

SUBDIVISION AGREEMENT BY AND BETWEEN
THE CITY OF HUNTINGTON BEACH AND

FOR TRACT NO. 18068

Agreement Date: _____

Subdivider Name: C3 DLG 414 Main Street, LLC
("Subdivider")

Subdivision Name/Tract No.: 18068
("Subdivision")

Tentative Map No.: 18068 (**Approval Date:** 02/20/2018)
(Tentative Map")

Improvement Plans Approved On: _____
("Improvement Plans")

Estimated Total Cost of Improvements: \$ 194,174.05

Estimated Total Cost of Monumentation: \$ 4,025.00

Security:

Bond Nos.: PB02497501239 & PB02497501240

Surety: Philadelphia Indemnity Insurance Company

- OR -

Irrevocable Standby Letter of Credit No.: _____

Financial Institution: _____

- OR -

Cash/Certificate of Deposit, Agreement Dated: _____

Financial Institution: _____

Insurance:

Commercial General Liability No.: Colony Insurance Company # 101 GL 0178336-00

Commercial Business Automobile No.: N/A

Worker's Compensation and Employer's Liability No.: N/A

Designees for the Service of Written Notice:

City:

Public Works Director
City of Huntington Beach
2000 Main Street,
Huntington Beach, CA 92648

Tel.: 714-536-5431

Subdivider:

C3 DLG 414 Main Street LLC
1024 Bayside Drive, Suite 365
Newport Beach, CA 92660

Tel.: 949.445.1016

Tel.: _____

THIS SUBDIVISION IMPROVEMENT 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, ("City") and C3 DLG 414 Main Street LLC, a California limited liability company, hereinafter ("Subdivider").

RECITALS

A. The Subdivider has requested the City approve and record a final map of the Subdivision pursuant to the Subdivision Map Act of the State of California and the Huntington Beach Zoning and Subdivision Ordinance relating to subdivision maps (collectively "Subdivision Laws").

B. As a condition of the approval of and prior to the recordation of the Subdivision, Subdivider is required to improve and dedicate the streets and alleys, and to perform certain other improvements in the Subdivision; and

C. Subdivider desires to enter into an agreement with City to delay performance of certain portions of the Improvements; to agree to perform the Improvements 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 the Huntington Beach Zoning and Subdivision Ordinance (the "HBZSO").

D. Subdivider has prepared, and the City Engineer has approved, Improvement Plans for the completion of certain improvements in connection with the Subdivision. The Improvement Plans are on file in the Department of Public Works and are incorporated into this Agreement by this reference. All references in this Agreement to the Improvement Plans include by reference any standard specifications for the construction and installation of improvements as approved by the City Engineer in effect on the date of approval of the Tentative Map.

E. An estimate of the cost of construction of the Public Improvements according to the Improvement Plans has been made and has been approved by the City Engineer. The estimated amount is stated at Exhibit A of this Agreement.

F. As consideration for the approval and recordation by the City Engineer of the final map of the Subdivision, Subdivider desires to enter into this secured Agreement, whereby

Subdivider promises to complete, at its expense, all of the Public Improvements required by the Tentative Map as reflected in the Improvement Plans.

G. Subdivider recognizes that by approval of the final map for Subdivision, City has conferred substantial rights upon Subdivider, including the right to sell, lease, or finance lots within the Subdivision. As a result, City will be damaged to the extent of the cost of installation of the Improvements by Subdivider's failure to perform its obligations to commence construction of the Improvements by the time established in this Agreement. The City shall be entitled to all remedies available to it pursuant to this Agreement and law in the event of default by Subdivider. The Subdivider specifically recognizes that the determination of whether a reversion to acreage or rescission of the Subdivision constitutes an adequate remedy for default by the Subdivider shall be within the sole discretion of the City.

