

Citrus Ave. Partners, LLC

1601 Dove Street, Suite 230

Newport Beach, CA 92660

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April 8, 2003

Mr. Steve Nelson
Senior Deputy City Attorney
City Hall
201 North Broadway
Escondido, CA 92025

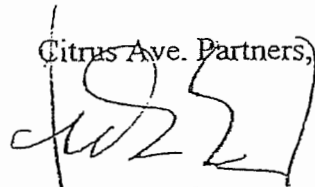
Re: Drainage Facilities Improvement and Reimbursement Agreement dated February 12, 2003 between Newport Properties, LLC and the City of Escondido ("Reimbursement Agreement") / 403 N. Citrus Avenue/ APN#231-022-53 / Tentative Tract Map 846, Escondido, CA (the "Property")

Dear Steve,

On March 3, 2003 Citrus Ave. Partners, LLC purchased the Property referenced above. Pursuant to paragraph 2.4 of the Reimbursement Agreement Newport Properties, LLC assigned its rights to the Reimbursement Agreement to Citrus Ave. Partners, LLC. A copy of the Reimbursement Agreement and the Assignment and Assumption of Drainage Facilities Improvement and Reimbursement Agreement is attached for the City's Records.

Sincerely,

Citrus Ave. Partners, LLC



Frank E. Eckert

c.c. Ron Anderson, City Engineer

DRAINAGE FACILITIES IMPROVEMENT AND REIMBURSEMENT AGREEMENT

This Agreement is made and entered into this 12 day of February 2003, between NEWPORT PROPERTIES, LLC, a Delaware limited liability company ("Developer"), and the CITY OF ESCONDIDO, a California municipal corporation ("City").

RECITALS

A. Developer is in escrow to purchase that certain real property consisting of approximately 4.96 acres of vacant land located at the northwest corner of Citrus Avenue and East Valley Parkway in the City of Escondido that is known as 403 N. Citrus Avenue, APN 231-022-53 (the "Property").

B. The City has approved Developer's application for a condominium permit, in conjunction with a one-lot tentative subdivision map, for the development of 56 detached residential condominium units (the "Project") on the Property.

C. As a condition of City's approval of the Project, and as a modification to the standard development obligations stated in the City Master Drainage Plan, City has required Developer to install certain drainage facilities in and along Citrus Avenue consisting of a sixty-six inch (66") diameter storm drain that will extend from an existing storm drain facility in Citrus Avenue approximately four hundred forty feet (440') north of the Property southward in and along Citrus Avenue to a point approximately one hundred forty-five feet (145') south of the northeasterly corner of the Property where the storm drain will connect with the on-site storm drain facilities to be constructed and installed by Developer as part of the Project (the "Oversized Storm Drain").

D. Developer estimates that the Project itself would necessitate a storm drain facility of only twenty-four inches (24") in diameter. The City will review and verify such estimate as discussed below. Contingent upon Developer's actual development of the Project, however, and pursuant to the conditions of approval, Developer is prepared to construct and install said Oversized Storm Drain to accommodate burdens to be placed on City's storm drain system by other properties and developments in the area provided that City agrees to reimburse, with interest, the incremental costs above Developer's "fair share" costs as provided below.

E. The Parties enter into this Agreement to establish their respective responsibilities for the cost of the Oversized Storm Drain and to establish Developer's eligibility for reimbursement of a portion of said costs in accordance with the provisions of City's adopted Drainage Master Plan.

THEREFORE, the Parties agree as follows:

AGREEMENT

1. DEVELOPER'S CONSTRUCTION AND INSTALLATION OF OVERSIZED STORM DRAIN.

Retention of Contractor and Reimbursement of Costs.

Developer shall employ or retain a contractor to construct and install the Oversized Storm Drain in accordance with the procedures and requirements set forth at pages 7-14 and 7-15, Section "H. Reimbursement for Construction of Eligible Projects," of the City's Drainage Master Plan adopted by City Ordinance 95-19 (the "City Reimbursement Procedure") attached to this Agreement as Exhibit "A." Except as provided in paragraph 2.2 below, the City's reimbursement of costs to construct the Oversized Storm Drain shall be governed by the City Reimbursement Procedure.

2. CITY REIMBURSEMENT

2.1 Calculation of Reimbursable Expenses.

The total amount of the City's reimbursement obligation shall be the difference between the estimated cost to construct the storm drain determined to be necessary to accommodate the Project's storm drain impacts (as discussed in Recital D above) and the cost to construct the Oversized Storm Drain (said difference to be called the "Reimbursable Expenses.") Before starting construction of the Oversized Storm Drain, Developer will submit adequate documentation of the estimated cost to construct the storm drain necessary to accommodate the Project's storm drain impacts. The City will review such documentation for approval within thirty (30) days of the submittal. The Developer will not be required to submit three (3) bids for such estimate.

