

SUBDIVISION AGREEMENT

THIS AGREEMENT, made pursuant to the provisions of Division 2 of Title 7 of the Government Code of the State of California, by and between the CITY OF FULLERTON, a municipal-corporation, hereinafter called the "CITY" and

Fullerton 33, LLC, a Delaware limited liability company

whose mailing address is

16580 Aston Irvine, CA 92606

hereinafter called the "SUBDIVIDER".

WITNESSETH:

THAT, WHEREAS, SUBDIVIDER has filed with the Planning Commission of the CITY, a tentative map for a proposed subdivision, known as Tract/Parcel Map No. 19008 which has been conditionally approved by the CITY and;

WHEREAS, SUBDIVIDER desires to postpone the public and private improvements required as a condition of approval of said tentative map until a time subsequent to the acceptance and recordation of the final map of said subdivision, by entering into an agreement and providing the improvement security required to assure the furnishing and installation of said improvements within the time herein provided.

NOW, THEREFORE, in consideration of the premises and the approval of the final map of said subdivision and the postponement of the time to install such improvements and to satisfy the said condition of the approval of the said tentative map, the SUBDIVIDER hereby undertakes, promises and agrees as follows:

1. SUBDIVIDER will, at his (its) own cost and expense, improve said tract by doing all the work and providing and furnishing all labor, materials and equipment and making all installations shown on the improvement plans signed and approved by the Director of Engineering and stipulated by the specifications of the CITY, said plans and specifications are on file in the office of the Director of Engineering and incorporated herein by reference, which may include but not limited to, all grading work, paving of all streets, alleys and public service easements, construction of concrete curbs, gutters, cross-gutters and sidewalks, installation of storm drainage and sanitary sewerage facilities, installation of underground conduit street lighting system, the installation of all

street name signs, and the supplying and planting of all parkway trees together with the installation of all appurtenances, contingencies and the furnishing of all engineering costs and services to do and complete said work, and to do and complete all other acts and obligations required by the CITY as a condition of the approval of the tentative subdivision.

2. SUBDIVIDER will, at his own cost and expense, provide and install all on-site and off-site water mains and appurtenances, and will provide all labor and materials to connect the same to existing mains and facilities of the CITY, and will comply with all of the requirements of Title 12 of the Fullerton Municipal Code, and with the plans and specifications for said work signed by, and on file in the office of the Water System Engineer of said CITY, incorporated herein by reference.

3. SUBDIVIDER will reimburse the CITY for any engineering costs (including plan checking, inspection, testing, materials furnished, overhead and other incidental expenses) incurred by the CITY in the processing of the subdivision and in the installation of the improvements hereinabove provided. In ascertaining the amount of such costs incurred by the CITY, the cost report of the City Director of Finance shall be prima facie evidence of the true cost of the engineering services so performed by the CITY.

4. It is agreed by and between the parties hereto that the total estimated cost of said work and improvements is \$ 1,062,200.00 / \$531,100.00.

5. SUBDIVIDER shall furnish two good and sufficient bonds in accordance with the provisions of Chapter 5 of Division 2 of Title 7 of the Government Code, said bonds to be in the amounts and for the following purposes: (a) an amount equal to the total estimated cost of said work and improvement, conditioned upon the faithful performance of this Agreement, and (b) an additional amount equal to one-half the total estimated cost of the said work and improvement securing payment to the contractor, his subcontractors, and to persons renting equipment or furnishing labor or materials to them for the improvements.

6. The Director of Engineering may make such changes, alterations or additions to the plans and specifications for said work and improvement which do not exceed ten percent (10%) of the total estimated cost set forth in Item 4 above, as may be determined necessary and desirable by him for the proper completion of said work and improvement or as required for the safety and welfare of the public and no such changes, alterations or additions shall relieve the SUBDIVIDER from the faithful performance of this Agreement.

