

SUBDIVISION IMPROVEMENT AGREEMENT

SUBDIVIDER: NEW AGE BROOKHURST II, LLC.

TENTATIVE TRACT MAP NO. 17702 / PHASE II FINAL MAP NO. 17702

THIS AGREEMENT is made this ____th day of ____ 2022, by the CITY OF GARDEN

GROVE, a municipal corporation ("CITY") on the one hand, and NEW AGE BROOKHURST II, LLC, a California limited liability company ("SUBDIVIDER") and PAN CONSTRUCTION, INC., a California corporation ("CONTRACTOR"), on the other hand. CITY, SUBDIVIDER, and CONTRACTOR are sometime referred to herein individually as the "Party" or collectively as the "Parties."

RECITALS:

The following recitals are a substantive part of this Agreement:

1. SUBDIVIDER has obtained initial City approval of a subdivision map for Tentative Tract Map No. 17702 ("Project"), subject to certain conditions of approval for the development of the Project ("Conditions of Approval").
2. As a condition precedent to the approval of the Phase II Final Map by CITY, SUBDIVIDER is required to construct, install and/or offer for dedication to CITY certain streets, highways, easements, infrastructure improvements and/or parcels of land intended for public use.
3. SUBDIVIDER, by the Phase II Final Map, has offered for dedication to CITY certain streets, easements, property, and infrastructure improvements.
4. CITY desires to accept the dedications of such streets, easements, property, and other improvements as shown on the Phase II Final Map, and certain other improvements described in this Agreement.
5. SUBDIVIDER has delivered to CITY and CITY has approved plans and specifications and related documents for certain "Improvements" (as hereinafter defined), which are required to be constructed and installed in order to accommodate the development of Phase II of the Project.
6. SUBDIVIDER has requested approval of the Phase II Final Map prior to completion of all of the Improvements required by CITY.
7. To assure CITY that SUBDIVIDER and CONTRACTOR will complete construction and installation of all required Improvements, the Parties have entered into this Agreement.
8. SUBDIVIDER's agreement to construct and install the Improvements pursuant to this Agreement and its offer of dedication of the streets, easements, and other improvements, as shown on the Phase II Final Map, are a material consideration to CITY in approving the Phase II Final Map and permitting development of Phase II of the Project to proceed. SUBDIVIDER has agreed to have CONTRACTOR perform, and CONTRACTOR has agreed to perform, the construction and installment of the Improvements.

9. This Agreement is entered into in accordance with the Subdivision Map Act (Government Code sections 66410 et seq.) and the ordinances, rules, regulations, and determinations of the CITY.

AGREEMENT

NOW THEREFORE, based on the foregoing Recitals, which are incorporated herein by reference, and in consideration of the CITY's approving the Phase II Final Map and permitting development of Phase II of the Project to proceed, CITY's acceptance of the streets, easement, and other improvements offered for dedication by SUBDIVIDER, and the mutual promises contained herein, the Parties mutually agree as follows:

1. **Improvements.** SUBDIVIDER, at its sole expense, agrees to construct and install, or have CONTRACTOR construct and install, as applicable, the street, sidewalks, drainage, domestic water, sanitary sewer, and other improvements (herein sometimes collectively referred to as the "Improvements") required to be constructed or agreed to be constructed as a condition precedent to the approval of the Phase II Final Map and acceptance of such streets and easements, as expressly shown on (1) the Improvement Lists attached hereto at Exhibit "A" and incorporated herein, and/or (2) the approved Project Improvement Plans on file with CITY and/or subsequently approved or revised by CITY and SUBDIVIDER (the "Improvement Plans"). The estimated construction cost for the Improvements is **\$5,655,000.00**. By execution of this Agreement, CONTRACTOR hereby agrees and covenants to CITY to construct and install the Improvements on behalf of SUBDIVIDER, and SUBDIVIDER and CONTRACTOR each agree that they shall be jointly and severally responsible to CITY for the construction and installation of the Improvements.