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

1. Subdivider's Obligation to Construct Public Improvements. Subdivider shall:
 - a. Comply with all requirements of the Tentative Map and any amendments thereto, and with the provisions of the Subdivision Laws.
 - b. Complete, at Subdivider's own expense, all of the Public Improvements required by the Tentative map in conformance with the Improvement Plans and all applicable standard specifications in effect on the date of the City's approval of the Tentative Map in conformance with the Improvement Plans and the applicable standard specifications in effect on the date of the City's approval of the Approved Tentative Map (the "Public Improvements").

c. Furnish all materials necessary to complete the Public Improvements in conformity with the Improvement Plans and all applicable standard specifications in effect on the date of the City's approval of the Tentative Map.

d. Acquire and dedicate to the City all rights-of-way, easements, and other interests in real property for the construction and installation of the Public Improvements, or pay the cost of acquisition incurred by the City. All real property interests dedicated by the Subdivider to the City shall be free and clear of liens and encumbrances at the time of dedication. Subdivider shall remove all liens and encumbrances at its sole expense prior to dedication to the City and warrant such clear title at Subdivider's sole expense. The Tentative Map for the Subdivision shall set forth the Subdivider's obligations with regard to any acquisition by City of off-site interests in real property. Subdivider shall also be responsible for obtaining any public or private utility easements or authorization to accommodate the Subdivision.

e. Commence construction of the Public Improvements by the time established in Section 20 of this Agreement and complete the Public Improvements within twenty-four (24) months following the date of this Agreement or as specified in any time extension granted by the City Engineer pursuant to Section 255.20 of the HBZSO. The Public Improvements are deemed completed when the City Engineer accepts them as provided in Section 13 and HBZSO Section 255.22 by recordation of a "Notice of Acceptance of Public Improvements."

f. Install all subdivision public monuments required by law prior to recordation of the Notice of Acceptance of Public Improvements. Subdivider shall install all subdivision boundary and individual property monuments within the time specified in the Engineer's Statement on the approved Final Map for the Subdivision.

g. Comply with all of the requirements in the special provisions attached hereto and incorporated herein by reference as Exhibit "B."

2. Acquisition and Dedication of Easements or Rights-of-Way. If any of the Public Improvements contemplated by this Agreement will be constructed on land not owned by Subdivider, the Subdivider shall not commence construction before:

a. The Subdivider makes an irrevocable offer of dedication to the City of appropriate rights-of-way, easements or other interests in real property, and obtains appropriate authorization from the property owner to allow construction of the improvements or work, or

b. The Subdivider dedicates to, and the City accepts, the appropriate rights-of-way, easements or other interests in real property, as determined by the City Engineer, or

c. The issuance to the City by a court of competent jurisdiction an order of possession. Subdivider shall comply with the order of possession.

Nothing in this Section 2 shall be construed as granting an extension of time to Subdivider.

3. Security. Upon executing this Agreement, Subdivider shall furnish to the City security for the purposes, in the amounts, and under the conditions that follow:

a) Type and Amounts.

(1) Performance Security. To assure the Subdivider's faithful performance of this Agreement to complete the public improvements in an amount of one hundred percent (100%) of the estimated cost of the Public Improvements. With this security, Subdivider guarantees performance under this Agreement and maintenance of the landscaping for one (1) year after its completion and acceptance.

(2) Payment Security. To secure Subdivider's payment to any contractor, subcontractor, person renting or supplying equipment, or furnishing labor and materials for completion of the Public Improvements in the amount of fifty percent (50%) of the estimated cost of the Improvements.

(3) Warranty Security. To warranty the Subdivider's work for a period of one (1) year following recordation of the Notice of Acceptance against any defective work, labor done, or defective materials furnished in the additional amount of not less than ten percent (10%) of the estimated cost of the Public Improvements.

(4) Monument Security. To secure the Subdivider setting the subdivision monuments as stated in Section 1.f above within the period of time specified in the Engineer's Statement on the approved Final Map for the Subdivision in the additional amount of one hundred percent (100%) of the estimated cost of setting those monuments.

b) Conditions.

(1) The Subdivider shall provide the required security on forms approved by the City and from sureties authorized by the California Insurance Commissioner to transact the business of insurance.

(2) The terms of the security documents referenced on Page 1 of this Agreement are incorporated into this Agreement by this reference.

