

RECORDING REQUESTED BY:

Department of Public Works
CITY OF CARLSBAD
1635 Faraday Avenue
Carlsbad, CA 92008

WHEN RECORDED MAIL TO:

City Clerk
CITY OF CARLSBAD
1200 Carlsbad Village Drive
Carlsbad, CA 92008

Space above this line for Recorder's use.

CITY OF CARLSBAD
NEIGHBORHOOD IMPROVEMENT AGREEMENT

Permit No. CB042027

Parcel No. 207-063-01

NIA No. 04022

THIS AGREEMENT (the "Agreement") is made this _____ day of _____, 20__ by and between the City of Carlsbad, a municipal corporation (the "City"), and Craig R. Griswold and Robin J. Griswold, husband and wife as community property (the "Owner").

RECITALS

1. Owner is the owner of real property located in the City of Carlsbad, California and described in Exhibit A attached hereto and incorporated herein by this reference (the "Property").
2. Owner has applied to the City for issuance of the above identified permit to authorize the development of the Property (the "Development Permit").
3. The City has determined that additional public improvements may be necessary in the future in order to allow Owner to proceed with development and, therefore, the Property would be suitable for development as requested by Owner if certain public improvements as described in Exhibit B attached hereto and incorporated herein by this reference (the "Improvements") are constructed.

4. The Municipal Code of the City of Carlsbad requires the dedication of the necessary rights-of-way for and the construction by Owner of the Improvements or an agreement for the same for certain developments as a condition of approval of the Development Permit for certain building projects such as that proposed by owner.
5. The Owner has requested that the City approve the Development Permit prior to the construction of the Improvements.
6. The City is willing to approve the Development Permit prior to the construction of the Improvements as requested by the Owner if Owner approves of and consents to the formation of an assessment district to include the Property for the purpose of financing the construction of the Improvements.
7. No assessment district shall be formed until completion of the Alternative Streets Design process adopted by resolution of the City Council.

NOW, THEREFORE, IT IS AGREED between the parties as follows:

Section 1. Recitals. The foregoing recitals are true and correct.

Section 2. City's Obligations. The City shall approve the Development Permit promptly following the execution of this Agreement by the Owner and compliance with all applicable City ordinances and other requirements.

Section 3. Owner's Obligations.

Section 3.01. Owner's Consent to and Approval of Formation of an Assessment District and Levy of Assessments. In consideration for the approval of the Development Permit prior to the completion of the construction of the Improvements, Owner hereby consents to and approves of:

A. the inclusion of the Property in an assessment district which may be formed by the City Council of the City for the purpose of financing the construction of the Improvements (the "Assessment District")

B. the levy of an assessment against the Property (the "Assessment") in an amount not to exceed the estimated cost of construction of the Improvements, together with the estimated incidental costs of such construction and the estimated costs of formation of the Assessment District and issuance of any bonds to be issued to represent the Assessment. The foregoing costs constituting the Assessment are set forth in Exhibit C attached hereto and incorporated herein by this reference. The Assessment shall be subject to adjustment for inflation from the date first written hereinabove until the date the Assessment is confirmed and levied by the increase in the Construction Cost Index for Los Angeles as contained in the Engineering News Record or, if the Construction Cost Index for Los Angeles is no longer published, an equivalent index reasonably selected by the City Engineer. In granting the consents and approvals set forth in this

Section 3., Owner is acting for and on behalf of Owner, the Owner's successors, heirs, assigns, and/or transferees and intends that such consents and approvals shall be binding upon each and every such person.

Except as otherwise provided for in this Agreement, the consents and approvals given by Owner shall be irrevocable.

Section 3.02 Owner's Grant of a Proxy to the City for Assessment Ballot Procedure. Owner hereby grants to the City a proxy to act for and on behalf of Owner, the Owner's successors, heirs, assigns, and/or transferees for the limited purpose of completing and submitting an assessment ballot in support of the levy of the Assessment in the proceedings to form the Assessment District.

In granting such proxy, Owner is acting for and on behalf of Owner, the Owner's successors, heirs, assigns, and/or transferees and intends that such proxy shall be binding upon each and every such person.

Except as otherwise provided for in this Agreement, the proxy granted by Owner shall be irrevocable.

Section 4. Owner's Representations and Waiver of Rights

Section 4.01 Owner's Representations. Owner hereby represents as follows:

A. Owner understands and acknowledges that:

1. Article XIID of the Constitution of the State of California ("Article XIID") and the Proposition 218 Omnibus Implementation Act (Government Code Section 53750 and following) (the "Implementation Act") (Article XIID and the Implementation Act may be referred to collectively as the "Assessment Law") establish certain procedures and requirements which apply when any agency such as the City considers the levy of assessments upon real property.