2. **Security.** To secure the faithful performance of each improvement required under this Agreement and to ensure full payment to all persons furnishing or supplying labor or materials for each improvement required, SUBDIVIDER shall provide CITY with the following bonds (or a cash deposit or instrument of credit in lieu of bonds):

Improvement	Type of Bond	Amount
100% of total estimate for Off-Site Improvements and On-Site Grading & Drainage Improvements as shown on Grading Plan No. G-1301 and Street Improvement Plan No. A-1857	Faithful Performance	\$5,655,000.00
50% of total estimate for Off-Site Improvements and On-Site Grading & Drainage Improvements as shown on Grading Plan No. G-1301 and Street Improvement Plan No. A-1857	Labor & Material	\$2,827,500.00
100% total estimate for Survey Monument Bond for setting required survey monuments and filing all documentation and records as described and required by the Final Tract Map on file with the CITY	Monument Bond	\$12,000.00

The bonds shall be executed on CITY forms by a surety authorized to do business in the State of California and shall be subject to approval by the City Attorney. Any instrument of credit provided in lieu of bonds shall be from a qualified financial institution, and in a form, acceptable to CITY, in its sole discretion. SUBDIVIDER acknowledges and agrees such bonds, cash deposit, or instrument(s) of credit acceptable to CITY must be provided to and approved by CITY prior to, or concurrently with, the earlier to occur of (i) the issuance of any grading permit for the Project, or (ii) transfer of the property subject to the Phase II Final Map to SUBDIVIDER pursuant to that certain Disposition and Development Agreement (“DDA”) by and between SUBDIVIDER and the Successor Agency to the Garden Grove Agency for Community Development (“Successor Agency”). SUBDIVIDER further agrees that, if said bonds, cash deposit, or instrument(s) of credit have not already been provided prior to close of escrow for transfer of the property to SUBDIVIDER pursuant to the DDA, SUBDIVIDER will provide the same through escrow and execute escrow instructions acceptable to CITY and Successor Agency stating that SUBDIVIDER’s provision of said bonds, cash deposit, and/or instrument(s) of credit through escrow are a condition to Successor Agency’s obligation to close escrow and directing the escrow agent to provide such bonds, cash deposit, and/or instrument(s) of credit to CITY upon close of escrow. The Successor Agency shall be an express third-party beneficiary to this Section 2.

3. **Time for Completion.** SUBDIVIDER and/or CONTRACTOR shall complete construction and installation of the Improvements within 365 days, or such later time as approved by the CITY in writing.
4. **CITY Inspection and Acceptance.** The City Engineer or his or her duly authorized representative, upon request of SUBDIVIDER, shall inspect the improvements herein agreed to be constructed or installed by SUBDIVIDER, and, if determined to be in accordance with the applicable CITY standards, as set forth in the Garden Grove Municipal Code, Conditions of Approval and Improvement Plans, shall recommend the acceptance of such improvements by the CITY.
5. **Changes or Alterations.** SUBDIVIDER shall perform, or cause CONTRACTOR to perform, any changes or alterations in the construction and installation of the improvements required by CITY, to the extent such changes or alterations are needed to cause the improvements to comply with the applicable CITY standards, as set forth in the Garden Grove Municipal Code, Conditions of Approval and Improvement Plans.
6. **Guarantee.** SUBDIVIDER shall guarantee such improvements for a period of one (1) year following the completion by SUBDIVIDER and acceptance by CITY against any defective work or labor done, or defective materials furnished, in the performance of work pursuant to this Agreement.
7. **Insurance and Indemnification Requirements.**
- 7.1 **Commencement of Work.** Unless expressly waived in writing by CITY, insurance meeting the requirements set forth in this Agreement and covering the acts and omissions of SUBDIVIDER, CONTRACTOR, and all other contractors and subcontractors engaged in any way in the construction and installation of the Improvements must be provided to CITY, and SUBDIVIDER, CONTRACTOR, all contractors, and subcontractors shall not commence work under this Agreement until all required insurance certificates and endorsements have been received and approved by

the CITY. All insurance required by this Agreement shall contain a Statement of Obligation on the part of the carrier to notify the CITY of any material change, cancellation, or termination at least thirty (30) days in advance.