(3) A condition of the Subdivider's security is that any changes not exceeding ten percent (10%) of the original estimated cost of the Public Improvements shall not relieve the security. In the event that changes to the Improvement Plans cause an increase of more than ten percent (10%) over the original estimated cost of the Public Improvements,

Subdivider shall provide security as required by Section 3(a) of the Agreement for 100% of the total estimated cost of the Public Improvements as changed.

(4) Notwithstanding Subsection b(3) above, Subdivider's security shall compensate the City for the actual cost of completing the required Public Improvements in the event of default by the Subdivider in the performance of this Agreement, regardless of whether the City's cost of completion exceeds the estimated total cost of the Public Improvements.

(5) A condition of the Subdivider's security is that any request by the Subdivider for an extension of time for the commencement or completion of the work under this Agreement may be granted by the City without notice to Subdivider's surety and such extensions shall not affect the validity of this Agreement or release the surety or sureties on any security given for this Agreement.

(6) As a condition of granting any extension for the commencement or completion of the work under this Agreement, the City Engineer may require Subdivider to furnish new security guaranteeing performance of this Agreement, as extended, in an increased amount to compensate for any increase in construction costs as determined by the City Engineer.

(7) If the Subdivider seeks to replace any security with another security, the replacement shall: (1) comply with all the requirements for security in this Agreement; (2) be provided by the Subdivider to the City Engineer; and (3) upon its written acceptance by the City Engineer, be deemed to be a part of this Agreement. Upon the City Engineer's acceptance of a replacement security, the former security may be released by the City.

4. Alterations to Improvement Plans.

a. The City and Subdivider may mutually agree upon changes to the Improvement Plans subject to the security requirements in Section 4 herein.

b. The Subdivider shall construct the improvements in accordance with the City standards in effect at the time of adoption of the Tentative Map. City reserves the right to protect the public safety or welfare, and comply with applicable Federal or State law or City zoning ordinances. If Subdivider requests and is granted an extension of time for completion of the Public Improvements, City may apply the standards in effect at the time of the extension.

5. Inspection. Subdivider shall at all times maintain proper facilities and safe access for inspection of the Public Improvements by City inspectors and to the shops and facilities wherein any work is in preparation. Upon completion of the Public Improvements, the Subdivider may request a final inspection by the City Engineer or the City Engineer's authorized representative. The City Engineer shall not execute or record the Notice of Acceptance of the Public Improvement unless the Subdivider has completed all aspects of the work in accordance with the Improvement Plans. When applicable law requires an inspection at a particular stage of construction of the Public Improvements, Subdivider shall not proceed with additional work until the inspection has been made and the work approved.

6. Release of Securities. The City shall release the securities required by this Agreement as follows:

a) Performance Security. The City shall release the Performance Security upon recordation of the Notice of Acceptance or as may otherwise be authorized in accordance with Government Code section 66499.7.

b) Payment Security. The City shall release the Payment Security in accordance with Government Code section 66499.7.

c) Warranty Security. The City shall release the Warranty Security upon expiration of the warranty period and settlement of any claims filed during the warranty period.

d) Retention of Security. The City may retain from any security released, an amount sufficient to cover costs and reasonable expenses and fees, including reasonable attorney's fees.

7. Injury to Public Improvements, Public Property or Public Utility Facilities. Until recordation of the Notice of Acceptance of the public improvements, Subdivider assumes responsibility for the care and maintenance of, and any damage to, the Public Improvements. Subdivider shall replace or repair all Public Improvements, public utility facilities, and surveying or subdivision monuments and benchmarks which are destroyed or damaged for any reason, regardless whether resulting from the acts of the Subdivider, prior to the recordation of the Notice of Acceptance of the Public Improvements. Subdivider shall bear the entire cost of such replacement or repairs regardless of what entity owns the underlying property. Any repair or replacement shall be to the satisfaction, and subject to the approval, of the City Engineer. Neither the City, nor any officer or employee thereof, shall be liable or responsible for any accident, loss or damage, regardless of cause, occurring to the work or Public Improvements prior to recordation of the Notice of Acceptance of the Public Improvements.

8. Permits. Subdivider shall, at its expense, obtain and comply with the conditions of all necessary permits and licenses for the construction of the Public Improvements. The

Subdivider shall also give all necessary notices and pay all fees and taxes required by law.

