

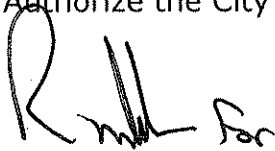
FINANCIAL IMPACT

There is no financial impact to the City by this action.

RECOMMENDATION

It is recommended that City Council:

- Approve Final Tract Map No. TR 17384 and the Subdivision Improvement Agreement and also accept the Subdivision Improvement Bonds and Insurance.
- Authorize the City Manager to execute the Agreement.



KEITH G. JONES
Public Works Director



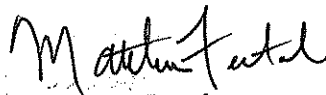
By: William E. Murray Jr.
City Engineer

Attachment 1: Planning Commission Resolution No. 5717

Attachment 2: Tract Map No. TR 17384

Attachment 3: Subdivision Improvement Agreement

Recommended for Approval



Matthew Fertal
City Manager

RESOLUTION NO. 5717

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF GARDEN GROVE RECOMMENDING APPROVAL OF DEVELOPMENT AGREEMENT NO. DA-182-10 AND APPROVING TENTATIVE TRACT MAP NO. TT-17384 FOR LAND LOCATED ON THE SOUTHWEST CORNER OF GARDEN GROVE BOULEVARD AND WEST STREET AT 12034 GARDEN GROVE BOULEVARD, PARCEL NOS. 100-504-32 AND 80.

BE IT RESOLVED that the Planning Commission of the City of Garden Grove, in regular session assembled on September 2, 2010, does hereby recommend approval of Development Agreement No. DA-182-10 and approve of Tentative Tract Map No. TT-17384.

BE IT FURTHER RESOLVED in the matter of Development Agreement No. DA-182-10 and Tentative Tract Map No. TT-17384, the Planning Commission of the City of Garden Grove does hereby report as follows:

1. The subject case was initiated by The Olson Company.
2. The applicant is requesting approval of Tentative Tract Map No. TT-17384 in order to complete the build-out of the Sycamore Walk residential development. 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. A Development Agreement is also included.
3. The City of Garden Grove has determined that this project is Exempt, In-fill Development Projects pursuant to Article 19, Section 15332, Categorical Exemptions of the California Environmental Quality Act.
4. The property has a General Plan designation of Residential Commercial Mixed Use and is zoned Planned Unit Development No. PUD-113-96-R. The site is vacant with a portion having been improved with a temporary parking lot.
5. Existing land use, zoning, and General Plan designation of property in the vicinity of the property have been reviewed.
6. Report submitted by the City staff was reviewed.
7. Pursuant to a legal notice, a public hearing was held on September 2, 2010, and all interested persons were given an opportunity to be heard.

8. The Planning Commission gave due and careful consideration to the matter during its meeting on September 2, 2010; and

BE IT FURTHER RESOLVED, FOUND AND DETERMINED that the facts and reasons supporting the conclusion of the Planning Commission, as required under Municipal Code Section 9.32.060 (Tentative Maps - Findings Required) are as follows:

FACTS:

The site is 36,155 square feet in area and is vacant with a portion having been improved with a temporary parking lot.

The 5.2-acre site was originally approved for the development of 70, two-story, single-family homes under a Site Plan (SP-178-96) and Tentative Tract Map (TT-15399). The western portion was delayed development due to underground soil contamination, primarily from a former gas station that was located at the southeast corner of Garden Grove Boulevard and Rockinghorse Road. Subsequently only 48 homes were constructed on the eastern half of the site along with a swimming pool recreation area and the main entrance to the site at West Street and Garden Grove Boulevard.

A zone change was concurrently processed with Tentative Tract Map (TT-15399) that rezoned the development site from Transition Zone West to Planned Unit Development No. PUD-113-96. The Planning Commission approved the Site Plan and Tentative Tract Map and recommended approval of the zone change on December 12, 1996. The City Council approved the rezone on January 28, 1997.

Due to the length of timing in addressing the underground soil contamination remediation process, the Garden Grove Agency for Community Development, which retained ownership of the western portion of this site, elected to allow the immediate corner of Garden Grove Boulevard and Rockinghorse Road to be developed with a restaurant, Los Sanchez Mexican Restaurant, including the rezoning of this site to C-1, Neighborhood Commercial. The remnant parcel, approximately 36,155 square feet in land area, situated between Los Sanchez restaurant and the Sycamore Walk residential development, was left in an unimproved state and was the focus area for the soil contamination remediation efforts.

