

CITY OF SAN LEANDRO

SUBDIVISION IMPROVEMENT AGREEMENT  
(Public and Private Improvements)

THIS SUBDIVISION IMPROVEMENT AGREEMENT (the "Agreement"), executed in triplicate, dated \_\_\_\_\_, is made and entered into by and between the CITY OF SAN LEANDRO, a municipal corporation of the State of California, hereinafter referred to as "City," and D.R. Horton Bay, Inc., a Delaware Corporation, hereinafter referred to as "Subdivider,".

RECITALS

A. Subdivider has presented to City a certain final map of a proposed subdivision of land located within the corporate limits of the City of San Leandro, common only known as 2824 Halcyon Drive, San Leandro, California.

B. The proposed subdivision of land is commonly known and described as, APN 77C-1240-5 and bears the name Tract No. 8592. Said subdivision is hereinafter referred to as "the Subdivision."

C. A vesting tentative tract map for the Subdivision was approved by the City Council on May 2, 2022, by Resolution No. 2022-069 (the "Vesting Tentative Map"). The final map for the Subdivision was filed with the City Engineer for presentation to the City Council for its approval, which final map is referred to and incorporated herein.

D. Subdivider has requested approval of the final map prior to the construction and completion of improvements including, but not limited to, streets, highways or public ways, public utility facilities and other facilities which are part of or appurtenant to the subdivision that are required by the Subdivision Map Act, the San Leandro Municipal Code, the Vesting Tentative Map (and approvals given in connection therewith) and final grading plan, if any, heretofore approved by City. Said improvements are hereinafter referred to as "the Required Improvements."

E. San Leandro Municipal Code section 7-1-945 requires the Subdivider to enter into and execute this subdivision improvement agreement with City regarding the completion of the Required Improvements prior to the City Council approving the final map.

## AGREEMENTS

1. Performance of Work. Subdivider agrees to furnish, construct, and install at his own expense all of the Required Improvements, both public and private, identified in the conditions to the approval of the Subdivision, and as shown on the plans prepared by Ruggeri, Jensen, Azar, dated July 7, 2023, identified as Improvement Plans Tract 8592 – Poppy Lane and specifications of said Subdivision, a copy of which is on file in the Office of the City Engineer and is incorporated herein by reference and all other improvements required by the City Engineer based upon the standards imposed by the San Leandro Municipal Code, including but not limited to Title VII, Chapter 8, and the Standard Specifications adopted by the City of San Leandro for public works. Subdivider's costs shall include all necessary relocation of existing utilities.

2. Work; Satisfaction of City Engineer. All of the work on the required improvements is to be done at the places, with the materials, in the manner, and at the grades, all as shown upon the approved plans and specifications, and to the reasonable satisfaction of the City Engineer.

3. Work; Inspections; Fees. The City Engineer or his designee shall inspect all of the improvements made pursuant hereto to determine that they comply with all City ordinances and regulations. Concurrently with the execution of this agreement, the Subdivider shall deposit with the City the sum of Eight Thousand-Five Hundred Dollars (\$8,500.00) to cover the cost of inspection of the improvements. Subdivider hereby agrees to increase the amount of the deposit to pay City the amount of the actual cost of inspection if such costs should exceed the original deposit. Any unexpended amount of the deposit will be returned to the Subdivider at the time of initial acceptance of the required improvements by the City Council.

4. Modification for Unforeseeable Circumstances. Subdivider reserves the right to modify said plans and specifications as the development progresses should unforeseen conditions occur, provided written approval is first obtained from the City Engineer in accordance with the Requirements of San Leandro Municipal Code Chapter 7-1. The City shall bear no responsibility whatsoever for work performed and rejected by the City Engineer or work performed without approval from the City Engineer. City reserves the right to make reasonable modifications to the plans and specifications whenever field conditions and/or public safety require such modifications. Subdivider shall pay City for all costs incurred in checking and inspection resulting from said modifications.

5. Work; Time for Commencement and Performance. City hereby fixes the time for the commencement of the required work to be on or about **June 2, 2023**, and for its completion to be on or before October 30, 2024. At least 15 calendar days prior to the commencement of work hereunder, Subdivider shall notify the City Engineer in writing of the date fixed by Subdivider for commencement thereof, in order that the City Engineer shall be able to provide services for inspection.