9. Defaults by Subdivider.

a) Default of Subdivider shall include, but not be limited to:

- (1) Subdivider's failure to timely commence construction of Public Improvements under this Agreement;
- (2) Subdivider's failure to timely complete construction of the Public Improvements;
- (3) Subdivider's failure to timely cure any defect in the Public Improvements;
- (4) Subdivider's failure to perform substantial construction work for a period of 20 consecutive calendar days after commencement of the work;
- (5) Subdivider's insolvency, appointment of a receiver, or the filing of any petition in bankruptcy, either voluntary or involuntary, which Subdivider fails to discharge within 30 days;
- (6) The commencement of a foreclosure action against the subdivision or a portion thereof, or any conveyance in lieu or in avoidance of foreclosure;
or
- (7) Subdivider's failure to perform any other obligation under this Agreement.

b) The City reserves all remedies available to it at law or in equity for breach of Subdivider's obligations under this Agreement. The City shall have the right, subject to this Section, to draw upon or use the appropriate security to mitigate the City's damages in the event of default by Subdivider. The City's right to draw upon or use the security is in addition to any other remedy available to City. The parties acknowledge that the estimated costs and security amounts may not reflect the actual cost of construction of the Public Improvements and,

therefore, City's damages for Subdivider's default shall be measured by the cost of completing the required Public Improvements. The City may use the sums provided by the securities for the completion of the Public Improvements in accordance with the Improvement. In the event Subdivider fails to cure any default under this Agreement within twenty (20) days after the City mails written notice of such default to the Subdivider and the Subdivider's surety, Subdivider authorizes City to perform the obligation for which Subdivider is in default and agrees to pay the entire cost of such performance by the City.

c) City may complete the Public Improvements, by contract or by any other method City deems appropriate, at the expense of Subdivider. In such event, City, without liability for so doing, may complete the Public Improvements using any of Subdivider's materials, appliances, plans and other property that are at the work site and that are necessary to complete the Public Improvements.

d) The Subdivider's failure to comply with the terms of this Agreement constitutes Subdivider's consent for the City to file and record a Notice of Violation pursuant to Government Code Section 66499.36 against all the lots in the Subdivision, to invoke all the remediation available to the City under Government Code Section 66499.33-66499.36 or to rescind or otherwise revert the Subdivision to acreage. Subdivider specifically recognizes that the determination of whether a reversion to acreage or rescission of the Subdivision constitutes an adequate remedy for default by the Subdivider shall be within the sole discretion of the City. The remedy provided by this Subsection c is in addition to all other remedies available to City. Subdivider agrees that the choice of remedy or remedies for Subdivider's breach shall be in the discretion of City.

e) In the event the Subdivider fails to perform any obligation hereunder, Subdivider agrees to pay all costs and expenses incurred by City in securing performance of such obligations, including but not limited to fees and charges of architects, engineers, attorneys, and other professionals, and court costs.

f) The failure of City to take enforcement action with respect to a default, or to declare a breach, shall not be construed as a waiver of that default or breach or any subsequent default or breach of Subdivider.

10. Warranty. Subdivider warrants the Public Improvements for a period of one (1) year after recordation of the Notice of Acceptance against any defective work or labor or defective materials. If, within the warranty period, any Public Improvement in whole or in part fails to fulfill any of the requirements of this Agreement, Subdivider shall cure such defect without delay and without cost to the City. Should Subdivider fail to cure any defect or commence diligently curing a defect within twenty (20) days after the City mails Subdivider and its surety written notice of a default under this provision, Subdivider authorizes the City, at City's option, to cure the defect and agrees to pay the cost of such work by City. Should the City determine that the public health or safety requires curing any defect before Subdivider can be notified or adequately respond, City may, in its sole discretion, perform such work as is reasonably necessary to protect public health or safety, and Subdivider shall pay to City the cost of such work.

