

SUBDIVISION AGREEMENT

Parcel Map Number 20819

THIS AGREEMENT is entered into as of this _____ day of _____ 20__ by and between DMP 8th Street, LLC (hereinafter referred to as "Subdivider") and the CITY OF UPLAND, a municipal corporation (hereinafter referred to as the "City").

A. Recitals

- (i) The City approved a Tentative Parcel Map pursuant to the California Subdivision Map Act as set forth in California Government Code Section 66410 et. seq. ("Map Act") identified as Tentative Parcel Number 20819 in the City of Upland, State of California; and
- (ii) Subdivider seeks approval of a Final Map under the Map Act identified as Final Parcel Map Number 20819; and
- (iii) Subdivider and the City are concurrently entering into that certain Agreement for Cash in Lieu of Construction of Off-Site Public Improvements (the "In Lieu Agreement").

B. Agreement

It is agreed by and between the parties hereto as follows:

1. In consideration of the City's approval of and filing Tentative Subdivision Parcel Map Number 20819 and Final Parcel Number 20819, Subdivider undertakes and agrees that it will, at Subdivider's sole cost and expense, design, construct and install all the improvements in accordance with the plans, specifications on file with the City, incorporated herein and made a part hereof, and including all conditions of approval required by the Planning Commission and City Council of the City of Upland, other than the "Improvements" identified in the In Lieu Agreement (hereinafter, the "Improvements").

2. Subdivider also undertakes and agrees upon the same consideration to design, construct and install or cause to be designed, constructed and installed, all improvements in accordance with the ordinances and regulations of the City, and to do all other and further acts required of it pursuant to this Agreement (other than the Improvements identified in the In Lieu Agreement).

3. Subdivider agrees in connection therewith to pay or cause to be paid all amounts becoming due to contractors, subcontractors, and persons renting equipment or furnishing labor or materials to the foregoing Final Parcel with respect to such improvements (other than the Improvements identified in the In Lieu Agreement).

4. Subdivider agrees to enter into the separate In Lieu Agreement for off-site Improvements that will be binding upon the parties.

5. Subdivider undertakes and agrees that all of the work of improvement not covered by the In Lieu Agreement shall be completed within three hundred sixty five (365) days from the date of execution of this Agreement.

6. Should Subdivider fail to comply with any of the terms or provisions of this Agreement, Subdivider shall be liable to the City for the reasonable cost of any work or improvements not completed or improperly done or performed. In the event of any such failure, the City shall give to Subdivider written notice thereof. Unless the work or improvements covered by said notice, including defective work

and improvements, are commenced by Subdivider within fifteen (15) days of the date of said notice and diligently prosecuted to completion, the City may at its option:

a) Collect from Subdivider the reasonable estimated cost of the work and improvements not so done and performed by Subdivider, and complete said work and improvements; or

b) The City may complete said work and improvements not so completed by Subdivider, and thereafter Subdivider shall reimburse the City for the reasonable costs and expenses incurred by the City in completing said work and improvements.

The City may change any election prior to trial of any lawsuit, and prior thereto no election of remedies shall be binding upon the City. In either event, there shall be included in said "costs and expenses," the reasonable overhead expenses of the City. In addition to the foregoing, Subdivider shall be liable to the City for reasonable attorneys' fees and court costs incurred by the City in enforcing the obligations of Subdivider under this Agreement.

7. All slope banks over three (3) feet in vertical height within said Parcel Map shall be landscaped with landscaping approved by the City Engineer. Sprinklers shall be installed on all slopes over three (3) feet in vertical height along arterial streets and shall be of a type and according to a sprinkler plan approved by the City Engineer, with sprinkler turn-ons at the tops of the slopes, and connected with the remainder of the water systems of the lots of which such slopes are a part. This Section 7 shall not apply to the extent any of the work and improvements in this paragraph are Improvements pursuant to the In Lieu Agreement.

8. Subdivider shall, at its sole cost and expense, secure and furnish to the City, bonds in a form approved by the City, executed by a corporation authorized to transact surety business within the State of California, of deposits, for the following amounts and purposes:

(a) Deleted [See In Lieu Agreement].

(b) A cash deposit in the amount of \$ 10,000 securing the setting of monuments.

9. Acceptance of any work or improvements by the City shall not constitute an acknowledgment by the City that the same are properly done or performed, except as to any items or matters readily apparent from an inspection thereof. Except as to such matters so readily apparent, Subdivider shall repair any defects which occur in the work of improvements within a one (1) year period thereof following acceptance by the City. This paragraph 9 shall not apply to the Improvements identified in the In Lieu Agreement.

10. Deleted.

11. Except to the extent of the negligence of City, its elected officials, officers agents and employees, Subdivider hereby agrees to indemnify, defend 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 attorneys fees and all other claims, whether groundless or not, arising out of or related to the negligence or misconduct of Subdivider, its officers, agents, employees, consultants, or subcontractors in connection with performing labor, transporting and/or supplying material, designing, constructing or installing

the improvements contemplated in this Subdivision Agreement to be completed by Subdivider.

12. All notices to Subdivider may be sent to DMP 8th Street 250 Newport Center Drive, Suite 300, Newport Beach, California, 92660 or at such other address of which the City shall actually receive notice in writing specifically calling attention to this Agreement.

13. In the event of any conflict between any of the terms and provisions of this Agreement and the terms and any of the terms and provisions of the In Lieu Agreement, the terms and provisions of the In Lieu Agreement shall apply.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

DMP 8th Street, LLC

BY



Mark A. Perlmutter, Manager

CITY OF UPLAND, a municipal Corporation

BY



Michael Blay, City Manager

ATTEST



Keri Johnson, City Clerk