7.2 **Contractors and Subcontractors.** SUBDIVIDER and CONTRACTOR shall require all contractors and subcontractors engaged in construction and installation of the Improvements to obtain and maintain the same insurance as required of SUBDIVIDER and CONTRACTOR herein and shall require such contractors and subcontractors to agree to comply with the insurance requirements herein, including providing the endorsements naming the CITY as an additional insured. SUBDIVIDER and CONTRACTOR shall be responsible to collect and maintain all insurance from all such contractors and subcontractors. Should the insurance carrier for any such contractor or subcontractor require an agreement with the CITY prior to providing effective additional insured coverage, then such contractor or subcontractor shall be required to execute an agreement with the CITY, in a form approved by the City Attorney, agreeing to perform the pertinent work and stipulating to indemnify and provide insurance under the terms of the Insurance and Indemnification Requirements of this Agreement.

7.3 **Workers Compensation Insurance.** For the duration of this Agreement, SUBDIVIDER and CONTRACTOR shall maintain Workers Compensation Insurance in the amount and type required by California law, if applicable. The insurer shall waive its rights of subrogation against the CITY, its officers, officials, agents, employees, and volunteers and against the City of Garden Grove as Successor Agency to the Garden Grove Agency for Community Development (“SUCCESSOR AGENCY”) and its officers, officials, agents, employees, and volunteers.

7.4 **Insurance Amounts.** SUBDIVIDER and/or CONTRACTOR shall provide and maintain and shall cause all its/their contractors and subcontractors engaged in any way in the construction and installation of the Improvements to provide and maintain the following insurance for the duration of this Agreement:

(a) Commercial general liability, including mobile equipment and not excluding XCU, in an amount not less than \$5,000,000 per occurrence; (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to CITY and have an AM Best’s Guide Rating of A-, Class VII or better, as approved by the CITY.

(b) Automobile liability in an amount not less than of \$2,000,000 combined single limit; (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to CITY and have an AM Best’s Guide Rating of A-, Class VII or better, as approved by the CITY.

An Additional Insured Endorsement, **ongoing and products-completed operations**, for the policy under section 7.3 (a) shall designate CITY, SUCCESSOR AGENCY, and their respective officers, officials, employees, agents, and volunteers as additional insureds for liability arising out of work or operations performed by or on behalf of the SUBDIVIDER/CONTRACTOR. SUBDIVIDER/CONTRACTOR shall provide to CITY proof of insurance and endorsement forms that conform to CITY’s requirements, as approved by the CITY.

An Additional Insured Endorsement for the policy under section 7.3 (b) shall designate CITY, SUCCESSOR AGENCY, and their respective officers, officials, employees, agents, and volunteers as additional insureds for automobiles owned, leased, hired, or borrowed by the SUBDIVIDER/CONTRACTOR. SUBDIVIDER/CONTRACTOR shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by the CITY.

For any claims related to this Agreement, SUBDIVIDER's/CONTRACTOR's insurance coverage shall be primary insurance as respects CITY, SUCCESSOR AGENCY, and their respective officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the CITY, SUCCESSOR AGENCY, or their respective officers, officials, employees, agents, or volunteers shall be excess of the SUBDIVIDER's/CONTRACTOR's insurance and shall not contribute with it.

The insurer for each policy of insurance required pursuant to this Agreement shall waive its rights of subrogation and provide a waiver of subrogation against CITY, SUCCESSOR AGENCY, and their respective officers, officials, employees, agents, and volunteers.

In the event any of SUBDIVIDER's/CONTRACTOR's underlying policies do not meet policy limits within the insurance requirements, SUBDIVIDER/CONTRACTOR shall provide the following information for a follows form excess liability policy: 1) the schedule of underlying policies for a follows form excess liability policy, 2) state that the excess policy follows form on the insurance certificate, and 3) an additional insured endorsement for the follows form excess liability policy designating CITY, SUCCESSOR AGENCY, and their respective officers, officials, employees, agents, and volunteers.