11 Environmental Warranty.

a. Prior to the acceptance of any dedications or Public Improvements by City, Subdivider shall provide City with a written warranty in a form substantially similar to Exhibit "C," attached hereto and incorporated herein by reference.

b. Subdivider shall give prompt written notice to City of:

(1) Any proceeding or investigation by any federal, state or local governmental authority with respect to the presence of any hazardous substance on the property to be dedicated or the migration thereof from or to any other property adjacent to, or in the vicinity of, the property to be dedicated.

(2) Any claims made or threatened by any third party against City or the property to be dedicated relating to any loss or injury resulting from any hazardous substance; and

(3) Subdivider's discovery of any occurrence or condition on any property adjoining or in the vicinity of the property to be dedicated that could cause the property to be dedicated or any part thereof to be subject to any restrictions on its ownership, occupancy, use for the purpose for which it is intended, transferability or suit under any environmental law.

12. Subdivider's Obligation to Warn Public During Construction. Until recordation of the Notice of Acceptance of the Public Improvements, Subdivider shall give good and adequate warning to the public of any dangerous condition of the Public Improvements, and shall take reasonable actions to protect the public from such dangerous condition. Until recordation of the Notice of Final Acceptance, Subdivider shall provide 48 hours advance written notice to all neighboring property owners and tenants affected by Subdivider's operations or construction of the hours, dates and duration of any planned construction activities.

13. Final Acceptance of Public Improvement. The City Engineer shall make a certification of completion and acceptance of the Public Improvements by recordation of a Notice of Acceptance on behalf of the City after final completion and inspection of all

improvements, as provided in Section 5. The recordation of the Notice of Acceptance shall not constitute a waiver of defects by the City.

14. Plant-Establishment Work. Notwithstanding Section 13, 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 Public Improvements as complete.

15. Indemnification. Defense. Hold Harmless.

a. 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.

b. 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 the Public Improvement or the Subdivision, or has insurance or other indemnification covering any of these matters.

c. After recordation of the Notice of Acceptance of the Public Improvements, the Subdivider shall remain obligated to eliminate any latent defect in design or dangerous condition caused by the design or construction defect; however, Subdivider shall not be responsible for routine maintenance. The provisions of this paragraph shall remain in full force and effect for ten (10) years following the recordation of the Notice of Acceptance of the Public Improvements by the City. It is the intent of this Section that Subdivider shall be responsible for all liability for design and construction of the Public Improvements installed or work done pursuant to this Agreement and that City shall not be liable for any negligence, nonfeasance, misfeasance or malfeasance in approving or reviewing any work or construction. The improvement security shall not be required to cover the provisions of this Paragraph.

d. Subdivider shall reimburse the City for all costs and expenses, including but not limited to fees and charges of architects, engineers, and other professionals incurred by City in enforcing this Section.

16. Insurance.

a. 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 an insurance 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 that may be applicable to this Agreement shall be deemed excess coverage and that Subdivider's insurance shall be primary.

b. 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.

c. 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.

17. Personal Nature of Subdivider's Obligations. Subdivider's obligations under this Agreement are personal obligations of Subdivider notwithstanding a transfer of all or any part of the property within the Subdivision subject to this Agreement. Subdivider shall not be entitled to assign its obligations under this Agreement to any transferee of all or any part of the property within the Subdivision or any other third party without the express prior written consent of the City.

18. Sale or Disposition of Subdivision. Seller or other Subdivider may request a novation of this Agreement and a substitution of security. Upon approval of the novation and substitution of securities, the Subdivider may request a release or reduction of the securities required by this Agreement. Nothing in the novation shall relieve the Subdivider of the obligations under Section 15 for the work or improvement done by the Subdivider.

19. Time is of the Essence. Time is of the essence in the performance of this Agreement by Subdivider.

20. Time for Commencement of Work; Completion; and Time Extensions.

a) Subdivider shall not begin construction of the Public Improvements until receipt of a Development Clearance from the City Engineer, which is issued upon receipt of all completed documents and payment of fees incident to the approval of the final map by the City.

b) Subdivider shall commence substantial construction of the Public Improvements required by this Agreement within three (3) months after the date of this Agreement. Subdivider shall complete the Public Improvements within twenty-four (24) months following the date of this Agreement. The City Engineer may grant up to a 12 month extension

pursuant to Section 255.20 of the HBZSO. In no event may the Public Improvements be completed in more than 36 months without the approval of the City Council of the City pursuant to Section 255.20 of the HBZSO.