2. The requirements established by the Assessment Law include the following:

a. The proportionate special benefit derived by each parcel to be assessed must be determined in relationship to the entirety of the capital cost of the improvement for which the assessment is to be levied;

b. No assessment may be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel from the improvement for which the assessment is to be levied;

c. Only special benefits are assessable; and

d. Parcels within an assessment district that are owned or used by any agency, the State of California or the United States of America shall not be exempt from assessment unless the agency proposing to levy the assessment can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit from the improvement for which the assessment is being levied.

3. The procedures established by the Assessment Law include:

a. The agency which proposes to levy an assessment (the "Agency") shall identify all parcels which will have a special benefit conferred upon them from the improvement for which the assessment is proposed to be levied and upon which an assessment is proposed to be imposed.

b. All assessments must be supported by a detailed engineer's report prepared by a registered professional engineer certified by the State of California.

c. Prior to levying a new assessment, the Agency must give written notice by mail (the "Assessment Notice") to the record owner, i.e., the owner of a parcel whose name and address appears on the last equalized secured property tax roll, of each parcel proposed to be assessed. The Assessment Notice must include: (i) the total amount of the proposed assessment chargeable to the entire assessment district; (ii) the amount chargeable to the record owner's parcel; (iii) the duration of the assessment payments; (iv) the reason for the assessment; (v) the basis on which the amount of the proposed assessment was calculated; and (vi) the date, time and location of a public hearing on the proposed assessment.

d. The Assessment Notice must contain an assessment ballot that includes a place where the person returning the assessment ballot may indicate his or her name, a reasonable identification of the parcel, and his or her support or opposition to the proposed assessment. The Assessment Notice must also include, in a conspicuous place, a summary of the procedures for the completion, return and tabulation of assessment ballots.

e. At the time, date and place stated in the Assessment Notice, the Agency shall conduct a public hearing upon the proposed assessment. At such public hearing, the Agency shall consider all objections or protests, if any, to the proposed assessment. At such public hearing, any interested person shall be permitted to present written or oral testimony.

f. At the conclusion of the public hearing, the Agency shall tabulate the assessment ballots submitted, and not withdrawn, in support or opposition to the proposed assessment. If there is a majority protest against the imposition of a new assessments, the Agency may not impose the assessment. A majority protest exists if the assessment ballots submitted, and not withdrawn, in opposition to the proposed assessment exceed the assessment ballots submitted, and not withdrawn, in favor of the proposed assessment. In tabulating the assessment ballots, the assessment ballots shall be weighted by the amount of the proposed assessment to be imposed upon each parcel for which an assessment ballot was submitted.

4. The description of the requirements and procedures established by and contained in the Assessment Law set forth above are intended only to summarize certain of such requirements and procedures.

5. The City would not agree to issue the Development Permit prior to the construction of the Improvements unless the City is assured that it will be legally able to impose the Assessment on the Property. The assurance of the City's legal ability to impose the Assessment on the Property is both a material inducement to and a material consideration for the City to enter into this Agreement and agree to issue the Development Permit prior to the construction of the Improvements.

B. Owner has had a reasonable opportunity to thoroughly read and review the Assessment Law in its entirety, and has further had a reasonable opportunity to consult with Owner's attorney regarding the Assessment Law and the terms and conditions of this Agreement.

Section 4.02 Waiver of Rights

A. In consideration of the approval by the City of the Development Permit prior to the construction of the Improvements, Owner hereby waives Owner's rights under the Assessment Law to:

1. object or protest the ordering by the City of the construction of the Improvements and the imposition of the Assessment at such public hearing so long as the amount of the Assessment does not exceed the amount set forth in Exhibit C hereto adjusted for inflation pursuant to Section 3.01B above;

2. submit an assessment ballot in support of or in opposition to the imposition of the Assessment so long as the amount of the Assessment does not exceed the amount set forth in Exhibit C hereto adjusted for inflation pursuant to Section 3.01B above; and

3. file or bring any protest, complaint or legal action of any nature whatsoever challenging the validity of the proceedings to form the Assessment District and/or the validity of the imposition of the Assessment on the Property.

