

**SUBDIVISION AGREEMENT BY AND BETWEEN
THE CITY OF NEWPORT BEACH AND
BACK BAY BUNGALOW L.L.C. FOR TRACT NO. 18121**

THIS AGREEMENT ("Agreement") is entered into this ____ day of September, 2021, by and between the CITY OF NEWPORT BEACH, a municipal corporation and charter city of the State of California, hereinafter referred to as "CITY," and BACK BAY BUNGAOW L.L.C., a California limited liability company, hereafter referred to as "SUBDIVIDER."

RECITALS

WHEREAS, SUBDIVIDER is the owner of a tract of land in CITY, which it is seeking to subdivide into lots and to make certain private and public improvements, and is about to file with CITY a map of the tract of land known as Tract No. 18121 ("Tract");

WHEREAS, as a condition of the approval of and prior to the recordation of this subdivision map for the Tract, SUBDIVIDER is required to complete street (including street, curb and gutter, sidewalk, drive approach and parkway culvert), water, and sewer improvements (collectively, "Improvements") as shown on public improvement plans for Tract 18121 dated September 29, 2021 ("Improvement Plans"), and to perform certain other improvements in the subdivision; and

WHEREAS, SUBDIVIDER desires to enter into an agreement with CITY to delay performance of certain portions of the work; to agree to perform this work as herein provided; and to execute and deliver to CITY bonds for the faithful performance of this Agreement, for the payment of all labor and material in connection therewith, and for the guarantee and warranty of the work for a period of one (1) year following completion and acceptance thereof against any defect in work or labor done, or defective materials furnished, and subdivision monumentation, as required by Sections 66499 through 66499.10 of the California Government Code and Section 19.36.030 (Improvement Security (66499 et seq.)) of the Newport Beach Municipal Code.

NOW, THEREFORE, in consideration of the promises and agreements of the parties as herein set forth, the parties agree as follows:

1. GENERAL IMPROVEMENTS

SUBDIVIDER hereby agrees to do, perform, and pay for all of the work for the Improvements as shown on the Improvement Plans for said Tract as required by the conditions of approval of the subdivision map for the Tract ("Map") which are not completed at the time of the recordation thereof. SUBDIVIDER also agrees to pay all engineering costs and any other deposits, fees, or conditions associated with the Tract and with the Improvements as required by CITY ordinance or resolution and as may be required by the City Engineer. All of the work for the Improvements ("Work") shall be done and performed in accordance with the Improvement Plans, specifications, and profiles which have been approved by the City Engineer and filed in the office of the City Engineer. All of the Work shall be done at the sole cost and expense of SUBDIVIDER. All of the Work shall be completed on or before three (3) years from the date hereof,

unless the conditions of approval of the Map require an earlier completion date. All labor and material costs and expenses for the Work shall be paid solely by SUBDIVIDER. CITY may withhold all occupancy permits until completion of the Improvements.

2. STREET IMPROVEMENTS

SUBDIVIDER agrees to complete any and all street improvements, including perimeter sidewalks, medians, and landscaping required by the conditions of approval of the Map, prior to release or connection of utilities for occupancy for any lot in the Tract.

3. GUARANTEE

SUBDIVIDER shall guarantee all Work and material required to fulfill its obligations as stated herein for a period of one (1) year following the date of the City Council's acceptance of same.

4. IMPROVEMENT PLAN WARRANTY

SUBDIVIDER warrants the Improvement Plans, specifications, and profiles which have been approved by the City Engineer and filed in the office of the City Engineer are adequate to accomplish the Work as promised herein and as required by the conditions of approval of the Map. If at any time before the City Council accepts the Work as complete or during the one (1) year guarantee period in Section 3 hereof, the Improvement Plans, specifications, and profiles which have been approved by the City Engineer and filed in the office of the City Engineer prove to be inadequate in any respect, SUBDIVIDER shall make whatever changes, at its own cost and expense, as are necessary to accomplish the Work as promised.

5. NO WAIVER BY CITY

Inspection of the Work and/or materials for the Improvements, or approval of Work and/or materials for the Improvements, or any statement by any officer, agent or employee of CITY indicating the Work or any part thereof complies with the requirements of this Agreement, or acceptance of the whole or any part of the Work and/or materials for the Improvements, or payments therefor, or any combination of all of these acts, shall not relieve SUBDIVIDER of its obligations under this Agreement; nor shall CITY be stopped from bringing any action for damages arising from SUBDIVIDER'S failure to comply with any of the terms and conditions hereof.