21. No Vesting of Rights. Performance by the Subdivider of this Agreement shall not be construed to vest Subdivider's rights with respect to any change in any zoning or building law or ordinance.

22. Notices. Unless otherwise specified in this Agreement, all notices required or provided for under this Agreement shall be in writing and delivered in person or sent by mail, postage prepaid and addressed as provided in this Section. Notice shall be effective on the date it is delivered in person, or, if mailed, on the date of deposit in the United States Mail. Notices shall be addressed to the persons listed on Pages 1 and 2 of this Agreement by the parties for this purpose.

23. Compliance with Laws. Subdivider, its agents, employees, contractors, and subcontractors shall comply with all federal, state and local laws in performing this Agreement.

24. Interpretation. This Agreement shall be interpreted in accordance with the laws of the State of California.

25. Nonperformance and Costs. If Subdivider fails to complete the Public Improvements within the time specified in this Agreement, and subsequent extensions, if any, or fails to maintain the Public Improvements, City may proceed to complete and/or maintain the Public Improvements 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.

26. Record Map. In consideration hereof, City shall allow Subdivider to file and record the Final Map or Parcel Map for the Subdivision.

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

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

29. 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.

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

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

32. Signatories. Each undersigned represents and warrants that its signature hereinbelow has the power 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.

33. Entirety. 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:

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

C3 DLG 414 Main Street LLC

a California limited liability company

By:

Jerzy J. Secousse

print name

ITS: (circle one) Chairman President Vice-President

Mayor

City Clerk

INITIATED AND APPROVED:

Director of Public Works

By:

Jerzy J. Secousse

print name

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

REVIEWED AND APPROVED:

City Administrator

APPROVED AS TO FORM:

for  City Attorney 

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

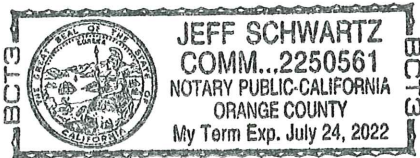
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
 County of ORANGE)
 On 12/23/2020 before me, JEFF SCHWARTZ - NOTARY PUBLIC,
 Date Here Insert Name and Title of the Officer
 personally appeared JERZY J. SECOURSSE
 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.



Signature _____
 Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is 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: SUBDIVISION AGREEMENT
 Document Date: 12/23/2020 Number of Pages: 24
 Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)

Signer's Name: <u>JERZY J. SECOURSSE</u>	Signer's Name: <u>N/A</u>
<input checked="" type="checkbox"/> Corporate Officer — Title(s): <u>PRESIDENT / CFO</u>	<input type="checkbox"/> Corporate Officer — Title(s): _____
<input type="checkbox"/> Partner — <input type="checkbox"/> Limited <input type="checkbox"/> General	<input type="checkbox"/> Partner — <input type="checkbox"/> Limited <input type="checkbox"/> General
<input type="checkbox"/> Individual <input type="checkbox"/> Attorney in Fact	<input type="checkbox"/> Individual <input type="checkbox"/> Attorney in Fact
<input type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator	<input type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Other: _____
Signer Is Representing: _____	Signer Is Representing: _____