If SUBDIVIDER/CONTRACTOR maintains higher insurance limits than the minimums shown above, SUBDIVIDER/CONTRACTOR shall provide coverage for the higher insurance limits otherwise maintained by the SUBDIVIDER/CONTRACTOR.

7.5 Indemnification.

- A. SUBDIVIDER agrees to protect, defend, and hold harmless CITY and its officials, officers, employees and agents from any and all claims, liabilities, expenses or damages of any nature, including attorneys' fees, for injury to or death of any person, damage to property, interference with use of property, and monetary damages of any nature resulting from, arising out of, or in any way connected with performance of the Agreement by SUBDIVIDER and its agents, officers, employees, subcontractors, or independent contractors hired by SUBDIVIDER. The only exception to SUBDIVIDER'S responsibility to protect, defend, indemnify and hold harmless CITY, is due to the negligence or willful misconduct of CITY, or any of its officials, officers, employees or agents.
- B. CONTRACTOR agrees to protect, defend, and hold harmless CITY and its officials, officers, employees and agents from any and all claims, liabilities, expenses or damages of any nature, including attorneys' fees, for injury to or death of any person, damage to property, interference with use of property, and monetary damages of any nature resulting from, arising out of, or in any way connected with the construction and installation of the Improvements and performance of the

Agreement by CONTRACTOR and its agents, officers, employees, subcontractors, or independent contractors hired by CONTRACTOR. The only exception to CONTRACTOR'S responsibility to protect, defend, indemnify and hold harmless CITY, is due to the negligence or willful misconduct of CITY, or any of its officials, officers, employees or agents.

- C. CITY does not, and shall not waive any rights against SUBDIVIDER or CONTRACTOR, which it may have by reason of this hold harmless agreement. This hold harmless agreement shall apply to all liability regardless of whether or not any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by SUBDIVIDER or CONTRACTOR in the event of loss, claim, damage, or expense. The indemnification obligations of SUBDIVIDER and CONTRACTOR shall survive the termination of this Agreement until all such obligations are fully and finally resolved.

8. **Default.**

- 8.1 **Remedies Not Exclusive.** In any case where this Agreement provides a specific remedy to CITY for a default by SUBDIVIDER or CONTRACTOR hereunder, such remedy shall be in addition to, and not exclusive of, CITY's right to pursue any other administrative, legal, or equitable remedy to which it may be entitled.

- 8.2 **CITY Right to Perform Work.** In the event SUBDIVIDER or CONTRACTOR fails to perform any obligations under this Agreement, SUBDIVIDER (on behalf of itself and of CONTRACTOR) hereby authorize CITY to perform such obligations twenty (20) days after mailing written Notice of Default to SUBDIVIDER at the address given below, and agrees to pay the entire cost of such performance by CITY, unless SUBDIVIDER cures such default in such twenty (20) day period, or such additional time as CITY deems reasonable in its sole discretion.

- 8.3 **Costs and Attorney's Fees.** In the event either SUBDIVIDER or CONTRACTOR fails to perform any obligations under this Agreement, SUBDIVIDER agrees to pay all costs and expenses reasonably incurred by CITY in securing performance of such obligations, including costs of suit and reasonable attorney's fees. In the event of any dispute arising out of SUBDIVIDER's or CONTRACTOR's performance of its obligations under this Agreement or under any of the Security Instruments referenced herein, the prevailing party in such action, in addition to any other relief which may be granted, shall be entitled to recover its reasonable attorney's fees and costs. Such attorney's fees and cost shall include fees and costs on any appeal, and in addition a party entitled to attorney's fees and costs shall be entitled to all other reasonable costs incurred in investigating such action, taking depositions and discovery, retaining expert witnesses, and all other necessary and related costs with respect to the litigation. All such fees and costs shall be deemed to have accrued on commencement of the action and shall be enforceable whether or not the action is prosecuted to judgment.