The Developer is authorized to enter into a Development Agreement in compliance with Government Code Section 65864.

FINDINGS AND REASONS:

The proposal meets the required findings under section 9.32.060 (Tentative Maps – Findings Required).

1. The map is consistent with the General Plan in that the proposed parcel is of an appropriate size and configuration to allow for the construction of the approved small-lot single-family residential development. The subdivision of the parcel will allow the construction of 12 new, single-family detached houses. The project is consistent with the General Plan designation of Residential Commercial Mixed-Use.
2. The design of the proposed twelve-lot subdivision is consistent with the Residential Commercial Mixed-Use General Plan designation allowing a proposal with twelve single-family residences in an urban setting. Policies from the General Plan include improving the economic viability of the area by emphasizing appropriate development of vacant properties and consolidation of smaller parcels. The project will improve the site and the economic viability of the Garden Grove Boulevard corridor. The approved design meets the spirit and intent of the Municipal Code for residential small-lot subdivision.
3. The site is physically suitable for a small-lot residential project as Garden Grove Boulevard has transitioned from its past importance as a primary route to Los Angeles to a corridor with more residential planned unit developments and more neighborhood-serving commercial uses.
4. The project is classified as an in-fill project and therefore is further exempt from environmental review in regard to Article 19, Section 15332, Categorical Exemptions of the California Environmental Quality Act (CEQA).
5. The City's General Plan anticipated mixed-use developments of residential units combined with commercial/office uses. The proposed development is within the density limits permitted under the General Plan Land Use Designation of MU (Mixed Use). As stated in the General Plan, housing on the Garden Grove Boulevard corridor provides convenient access to jobs and activities, and supplies a resident clientele to support commercial sales and services along this thoroughfare. Based on the General Plan Update Housing Element, the estimated number of persons per household is 3.247. This estimate of persons per household does not exceed the population growth for the region. Therefore, the site is physically suitable for the proposed density.

6. The design of the subdivision will not cause serious public health problems. The conditions of approval of on-site and off-site improvements will safeguard the public health.
7. The design of the subdivision is not in conflict with the easements of record or easements established by court judgment acquired by the public-at-large for access through or use of property within the subdivision; if such easements exist, then alternate easements for access or for use will be provided and these will be substantially equivalent to the ones previously acquired by the public.
8. The design and improvements of the proposed subdivision are suitable for the twelve single-family detached homes and the subdivision can be developed in compliance with applicable zoning regulations.
9. The design of the subdivision does take into consideration and to the extent feasible, future passive and natural heating and cooling opportunities.
10. The design, density, and configuration of the subdivision provides a balance between effect of the subdivision on the housing needs of the region and of public service needs that the character of the subdivision is compatible with the design of existing structures and that the lot sizes of the subdivision are substantially the same as the lot sizes within this area.

INCORPORATION OF FACTS AND FINDINGS SET FORTH IN STAFF REPORT

In addition to the foregoing, the Planning Commission incorporates herein by this reference, the facts and findings set forth in the staff report.

BE IT FURTHER RESOLVED that the Planning Commission does conclude:

1. That Tentative Tract Map No. TT-17384 does possess characteristics that justify the request in accordance with the Garden Grove General Plan and the Garden Grove Municipal Code.
2. In order to fulfill the purpose and intent of the Municipal Code, and thereby promote the health, safety, and general welfare, the attached Conditions of Approval (Exhibit "A") shall apply to Tentative Tract Map No. TT-17384.

ADOPTED this 2nd day of September, 2010

/s/ KRIS BEARD
CHAIR

I HEREBY CERTIFY that the foregoing resolution was duly adopted at the regular meeting of the Planning Commission of the City of Garden Grove, State of California, held on September 2, 2010, by the following votes:

AYES:	COMMISSIONERS:	BEARD, BONIKOWSKI, CABRAL, PAK
NOES:	COMMISSIONERS:	NONE
ABSENT:	COMMISSIONERS:	BUI, ELLSWORTH
VACANCY:	COMMISSIONERS:	ONE

/s/ TERESA POMEROY
SECRETARY

PLEASE NOTE: Any request for court review of this decision must be filed within 90 days of the date this decision was final (See Code of Civil Procedure Section 1094.6).

