

ORDINANCE NO. 2781

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE
ADOPTING A DEVELOPMENT AGREEMENT BETWEEN THE OLSON COMPANY (PROPERTY
OWNER), AND THE CITY OF GARDEN GROVE

THE CITY COUNCIL OF THE CITY OF GARDEN GROVE DOES ORDAIN AS FOLLOWS:

Section 1. A Development Agreement (DA-182-10) is hereby adopted Tentative Tract Map No. TT-17384 for property located on the southwest corner of Garden Grove Boulevard and West Street, 12034 Garden Grove Boulevard (Parcel Nos. 100-504-32 and 80). A copy of the Development Agreement is on file in the City Clerk's Office.

Section 2. Severability. If any section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, words or portions thereof be declared invalid or unconstitutional.

Section 3. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published and posted pursuant to the provisions of law and this Ordinance shall take effect thirty (30) days after adoption.

The foregoing Ordinance was passed by the City Council of the City of Garden Grove on the ___ day of _____.

ATTEST:

MAYOR

CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS:
CITY OF GARDEN GROVE)

I, KATHLEEN BAILOR, City Clerk of the City of Garden Grove, do hereby certify that the foregoing Ordinance was introduced and presented on September 28, 2010, with a vote as follows:

AYES: COUNCIL MEMBERS: (4) BROADWATER, DO, JONES, DALTON
NOES: COUNCIL MEMBERS: (0) NONE
ABSENT: COUNCIL MEMBERS: (1) NGUYEN

RECORDING REQUESTED BY)
AND WHEN RECORDED MAIL TO:)

City Clerk's Office)
City of Garden Grove)
11222 Acacia Parkway)
Garden Grove, CA 92840)
)
)

(Space above for Recorder.)

This document is exempt from payment of a recording fee pursuant to Government Code Section 6103.

Dated: _____

DEVELOPMENT AGREEMENT

Tentative Tract Map No. 17384

(The Olson Company)

THIS AGREEMENT is made this 15th day of September, 2000, by the CITY OF GARDEN GROVE, a municipal corporation ("CITY"), and The Olson Company ("PROPERTY DEVELOPER").

RECITALS

The following recitals are a substantive part of this Agreement:

- A. The CITY and DEVELOPER desire to enter into this DEVELOPMENT AGREEMENT to complete the build-out of the Sycamore Walk residential development through the proposed Tentative Tract Map No. TT-17384. The proposed build-out consists of a twelve-lot, small-lot subdivision, with twelve (12) homes and one common lot on a 36,155 square foot site, to be joined with the existing small-lot subdivision immediately east of this site (the "PROJECT") on that certain real property located at the southwest corner of Garden Grove Boulevard and West Street at 12034 Garden Grove Boulevard (the "PROPERTY"). Parcel Nos. 100-504-32 and 80.

- B. The Planning Commission approved Tentative Tract Map No. TT-17384 for the PROJECT, on September 2, 2010, conditioned upon DEVELOPER entering into a Development Agreement.
- C. The CITY, and DEVELOPER desire to enter into this DEVELOPMENT AGREEMENT for the construction of the PROJECT pursuant to Article 2.5 (commencing with Section 65864) of Chapter 4 of Division 1 of Title 7 of the California Government Code (the "Development Agreement Statute").
- D. The PROJECT is a development requiring certain discretionary approvals by the CITY before it may be constructed.
- E. The Development Agreement Statute provides the authority for CITY to enter into binding development agreements with a developer having a legal and equitable interest in real property.
- F. DEVELOPER has an equitable interest in the PROPERTY.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **DURATION.** This Agreement and Land Use Entitlements described in Section 2 shall expire four (4) years from its effective date, unless any duty specified remains executory, in which case this Agreement may be renewed for a successive one year term at discretion of CITY, pursuant to law, until all duties are performed. This renewal shall not unreasonably be withheld.
2. **Permitted Uses/Land Use Entitlements.** The following uses are permitted on the PROPERTY: To complete the build-out of the Sycamore Walk residential development through the proposed Tentative Tract Map No. TT-17384. The proposed build-out consists of a twelve-lot, small-lot subdivision, with twelve (12) homes and one common lot on a 36,155 square foot site, to be joined with the existing small-lot subdivision immediately east of this site (the "PROJECT") on that certain real property located at the southwest corner of Garden Grove Boulevard and West Street at 12034 Garden Grove Boulevard.
3. **Density/Intensity.** The density or intensity of the PROJECT is as follows: Expand the existing Sycamore Walk residential development by adding a twelve lot subdivision thereby facilitating the build-out of the unimproved land area of 36,155 square feet with twelve new two-story, single-family detached homes.