7. SUBDIVIDER agrees to complete all of said work and improvement and to pay all costs specified herein within a period of one year from the date hereof.

8. It is agreed by and between the parties hereto that in the event it is deemed necessary to extend the time of completion of the work and improvement to be done under this Agreement, said extension may be granted by the City Council of the CITY or its duly authorized officer, and shall in no way affect the validity of this agreement or the obligations hereunder. Bonds furnished hereunder shall be kept in full force and effect until said work and improvement shall be deemed complete, approved and accepted as completed by CITY unless the same are reduced in amount as specified in Title 16 of the Fullerton Municipal Code.

9. SUBDIVIDER agrees that CITY may, without any notice, and at its sole option, at any time after the said time for completion has passed, complete, or cause to be completed, all or any part of the said work, and SUBDIVIDER shall pay to said CITY, within thirty (30) days of written demand therefor, all of the cost of any of said work done by the CITY, its agents and contractors, or any of them, to complete all or any part of said work.

10. SUBDIVIDER agrees to pay, within thirty (30) days of written demand therefore, CITY such sum as the Court may adjudge as reasonable for the legal services of any attorney representing the CITY in any action brought to enforce or interpret the obligations of this instrument, and such sum shall be made a part of any judgment in such action against the SUBDIVIDER if such action is determined in favor of the CITY.

11. CITY, its officers, and employees, except for their own acts, shall not be liable or responsible for any accident, loss or damage happening or occurring to the improvements specified in this agreement prior to the completion and acceptance of said improvements by the CITY.

12. At all times, from the acceptance by the CITY of the dedications offered on the final map of said subdivision to the completion and acceptance of the improvements described herein, SUBDIVIDER shall perform all work in a safe, workmanlike manner and shall take such precautions as may be necessary to warn and protect the public from any dangerous condition caused by the construction of said improvements.

13. Subsequent to the use or occupancy of any dwelling or building constructed within the subdivision, and until the date of the CITY'S formal acceptance of any or all of the private and public improvements described herein, SUBDIVIDER agrees to provide and maintain necessary utilities and services to all such dwellings and buildings, and to regularly maintain all other improvements described herein used by the occupants thereof, until formal acceptance by the CITY. This includes, but is not limited to, providing and maintaining water, sewer, and storm drain mains and appurtenances, street sweeping, public area landscaping, lighting, etc.

14. Subdivider agrees to defend, indemnify and hold harmless the CITY, its officers, agents, employees, and volunteers from all loss, cost, and expense arising out of liability or claim of liability for personal injury, bodily injury to persons, contractual liability and damage to property sustained or claimed to have been sustained arising out of activities of the Subdivider or those of any of its officers, agents, or employees, whether such act is authorized by this Agreement or not; and undersigned shall pay for

any and all damage to the property of the CITY, or loss or theft of such property, done or caused by such persons. The CITY assumes no responsibility whatsoever for any property placed within the public right-of-way. Subdivision further agrees to waive all rights of subrogation against the CITY. The provisions of this Section do not apply to any damage or loss caused solely by the negligence of the CITY or any of its agents or employees.

EXECUTED at Fullerton, California this _____ day of _____, 20____.

SUBDIVIDER*
Fullerton 33, LLC, a Delaware limited liability company

By: _____
(Signature)

member
(Title)

949 296-2400 x101
(Telephone)

FOR TRACT ONLY

CITY OF FULLERTON

APPROVED:

City Engineer

CITY OF FULLERTON

Mayor

CITY OF FULLERTON

APPROVED:

City Attorney

ATTEST:

City Clerk

Note: Improvement Bond and Labor and Material Bond must be attached to this Agreement.

*Partnerships, joint ventures, and other corporate entities should contact the Fullerton City Attorney for acceptable form of execution.

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)

On January 11, 2021 before me, Sandra L. Zundell, Notary Public
(insert name and title of the officer)

personally appeared Brett Whitehead,
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.

Signature



(Seal)