EXHIBIT "A"
ENGINEER'S ESTIMATE

ESTIMATED CONSTRUCTION COST FOR BONDING

PROJECT NAME: ShorHouse - Tract 18068

PROJECT ADDRESS: 414/424 Main Street, Huntington Beach, CA

OWNER NAME: C3 DLG 414 Main Street, LLC

CIVIL ENGINEER : Jones,Cahl & Associates **J.N.** 20-2417 **DATE:** 11/4/2020

Item No.	Description	Quantity	Unit	HB Unit Price	HB Price
2	REMOVE EXISTING A.C. PAVEMENT	5,330	S.F.	\$2.00	\$10,660.00
3	DEMO EXISTING CURB AND GUTTER	113	L.F.	\$18.00	\$2,034.00
4	DEMO EXISTING SIDEWALK AND/OR DRIVEWAY	1,186	S.F.	\$10.00	\$11,860.00
5	SAWCUT	201	L.F.	\$4.00	\$804.00
6	CONSTRUCT CURB & GUTTER PER CITY OF HUNTINGTON BEACH STD. #202, C.F.=VARIES, SEE PLAN	113	L.F.	\$30.00	\$3,390.00
7	CONSTRUCT 0.33' A.C. W/ SS-1 SEALCOAT OVER 0.50' A.B. (MIN.)	5,330	S.F.	\$20.00	\$106,600.00
8	CONSTRUCT FIRE HYDRANT PER CITY OF HUNTINGTON BEACH STD. #607 & 606A	1	EA.	\$4,500.00	\$4,500.00
9	CONSTRUCT PARKWAY CULVERT PER CITY OF HUNTINGTON BEACH STD. PLAN #312, TYPE "C"	1	EA.	\$500.00	\$500.00
10	CONSTRUCT 6" FIRE SERVICE ASSEMBLY AND DCDA PER WATER STD. PLAN 618 WITH FIRE DEPARTMENT CONNECTION	1	EA.	\$3,500.00	\$3,500.00
11	CONST. 4" DOMESTIC WATER SERVICE W/ 4" METER (OMNI COMPOUND METER AND JENSON PRECAST CONCRETE VAULT) WITH TRAFFIC RATED METER BOX PER WATER DIVISION STD. PLAN NO. 604B. WITH 4" BACKFLOW DEVICE (RPPD) PER STD. PLAN 609D.	1	EA.	\$6,500.00	\$6,500.00
12	CONST. 1" IRRIGATION WATER SERVICE W/ METER (NEPTUNE T10 METER, POTTED WITH ACLARA MTU) WITH TRAFFIC RATED METER BOX PER WATER DIVISION STD. PLAN NO. 603. WITH BACKFLOW DEVICE (RPPD) PER STD. PLAN 609A.	1	EA.	\$2,500.00	\$2,500.00
13	SAWCUT AND REMOVE EXISTING PAVEMENT AND CONSTRUCT TRENCH REMOVAL AND REPLACEMENT PER STD. PLAN NO. 606A	3	EA.	\$300.00	\$900.00
14	CONSTRUCT NEW 6"Ø SEWER LATERAL PER CITY STD. PLAN 507	1	EA.	\$1,500.00	\$1,500.00
15	ABANDON EXISTING WATER SERVICE AT MAIN PER CITY STD. 613A AND REMOVE AND DELIVER TO THE UTILITIES DIVISION PER PW INSPECTOR	2	EA.	\$500.00	\$1,000.00
25	REMOVE CONCRETE AND REPLACE WITH 4" BEIGE COLORED TOP CAST CONCRETE* WITH SAND AND CRUSHED SHELL PATTERN. (PER FIGURE 6-6 OF THE CITY'S DOWNTOWN SPECIFIC PLAN)(SHADE #1)	548	S.F.	\$8.00	\$4,384.00
26	REMOVE CONCRETE AND REPLACE WITH 4" CONCRETE COMPOSITE OF TUMBLED* BEACH GLASS IN WHITES, BLUES, AND GREENS PER SPECIFICATIONS OF CITY'S DOWNTOWN SPECIFIC PLAN.	942	S.F.	\$8.00	\$7,536.00
29	PAINT WHITE 4" PARKING STALL STRIPE TWO COATS. COORDINATE WITH PUBLIC WORKS PRIOR TO INSTALLATION.	299	L.F.	\$2.00	\$598.00
30	PAINT GRAY OVER EXISTING RED CURB PER CITY SPECIFICATIONS. COORDINATE WITH PUBLIC WORKS PRIOR TO PAINTING.	43	L.F.	\$1.00	\$43.00

ESTIMATED CONSTRUCTION COST FOR BONDING			
PROJECT NAME:	ShorHouse - Tract 18068		
PROJECT ADDRESS:	414/424 Main Street, Huntington Beach, CA		
OWNER NAME:	C3 DLG 414 Main Street, LLC		
CIVIL ENGINEER :	Jones,Cahl & Associates	J.N. 20-2417	DATE: 11/4/2020