4. Maximum Height and Building Size. The maximum height and building sizes are as follows: The maximum building height shall be two stories above grade with an overall height of approximately 24 feet and the two floor plans proposed for this development are approximately 1,300 and 1,700 square feet, with both plans having two-car garages of 436 square feet and 429 square feet respectively.
5. Reservation or Dedication. The reservation of easements or dedication of property to the City to allow the construction of the proposed residential development shall be as shown on and/or conditioned in the approved Tentative Tract Map No. TT-17384.
6. Improvements. The improvements described in Planning Commission Resolution No. 5717 shall be constructed prior to the occupancy of the proposed development or the issuance of any certificate of occupancy for any unit of the development, all in accordance with the terms and conditions of Tentative Tract Map No. TT-17384.
7. Scope of PROJECT. The PROJECT shall consist of a twelve-lot, small-lot subdivision, with twelve (12) homes and one common lot on a 36,155 square foot site, to be joined with the existing small-lot subdivision immediately east of this site.
8. Resolution/Material Terms. All conditions of approval as per Resolution No. 5717 attached hereto and incorporated herein as Exhibit "A," are material terms of this Agreement. Breach of any condition of approval shall be deemed to be a breach of this Development Agreement.
9. Development Agreement Payment. DEVELOPER shall pay the development agreement payment to the CITY as follows:
 - 9.1 Amount. \$9,000.00 for the development and shall be paid prior to issuance of any building permits.
 - 9.2 Amount. The Developer shall pay \$13,992.00 toward construction of a Fire Station, including, but not limited to, related equipment, furnishings, and fixtures, etc. as part of this Development Agreement and shall be paid prior to issuance of any building permits.
 - 9.3 Not to Exceed. Payment under this Agreement shall not exceed \$22,992.00.

10. City Agreement. CITY agrees that the sums to be paid to the City, pursuant to Paragraph 9, will reimburse CITY for the cost of certain CITY services required by the PROJECT that are not otherwise being reimbursed to CITY.
11. Payment Due Date. The payment amount of \$22,992.00 shall be due and payable prior to the issuance of building permits for the PROJECT.
12. Termination Provisions. This Agreement may be terminated upon the happening of any of the following events:
 - A. Failure of Developer to perform any of the provisions of this Agreement, or
 - B. Mutual agreement of the parties.
13. Periodic Review. CITY shall review DEVELOPER'S performance every twelve (12) months at the anniversary of the adoption of this Agreement. DEVELOPER shall demonstrate good faith compliance with the terms of this Agreement. If as a result of the review CITY finds and determines, based upon substantial evidence, that DEVELOPER has not complied in good faith with terms or conditions of this Agreement, CITY may terminate the Agreement. This review shall be conducted by the Director of the Community Development Department.
14. City Discretion. So long as the Agreement remains in effect, DEVELOPER shall have the full vested right to construct and complete development of the PROJECT and the use of the PROPERTY consistent with the land use entitlements identified in Paragraph 2. Otherwise, CITY retains its right and discretion, under all applicable Codes, to approve or disapprove any item related to this PROJECT that it has not specifically agreed to via this Agreement. DEVELOPER acknowledges that it shall comply with all CITY requirements for applications and permits of any nature that apply to the PROJECT and the PROPERTY on or before of the Commencement Date and that this Agreement does not relieve DEVELOPER of the necessity of filing applications for and obtaining any such permits.
15. Improvement Schedule. The following improvements shall be constructed by the stated dates:

All repairs and improvements to the public right-of-way required in Planning Commission Resolution No. 5717 shall be completed prior to the issuance of any certificates of occupancy or release of any public utilities.

16. Developer Breach. Failure of DEVELOPER to construct improvements as specified, or to pay amounts specified in a timely fashion, shall result in the withholding of building permits, any other permit or certificate of occupancy until the breach is remedied.
17. Non-Liability of Officials and Employees of the City. No official or employee of CITY shall be personally liable to DEVELOPER in the event of any default or breach by CITY, or for any amount that will become due to DEVELOPER, or any obligation under the terms of this Agreement.
18. Notices. All notices shall be personally delivered or mailed 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.
 - A. Address of DEVELOPER is as follows:
The Olson Company
3010 Old Ranch Parkway, # 100
Seal Beach, CA 90740
 - B. Address of CITY is as follows:
City of Garden Grove
11222 Acacia Parkway
Garden Grove, CA 92840
19. DEVELOPER'S Proposal. The PROJECT shall include DEVELOPER's proposal, as modified by Planning Commission and City Council, including all conditions of approval contained in Planning Commission Resolution No. 5717, which shall be incorporated herein by this reference. In the event of any inconsistency between terms of the proposal and this Agreement, this Agreement shall govern.
20. Licenses, Permits, Fees, and Assessments. At its sole expense, DEVELOPER shall obtain all licenses, permits, and approvals as may be required by this Agreement, or by the nature of the PROJECT.
21. Time of Essence. Time is of the essence in the performance of this Agreement.
22. Successor's In Interest. The provisions of this Agreement shall be binding upon and inure to successors in interest of the parties and shall be specifically binding upon and for the benefit of any future lessees or other owners of an interest in PROPERTY.