B. In order that the City may be assured of its ability to legally impose the Assessment on the Property and therefore be willing to enter into this Agreement and agree to approve the Development Permit prior to the construction of the Improvements, Owner represents and warrants that Owner has knowingly, intelligently and voluntarily waived for and on behalf of Owner, Owner's successors, heirs, assigns and/or transferees, each and every one of the rights specified in Section 4.02A above.

C. Nothing in this waiver of rights section is intended to waive the owner's ability to participate in Alternative Streets Design process.

Section 5. Alternative Satisfaction of Owner's Obligations

Owner's obligations under Section 3 above may be satisfied by paying the amount set forth in Exhibit "C" adjusted for inflation at any time prior to the formation of the assessment in which case a release of this Agreement shall be recorded in the office of the San Diego County Recorder.

Section 6. General Provisions

Section 6.01 Conflict with Other Agreements or Requirements of the City. Except as specifically provided in this Agreement, nothing contained herein shall be construed as releasing Owner from any condition of development of the Property or requirement imposed by any other agreement with or requirement of the City.

Section 6.02 General Standard of Reasonableness. Any provision of this Agreement which requires the consent, approval, discretion or acceptance of any party hereto or any of their respective employees, officers or agents shall be deemed to require that such consent, approval or acceptance not be unreasonably withheld or delayed, unless such provision expressly incorporates a different standard.

Section 6.03 Entire Agreement; Amendment. This Agreement contains all of the agreements of the parties hereto with respect to the matters contained herein and no prior or contemporaneous agreement or understandings, oral or written, pertaining to any such matters shall be effective for any purpose. No provision of this Agreement may be modified, waived, amended or added to except by a writing signed by the party against which the enforcement of such modification, waiver, amendment or addition is or may be sought.

Section 6.04 Notices. Any notice, payment or instrument required or permitted by this Agreement to be given or delivered to either party shall be deemed to have been received when personally delivered or seventy-two (72) hours following deposit of the same in any United States Post Office in California, registered or certified, postage prepaid, addressed as follows:

Owner: Craig R. Griswold & Robin J. Griswold
3846 Skyline Rd
Carlsbad CA 92008

City: City of Carlsbad
Attn: City Manager
1200 Carlsbad Village Dr
Carlsbad CA 92008

Each party may change its address for delivery of notice by delivering written notice of such change of address to the other party.

Section 6.05 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

Section 6.06 Governing Law. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California.

Section 6.07 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by any other party, or the failure by a party to exercise its rights under the default of any other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by any other party with the terms of this Agreement thereafter.

Section 6.08 Singular and Plural; Gender. As used herein, the singular of any work includes the plural, and terms in the masculine gender shall include the feminine.

Section 6.09 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 6.10 Construction of Agreement. This Agreement has been reviewed by legal counsel for both the City and the Owner and shall be deemed for all purposes to have been jointly drafted by the City and the Owner. No presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement. The language in all parts of this Agreement, in all cases, shall be construed as a whole and in accordance with its fair meaning and not strictly for or against any party and consistent with the provisions hereof, in order to achieve the objectives of the parties hereunder. The captions of the sections and subsections of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction.

Section 6.11 Recitals, Exhibits. Any recitals set forth above and any attached exhibits are incorporated by reference into this Agreement.

Section 6.12 Authority of Signatories. Each signatory and party hereto hereby represents and warrants to the other party that it has legal authority and capacity and direction from its principal to enter into this Agreement, and that all resolutions and/or other actions have been taken so as to enable such party to enter into this Agreement.

Section 7. Covenant Running with the Land. The parties hereto intend that the burdens and obligations of the Owner under Section 3 above constitute a covenant running with the land and that such covenant shall be binding upon all transferees of the Property.

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EXHIBIT C
THE ASSESSMENT

	<i>Quantity</i>		<i>Cost</i>
PAVING	3000	SF	\$3,900
BASE	3000	SF	\$2,100
SIDEWALK	670	SF	\$2,680
CURB & GUTTER	150	LF	\$2,175
PAVEMENT PREP.	3000	SF	\$1,200
CLEAR & GRUB	1340	SF	\$469
UNDERGROUND UTL	150	LF	\$45,000
SEWER		LF	\$0
WATER		LF	\$0
FIRE HYDRANT		EA	\$0
STREET LIGHT		EA	\$0
DRIVEWAY APPROACH	160	SF	\$680
SUBTOTAL			\$58,204
DESIGN		LS	\$8,731
CONTINGENCY (20%)			\$11,641
ASSESS. DISTRICT COST			\$31,390
PLAN CHECK			\$3,814
INSPECTION			\$1,200
TOTAL			\$114,979

