigned persons declares under penalty of perjury that the foregoing is true and correct.

Dated: _____

SUBDIVIDER*:

By: _____

Title: _____

By: _____

Title: _____

*Proof of authorization for Subdivider's signatures is required to be submitted concurrently with this environmental warranty.

RECORDED WITHOUT FEE UNDER
SECTION 6103 GOVERNMENT CODE
OF THE STATE OF CALIFORNIA

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:
AND MAIL TAX STATEMENT TO:**

City of San Jose – Public Works
200 East Santa Clara Street, 5th Floor
San Jose, CA 95113-1905

APN: **Insert APN**

Space above this line for Recorder's use

The Undersigned Grantee(s) Declare(s): DOCUMENTARY TRANSFER TAX \$0; CITY TRANSFER TAX \$0;
Recorded for the benefit of the City of San Jose and is exempt from fee per Government Code Sections 27383 and
6103.

- computed on the consideration or full value of property conveyed, OR
 computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,
 unincorporated area; **City of San Jose**, and

Signature of Declarant

**EXHIBIT "E"
SUBDIVISION IMPROVEMENT AGREEMENT**

09-031803 IP TRACT NO. 12345
(Subdivision/Unit No.)

ABC HOMES. LLC, a California Limited Liability Company
(Subdivider)

QUITCLAIM DEED AND AUTHORIZATION

[Name of PROPERTY OWNER and type of entity], hereinafter "Grantor," does hereby
grant, bargain, sell, assign, convey, remise, release and forever QUITCLAIM unto the City of
San Jose, a municipal corporation, hereinafter "Grantee," all the right, title, interest, estate, claim
and demand, both at law and in equity, as well as in possession as in expectancy of the Grantor
as owner of that certain Subdivision of real property situated in the County of Santa Clara, State
of California, and specifically described in the map for Tract No. _____, thereof filed in
the Office of the County Recorder of the County of Santa Clara on the ____ day of
_____, 20__, as Document No. _____, to pump, take or otherwise extract

water from any sources including but not limited to the underground basin or any underground strata. Further, on behalf of itself and its successors in ownership of overlying land within the above-described subdivision, Grantor hereby irrevocably authorizes Grantee, its successors and assigns, to so pump, take or otherwise extract such water from said sources; provided, however, that nothing contained in this instrument shall be deemed to authorize Grantee to enter upon any of the lots delineated upon the above-described map.

This conveyance is made in order to further confirm Grantee's right to extract said water under law.

This assignment, conveyance and authorization is made for the benefit of each parcel of land within the above-described subdivision and shall bind each owner of any parcel of land within said subdivision.

The terms and provisions of this deed and authorization shall run with the land and shall, without regard to technical classification or designation, legal or otherwise, be to the fullest extent permitted by law and equity, binding for the benefit of the community and the City and enforceable by the City against the Grantee, its heirs, successors and assigns, to the said property or any part thereof or any interest therein.

IN WITNESS WHEREOF, said Grantors have caused this instrument to be executed this _____ day of _____, 20__.

GRANTOR*:

By: _____

Title: _____

By: _____

Title: _____

*Proof of authorization for Grantor's signatures is required to be submitted concurrently with this Quitclaim Deed and Authorization.

Bond No. _____

Premium _____

FAITHFUL PERFORMANCE BOND

WHEREAS, the CITY OF SAN JOSE, a municipal corporation of the State of California ("City"), and **ABC HOMES. LLC, a California Limited Liability Company**, as principal ("Principal") have entered into an agreement entitled **SUBDIVISION IMPROVEMENT AGREEMENT 09-031803 IP FOR TRACT NO. 12345**, incorporated herein by reference and referred to as the "Contract," which requires Principal to install and complete certain designated public improvements; and,

WHEREAS, under the terms of the Contract and prior to commencing any work under the Contract, Principal is required to furnish a bond to City for faithful performance of the Contract.

NOW, THEREFORE, we the Principal and _____, a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California ("Surety"), are held firmly bound unto the City in the sum of **TWO HUNDRED THOUSAND DOLLARS AND NO/100 DOLLARS (\$200,000.00)**, for the payment of which sum well and truly to be made, we the Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

The condition of this obligation is such that, if the Principal, Principal's heirs, executors, administrators, successors, or assigns shall in all things stand to and abide by, and well and truly keep and perform all covenants, conditions, and agreements required to be kept and performed by Principal in the Contract and any changes, additions, or alterations made thereto, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meanings, and shall indemnify and save harmless City, its officers, employees, and agents, as therein provided, then this obligation shall be 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 sum specified above, there shall be included all costs, expenses, and fees, including attorney's fees, reasonably incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the work to be performed thereunder or to 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, alteration, or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by authorized representatives of the Principal and Surety. SIGNED AND SEALED on _____, 20_____.

PRINCIPAL:

SURETY:

(Principal name)

(Seal)

(Surety name)

BY: _____
(Signature)

BY: _____
(Signature)

(Print name and title)

(Print name and title)

Principal address and telephone:

Surety address and telephone:

Affix Corporate Seals
Attach Notary Acknowledgments for All Signatures
Attach Power-of-Authority if executed by Attorney-in-Fact

Bond No. _____

Premium _____

PAYMENT (LABOR AND MATERIALS) BOND

WHEREAS, the CITY OF SAN JOSE, a municipal corporation of the State of California ("City"), and **ABC HOMES. LLC, a California Limited Liability Company**, as principal ("Principal") have entered into an agreement entitled **SUBDIVISION IMPROVEMENT AGREEMENT 09-031803 IP FOR TRACT NO. 12345**, incorporated herein by reference and referred to as the "Contract," which requires Principal to install and complete certain designated public improvements; and,

WHEREAS, under the terms of the Contract and prior to commencing any work under the Contract, Principal is required to furnish a good and sufficient payment bond to the City to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the California Civil Code.

