

SUBDIVISION AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 2004, by and between the CITY OF COSTA MESA, a municipal corporation (the "CITY,") and Encore Builders, LLC, (the "SUBDIVIDER").

RECITALS:

WHEREAS, SUBDIVIDER is contemplating the construction, development and improvement of certain lands within the CITY;

WHEREAS, SUBDIVIDER has personally or by and through his officers, agents and employees, designed, prepared, reviewed and considered the subdivision of lands and the plans thereof described herein;

WHEREAS, SUBDIVIDER has submitted and filed plans for the installation of street improvements (the "PLANS") on said proposed tract to the CITY for its review and approval; and

WHEREAS, as a condition of CITY's approval, SUBDIVIDER has agreed to execute an agreement to ensure the construction and installation of said improvements.

NOW, THEREFORE, the parties mutually covenant, promise and agree as follows:

I. PLANS AND IMPROVEMENTS

SUBDIVIDER shall, at its sole cost and expense, design, construct and install all of the street improvements and other works of improvement as shown and delineated on the PLANS for Tract No. 16476 for subsequent acceptance by CITY.

2. SUBDIVIDER warrants that said design, construction and installation will be performed in accordance with the PLANS and in conformity with all ordinances of CITY and other applicable laws and permits granted to SUBDIVIDER herein.

3. BONDS AND SECURITY

SUBDIVIDER shall, at its sole cost and expense, secure and furnish to CITY bonds in a form approved by CITY, executed by a corporation authorized to transact surety business within the State of California, for the following purposes and in the sums stated, or furnish a cash deposit or other form of security approved by CITY, in lieu thereof (based upon the estimated cost of said improvements):

- a. Faithful Performance Bond: To secure the faithful performance of all terms and conditions herein in the sum of Twenty-Five Thousand Five Hundred Sixty-Two Dollars and Twenty-Eight Cents (\$25,562.28);
- b. Labor and Materialmen Bond: To secure payment to the Contractor, subcontractor, engineers, surveyors and to all persons renting equipment or furnishing labor or materials to them or upon such improvements in Tract No. 16476 in the sum of Twenty-Five Thousand Five Hundred Sixty-Two Dollars and Twenty-Eight Cents (\$25,562.28);
- c. Monument Bond: To secure all the cost of placing monuments on Tract No. 16476 in the sum of Two Thousand Dollars (\$2,000.00).

4. INSPECTIONS AND ACCEPTANCE

CITY shall, upon SUBDIVIDER'S written request to the City Engineer, inspect the work performed by SUBDIVIDER as it progresses and, if found to be in order, approve and accept same. In such case, SUBDIVIDER shall be entitled to partial reduction in Bond sums or refund of cash deposit furnished to secure SUBDIVIDER'S faithful performance herein, in a sum in the same ratio to the total money deposited as work accepted bears to

the total work to be done hereunder; provided, that the City Engineer has first certified to the City Council of CITY, the amount of work completed and to be accepted by CITY and the City Council approves said reduction or refund, and further provided, that no reduction or refund in excess of eighty-five percent (85%) of the total amount of the original deposit shall be made until all the work is completed and accepted. CITY, its officers, agents and employees shall not unreasonably withhold or refuse approval or acceptance of the work performed herein but shall require compliance with all applicable laws.

5. REPRESENTATIVES

The City Manager or his designee shall be the representative of CITY for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the CITY, called for by this Agreement, except as otherwise expressly provided in this Agreement.

NEOKLIS ZAMVAKELLIS shall be the representative of SUBDIVIDER for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of SUBDIVIDER, called for by this Agreement, except as otherwise expressly provided in this Agreement.

6. INDEMNIFICATION

Except as to the sole and exclusive negligence of CITY, its elected officials, officers, agents and employees, the SUBDIVIDER hereby agrees to protect, defend, indemnify and hold harmless, the CITY, its elected officials, officers, agents and employees from and against any and all costs, expenses, or damages to property or injuries or death to any person or persons, including attorney fees and shall protect, defend, indemnify and hold harmless the CITY, its elected officials, officers, agents and employees from any and all claims, demands, suits, actions or proceedings of any kind or nature, including, but not by

way of limitation, all civil claims, workers' compensation claims, and all other claims, whether groundless or not, from or arising out of the acts, errors or omissions of the SUBDIVIDER, his officers, agents, employees, consultants, subcontractors or other persons, companies or other entities, performing labor or supplying material to the improvements on Tract No. 16476.

7. TIME FOR PERFORMANCE

SUBDIVIDER shall commence construction and installation of said improvements within one hundred and eighty (180) days from the date of approval of said tract map by CITY (the "Approval Date") and shall complete said work within three hundred sixty-five (365) days from said Approval Date.

8. GENERAL PROVISIONS

a. The parties hereto acknowledge and agree that the relationship between CITY and SUBDIVIDER is one of principal and independent contractor and no other. All personnel to be utilized by SUBDIVIDER in the performance of this Agreement shall be employees of SUBDIVIDER and not employees of the CITY. SUBDIVIDER shall pay all salaries and wages, employer's social security taxes, unemployment insurance and similar taxes relating to employees and shall be responsible for all applicable withholding taxes. Nothing contained in the Agreement shall create or be construed as creating a partnership, joint venture, employment relations, or any other relationship except as set forth between the parties. The parties specifically acknowledge and agree that SUBDIVIDER is not a partner with CITY, whether general or limited, and no activities of CITY or SUBDIVIDER or statements made by CITY or SUBDIVIDER shall be interpreted by any of the parties hereto as establishing any type of business relationship other than an independent contractor relationship.

b. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any legal action relating to or arising out of this Agreement shall be subject to the jurisdiction of the County of Orange, California.

c. This Agreement may not be sold, transferred or assigned by either party, or by operation of law, to any other person or persons or business entity, without the other party's written permission. Any such sale, transfer or assignment, or attempted sale, transfer or assignment without written permission, may be deemed by the other party to constitute a voluntary termination of this Agreement and this Agreement shall thereafter be deemed terminated and void.

d. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought referring expressly to this Paragraph. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

e. Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

f. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so, the parties hereto are formally bound to the provisions of this Agreement.

[REMAINDER OF PAGE BLANK, SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

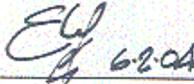
CITY OF COSTA MESA

Mayor

ATTEST:

Deputy City Clerk of the City of Costa Mesa

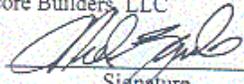
APPROVED AS TO CONTENT:



Ernesto Munoz
City Engineer

SUBDIVIDER

Encore Builders, LLC

By: 

Signature

NEOKLIS ZAMBAKELLIS

Print Name

MANAGER

Title

~~By: _____
Signature~~

~~_____
Print Name~~

~~_____
Title~~

APPROVED AS TO FORM:



Linda Nguyen, DCA
for City Attorney