- 9. **Non-Liability of Officials and Employees of CITY.** No member, official or employee of CITY shall be personally liable to SUBDIVIDER or CONTRACTOR, or any successor in interest, in the event of any default or breach by CITY, or for any amount which may become due from CITY or its successor, or any obligation under the terms of this Agreement.

10. **Labor.**

10.1 **Labor Standards.** SUBDIVIDER and CONTRACTOR shall each be responsible for causing itself and all contractors and subcontractors constructing or installing any of the Infrastructure Improvements to comply with all applicable federal and state labor standards, including, to the extent applicable, the prevailing wage requirements promulgated by the Director of Industrial Relations of the State of California Department of Labor. CITY makes no warranty or representation concerning whether any of the Infrastructure Improvements required to be constructed and/or installed pursuant to this Agreement constitute public works subject to the prevailing wage requirements.

10.2 **Non-Discrimination.** SUBDIVIDER covenants and agrees that there shall be no discrimination against or segregation of any person, group, or employee due to race, color, creed, religion, sex, marital status, age, handicap, national origin or ancestry, in any action or activity undertaken pursuant to this Agreement.

10.3 **Licensed Contractors.** SUBDIVIDER shall cause all of the Improvements to be constructed and/or installed by contractors and subcontractors with valid California Contractors' licenses for the type of work being performed.

11. **Change of Subdivider.** If SUBDIVIDER ceases to have legal interest in the Project, then a notice to that effect shall be filed with CITY by SUBDIVIDER. The notice shall include the name and address of the new Subdivider. SUBDIVIDER shall require as a condition of the transfer of the legal interest in the Project, that the new Subdivider shall (1) submit new bonds or substitute security in accordance with this Agreement (at which time the original bonds or security shall be released); (2) submit to CITY a certified copy of the recorded deed referencing the transfer of the legal interest; and (iii) require that, upon transfer, the successor Subdivider undertake all of the obligations under this Agreement in lieu and in place of SUBDIVIDER and, if applicable, CONTRACTOR. Thereafter, SUBDIVIDER and, if applicable, CONTRACTOR shall have no further obligations to CITY under this Agreement except for any liability, obligations, acts or omissions incurred prior to such transfer. SUBDIVIDER's and CONTRACTOR's responsibility for such liability, obligations, acts or omissions shall survive until such liability or obligations are fully and finally resolved, or until the statute of limitations on such acts or omissions has elapsed.

12. **General Provisions.** It is mutually agreed as follows:

12.1 **Assignment or Delegation.** Neither CITY nor SUBDIVIDER or CONTRACTOR shall assign this Agreement without the consent of the other. SUBDIVIDER shall not delegate its obligations under this Agreement to another.

12.2 **Independent Contractor.** It is understood and agreed that, in connection with the performance of SUBDIVIDER's and CONTRACTOR's obligations under this Agreement, SUBDIVIDER, CONTRACTOR, their employees, agents, contractors, and any subcontractors acting on behalf of SUBDIVIDER or CONTRACTOR shall act and be independent contractors and shall not be agents or employees of the CITY, and as independent contractors, shall obtain no rights to retirement benefits, or other benefits which accrue to CITY employees, and each of SUBDIVIDER and CONTRACTOR, on behalf of itself, its employees, agents, contractors, and any subcontractors acting on behalf of SUBDIVIDER or CONTRACTOR, hereby expressly waives any claim it may have to any such rights.

- 12.3 Compliance with Law. SUBDIVIDER and CONTRACTOR shall comply with, and require all those acting on SUBDIVIDER's behalf to comply with, all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.
- 12.4 Conflict of Interest and Reporting. SUBDIVIDER and CONTRACTOR shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.
- 12.5 Notices. All notices shall be personally delivered or mailed, postage prepaid, to the below-listed address, or to such other address as may be designated by written notice. These addresses shall be used for delivery of service of process.