6. Location of Construction Yard. Subdivider agrees to locate any construction yard for the storage of equipment, vehicles, supplies and materials, or the preparation or fabrication thereof, to be used in connection with the installation of improvements for said subdivision or the construction of buildings therein, in such a manner so as to cause a minimum of inconvenience to persons living in the areas immediately adjacent to said subdivision, including installation of appropriate fencing and screening and to obtain the approval of the City Engineer as to the proposed location and standards for maintenance of the yard. Immediately upon completion of the last building to be constructed in the subdivision, or unit thereof, to which this agreement refers, Subdivider agrees to cease using the construction yard, clear the site and restore it to its original condition, and to remove therefrom all supplies, materials, equipment, or vehicles being stored or kept thereon. Subdivider agrees not to use the construction yard in connection with the installation of improvements or construction of buildings in any other subdivision, or any other unit of the subdivision to which this agreement refers. City may extend the time within which the construction yard may be used, or within which supplies, materials, equipment or vehicles may be stored or kept thereon if City shall determine that the granting of such extension will not be detrimental to the public welfare. No extension will be made except on the basis of a written application made by Subdivider to the City Engineer stating fully the grounds and facts relied upon for such extension.

7. Rights-of-Way Free from Obstruction. Subdivider agrees to keep and maintain all areas within the improved or partially improved public streets or public rights-of-way contiguous and adjacent to and within the hereinabove referred to Subdivision, including streets being constructed and/or improved pursuant to this agreement, free and clear of all building materials, dirt, mud, sand, gravel, rocks, bricks, stones, shingles, roofing material, lumber, tool sheds, construction buildings and other similar items at all times during

the improvement and construction of the improvements and all buildings and other structures within said Subdivision, unless authorized by the City Engineer in writing.

8. Extension. The dates for commencement and completion of the work of construction may be extended as herein provided. The City Engineer may, in his or her sole discretion, extend the dates for commencement and completion of the required work set forth in Section 5, for reasonable delays in said work actually caused by riots, strikes, lockouts, fires, earthquakes, flood, acts of God, and conditions resulting therefrom. Extension of said dates for any other cause shall be made only by approval from the City Council. The City Engineer and City Council shall be the sole and final judge as to whether good cause has been shown to entitle Subdivider to an extension for the completion of the required work set forth in Section 5. Any extension granted pursuant to this paragraph shall not obligate City in any manner to grant other requests for extension.

9. Request for Extension; Granting. Any request for extension of any commencement or completion date shall be in writing, shall fully state the facts and grounds relied upon for said extension, and shall be delivered to City in the manner hereinafter specified for services of notices pursuant to Section 22. Extensions shall be granted in writing and any purported oral extension or purported oral agreement to make an extension shall not be valid for any purpose whatsoever.

10. Extension; No Release of Obligations. In the event it is deemed necessary by the City to extend the time of commencement or completion of the work to be done under this Agreement beyond the dates specified herein, such extension shall in no way release any guarantee given by Subdivider pursuant to this Agreement, or relieve or release those providing improvement security pursuant to this Agreement. The sureties in executing the bonds shall be deemed to stipulate and agree that no change, extension of time, alteration or addition to the term 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 the bond, and to 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.

11. Extension; Condition. The granting of any extension may be conditioned upon Subdivider providing City with new or amended surety bonds in amounts increased to reflect increases in the cost of

constructing the required improvements that have occurred prior to the granting of the extension, and/or the cost of additional or increased inspection services.

12. No Waiver by the City, Final Acceptance. Inspection of the work and/or materials, or approval of work and/or materials inspected, use of the work by the public as public right-of-way, or statement by any officer, agent, or employee of the City indicating the work complies with the requirements of this Agreement, shall not relieve the Subdivider from the obligation to fulfill the Agreement as prescribed herein. Acceptance of any part or stage of the Required Improvements shall not be final until a written notice of acceptance of all the improvements shall have been delivered to Subdivider in accordance with the requirements of San Leandro Municipal Code Chapter 7-1.