6. COSTS

SUBDIVIDER shall, at its own cost and expense, pay when due, all the costs of the Work, including inspections thereof and relocation of existing utilities required thereby.

7. SURVEYS

SUBDIVIDER shall set and establish survey monuments in accordance with the filed Map and to the satisfaction of CITY before acceptance of any Work by the CITY.

8. IMPROVEMENT SECURITY

Upon executing this Agreement, SUBDIVIDER shall, pursuant to California Government Code Section 66499, and the Newport Beach Zoning and Subdivision

Ordinance, provide as security to CITY:

PRIVATE STREET & STORM DRAIN IMPROVEMENTS

- A. Faithful Performance: For performance security, in the amount of **Forty Five Thousand One Hundred Seventy Eight Dollars and 00/100 (\$45,178.00)**, which is one hundred percent (100%) of the estimated cost of the work. SUBDIVIDER shall present such additional security in the form of:

☐ Cash, certified check, or cashier's check.
☒ Acceptable corporate surety bond.
☐ Acceptable irrevocable letter of credit.

With this security, SUBDIVIDER guarantees performance under this Agreement and maintenance of the Work for one (1) year after its completion and acceptance against any defective workmanship or materials or unsatisfactory performance.

- B. For Labor and Material: Security in the amount of **Forty Five Thousand One Hundred Seventy Eight Dollars and 00/100 (\$45,178.00)**, which is one hundred percent (100%) of the estimated cost of the work. SUBDIVIDER shall present such security in the form of:

☐ Cash, certified check, or cashier's check.
☒ Acceptable corporate surety bond.
☐ Acceptable irrevocable letter of credit.

With this security, SUBDIVIDER guarantees payment to the contractor, to its subcontractors, and to persons renting equipment or furnishing labor or materials for the Improvements or to SUBDIVIDER.

- C. Warranty: Security in the amount of **Four Thousand Five Hundred Eighteen Dollars and 00/100 (\$4,518.00)**, which is ten percent (10%) of the estimated cost of the work. SUBDIVIDER shall present such security in the form of:

☐ Cash, certified check, or cashier's check.
☒ Acceptable corporate surety bond.
☐ Acceptable irrevocable letter of credit.

With this security, SUBDIVIDER provides a one (1) year guarantee period on all work and materials. Such Warranty Bond shall be released one (1) year after acceptance of all Improvements.

FINAL MONUMENTATION

- A. For Subdivision Monumentation: Security in the amount of **Two Thousand Dollars and 00/100 (\$2,000.00)**, which is one hundred percent (100%) of the estimated cost of this work. SUBDIVIDER shall present such security in the form of:

☐ Cash, certified check, or cashier's check.
☒ Acceptable corporate surety bond.
☐ Acceptable irrevocable letter of credit.

With this security, SUBDIVIDER guarantees setting of such monuments and guarantees payment to the Engineer or Surveyor for setting such monuments in the Tract, and as a prerequisite to the approval of the final Map.

SUBDIVIDER may, during the term of this Agreement, substitute improvement security provided that the substituted security is approved in advance in writing by the City Attorney; however, any bond or other security given in satisfaction of this condition shall remain in full force and effect until one (1) year after the Improvements are accepted in writing by CITY. SUBDIVIDER may be required by CITY to provide a substitute security at any time until one (1) year after the Improvements are accepted in writing by CITY.

9. INDEMNIFICATION. DEFENSE. HOLD HARMLESS

City and all officers, employees, and representatives thereof shall not be responsible in any manner for any loss or damage to any of the materials or other things used or employed in performing the Work or for injury to or death of any person as a result of SUBDIVIDER's performance of the Work required hereunder; or for damage to property from any cause arising from the performance of the Work by SUBDIVIDER, or its subcontractors, or its workers, or anyone employed by either of them.

SUBDIVIDER shall be responsible for any liability imposed by law and for injuries to or death of any person or damage to property resulting from defects, obstructions, or from any cause arising from SUBDIVIDER's performance of the Work, performance of the Work by any contractor, subcontractor, or agent of SUBDIVIDER, or a supplier providing materials for the Work on behalf of the SUBDIVIDER.