A decision becomes final if it is not timely appealed to the City Council. Appeal deadline is September 23, 2010.

TRACT NO. 17384

IN THE CITY OF GARDEN GROVE, COUNTY OF ORANGE, STATE OF CALIFORNIA

ACCEPTED AND FILED AT THE REQUEST OF DATE TIME FEES INSTRUMENT # BOOK PAGE TOM DALY COUNTY CLERK-RECORDER BY DEPUTY

SHEET 1 OF 2 SHEETS 0.893 ACRES ALL OF TENTATIVE TRACT 17315 LOTS 12 NUMBERED 2 LETTERED DATE OF SURVEY: JUNE 2010

OWNERSHIP CERTIFICATE:

WE, THE UNDERSIGNED, BEING ALL PARTIES HAVING ANY RECORD INTEREST IN THE LAND COVERED BY THIS MAP, DO HEREBY CONSENT TO THE PREPARATION AND RECORDATION OF SAID MAP, AS SHOWN WITHIN THE DISTINCTIVE BORDER LINE.

WE HEREBY RESERVE FOR THE HOMEOWNERS ASSOCIATION FOR THIS TRACT:

- 1) LOT 4 FOR PRIVATE STREET PURPOSES.
2) LOT 8 FOR LANDSCAPE MAINTENANCE PURPOSES.
WE HEREBY DEDICATE TO THE CITY OF GARDEN GROVE:
1) AN EASEMENT FOR TRASH COLLECTION PURPOSES, POLICE, FIRE, SAFETY AND HEALTH PROTECTION AND GENERAL WELFARE PURPOSES OVER LOTS A AND B.
2) AN EASEMENT FOR PUBLIC WATER LINE PURPOSES OVER LOTS 1 THROUGH 12 AND LOTS A AND B, EXCEPTING THEREFROM ANY PORTION THEREOF INCLUDED WITHIN THE APPROVED RESIDENTIAL DWELLING UNITS.
3) ALL UNDERGROUND WATER RIGHTS WITHOUT THE RIGHT OF ENTRY FROM THE SURFACE.

WE ALSO HEREBY RELEASE AND RELINQUISH TO THE CITY OF GARDEN GROVE: ALL VEHICULAR ACCESS RIGHTS TO GARDEN GROVE BOULEVARD EXCEPT AT THE APPROVED ENTRY FOR THIS TRACT.

IN-TOWN COMMUNITIES, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY BY: OLSON URBAN HOUSING LLC, A DELAWARE LIMITED LIABILITY COMPANY, ITS MEMBER

BY: Scott Louie, Notary Public, State of California, Commission Expires: Jun 10, 2013

NOTARY ACKNOWLEDGMENT

ON February 22, 2011, BEFORE ME Valerie Weisel, Notary Public, STATE OF CALIFORNIA, COUNTY OF ORANGE, WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME IN HIS AUTHORIZED CAPACITY, AND THAT BY HIS SIGNATURE ON THE INSTRUMENT THE PERSON OR THE ENTITY UPON BEHALF OF WHICH THE PERSON ACTED, EXECUTED THE INSTRUMENT.

WITNESS MY HAND SIGNATURE: Valerie Weisel, My Principal Place of Business is in Orange, County, My Commission Expires: Jun 10, 2013, Commission Number: 1852747

NOTARY ACKNOWLEDGMENT

ON February 22, 2011, BEFORE ME Valerie Weisel, Notary Public, STATE OF CALIFORNIA, COUNTY OF ORANGE, WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME IN HIS AUTHORIZED CAPACITY, AND THAT BY HIS SIGNATURE ON THE INSTRUMENT THE PERSON OR THE ENTITY UPON BEHALF OF WHICH THE PERSON ACTED, EXECUTED THE INSTRUMENT.