13. Improvement Security. Concurrently with the execution of this Agreement, Subdivider shall furnish City:

(a) Two improvement securities, each in the sum of **ONE MILLION ONE HUNDRED EIGHT SIX THOUSAND TWO HUNDRED AND TWO DOLLARS (\$1,186,202)**, which sum is equal to one hundred percent (100%) of the estimated cost of constructing the Required Improvements. One improvement, security, shall secure faithful performance of this Agreement as required by Government Code Section 66499.3(a). The second improvement security shall secure, as required by Government Code Section 66499.3(b), payment to the contractor, his subcontractor and to persons furnishing labor, materials or equipment to them for the construction of the Required Improvements, and for the payment of amounts due under the Unemployment Insurance Act with respect to work or labor performed in connection with the installation of the Required Improvements. The form of the improvement security shall be subject to the approval of the City Attorney. Improvement security shall be reduced or released by City only in the manner provided by the San Leandro Municipal Code Chapter 7-1. No change, alteration or addition to the terms of this Agreement or the plans and specifications accompanying the same shall in any manner affect the obligation of those providing improvement security pursuant to this Agreement. Any bond(s) shall be executed by a surety company authorized to transact a surety business in the State of California.

14. Warranty Security. Prior to initial acceptance of any of the work constructed hereunder or the release of any of the securities required under Paragraph 13, hereof, Subdivider shall furnish the City a

guaranty and warranty security in a form acceptable to the City Attorney in the amount of **ONE HUNDRED EIGHTEEN THOUSAND SIX HUNDRED AND TWENTY DOLLARS (\$118,620)**, or such greater amount that is equal to ten percent (10%) of the estimated cost of the Required Improvements, to guarantee that all Required Improvements are free from defect for a period of one year after initial acceptance of the Required Improvements the City. Any bond(s) shall be executed by a surety company authorized to transact a surety business in the State of California.

15. **Hold Harmless Agreement.** Subdivider hereby agrees to, and shall, indemnify, defend with counsel acceptable to the City and hold City, its elective and appointive boards and officials, commissions, officers, agents and employees harmless from and against any or all loss, liability, expense, claim, costs, suits, damages of every kind, nature and description directly or indirectly arising from the performance of the work from Subdivider, Subdivider's contractors', subcontractors', agents' or employees' operations under this Agreement. Subdivider agrees to, and shall, defend City and its elective and appointive boards and officials, commissions, officers, agents and employees from any suits or actions at law or in equity for damages caused or alleged to have been caused, by reason of any of the aforesaid operations; provided as follows:

- a. That City does not, and shall not, waive any rights against Subdivider which it may have by reason of the aforesaid hold harmless agreement, because of the acceptance by City, or the deposit with City by Subdivider, of any of the insurance policies described in paragraph 16 hereof.
- b. That the aforesaid hold harmless agreement by Subdivider shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this paragraph, regardless of whether or not City has prepared, supplied, or approved of plans and/or specifications for the subdivision, or regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

16. **Subdivider's Insurance.** Concurrently with the execution hereof, Subdivider shall obtain, at its own cost and expense, the types and amounts of insurance listed below against claims for injuries to persons

or damages to property that may arise from or in connection with the performance of the work hereunder by the Subdivider and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Subdivider shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work. Subdivider shall maintain the insurance policies required by this section throughout the term of this Agreement. Subdivider shall not allow any subcontractor to commence work on any subcontract until Subdivider has obtained all insurance required herein for the subcontractor(s) and provided evidence to City that such insurance is in effect. VERIFICATION OF THE REQUIRED INSURANCE SHALL BE SUBMITTED AND MADE PART OF THIS AGREEMENT PRIOR TO EXECUTION. Subdivider shall maintain all required insurance listed herein for the duration of this Agreement.

**16.1 Workers' Compensation.**

**16.1.1 General Requirements.** Subdivider shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Subdivider. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than \$1,000,000 per accident. In the alternative, Subdivider may rely on a self-insurance program to meet these requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the California Labor Code shall be solely in the discretion of the Contract Administrator.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the Subdivider, its employees, agents, and subcontractors.

**16.1.2 Submittal Requirements.** To comply with Subsection 16.1, Subdivider shall submit the following:

- a. Certificate of Liability Insurance in the amounts specified in the section;  
and
- b. Waiver of Subrogation Endorsement as required by the section.

**16.2 Commercial General and Automobile Liability Insurance.**

**16.2.1 General Requirements.** Subdivider, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Agreement in an amount not less than \$2,000,000 and automobile liability insurance for the term of this Agreement in an amount not less than \$2,000,000 per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

**16.2.2 Minimum Scope of Coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an “occurrence” basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001, Code 1 (any auto). No endorsement shall be attached limiting the coverage.