To the fullest extent permitted by law, SUBDIVIDER shall indemnify, defend and hold harmless City, its City Council, boards, committees and commissions, officers, agents, volunteers, and employees (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to any breach of the terms and conditions of this Agreement by or on behalf of SUBDIVIDER, any Work performed for the Improvements including, without limitation, defects in workmanship or materials or SUBDIVIDER's

presence or activities conducted on the Work (including the negligent and/or willful acts, errors and/or omissions of SUBDIVIDER, its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them).

Notwithstanding the foregoing, nothing herein shall be construed to require SUBDIVIDER to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorneys' fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all Claims regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by SUBDIVIDER.

SUBDIVIDER shall perform all Work in a manner to minimize public inconvenience and possible hazard, to restore other work areas to their original condition and former usefulness as soon as possible, and to protect public and private property. SUBDIVIDER shall be liable for any private or public property damaged during the performance of the Work by SUBDIVIDER or its agents.

In addition to the other rights of City hereunder, in the event that any Claims are brought against the CITY as a result of SUBDIVIDER'S breach of the terms and conditions of this Agreement, any Work performed by or on behalf of SUBDIVIDER, or as a result of SUBDIVIDER's presence or activities conducted on the Tract, the City, as it deems necessary and to the extent authorized by law, may retain any security under Section 8 of this Agreement until disposition of any such Claims.

The rights and obligations set forth in this Section shall survive the termination of this Agreement.

10. INSURANCE

Any insurance required by the City pursuant to any permit issued to City including but not limited to, any encroachment permits, shall be obtained by SUBDIVIDER.

The requirement for carrying the insurance coverage shall not derogate from SUBDIVIDER'S defense, hold harmless and indemnification obligations as set forth in Section 9 of this Agreement. CITY or its representatives shall at all times have the right to demand the original or a copy of the policy of insurance. SUBDIVIDER shall pay, in prompt and timely manner, the premium on all insurance hereinabove required.

11. NONPERFORMANCE AND COSTS

If SUBDIVIDER fails to complete the Work within the time specified in this Agreement, or any subsequent extensions, if any, or fails to maintain the Work, CITY may proceed to complete and/or maintain the Work by contract or otherwise, and SUBDIVIDER agrees to pay all costs and charges incurred by CITY (including, but not limited to: engineering, inspection, surveys, contract, overhead, etc.) immediately upon demand. In such event, the CITY may utilize the security provided under Section 8 to cover costs and charges incurred by CITY (including, but not limited to: engineering,

inspection, surveys, contract, overhead, etc.) for the Work.

SUBDIVIDER hereby consents to entry on the subdivision property by CITY and its forces, including subdividers, in the event CITY proceeds to complete and/or maintain the Work.

Once action is taken by CITY to complete or maintain the Work, in the event that City does not elect to use the security provided by SUBDIVIDER for the Improvements or does elect to use such security and such security is insufficient for City to complete or maintain the Work, SUBDIVIDER agrees to pay all costs incurred by CITY even if SUBDIVIDER subsequently completes the Work.

12. RECORD MAP

In consideration hereof, CITY agrees that SUBDIVIDER is permitted to file and record the final Map for the Tract.

13. NOTICES

Any notices, certificates, or other communications hereunder shall be given either by personal delivery to SUBDIVIDER or to CITY as the situation shall warrant, or by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States Postal Service, to the addresses specified below. CITY and SUBDIVIDER may designate different addresses to which subsequent notices, certificates or other communications will be sent by notifying the other party via personal delivery, reputable overnight courier or U.S. certified mail-return receipt requested:

TO CITY:

City of Newport Beach
Attn: Director of Public Works
100 Civic Center Drive
Newport Beach, CA 92660

TO SUBDIVIDER:

BACK BAY BUNGALOW LLC
Attn: Anastasios Nikolaou
Managing Member.
3183-E Airway Avenue
Costa Mesa, CA 92626

14. CONSENT

When CITY'S consent/approval is required under this Agreement, its consent/approval for one transaction or event shall not be deemed to be a consent/approval to any subsequent occurrence of the same or any other transaction or event.

15. MODIFICATION

No waiver or modification of any language in this Agreement shall be valid unless in writing and duly executed by both parties.

16. CITY APPROVALS

The City Manager of the City of Newport Beach is hereby authorized, on behalf of the CITY, to sign all documents necessary and appropriate to carry out and implement this Agreement and to administer the CITY's obligations, responsibilities and duties to be performed under this Agreement.