WITNESS MY HAND SIGNATURE: Valerie Weisel, My Principal Place of Business is in Orange, County, My Commission Expires: Jun 10, 2013, Commission Number: 1852747

BEING A SUBDIVISION OF PARCEL 2 OF PARCEL MAP NO. 2005-136 AS SHOWN ON A MAP FILED IN BOOK PAGES 27, 28 AND 29 OF PARCEL MAPS TOGETHER WITH LOT 89 OF TRACT NO. 15399 AS PER MAP RECORDED IN BOOK 765, PAGES 4 TO 10, INCLUDING UNDESIGNED MAPS, BOTH OF RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, CALIFORNIA.

JEFFERY L. MAYS, PLS 6379 ARS ENGINEERING

CITY ENGINEERS STATEMENT:

I HEREBY STATE THAT I HAVE EXAMINED THIS MAP AND FOUND IT TO BE SUBSTANTIALLY CORRECT AS SHOWN THEREON AS WELL AS THE PROVISIONS OF THE SUBDIVISION MAP ACT AND CITY SUBDIVISION REGULATIONS HAVE BEEN COMPLIED WITH.

DATED THIS DAY OF 2011

WILLIAM E. MURRAY, JR., CITY OF GARDEN GROVE, P.C.E. 90855 REGISTRATION EXPIRES: 06/30/11

COUNTY SURVEYORS STATEMENT:

I HEREBY STATE THAT I HAVE EXAMINED THIS MAP AND HAVE FOUND THAT ALL MAPPING PROVISIONS OF THE SUBDIVISION MAP ACT HAVE BEEN COMPLIED WITH AND I AM SATISFIED SAID MAP IS TECHNICALLY CORRECT.

DATED THIS DAY OF 2011

RAYMOND L. MATHE, COUNTY SURVEYOR (DEPUTY), LS 6185 LICENSE EXPIRATION DATE: 3-31-12

SURVEYORS STATEMENT:

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCES AT THE REQUEST OF IN-TOWN COMMUNITIES, LLC IN JUNE 2010. I HEREBY STATE THAT ALL MONUMENTS ARE OF THE CHARACTER AND KIND AND POSITION AS SHOWN ON THE WITHIN MAP AND THAT SAID MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED. I HEREBY STATE THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE APPROVED OR CONDITIONALLY APPROVED TENTATIVE MAP.

JEFFERY L. MAYS, PLS 6379 ARS ENGINEERING, MY LICENSE EXPIRES 12-31-2012

CITY CLERKS CERTIFICATE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I HEREBY CERTIFY THAT THIS MAP WAS PRESENTED FOR APPROVAL TO THE CITY COUNCIL OF THE CITY OF GARDEN GROVE AT A REGULAR MEETING THEREOF HELD ON THE DAY OF 2011 AND THAT THEREUPON SAID COUNCIL DID, BY AN ORDER DULY PASSED AND ENTERED, APPROVE SAID MAP AND DID ACCEPT ON BEHALF OF THE CITY OF GARDEN GROVE:

- 1) AN EASEMENT FOR TRASH COLLECTION PURPOSES, POLICE, FIRE, SAFETY AND HEALTH PROTECTION AND GENERAL WELFARE PURPOSES OVER LOTS A AND B.
2) AN EASEMENT FOR PUBLIC WATER LINE PURPOSES OVER LOTS 1 THROUGH 12 AND LOTS A AND B, EXCEPTING THEREFROM ANY PORTION THEREOF INCLUDED WITHIN THE APPROVED RESIDENTIAL DWELLING UNITS.
3) ALL UNDERGROUND WATER RIGHTS WITHOUT THE RIGHT OF ENTRY FROM THE SURFACE.
4) THE VEHICULAR ACCESS RIGHTS TO GARDEN GROVE BOULEVARD AS RELEASED AND RELINQUISHED.

AND DID ALSO APPROVE SUBJECT MAP PURSUANT TO THE PROVISIONS OF SECTION 66456(G)(3)(A) OF THE SUBDIVISION MAP ACT.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED THE OFFICIAL SEAL OF THE CITY OF GARDEN GROVE.