23. Authority to Execute. The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement and that by executing this Agreement, the parties are formally bound.
24. Indemnification. DEVELOPER agrees to protect, defend, and hold harmless CITY and their elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, arising out of, or in any way connected with performance of the Agreement by DEVELOPER, DEVELOPER'S agents, officers or employees, and subcontractors hired by DEVELOPER.
25. Modification. This Agreement may be modified only by subsequent mutual written agreement executed by CITY, and the DEVELOPER.
26. The City Clerk shall cause this Agreement to be recorded against the PROPERTY when DEVELOPER or its permitted successor in interest becomes the owner in fee of the PROPERTY.
27. Remedies. The occurrence of any Event of Default shall give the nondefaulting party the right to proceed with any and all remedies set forth in this Agreement, including an action for damages, an action or proceeding at law or in equity to require the defaulting party to perform its obligations and covenants under this Agreement or to enjoin acts or things which may be unlawful or in violation of the provisions of this Agreement, and the right to terminate this Agreement.
28. Force Majeure. Subject to the party's compliance with the notice requirements as set forth below, performance by either party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays or default are due to causes beyond the control and without the fault of the party claiming an extension of time to perform, which may include, without limitation, the following: war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, assaults, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, material or tools, acts or omissions of the other party, or acts or failures to act of any public or governmental entity (except that the City's acts or failure to act shall not excuse performance of the City hereunder). An extension of the time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice

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

Date: _____

"CITY"
CITY OF GARDEN GROVE

BY _____

ATTEST:

CITY CLERK

DATE: _____

"PROPERTY OWNER/DEVELOPER"
The Olson Company

By: 

Its: CHARLEMAN

Date: 9/15/10
(Signature must be notarized.)

APPROVED AS TO FORM:



Garden Grove City Attorney

Date: 9/21/10

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

CERTIFICATE OF SECRETARY

The undersigned, Katherine M. Chandler, duly elected and acting Secretary of In Town Living, Inc., hereby certifies that the following resolutions were adopted by the unanimous vote of the Directors of **In Town Living, Inc.**, a Delaware corporation (the "Corporation"), acting pursuant to its bylaws and by the authorization of Sections 108(c) and 141(f) of the Delaware General Corporation Law ("DGC"), and that resolutions were effective as of December 17, 2009, and that said resolutions are in full force and effect:

Appointment of Officers

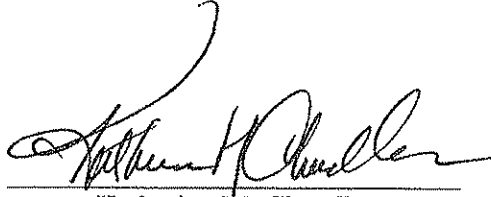
RESOLVED: That the following persons are appointed as officers of the Corporation to the offices set forth opposite their respective names, to serve until their respective successors are duly elected and qualified or until any such officer's earlier resignation or removal:

<u>Name</u>	<u>Officer</u>
Stephen E. Olson	Chairman of the Board and Chief Executive Officer
Scott Laurie	President and Chief Operating Officer
Mario Urzua	Senior Vice President and Chief Financial Officer
Katherine M. Chandler	Senior Vice President, General Counsel and Secretary
Leighton Ko	Senior Vice President, Chief Accounting Officer
Michael Ugar	Senior Vice President, Operations
Tak Fujii	Senior Vice President, Chief Information Officer
Todd J. Olson	Senior Vice President; President- Community Development
William E. Holford	Senior Vice President, Marketing and Sales
Annita Goldy	Vice President, Human Resources and Assistant Secretary
Brenda Olson	Assistant Secretary
Donald P. Clark	Assistant Secretary

Authority of Officers

RESOLVED: That in accordance with the powers of officers specified in the Corporation's bylaws, the officers of the Corporation are authorized to execute and deliver any agreement in the name of the Corporation and to otherwise obligate the Corporation with respect to the business of the corporation, within general guidelines and budgets approved by the Board; *provided, however*, that the Board may adopt from time to time specific limitations on the authority of such officers.

Dated: September 16, 2010



Katherine M. Chandler
Secretary