

**FIRST AMENDMENT TO
SUBDIVISION IMPROVEMENT AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
AND
LENNAR AVENUE ONE, LLC**

This FIRST AMENDMENT TO SUBDIVISION IMPROVEMENT AGREEMENT (~~%First Amendment+~~) is entered into this _____ day of _____, 2017, (~~%Effective Date+~~) by the CITY OF SAN JOSE, a municipal corporation (~~%City+~~), and LENNAR AVENUE ONE, LLC, a Delaware limited liability company (~~%Developer+~~).

RECITALS

WHEREAS, on August 8, 2013, City and Developer entered into an agreement entitled ~~%SUBDIVISION IMPROVEMENT AGREEMENT BETWEEN THE CITY OF SAN JOSE AND LENNAR AVENUE ONE, LLC, A DELAWARE LIMITED LIABILITY COMPANY+~~ (~~%Agreement+~~); and

WHEREAS, the Agreement provides, among other things, that the Developer shall construct all of the Public Improvements (as defined in the Agreement) shown on the improvement plans approved by the City, including off-site sanitary sewer improvements; and

WHEREAS, it was determined that three thousand (3,900) linear feet of sanitary main located on Raleigh Road and Charlotte Drive did not have sufficient capacity and required the installation of a new 21+vitified clay pipe (VCP) sewer main (~~%Reimbursable Improvements+~~) and that these off-site sanitary sewer improvements were beyond the obligation of the Developer under the Agreement; and

WHEREAS, the City and Developer desire to amend the Agreement to allow City to reimburse Developer for certain costs associated with the construction of the Reimbursable Improvements; and

WHEREAS, pursuant to Section 14.04.330.A of the San José Municipal Code, in order for the CITY to authorize and reimburse the work of the Developer, as a Subdivision Improvement Agreement contract, the City makes the following findings:

1. The work was done by the Developer for the City in connection with the subdivision or development of the real property bounded by Cottle Road, Raleigh Road and State Route 85, as approved by Planned Development Rezoning PDC04-031, and Planned Development Permit PD12-039; and
2. The work was performed more efficiently, expeditiously and with less inconvenience to the public by the Developer than it would have been by the City, as Developer was already performing work in the vicinity; and
3. The cost estimate for the Reimbursable Improvements provided to the City has been reviewed and the City has determined that the work done by Developer was not greater than what would have been the cost if the work was done by the City.

NOW, THEREFORE, the parties agree to amend the Agreement as follows:

SECTION 1. The following provisions are added after Section 3 in EXHIBIT B, %SPECIAL PROVISIONS+of the Agreement:

4. Reimbursable Improvements

Notwithstanding anything to the contrary in this Agreement, the construction of the off-site sanitary sewer improvements shown on the approved Improvement Plans on file in the Office of the City Engineer (%Reimbursable Improvements+), shall be subject to reimbursement by the City for the actual cost of construction in a total sum not to exceed ONE MILLION THREE HUNDRED FOURTEEN THOUSAND SIX HUNDRED SEVENTY DOLLARS (**\$1,314,670.00**). A summary of the Reimbursable Improvements includes, but is not limited to:

- a. Upsizing of approximately two thousand (2,000) linear feet of 12+and 15+ sanitary main with a 21+Vitrified Clay Pipe (VCP) main along Charlotte Drive between Raleigh Road; and
- b. Installation of one thousand nine hundred (1,900) linear feet of 21+VCP main along Charlotte Drive to Endicott Boulevard; and

- c. Open trench, construction of manholes, traffic control and construction staking.
5. Final Payment for Reimbursable Improvements
Developer shall submit a final invoice to the City for the actual cost of the Reimbursable Improvements, along with any additional information reasonably requested by the City to verify Developer's invoice. The City shall, to its satisfaction, verify Developer's expenses and the work performed and pay undisputed amounts within thirty-five (35) days after the filing of the Notice of Acceptance by the City in accordance with Section 17 of the Agreement.
6. Reimbursable Improvements Subject to Agreement
The Reimbursable Improvements shall be subject to all of the provisions applicable to the Public Improvements generally under the Agreement.

SECTION 2. All of the terms and conditions of the original Agreement not modified by this First Amendment shall remain in full force and effect.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

RD:EEH

WITNESS THE EXECUTION HEREOF on the day and year first written above.

APPROVED AS TO FORM:

CITY OF SAN JOSE:

EGAN HILL
Deputy City Attorney

TONI TABER, CMC
City Clerk

DEVELOPER*:

LENNAR AVENUE ONE, LLC
a Delaware limited liability company

By: _____

Title: _____

By: _____

Title: _____

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

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