**16.2.3 Additional Requirements.** Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:



- a. The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- b. City, its officers, officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Subdivider; or automobiles owned, leased, hired, or borrowed by the Subdivider.
- c. Subdivider hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Subdivider agrees to obtain any endorsements that may be necessary to effect this waiver of subrogation.
- d. For any claims related to this Agreement or the work hereunder, the Subdivider's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Subdivider's insurance and shall not contribute with it.

**16.2.4 Submittal Requirements.** To comply with Subsection 16.2, Subdivider shall submit the following:

- a. Certificate of Liability Insurance in the amounts specified in the section;
- b. Additional Insured Endorsement as required by the section;
- c. Waiver of Subrogation Endorsement as required by the section; and
- d. Primary Insurance Endorsement as required by the section.

**16.3 All Policies Requirements.**

**16.3.1 Acceptability of Insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

**16.3.2 Verification of Coverage.** Prior to beginning any work under this Agreement, Subdivider shall furnish City with complete copies of all Certificates of Liability Insurance delivered to Subdivider by the insurer, including complete copies of all endorsements attached to the policies. All copies of Certificates of Liability Insurance and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the City does not receive the required insurance documents prior to the Subdivider beginning work, it shall not waive the Subdivider's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies at any time.

**16.3.3 Deductibles and Self-Insured Retentions.** Subdivider shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, and volunteers; or the Subdivider shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

**16.3.4 Wasting Policies.** No policy required by this Section 16 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

**16.3.5 Endorsement Requirements.** Each insurance policy required by Section 16 shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the City.

**16.3.6 Subcontractors.** Subdivider shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

**16.4 Submittal of Proof of Insurance Coverage.** All certificates of insurance and original endorsements effecting coverage required in this Section 16 must be electronically submitted through the City's online insurance document management program, PINS Advantage. Contractor shall comply with all requirements provided by City related to the PINS Advantage program.

17. Title to Improvements. Title to, and ownership of, all improvements constructed hereunder by Subdivider shall vest absolutely in City, upon completion and acceptance of such improvements by City unless otherwise provided.

18. Repair or Reconstruction of Defective Work. Except as otherwise expressly provided in this Agreement, and excepting only items of routine maintenance, ordinary wear and tear and unusual abuse or neglect, Subdivider guarantees all work executed by Subdivider and/or Subdivider's agents, and all supplies, materials and devices of whatsoever nature incorporated in, or attached to the work, or otherwise delivered to City as a part of the work pursuant to the Agreement, to be free of all defects of workmanship and materials for a period of one year after initial acceptance of the entire work by City. Subdivider shall repair or replace any or all such work or material, together with all or any other work or materials which may be displaced or damaged in so doing, that may prove defective in workmanship or material within said one year guarantee period without expense or charge of any nature whatsoever to City. Subdivider further covenants and agrees that when defects in design, workmanship and materials actually appear during the guarantee period, and have been corrected, the guarantee period shall automatically be extended for one additional year to insure that such defects have actually been corrected.

In the event the Subdivider shall fail to comply with the conditions of the foregoing guarantee within thirty (30) days time, after being notified of the defect in writing, City shall have the right, but shall not be obligated, to repair or obtain the repair of the defect, and Subdivider shall pay to City on demand all costs and expense of such repair. Notwithstanding anything herein to the contrary, in the event that any defect in workmanship or material covered by the foregoing guarantee results in a condition which constitutes an immediate hazard to the public health, safety, or welfare, City shall have the right to immediately repair, or cause to be repaired, such defect, and Subdivider shall pay to City on demand all costs and expense of such repair. The foregoing statement relating to hazards to health and safety shall be deemed to include either

temporary or permanent repairs which may be required as determined in the sole discretion and judgment of City.

If City, at its sole option, makes or causes to be made the necessary repairs or replacements or performs the necessary work, Subdivider shall pay, in addition to actual costs and expenses of such repair or work, fifty percent (50%) of such costs and expenses for overhead and interest at the maximum rate of interest permitted by law accruing thirty (30) days from the date of billing for such work or repairs.

19. Subdivider Not Agent of City. Neither Subdivider nor any of Subdivider's agents, contractors or subcontractors are or shall be considered to be agents of City in connection with the performance of Subdivider's obligations under this Agreement.