DATED THIS DAY OF 2011

BY: RUTH E. SMITH, CITY CLERK, CITY OF GARDEN GROVE

COUNTY TREASURER-TAX COLLECTORS CERTIFICATE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I HEREBY CERTIFY THAT ACCORDING TO THE RECORDS OF MY OFFICE, THERE ARE NO LIENS AGAINST THE LAND COVERED BY THIS MAP OR ANY PART THEREOF FOR UNPAID STATE, COUNTY, MUNICIPAL OR LOCAL TAXES OR SPECIAL ASSESSMENTS COLLECTED AS TAXES, EXCEPT TAXES OR SPECIAL ASSESSMENTS COLLECTED AS TAXES NOT YET PAYABLE.

AND DO CERTIFY TO THE RECORDER OF ORANGE COUNTY THAT THE PROVISIONS OF THE SUBDIVISION MAP ACT HAVE BEEN COMPLIED WITH REGARDING DEPOSITS TO SECURE PAYMENT OF TAXES OR SPECIAL ASSESSMENTS COLLECTED AS TAXES ON THE LAND COVERED BY THIS MAP.

DATED THIS DAY OF 2011

SHARI L. FREIDENRICH, COUNTY-TREASURER-TAX COLLECTOR BY: DEPUTY TREASURER-TAX COLLECTOR

SIGNATURE OMISSIONS:

PURSUANT TO THE PROVISIONS OF SECTION 66436(G)(3)(A) OF THE SUBDIVISION MAP ACT THE FOLLOWING SIGNATURES HAVE BEEN OMITTED:

- 1) THE CITY OF GARDEN GROVE, A MUNICIPAL CORPORATION, HOLDER OF EASEMENTS FOR WATER LINE PURPOSES, TRASH COLLECTION, POLICE, FIRE, AND GENERAL WELFARE PURPOSES OVER LOTS A AND B, AS SHOWN ON THE WITHIN MAP, DEDICATED ON TRACT 15389 RECORDED IN BOOK 765, PAGE 4 THROUGH 10, INCLUSIVE OF MISCELLANEOUS MAPS. (EASEMENT IS BLANKET IN NATURE)
2) PACIFIC BELL, HOLDER OF AN EASEMENT FOR UTILITY PURPOSES RECORDED SEPTEMBER 1, 1998 AS INSTRUMENT NO. 198805584515 OF OFFICIAL RECORDS. (EASEMENT IS BLANKET IN NATURE)
3) SOUTHERN CALIFORNIA EDISON, A CORPORATION, HOLDER OF AN EASEMENT FOR UTILITY PURPOSES RECORDED DECEMBER 4, 1998 AS INSTRUMENT NO. 1998051494 OF OFFICIAL RECORDS. (EASEMENT IS BLANKET IN NATURE)

