

SUBDIVISION AGREEMENT

THIS AGREEMENT made and entered into this 9<sup>th</sup> day of October, 2013, by and between the CITY OF COSTA MESA, a municipal corporation, hereinafter referred to as "CITY," and SCEL Properties LLC, hereinafter referred to as a "SUBDIVIDER."

R E C I T A L S :

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 sidewalk, curb and gutter and pavement hereinafter referred to as "PLANS" and incorporated herein by reference on said proposed Tract Map 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 improvements within the public right-of-way as shown and delineated on the PLANS for Tract Map No. 17457 for subsequent acceptance by CITY.

2. SUBDIVIDER shall design, construct and install the improvements, or cause the same to be designed, constructed and installed, 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 or a letter of credit 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 \$16,503;
- 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 Parcel in the sum of \$16,503;
- c. Monument Bond: To secure all the cost of placing monuments on said Parcel in the sum of \$1,200.

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, stated amount of the letter of credit or partial refund of cash deposit, as applicable, furnished to secure SUBDIVIDER'S faithful performance herein, in a sum in the same

ratio to the original bond amount, original stated amount of the letter of credit or total money deposited, as applicable, 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 bond amount, original stated amount of the letter or credit, or original deposit, as applicable, 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 any claim arising from or relating to the willful misconduct or active 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 claims, demands, suits, actions or proceedings of any kind or nature, including, but not by way of limitation, all civil claims, workers' compensation claims costs, expenses, or damages to property or injuries to or death of any person or persons, including attorney fees 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 for, or designing, constructing or installing the improvements contemplated in this Agreement.

6. TIME FOR PERFORMANCE

SUBDIVIDER shall commence construction and installation of said improvements within one hundred and eighty (180) days after the date of final approval of said Parcel 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 contractor and no other. It is the intent of the parties that SUBDIVIDER not be an employee of CITY for any purpose. None of the personnel to be utilized by SUBDIVIDER in the performance of this Agreement shall be employees of the CITY. SUBDIVIDER shall pay all salaries and wages, employer's social security taxes, unemployment insurance and similar taxes relating to SUBDIVIDER'S 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

[Redacted Signature]

Fariba Fazeli  
City Engineer

SUBDIVIDER  
SCEL Properties LLC

By: [Redacted Signature]  
print name: JONATHAN MARK BLUCE ELUETT  
print title: PRESIDENT.



ATTEST:

[Redacted Signature]

City Clerk and ex-officio Clerk  
of the City of Costa Mesa

APPROVED AS TO FORM:

[Redacted Signature]

City Attorney

# CITY OF COSTA MESA

Department of Public Services/Engineering

## INTER OFFICE MEMORANDUM

**TO:** Tom Duarte, City Attorney  
**FROM:** Fariba Fazeli, City Engineer F.F.  
**DATE:** October 3, 2013  
**SUBJECT:** Subdivision Agreements for Tract Map 17457 at 1856 Placentia Avenue

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Please review and sign the "Approved as to Form" on page 5 of the attached Subdivision Agreements for off-site improvements, which includes the installation of a driveway approach, sidewalk, and pavement replacement as required for Tract Map 17457.

If there are no changes, please sign the originals and contact Mohcine Chirar when the documents are ready. The agreements should be dated upon the final signature.

Mohcine Chirar may be reached at 714-754-5140 if you have any questions.

Attachment

c Ernesto Munoz, Director of Public Services  
Mohcine Chirar, Engineering Technician III