20. Notice of Breach and Default. If Subdivider refuses or fails to obtain prosecution of the work, or any severable part thereof, with such diligence as will insure its completion within the time specified, or any extension thereof, or fails to obtain completion of said work within such time, or if Subdivider should be adjudged as bankrupt, or should make a general assignment for the benefit of Subdivider's creditors, or if a receiver should be appointed, or if Subdivider, or any of Subdivider's contractors, subcontractors, agents or employees should violate any of the provisions of this Agreement, the City Engineer may serve written notice on Subdivider and Subdivider's surety or holder of other security of breach of this Agreement, or of any portion, thereof, and default of Subdivider.

21. Breach of Agreement; Performance by Surety or City. In the event of any such notice of breach of this Agreement, Subdivider's surety shall have the duty to take over and complete the work and the improvement herein specified; provided, however, that if the surety, within thirty (30) days after the serving upon it of such notice of breach, does not give City written notice of its intention to take over the performance of the contract, and does not commence performance thereof within thirty (30) days after notice to City of such election, City may take over the work and prosecute the same to completion, by contract or by any other method City may deem advisable, for the account and at the expense of Subdivider and Subdivider's surety shall be liable to City for any damages and/or reasonable and documented excess costs occasioned by City thereby; and, in such event, City, without liability for so doing, may take possession of, and utilize in

completing the work, such materials, appliances, plant and other property belonging to Subdivider as may be on the site of the work and necessary therefore.

22. Notices. All notices herein required shall be in writing, and delivered in person or sent by registered mail, postage prepaid.

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

**CITY MANAGER  
CITY OF SAN LEANDRO  
835 E. 14TH STREET  
SAN LEANDRO, CALIFORNIA 94577**

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

**CHRIS ZABALLOS  
D.R. HORTON BAY, INC.  
3000 EXECUTIVE PARKWAY, SUITE 100  
SAN RAMON, CA 94583**

Notice shall be deemed to have been given for all purposes (a) when received, if delivered in person, or (b) five (5) business days after mailing. Any party or the surety may change such address by notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

23. Recordation of Abstract. Concurrently with the execution of this Agreement, Subdivider has executed and has caused to be acknowledged an abstract of this Agreement. Subdivider agrees City may record said abstract in the Official Records of Alameda County. Upon initial approval and/or initial acceptance of the required improvements by the City Council, City agrees to record a Notice of Completion in the Official Records of Alameda County.

24. Assignment. This Agreement will not be assigned without the prior written consent of City.

25. Additional Terms and Conditions. This Agreement is subject to the following additional terms and conditions, including all applicable conditions of approval for the Vesting Tentative Map for Tract 8592.

(a) All improvements to be provided by Subdivider under the terms of this Agreement shall be completed to the satisfaction of the City Engineer prior to the issuance of final building inspection approvals for residential purposes by the Chief Building Official of the City of San Leandro.

(b) In the event any portion of the work to be performed pursuant to this Agreement will not be completed prior to October 15 of any calendar year, Subdivider shall provide, on or before September 1 of said year, an Amended Erosion and Sedimentation Control Plan to the City Engineer for review and approval. Said Plan shall include, but not be limited to, delineation of areas of work that will not be completed prior to October 15 and the erosion and sedimentation control measures proposed to protect these areas, and surrounding areas, from erosion and/or sedimentation.

(c) City reserves the right to restrict or prohibit any or all construction of site improvements or buildings, being constructed pursuant to approved building permits, during the wet construction season, defined by the City as October 15 through April 15, inclusive, if the City Engineer, in his or sole and absolute discretion, determines that such construction activities will generate pollutant bearing runoff; erosion and/or sedimentation; or will in any way threaten the wetland areas adjacent to, or in proximity of, the subdivision.

(d) During construction activities, Subdivider shall provide traffic controls per the traffic control plan and as approved by the City Engineer.

(e) Subdivider agrees to take all steps necessary to mitigate the potential generation of air-borne dust or debris during the performance of the work hereunder. Subdivider further agrees that the City Engineer, in his or her sole and absolute discretion, may order all or any portion of the work to be suspended in the event air-borne dust or debris leaves the work area and causes a nuisance to adjoining property owners or the public at large. Such suspensions shall remain in effect until the City Engineer is fully satisfied that the work practices causing the air-borne dust or have been satisfactorily mitigated and the adversely affected properties or areas have been thoroughly cleaned.