To obtain reimbursement under the City's Reimbursement Procedure, the Developer will first submit at least three bids for completion of the work to the City Engineer. After approval of a bid amount by the City Engineer, the Developer will construct the Oversized Storm Drain and will then submit, including incrementally, adequate documentation of both the total costs of the Oversized Storm Drain and the amount of Reimbursable Expenses. The City will review such documentation of the total costs and the Reimbursable Expenses and approve or disapprove of those amounts. If the documentation of the total costs and the Reimbursable Expenses is not approved or disapproved within thirty (30) days of submittal by the Developer, then the amounts reflected in Developer's documentation will be deemed approved. In the event that the City disapproves of Developer's submitted statement of total costs and the amount of Reimbursable Expenses as discussed above within thirty (30) days, then either party may seek to resolve their dispute over such total costs and Reimbursable Expenses through any appropriate legal or equitable action.

2.2 Reimbursement of Initial Portion of Reimbursable Expenses.

City shall initially reimburse to Developer, including incrementally, the first Seventy-Five Thousand Dollars (\$75,000.00) of Reimbursable Expenses in cash no later than thirty-five (35)

days after Developer submits adequate documentation of such expenses for construction, including incrementally, of the Oversized Storm Drain and all lien claims are paid and released or statutory lien release bonds are provided. Such initial \$75,000 reimbursement will be from the City's Drainage Fund, and will be applied toward the total amount of Reimbursable Expenses.

2.3 Interest on Reimbursable Expenses.

Pursuant to Government Code Section 66486, Developer is entitled to interest on the Reimbursable Expenses, at the City's Portfolio rate. Interest will accrue at the rate of three and one-half percent (3 ½%) per annum, compounded daily, based upon a 365 day year, on the unpaid portion of the Reimbursable Expenses. Each year, an annual calculation and payment of interest will be submitted to the City by Developer and added to the Reimbursable Expenses, to be paid by the City under paragraphs 1 and 2.1 above. Such amount will satisfy all obligations or requirements under the law for the payment of interest on the Reimbursable Expenses.

2.4 Developer Assignment Rights.

Developer shall have the right to assign all of its rights and obligations set forth in this Agreement to any successor-in-interest of Developer's right, title, and interest in and to the Property and/or the Project. In the event of any such transfer or assignment by Developer prior to completion of the Oversized Storm Drain, Developer and its transferee or assignee shall submit to City an executed written assignment and assumption agreement in a form reasonably acceptable to the City Attorney. An assignment or transfer by Developer shall not require the approval or consent of the City.

3. MISCELLANEOUS PROVISIONS

3.1 Notices.

All notices under this Agreement shall be in writing and shall be deemed to have been duly given on the date received. Notices may be delivered by first class mail, registered or certified, postage prepaid, and properly addressed to the Party at its address set forth below, or any other address that any Party may designate by written notice to the others:

Developer:

NEWPORT PROPERTIES, LLC
c/o Province Group LLC
1601 Dove Street, Suite 230
Newport Beach, CA 92660
Attn: Frank Eckert
Telephone: (949) 553-4800
Facsimile: (949) 553-4810

With a copy to:

The Stroot Family
C/o Christopher E. Stroot
P.O. Box 16153
San Diego, CA 92176

City:

City of Escondido
201 North Broadway
Escondido, CA 92025-2798
Attn: Ronald W. Anderson, City Engineer
Telephone: (760) 839-4572
Facsimile: (760) 839-4597

3.2 Entire Agreement.

This Agreement constitutes the entire agreement among the Parties pertaining to the subject matter contained in it, supersedes all prior and contemporaneous agreements, representations, and understandings of the Parties with respect to such subject matter and with respect to any other agreements relating to the Property. Amendment.

3.3 Amendment.

The provisions of this Agreement may be waived, altered, amended, superceded, replaced, in whole or in part, only by a written document executed by all Parties to this Agreement.

NEWPORT PROPERTIES LLC,
a Delaware limited liability company

By: 

Mark J. Kerslake

Its: *Sole Member*

CITY OF ESCONDIDO

By: 

Ronald W. Anderson, City Engineer

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY
JEFFREY R. EPP, City Attorney

By: 

in Table 7-13. It is estimated that the use of detention/retention basins can reduce the cost of facilities to serve existing development by approximately \$15,000,000. Construction of drainage facilities with street improvement projects is estimated to account for approximately \$10,000,000 in the cost of facilities to serve existing development. The use of Assessment Districts and the Stormwater Fee are estimated to account for approximately \$4,000,000 and \$1,000,000 respectively in the cost of facilities to serve existing development. The amounts described above account for \$44,000,000 which is the total cost of the unfunded share of drainage deficiencies.