CIVIL ENGINEER: Jones, Cahl & Associates **J.N.** 20-2417 **DATE:** 11/4/2020

Item No.	Description	Quantity	Unit	HB Unit Price	HB Price
31	INSTALL RED CURB IN NO PARKING AREA PER CITY SPECIFICATIONS	38	L.F.	\$1.00	\$38.00
	SubTotal:				\$168,847.00
	15% Contignecy:				\$25,327.05
	Grand Total:				\$194,174.05

ESTIMATED CONSTRUCTION COST FOR BONDING			
PROJECT NAME:	ShorHouse - Tract 18068		
PROJECT ADDRESS:	414/424 Main Street, Huntington Beach, CA		
OWNER NAME:	C3 DLG 414 Main Street, LLC		
CIVIL ENGINEER :	Jones,Cahl & Associates	J.N. 20-2417	DATE: 11/4/2020

OWNER NAME: C3 DLG 414 Main Street, LLC

CIVIL ENGINEER: Jones, Cahl & Associates **J.N.** 20-2417 **DATE:** 11/4/2020

Item No.	Description	Quantity	Unit	HB Unit Price	HB Price
1	MONUMENTATION	1	L.S.	\$3,500.00	\$3,500.00
	SubTotal:				\$3,500.00
	15% Contignecy:				\$525.00
	Grand Total:				\$4,025.00

EXHIBIT "B"

NOT APPLICABLE

EXHIBIT "C"

TRACT NO. 18068

("Subdivider")

ENVIRONMENTAL WARRANTY

As a condition precedent to acceptance of the dedications and public improvements to be conveyed by the above-named Subdivider to the City of Huntington Beach ("City") for the above referenced Subdivision, Subdivider hereby warrants to the City that:

1. Neither the property to be dedicated nor Subdivider are subject to any environmental law, and neither the property to be dedicated nor the Subdivider are subject to any existing, pending or threatened investigation by any federal, state or local governmental authority under or in connection with the environmental laws relating to the property to be dedicated.

2. Neither Subdivider nor any other person with Subdivider's permission to be upon the property to be dedicated has used, generated, manufactured, produced or released, on, under or about the property dedicated, an Hazardous Substance except in compliance with all applicable environmental laws. For the purpose of this warranty, the term "Hazardous Substances" shall mean any substance material which is capable of posing a risk of injury to health, safety or property, including all those materials and substances designated as hazardous or toxic by any Federal State or local law, ordinance, rule, regulation or policy, including but not limited to, all of those materials and substances defined as "Toxic Materials" in Sections 66680 through 66685 of Title 22 of the California Code of Regulations, Division 4, Chapter 30, as the same shall be amended from time to time, or any other materials requiring remediation under federal state or local laws, ordinances, rules, regulations or policies.

3. Subdivider prior and present use of the property to be dedicated has not result in the release of or presence of, any Hazardous Substance on the property to be dedicated or the migration of any hazardous substance from or to any other property adjacent to, or in the vicinity of, the property to be dedicated.

4. Subdivider's prior and present use of the property to be dedicated has not resulted in the release of any Hazardous Substance on the property to be dedicated.

5. All persons executing this warranty hereby represent and warrant to the City of Huntington Beach ~~San Jose~~, and Subdivider hereby represents and warrants, that the signalers hereto have the legal power, right and authority to execute this warranty on behalf of the Subdivider and that the signators hereto have sufficient knowledge or expertise, either personally, through reasonable inspection and investigation of the property, or through reasonable reliance upon the investigation and professional opinion of Subdivider's environmental experts, to make the representations herein, and that no consent of any other party is required to execute this warranty and make the representations herein on behalf of the Subdivider to the City.

Each of the undersigned persons declares under penalty of perjury that the foregoing is true and correct.

Date: _____

SUBDIVIDER:

By: Jerzy J. Secousse

Title: Jerzy J. Secousse / President

By: Jerzy J. Secousse

Title: Jerzy J. Secousse / CFO