(f) Construction activity for public improvements shall not commence prior to 8:00 a.m. and shall cease by 5:00 p.m., Monday through Friday, and no work on Saturdays and Sundays, unless otherwise approved by the City Engineer. Prior to working on Saturday and Sunday, the Subdivider's Contractor shall inform the Engineering Inspector 48 hours advance to schedule an inspection. There shall be no construction activity on Sundays and legal holidays. Interior construction such as sheet rock taping and texturing, painting, tile installation and similar activity shall be permitted outside the above working hours provided that construction noise shall not be detectable outside of the new homes being built.

(g) Truck hauling activities shall be restricted to 8:00 a.m. – 3:30 p.m. There shall be no truck hauling activity on Saturdays, Sundays, and legal holidays.

(h) The contractor shall be required to employ the quietest among alternative equipment or to muffle/control noise from available equipment.

(i) Insofar as possible, noisy operations shall be performed off-site or on portions of the site distant from residential neighborhoods.

(j) All construction contracts shall include the following requirements: 1) Unpaved construction sites shall be sprinkled with water at least twice per day, 2) trucks hauling construction materials shall be covered with tarpaulins or other effective covers, 3) streets surrounding demolition and construction sites shall be swept at least once per day, and 4) paving and planting shall be done as soon as possible. City shall charge applicant, and applicant shall pay, for all costs of sweeping city streets in the vicinity of the project as necessary to control dust and spillage.

(k) All construction contracts shall include requirements that construction equipment avoid unnecessary idling to reduce CO, ROG and NO<sub>x</sub> emissions.

(l) To the extent possible, construction activities, including vehicles and workers, shall be excluded from sensitive habitat areas throughout the construction period. Temporary fencing shall be installed along the border between the development and the sensitive habitat areas and shall be posted with signs clearly stating that all construction vehicles and workers are prohibited from entering the sensitive habitat areas. Fencing and signage shall be installed prior to issuance of any building permits. Whenever necessary to ensure the protection of sensitive habitat areas the City may employ at applicant's expense consultants to inspect the construction staking and construction activity.

(m) In the event that archaeological or historical resources are discovered during excavation/grading, work shall be suspended, and a qualified archaeologist or historian shall be hired at Subdivider's expense to examine the findings and to recommend appropriate mitigation. Said mitigation shall be reviewed and approved by the Planning Commission and City Council.

(n) All fill material imported to the project site shall be tested for toxicity. The applicant shall submit the results of such testing to the City. Fill material which has toxicity levels in excess of permissible local, state or federal levels shall not be used on the project site.

(o) All metal fences and ancillary structures in the right-of-way and in close proximity to the transmission lines shall be grounded, in accordance with applicable specifications, to eliminate potential electric shocks. Appropriate cautionary signing shall also be installed.

(p) Subdivider's responsibility for the treatment, management, or disposal of hazardous substances, hazardous wastes, or hazardous materials (collectively, "Hazardous Substances") shall be no greater than nor

less than that provided by and under federal, state and regional law (as may be implemented under local law). Notwithstanding the foregoing, Subdivider agrees to be responsible for the disposal of the soil and other material extracted from those roadway excavation by Subdivider during construction of the "required improvements" provided for herein, whether or not such excavation contain Hazardous Substances. Subdivider shall agree to be responsible for any additional conditions imposed by any other regulatory agency to the extent those conditions are necessary for the removal of the excavated soils and or the replacement of the removed soil, so long as such conditions do not require Subdivider to remediate any Hazardous Substances beyond the area of the project.

25. Miscellaneous.

- 25.1 Attorneys' Fees. If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 25.2 Venue. In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.
- 25.3 Severability. If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 25.4 No Implied Waiver of Breach. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.



- 25.5 Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 25.6 Licenses. Subdivider represents and warrants to City that Subdivider and its employees, agents, contractors and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Subdivider represents and warrants to City that Subdivider and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Subdivider and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
- 25.7 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

The Parties have executed this Agreement as of the date first written above. The persons whose signatures appear below certify that they are authorized to sign on behalf of the respective Party.

CITY OF SAN LEANDRO

D.R. HORTON BAY, INC.

\_\_\_\_\_  
Frances M. Robustelli, City Manager

By:  \_\_\_\_\_

Attest:

Print Name: JULIUS ZABALOS

Title: 

\_\_\_\_\_  
Kelly B. Clancy, City Clerk

Approved as to Form:

\_\_\_\_\_  
Richard D. Pio Roda, City Attorney