17. SECTION HEADINGS

The titles, captions, section, paragraph and subject headings, and descriptive

phrases at the beginning of the various sections in this Agreement are merely descriptive and are included solely for convenience of reference only and are not representative of matters included or excluded from such provisions, and do not interpret, define, limit, describe, or construe the intent of the parties or affect the construction or interpretation of any provision of this Agreement.

18. INTERPRETATION OF THIS AGREEMENT

The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties. If any provision of this Agreement is held by an arbitrator or court of competent jurisdiction to be unenforceable, void, illegal or invalid, such holding shall not invalidate or affect the remaining covenants and provisions of this Agreement. No covenant or provision shall be deemed dependent upon any other unless so expressly provided here. As used in this Agreement, the masculine or neuter gender and singular or plural number shall be deemed to include the other whenever the context so indicates or requires. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present or future statute, law, ordinance or regulation contrary to which the parties have no right to contract, then the latter shall prevail, and the provision of this Agreement which is hereby affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law.

19. DUPLICATE ORIGINAL

The original of this Agreement and one or more copies hereto have been prepared and signed in counterparts as duplicate originals, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original. Each duplicate original shall be deemed an original instrument as against any party who has signed it.

20. IMMIGRATION

SUBDIVIDER shall be responsible for full compliance with the immigration and naturalization laws of the United States and shall, in particular, comply with the provisions of the United States Code regarding employment verification.

21. LEGAL SERVICES SUBCONTRACTING PROHIBITED

SUBDIVIDER and CITY agree that CITY is not liable for payment of any subcontractor work involving legal services, and that such legal services are expressly outside the scope of services contemplated hereunder. SUBDIVIDER understands that pursuant to Newport Beach City Charter Section 602, the City Attorney is the exclusive legal counsel for CITY; and CITY shall not be liable for payment of any legal services expenses incurred by SUBDIVIDER.

22. NO ATTORNEY'S FEES

In the event suit is brought by either party to construe, interpret and/or enforce the terms and/or provisions of this Agreement or to secure the performance hereof, each party shall bear its own attorney's fees, such that the prevailing party shall not be entitled to recover its attorney's fees from the nonprevailing party.

23. SURVIVAL

Terms and conditions of this Agreement, which by their sense and context survive the expiration or termination of this Agreement shall so survive.

24. GOVERNING LAW

This Agreement shall be governed and construed in accordance with the laws of the State of California.

25. SIGNATORIES

Each undersigned represents and warrants that its signature herein below has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify CITY fully for any injuries or damages to CITY in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

26. ENTIRETY

The parties acknowledge and agree that they are entering into this Agreement freely and voluntarily following extensive arm's length negotiations, and that each has had the opportunity to consult with legal counsel prior to executing this Agreement. The parties also acknowledge and agree that no representations, inducements, promises, agreements or warranties, oral or otherwise, have been made by that party or anyone acting on that party's behalf, which are not embodied in this Agreement, and that that party has not executed this Agreement in reliance on any representation, inducement, promise, agreement, warranty, fact or circumstance not expressly set forth in this Agreement. This Agreement contains the entire agreement between the parties respecting the subject matter of this Agreement and supersedes all prior understandings and agreements whether oral or in writing between the parties respecting the subject matter hereof.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their authorized offices the day, month and year first above written.

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

Date: 10/13/21

By: 
Aaron C. Harp
City Attorney

**CITY OF NEWPORT BEACH,
a California municipal corporation**

Date: _____

By: _____
Brad Avery
Mayor

ATTEST:

Date: _____

By: _____
Leilani I. Brown
City Clerk

**SUBDIVIDER: BACK BAY BUNGALOW
L.L.C., a California limited liability
company**

Date: 10-14-21

By: 
Anastasios Nikolaou
Managing Member

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Orange } ss.

On October 14, 2021

before me, Charlie Cho

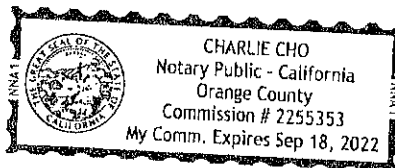
Notary Public, personally appeared Anastasios Nikolaou, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Charlie Cho

Signature



(seal)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____ } ss.

On _____, 20____

before me, _____

Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(seal)