NOW, THEREFORE, we the Principal and _____, a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California ("Surety"), are held firmly bound unto the City, and unto all contractors, subcontractors, suppliers, laborers, materialmen and other persons employed in the performance of the Contract and referred to in the aforesaid Civil Code, as obligees, in the sum of **TWO HUNDRED THOUSAND DOLLARS AND NO/100 DOLLARS (\$200,000.00)**, on the condition that if Principal shall fail to pay for any materials or equipment furnished or used or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Principal and all subcontractors with respect to such work or labor, then the Surety shall pay the same in an amount not exceeding the sum specified above. If suit is brought upon this bond, Surety shall pay, in addition to the above sum, all costs, expenses, and fees, including attorney's fees, reasonably incurred by any obligee in successfully enforcing the obligation secured hereby, all to be taxed as costs and included in

the judgment rendered. Should the condition of this bond be fully performed, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect, and shall bind Principal, Surety, their heirs, executors, administrators, successors, and assigns, jointly and severally.

IT IS HEREBY EXPRESSLY STIPULATED AND AGREED that this bond shall inure to the benefit of all persons, companies, corporations, political subdivisions, and State agencies 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. The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract 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, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by authorized representatives of the Principal and Surety. SIGNED AND SEALED on

_____, 20_____.

PRINCIPAL:

(Principal name) (Seal)

BY: _____
(Signature)

(Print name and title)

Principal address and telephone:

SURETY:

(Surety name)

BY: _____
(Signature)

(Print name and title)

Surety address and telephone:

Affix Corporate Seals
Attach Notary Acknowledgments for All Signatures
Attach Power-of-Authority if executed by Attorney-in-Fact

Bond No. _____

Premium _____

WARRANTY BOND

WHEREAS, the City of San Jose, a municipal corporation of the State of California (“City”) and **ABC HOMES. LLC, a California Limited Liability Company**, as principal (“Principal”) have entered into an agreement entitled **SUBDIVISION IMPROVEMENT AGREEMENT 09-031803 IP FOR TRACT NO. 12345**, incorporated herein by reference and referred to as the “Contract,” which requires Principal to install and complete certain designated public improvements; and,

WHEREAS, under the terms of the Contract, Principal is required to furnish a bond to City to make good and protect the City against the results of any work or labor done or materials or equipment furnished which are defective or not in accordance with the terms of the Contract having been used or incorporated in any part of the work so contracted for, which shall have appeared or been discovered, within the period of one (1) year from and after the completion and final acceptance of the work done under the Contract.

NOW, THEREFORE, we the Principal and _____, a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California (“Surety”), are held firmly bound unto the City in the sum of **FIFTY THOUSAND DOLLARS AND NO/100 DOLLARS (\$50,000.00)**, for the payment of which sum well and truly to be made, we the Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

The condition of this obligation is such that, if the Principal shall well and truly make good and protect the City against the results of any work or labor done or materials or equipment furnished which are defective or not in accordance with the terms of the Contract having been used or incorporated in any part of the work performed under the Contract, which shall have appeared or been discovered within said one-year period from and after completion of all work under the Contract and final acceptance by City of said work, then this obligation shall be null and void; otherwise, it shall be and remain in full force and effect.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract 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 change, extension of time, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by authorized representatives of the Principal and Surety. SIGNED AND SEALED on _____, 20____.

PRINCIPAL:

SURETY:

(Principal name) (Seal)

(Surety name)

BY: _____
(Signature)

BY: _____
(Signature)

(Print name and title)

(Print name and title)

Principal address and telephone:

Surety address and telephone:

Affix Corporate Seals
Attach Notary Acknowledgments for All Signatures
Attach Power-of-Attorney if executed by Attorney-in-Fact

Bond No. _____

Premium _____

MONUMENT BOND

WHEREAS, the CITY OF SAN JOSE, a municipal corporation of the State of California ("City"), and **ABC HOMES. LLC, a California Limited Liability Company**, as principal ("Principal") have entered into an agreement entitled **SUBDIVISION IMPROVEMENT AGREEMENT 09-031803 IP FOR TRACT NO. 12345**, incorporated herein by reference and referred to as the "Contract," which requires Principal to install and complete certain designated public improvements, including the setting of monuments; and,

WHEREAS, under the terms of the Contract, Principal is required to furnish a bond to City for setting of monuments.

NOW, THEREFORE, we the Principal and _____, a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California ("Surety"), are held firmly bound unto the City, as obligee, in the sum of: **FOUR THOUSAND DOLLARS AND NO/100 DOLLARS (\$4,000.00)**, for the payment of which sum well and truly to be made, we the Principal and Surety bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally.

The condition of this obligation is such that if the Principal, Principal's heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform all covenants, conditions, and agreements required to be kept and performed by Principal in the Contract, including the setting of monuments, and any changes, additions, or alterations made thereto, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meanings, and shall indemnify and save harmless City, its officers, employees, and agents, as therein provided, then this obligation shall be 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 sum specified above, there shall be included all costs, expenses, and fees, including attorney's fees, reasonably

incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

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

IN WITNESS WHEREOF, this instrument has been duly executed by authorized representatives of the Principal and Surety. SIGNED AND SEALED on _____, 20_____.

PRINCIPAL:

SURETY:

(Principal name)

(Seal)

(Surety name)

BY: _____
(Signature)

BY: _____
(Signature)

(Print name and title)

(Print name and title)

Principal address and telephone:

Surety address and telephone:

Affix Corporate Seals
Attach Notary Acknowledgments for All Signatures
Attach Power-of-Authority if executed by Attorney-in-Fact