H. Reimbursement for Construction of Eligible Projects

A property owner/developer may be eligible for reimbursement for constructing one or more of the drainage improvements which are included in the Drainage Master Plan. Upon application by a property owner/developer for reimbursement the following information and requirements shall be considered:

- (a). Detailed description of the project with a preliminary cost estimate.
- (b). Requirements of property owner/developer:
 - prepare plans and specifications for approval by the City;
 - secure and dedicate any right-of-way required for the project;
 - secure all required permits, environmental clearances necessary for construction of the project;
 - provide performance bonds;
 - pay all City fees and costs.
- (c). The property owner/developer shall provide all necessary funds to construct the project. The City will not be responsible for any construction costs unless agreed to in advance.
- (d). The property owner/developer shall secure at least three (3) qualified bids for the construction. Any extra work or charges during construction shall be justified and documented.
- (e). When all work has been completed to the satisfaction of the City, the property owner/developer shall submit verification to the City of payments made for the construction. The Director of Public Works shall make the final determination on expenditures eligible for reimbursement.
- (f). The City shall inspect all construction and verify quantities, in accordance with the City and State Code to ensure that the final improvement complies with all applicable standards and is constructed to the satisfaction of the City Engineer.
- (g). A portion of Drainage Facilities Fees collected each fiscal year shall be used as reimbursement for eligible improvements constructed by developers. Initially, ten (10) percent of the fees collected during fiscal year

1995-96 shall be used to provide reimbursement for eligible drainage projects constructed during the year. Any remaining balance of the ten (10) percent shall be returned to the Drainage Facilities Fund to be used for City capital improvement drainage projects.

- (h). The owner/developers name shall be placed on a list of all projects which are eligible for reimbursement on a year-to-year basis. The list shall be updated each year and the owner/developer shall be required to resubmit a request in the event they did not receive the maximum reimbursement during the previous year. The list shall be updated each year for new construction completed during the previous fiscal year.
- (i). Reimbursement shall be distributed in direct proportion to the amount of eligible projects submitted. For example, if in a given fiscal year \$100,000 is available for distribution and \$1,000,000 in projects is eligible for reimbursement, each owner/developer is paid ten (10) percent of their respective amounts, and the balance can be carried over to the next fiscal year, upon resubmittal by the owner/developer.
- (j). Reimbursement shall not be allowed in excess of the difference between the cost to construct the facility for existing development and ultimate development conditions as shown in Tables 6.4 and 6.5 or otherwise determined.

**ASSIGNMENT AND ASSUMPTION OF DRAINAGE FACILITIES IMPROVEMENT
AND REIMBURSEMENT AGREEMENT**

This ASSIGNMENT AND ASSUMPTION OF DRAINAGE FACILITIES IMPROVEMENT AND REIMBURSEMENT AGREEMENT ("Assignment") is made and entered into as of this 7th day of March, 2003, by and between NEWPORT PROPERTIES, LLC, a Delaware limited liability company ("Assignor"), and CITRUS AVE. PARTNERS, LLC, a California limited liability company ("Assignee").

RECITALS:

A. Assignor and the City of Escondido ("City"), entered into that certain Drainage Facilities Improvement and Reimbursement Agreement dated February 12, 2003 (the "Reimbursement Agreement") with respect to that certain real property consisting of approximately 4.96 acres of vacant land located at the northwest corner of Citrus Avenue and East Valley Parkway in the City of Escondido, California, having an Assessor Parcel No. 231-022-53 and a street address of 403 N. Citrus Avenue (the "Property").

B. Concurrently with the date hereof, Assignee has acquired title to the Property and as a result thereof, Assignor desires to assign and transfer to Assignee all of Assignor's right, title and interest in and to the Reimbursement Agreement, and Assignee desires to accept such assignment and to assume and perform all of Assignor's responsibilities, covenants and obligations in and under the Reimbursement Agreement.

NOW, THEREFORE, in consideration of the above recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows, effective as of the date hereof:

1. Assignor hereby assigns and transfers to Assignee all of Assignor's right, title and interest in and to the Reimbursement Agreement.

2. Assignee hereby accepts the above assignment and expressly assumes and covenants to keep, perform, fulfill and discharge all of the terms, covenants, conditions, responsibilities and obligations required to be kept, performed, fulfilled and discharged by Assignor under the Reimbursement Agreement and hereby agrees to indemnify, defend and hold harmless Assignor with respect to any and all matters arising from or relating to the Reimbursement Agreement, and as a result of such assumption, Assignor is hereby released and relieved of its obligations under the Reimbursement Agreement.

3. This Assignment shall be construed and governed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the date set forth above.

"Assignor"

NEWPORT PROPERTIES LLC,
a Delaware limited liability company

By: _____

Name: Mark J. Kerslake

Its: Sole Member

"Assignee"

CITRUS AVE. PARTNERS, LLC,
a California limited liability company

By: Newport Properties, LLC a Delaware limited liability
company, its Manager

By: _____

Mark J. Kerslake, its Sole Member