TRACT NO. 17384

IN THE CITY OF GARDEN GROVE, COUNTY OF ORANGE, STATE OF CALIFORNIA

JEFFERY L. MAVS, PLS 6379

SHEET 2 OF 2 SHEETS
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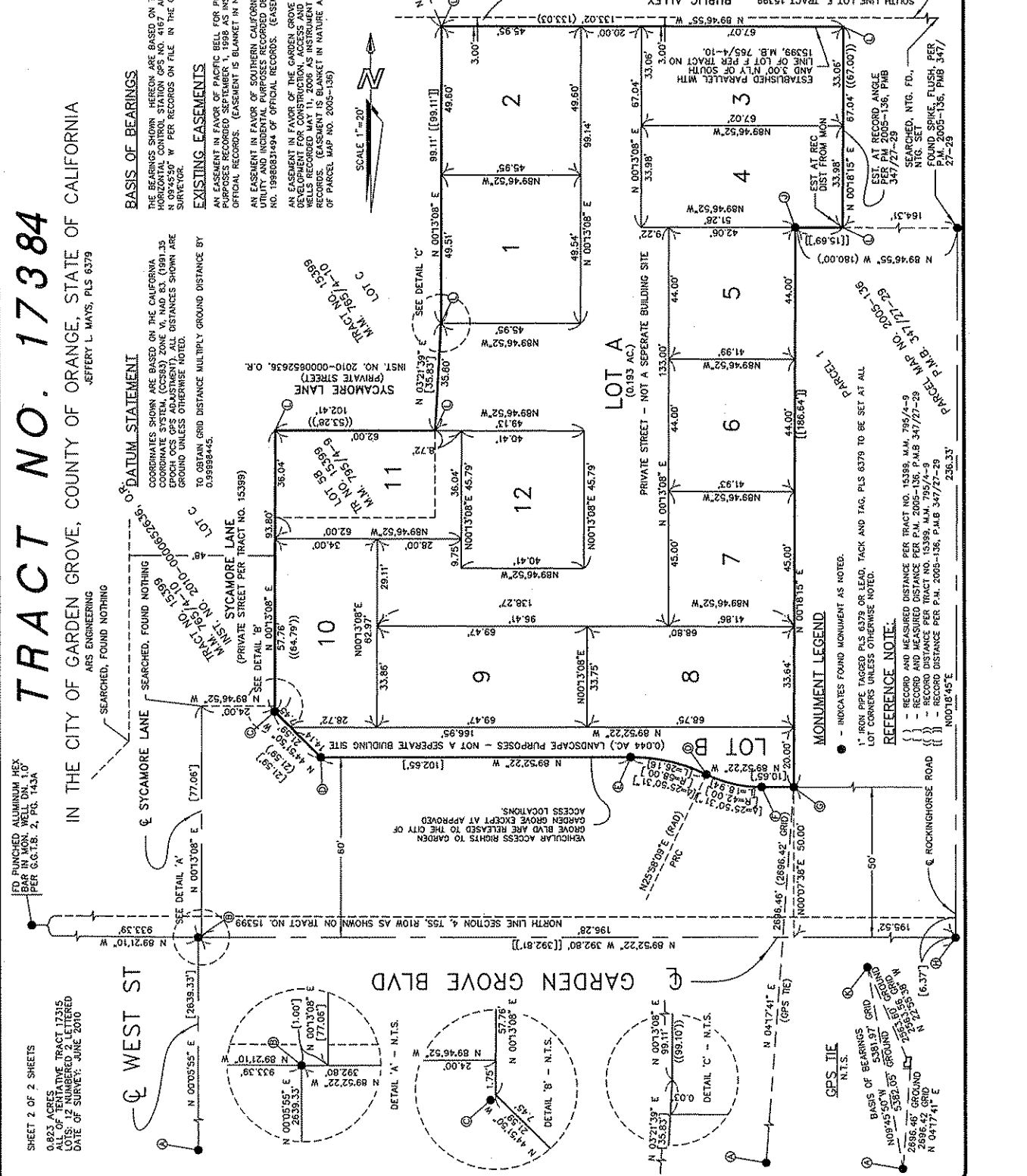
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**SUBDIVISION IMPROVEMENT AGREEMENT
SUBDIVIDER: OLSON HOMES
TRACT MAP NO. 17384**

THIS AGREEMENT is made this ____ day of _____ 2010, by the CITY OF GARDEN GROVE, a municipal corporation ("CITY"), and **IN-TOWN COMMUNITIES, LLC, a California limited liability company By: OLSON URBAN HOUSING, LLC, a Delaware limited liability company, its Member By: In Town Living, Inc., a Delaware corporation, its Managing Member, ("SUBDIVIDER")**. CITY and SUBDIVIDER 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. 17384 ("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 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 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 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 the Project.
6. SUBDIVIDER has requested approval of the Final Map prior to completion of all of the Improvements required by CITY.
7. To assure CITY that SUBDIVIDER 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 Final Map, are a material consideration to CITY in approving the Final Map and permitting development of the Project to proceed.
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 Final Map and permitting development 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 his or her sole expense, agrees to construct and install, as applicable, the street, sidewalks, drainage system, 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 Final Map and acceptance of such streets and easements, as expressly shown on (1) the Improvement List is attached hereto as 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 **\$270,270.00**.

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, prior to the execution of this Agreement by CITY, with the following bonds:

Improvement	Type of Bond	Amount
100% of total estimate for Off-Site Improvements, On-Site Grading, Drainage system, water and sewer improvements as shown on Grading Plan No. G-1250 , as described on the attached exhibit "A"	Faithful Performance	\$270,270.00
50% of total estimate for Off-Site Improvements, On-Site Grading, Drainage system, water and sewer improvements as shown on Grading Plan No. G-1250 , as described on the attached exhibit "A"	Labor & Material	\$135,135.00

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.

