

ATTACHMENT 3

Vesting Tract No. 16382

SUBDIVISION AGREEMENT

THIS AGREEMENT made and entered into this 9th day of September, 2004, by and between the CITY OF COSTA MESA, a municipal corporation, hereinafter referred to as "CITY," and Rutter 1901 Newport, a Limited Liability Company, hereinafter referred to as a "SUBDIVIDER."

RECITALS:

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

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; and

WHEREAS, SUBDIVIDER has submitted and filed plans for the installation of street and public storm drain improvements hereinafter referred to as "PLANS" and incorporated herein by reference on said proposed Tract to the CITY for its review and approval; and

WHEREAS, as a condition of CITY 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:

1. PLANS AND IMPROVEMENTS

SUBDIVIDER shall, at its sole cost and expense, design, construct and install all of the street and public storm drain improvements and other works of improvement as shown and delineated on the PLANS for Vesting Tract No. 16382 for subsequent acceptance by CITY.

2. SUBDIVIDER warrants that said design, construction and installation will be performed in accordance with said 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 \$378,428.41;
- 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 said Vesting Tract in the sum \$378,428.41;
- c. Monument Bond: To secure all the cost of placing monuments on said Vesting Tract in the sum of \$6,000.00 .

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 CITY'S 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 (85%) percent 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. 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 to or death of 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 said Vesting Tract.

6. 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 Vesting Tract Map by CITY (the "Approval Date") and shall complete said work within three hundred sixty-five (365) days from said Approval Date.

7. The persons executing this Agreement warrant they are authorized to do so on behalf of their respective party.
8. The parties hereto acknowledge and agree that the relationship between CITY and SUBDIVIDER is one of principal and independent subdivider 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.

EXECUTED in Costa Mesa, California, on the day and year first above written.

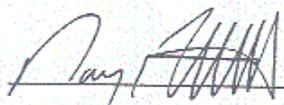
CITY OF COSTA MESA

Mayor

ATTESTED:

City Clerk

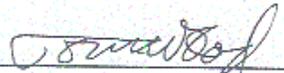
SUBDIVIDER

By: 

RAY JAY RUTTER

President
Title

APPROVED AS TO FORM:



City Attorney