If to SUBDIVIDER:
New Age Brookhurst II, LLC
Attn: Ronnie Lam
411 E. Huntington Drive #305,
Arcadia, California 91006

If to CONTRACTOR:
Pan Construction, Inc.
Attention: Katie Pan
1264 S. San Gabriel Boulevard
Rosemead, California 91770

If to CITY:
City of Garden Grove
Attention: Public Works Director
11222 Acacia Parkway
Garden Grove, California 92840

- 12.6 **Licenses, Permits, Fees, and Assessments.** At its sole cost and expense, SUBDIVIDER and/or CONTRACTOR shall obtain such license, permits, and approvals as may be required by law for the performance of SUBDIVIDER's and/or CONTRACTOR's obligations under this Agreement. SUBDIVIDER or CONTRACTOR, and not CITY, shall have the sole obligation to pay for any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the performance of the obligations required under this Agreement.
- 12.7 **Time of Essence.** Time is of the essence in the performance of this Agreement.
- 12.8 **Heirs, Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the Parties, including all successors and assigns to SUBDIVIDER's right, title, and interest in the property covered by the Project and any portion thereof.
- 12.9 **Corporate Authority.** 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 so executing this Agreement the parties hereto are formally bound to the provisions of this Agreement.

- 12.10 **Modification**. This Agreement constitutes the entire agreement between the Parties. This Agreement may be modified only by subsequent mutual written agreement executed by CITY and SUBDIVIDER and CONTRACTOR.
- 12.11 **Waiver**. All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the CITY, SUBDIVIDER, and CONTRACTOR. SUBDIVIDER and CONTRACTOR each agrees that waiver by CITY of any one or more of the conditions of performance under this Agreement shall not be construed as waiver of any other condition of performance under this Agreement.
- 12.12 **California Law**. This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced pursuant to this Agreement shall be initiated in the central or main branch of the Orange County Superior Court.
- 12.13 **Interpretation**. This Agreement shall be interpreted as though prepared by all Parties.
- 12.14 **Preservation of Agreement**. Should any paragraph, clause, provision or word of this Agreement be found invalid or unenforceable, such decision shall affect only the paragraph, clause, provision or word so construed and interpreted, and all remaining provisions shall remain valid and enforceable.
13. **Mutual Agreement**. The Parties hereto do mutually covenant and agree to the full and faithful performance of their respective obligations under this Agreement.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS THEREOF, these parties have executed this Agreement on the day and year shown below.

“CITY”

CITY OF GARDEN GROVE

Date: _____

By: _____

City Manager

APPROVED AS TO FORM:

ATTEST:

Garden Grove City Attorney

City Clerk

Date: _____

Date: _____

“SUBDIVIDER”

NEW AGE BROOHURST II, LLC, a
California limited liability company

Date: _____

By: Kam Sang Company, Inc., a California
corporation

Its: Manager

By: _____

Name: Ronnie Lam

Its: Authorized Signatory

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

“CONTRACTOR”

PAN CONSTRUCTION, INC., a California corporation

Date: _____

By: _____

Name: _____

Its: _____

If SUBDIVIDER or CONTRACTOR is a corporation, a Corporate Resolution and/or Corporate Seal is required. If a partnership, Statement of Partnership must be submitted to CITY.

INSTRUCTIONS: If SUBDIVIDER or CONTRACTOR is a corporation or limited liability company, the Agreement must be executed in the corporate/LLC name and signed by the President or a Vice-President and the Secretary or Assistant Secretary. If SUBDIVIDER or CONTRACTOR is a limited liability company with designated centralized management (i.e., those that specifically designate in their articles of organization that they will be managed by a manager or managers), the Agreement must be executed in the LLC's name and signed by at least *two managers* (or by one manager in the case of an LLC whose articles of organization state that it is managed by only one manager). If SUBDIVIDER or CONTRACTOR is a partnership, it must be signed by all general partners. If SUBDIVIDER or CONTRACTOR is an individual doing business under a fictitious name, it must be signed by all persons having an interest in the business, and the fictitious name must be included.