

SUBDIVISION AGREEMENT BY AND BETWEEN
THE CITY OF HUNTINGTON BEACH AND
HUNTINGTON GATEWAY INDUSTRIAL III, LLC
FOR PARCEL NO. 2022-107

THIS AGREEMENT ("Agreement") is entered into this _____ day of _____ 2_____, by and between the CITY OF HUNTINGTON BEACH, a municipal corporation of the State of California, hereinafter referred to as "CITY," and HUNTINGTON GATEWAY INDUSTRIAL III, LLC, a California limited liability company, hereinafter 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 dedicate certain streets, alleys, and other improvements therein to public use, and is about to file with CITY a map of the tract of land known as Parcel No. 2022-107; and

As a condition of the approval of and prior to the recordation of this subdivision map, SUBDIVIDER is required to improve and dedicate the streets and alleys, and to perform certain other improvements in the subdivision; and

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, as required by Sections 66499 and

66499.3 of the California Government Code, and Chapter 255 of CITY'S Zoning and Subdivision Ordinance.

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 and perform and pay for all of the work in said tract required by the conditions of approval of the subdivision map not completed at the time of the recordation thereof, including, but not limited to, the construction of: streets, including excavation, paving, curbs, gutters, sidewalks, trees and landscaping; sewers, including construction of main lines and lot laterals and structures; street lights; street signs; and domestic water systems, including the construction of water mains, services and installation of meters. SUBDIVIDER also agrees to pay all engineering costs and any other deposits, fees or conditions as required by CITY ordinance or resolution and as may be required by the City Engineer. All of the work shall be done and performed in accordance with the 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 two (2) years from the date hereof, unless the conditions of approval of the subdivision map require an earlier completion date. All labor and material bills therefor shall be paid solely by SUBDIVIDER. CITY may withhold all occupancy permits until completion of all these improvements.

2. ARTERIAL HIGHWAY IMPROVEMENT

SUBDIVIDER agrees to complete all arterial highway improvements, including perimeter walls and landscaping required by the conditions of approval of the subdivision 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 City Council acceptance of same.

4. PLANT-ESTABLISHMENT WORK

SUBDIVIDER agrees to perform plant-establishment work for landscaping installed under this Agreement. This plant-establishment work shall consist of adequately watering plants, replacing unsuitable plants, performing weed, rodent and other pest control and other work determined by CITY'S Public Works Department to be necessary to ensure establishment of plants. This plant-establishment work shall be performed for a period of one (1) year from and after the date City Council accepts the work as complete.

5. IMPROVEMENT PLAN WARRANTY

SUBDIVIDER warrants the improvement plans for the work are adequate to accomplish the work as promised herein and as required by the conditions of approval of the subdivision map. If at any time before the City Council accepts the work as complete or during the one (1) year guarantee period, the improvement plans 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.

6. NO WAIVER BY CITY

Inspection of the work and/or materials, or approval of work and/or materials, 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, or payments therefor, or any combination of all of these acts, shall not relieve SUBDIVIDER of its obligations to fulfill this Agreement as prescribed; 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.

7. 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.

8. 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 as complete by the City Council.

9. IMPROVEMENT SECURITY

Upon executing this Agreement, SUBDIVIDER shall, pursuant to California Government Code Section 66499, and the Huntington Beach Zoning and Subdivision Ordinance, provide as security to CITY:

A. Faithful Performance:

For performance security, in the amount of Four Million Seven Hundred Thirty-Two Thousand and One Hundred Dollars (\$4,732,100), 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.

X 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 any unsatisfactory performance.

- B. For Labor and Material: Security in the amount of Two Million Three Hundred Sixty-Six Thousand and Fifty Dollars (\$2,366,050), which is fifty percent (50%) of the estimated cost of the work.

SUBDIVIDER shall present such security in the form of:

_____ Cash, certified check, or cashier's check.

X 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 to them or to SUBDIVIDER.

SUBDIVIDER may, during the term of this Agreement, substitute improvement security provided that the substituted security is acceptable to 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 work of improvement is finally accepted in writing

by CITY, and SUBDIVIDER may be required by CITY to provide a substitute security at any time.

10. INDEMNIFICATION. DEFENSE. HOLD HARMLESS

SUBDIVIDER hereby agrees to protect, defend, indemnify and hold harmless CITY, its officers, elected or appointed officials, employees, agents and volunteers from and against any and all claims, damages, losses, expenses, judgments, demands and defense costs (including without limitation, costs and fees of litigation of every nature or liability of any kind or nature) allegedly suffered, incurred or threatened, including personal injury, death, property damage, inverse condemnation, or any combination of these, and resulting from any act or omission (negligent or nonnegligent) in connection with the matters covered by this Agreement, but save and except those that arise from the sole active negligence or willful misconduct of CITY. SUBDIVIDER will conduct all defense at its sole cost and expense and CITY shall approve selection of SUBDIVIDER'S counsel. This indemnity shall apply to all claims and liability 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.