3. **Time for Completion.** SUBDIVIDER 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 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 Requirements.**
 - 7.1 **COMMENCEMENT OF WORK.** Subdivider or Subdivider's contractor, if Subdivider is not itself performing the work, performed pursuant to this Agreement, shall not commence work under this Agreement until all 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 **Workers' Compensation Insurance.** For the duration of this Agreement, SUBDIVIDER, or its contractor, as appropriate, and all subcontractors shall maintain Workers Compensation Insurance in the amount and type required by law, if applicable.
 - 7.3 **Insurance Amounts.** SUBDIVIDER or Subdivider's contractor, as appropriate, and each of its sub-contractors shall maintain the following insurance for the duration of this Agreement:
 - A. Commercial general liability in the amount of \$1,000,000 per occurrence; **(claims made and modified occurrence policies are not acceptable)**; Insurance companies must be acceptable to CITY and have a Best's Guide Rating of A-, Class VII or better or as otherwise approved by the CITY.
 - B. Automobile liability in the amount of \$1,000,000 per occurrence; Insurance companies must be **acceptable to CITY** and have a Best's guide Rating of A-, Class VII or better or as otherwise approved by the CITY.

* An Additional Insured Endorsement of the policy (or policies) under section 7.3 (A) shall designate CITY, its officers, officials, employees, agents, and volunteers as additional insured's for liability arising out of work or operations performed by or on behalf of the SUBDIVIDER. Subdivider's 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 of the policy or (policies) under section 7.3 (B) shall designate CITY, its officers, officials, employees, agents, and volunteers as additional insured's for automobiles owned, leased, hired, or borrowed by the SUBDIVIDER or Subdivider's contractor, as appropriate. SUBDIVIDER 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 or Subdivider's contractor's as appropriate, insurance coverage shall be primary insurance as respects to CITY, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents, or volunteers shall be excess of the Subdivider's/ Subdivider's Contractors insurance and shall not contribute with it.

If SUBDIVIDER is not constructing or installing the required improvements itself, Subdivider's insurance obligation pursuant to this subsection 7.3 may be satisfied from each of Subdivider's contractors and each of their subcontractors, as appropriate, at the time of application for any permit from the CITY related to the construction and/or installation of the improvements under this Agreement.

8. Default.

- 8.1 **Remedies Not Exclusive.** In any case where this Agreement provides a specific remedy to CITY for a default by SUBDIVIDER 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 fails to perform any obligations under this Agreement, SUBDIVIDER hereby authorizes 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 SUBDIVIDER 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 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 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 shall 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 Infrastructure 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 in accordance with this Agreement (at which time the original bonds 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. Thereafter, SUBDIVIDER 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 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 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 obligations under this Agreement, SUBDIVIDER, its employees, agents, contractors, and any subcontractors acting on behalf of SUBDIVIDER 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 SUBDIVIDER, on behalf of itself, its employees, agents, contractors, and any subcontractors acting on behalf of SUBDIVIDER, hereby expressly waives any claim it may have to any such rights.
- 12.3 **Compliance with Law.** SUBDIVIDER 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 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.
- A. If to Subdivider:
The Olson Company - **IN-TOWN COMMUNITIES, LLC**
3010 Old Ranch Parkway, Suite 100
Seal Beach, CA 90740
- B: If to CITY:
City of Garden Grove
Attention: Public Works Director
11222 Acacia Parkway
Garden Grove, California 92842
- 12.6 **Licenses, Permits, Fees, and Assessments.** At its sole cost and expense, SUBDIVIDER shall obtain such license, permits, and approvals as may be required by law for the performance of SUBDIVIDER's obligations under this Agreement. SUBDIVIDER 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.
- 12.11 **Waiver.** All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the CITY and SUBDIVIDER. SUBDIVIDER 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 both 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 PAGE]

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

ATTEST:

“SUBDIVIDER”

City Clerk

By: _____
Tom Moore

Date: _____

Its: Executive Director

Date: 11/10/2010

BY: 

Name Katherine M. Chandler
SVP, General Counsel & Secretary
Title

APPROVED AS TO FORM:


Garden Grove City Attorney

Date: 2/24/2011

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

- 14 INSTRUCTIONS: If SUBDIVIDER 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 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 is a partnership, it must be signed by all general partners. If SUBDIVIDER 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.