The promise and agreement in this Section are not conditioned or dependent on whether or not CITY has prepared, supplied, or reviewed any plan(s) or specifications(s) in connection with this work or subdivision, or has insurance or other indemnification covering any of these matters.

11. INSURANCE

In addition to SUBDIVIDER'S covenant to defend, hold harmless and indemnify CITY, SUBDIVIDER shall obtain and furnish to CITY a policy of general public

liability insurance, including motor vehicle coverage. Said policy shall indemnify SUBDIVIDER, its officers, agents and employees, while acting within the scope of their duties, against any and all claims of arising out of or in connection with this Agreement, and shall provide coverage in not less than the following amount: combined single limit bodily injury and property damage, including products/completed operations liability and blanket contractual liability, of One Million Dollars (\$1,000,000) per occurrence. If coverage is provided under a form which includes a designated general aggregate limit, the aggregate limit must be less than One Million Dollars (\$1,000,000). This policy shall name City of Huntington Beach, its officers, officials, employees, agents and volunteers as Additional Insureds, and shall specifically provide that any other insurance coverage which may be applicable to this Agreement shall be deemed excess coverage and that SUBDIVIDER'S insurance shall be primary.

The abovementioned insurance shall not contain a self-insured retention, or a "deductible" or any other similar form of limitation on the required coverage, except with the express written consent of CITY.

Prior to commencing performance of the work hereunder, SUBDIVIDER shall furnish to CITY a certificate of insurance subject to approval of the City Attorney evidencing the foregoing insurance coverage as required by this Agreement; the certificate shall:

1. provide the name and policy number of each carrier and policy;
2. state that the policy is currently in force; and
3. promise to provide that such policy will not be canceled or modified without thirty (30) days' prior written notice of CITY.

SUBDIVIDER shall maintain the foregoing insurance coverage in full force until the work under this Agreement is fully completed and accepted by CITY.

The requirement for carrying the foregoing insurance coverage shall not derogate from SUBDIVIDER'S defense, hold harmless and indemnification obligations as set forth in 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 a prompt and timely manner, the premium on all insurance hereinabove required.

12. NONPERFORMANCE AND COSTS

If SUBDIVIDER fails to complete the work within the time specified in this Agreement, and 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.

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

Once action is taken by CITY to complete or maintain the work, SUBDIVIDER agrees to pay all costs incurred by CITY, even if SUBDIVIDER subsequently completes the work.

13. RECORD MAP

In consideration hereof, CITY shall allow SUBDIVIDER to file and record the Final Map or Parcel Map for the Subdivision.

14. 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 Huntington Beach
ATTN: Director of Public Works
2000 Main Street
Huntington Beach, CA 92648

TO SUBDIVIDER:

Huntington Gateway Industrial III, LLC
ATTN: Patrick Russell
3501 Jamboree Road, Suite 3000
Newport Beach, CA 92660

15. 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.

16. MODIFICATION

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

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 or 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 Huntington Beach City Charter Section 309, 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. 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 hereinbelow 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.

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.

SUBDIVIDER,


Huntington Gateway Industrial III, LLC

By: 

Larry Lukonish
print name

ITS: (circle one) Chairman/President/Vice President

AND

By: 

KENNETH M. COATSWORTH
print name

ITS: (circle one) Secretary/Chief Financial Officer/Asst.
Secretary - Treasurer

CITY OF HUNTINGTON BEACH, a municipal corporation of the State of California

Mayor

City Clerk

INITIATED AND APPROVED:

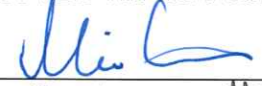


Director of Public Works

REVIEWED AND APPROVED:

City Manager

APPROVED AS TO FORM:



City Attorney

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

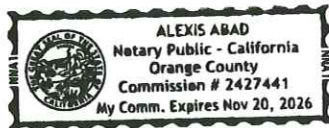
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of Orange

On March 13, 2023 before me, Alexis Abad, Notary Public,
Date Here Insert Name and Title of the Officer

personally appeared Larry Lukanish
Name(s) of Signer(s)

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.

Place Notary Seal and/or Stamp Above

Signature Alexis Abad
Signature of Notary Public

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer is Representing: _____

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer is Representing: _____

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

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 March 13, 2023 before me, Alexis Abad, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Kenneth M. Coatsworth
Name(s) of Signer(s)

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.

Place Notary Seal and/or Stamp Above

Signature Alexis Abad
Signature of Notary Public

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

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Capacity(ies) Claimed by Signer(s)

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☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer is Representing: _____

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer is Representing: _____