

ATTACHMENT 3
NON-SUBDIVISION IMPROVEMENT AGREEMENT

NON-SUBDIVISION IMPROVEMENT AGREEMENT
TO SATISFY CONDITIONS
RESOLUTION NO. 5340
A RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF YORBA LINDA APPROVING TENTATIVE
PARCEL MAP 2010-138 - PETERSON

Note: This agreement to a single lot, prior to subdivision.

1. PARTIES AND DATE.

This Agreement is entered into as of this 21 day of April, 2020, ("Effective Date") by and between the City of Yorba Linda, a California municipal corporation ("City") and **Robert Kerry Peterson and Debra Lynn Peterson**, Trustees of The Kerry and Debra Peterson Trust Dated 9/29/1998, with its principal office located at 4995 Greenhaven Street, Yorba Linda, CA 92887 ("Applicant"). City and Applicant are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

2. RECITALS.

2.1 Applicant submitted to the City for its approval **Tentative Parcel Map 2010-138** (sometimes referred to herein as "Land Use Approvals") for real property located within City, a full and accurate description of which is attached hereto as Exhibit "A" and incorporated herein by this reference ("Property"). Applicant owns the Property and plans to construct certain improvements to the Property incident to those Land Use Approvals, a full and accurate description of which is attached hereto as Exhibit "B" and incorporated herein by this reference ("Improvements"). The Property is identified in City records as 5641 Lakeview Avenue, APN: 343-291-12.

2.2 On the 27th day of March, 2019, the Yorba Linda Planning Commission conditionally approved the Land Use Approvals for **Tentative Parcel Map 2010-138 at 5641 Lakeview Avenue, APN: 343-291-12** which require Applicant to enter into this Agreement and furnish to City adequate security for the completion of the Improvements to the Property to satisfy the conditions of approval for the Land Use Approvals as required by the laws of the State of California, the City of Yorba Linda Municipal Code, or certain ordinances, resolutions, codes, standards, or policies of the City (hereinafter collectively referred to as "City Ordinances").

2.3 Applicant and City desire to enter into this Agreement for the timely construction and completion of the Improvements and the furnishing of security therefor, acceptable to the City Engineer and City Attorney, for the Land Use Approvals.

2.4 Applicant's execution of this Agreement and the provision of the security are made in consideration of the City's approval of the Land Use Approvals and as a condition of such approval.

3. TERMS.

3.1 Improvements. Applicant promises and agrees to construct or to cause to be constructed, at Applicant's sole cost and expense, all Improvements upon the Property as detailed in **Street Improvement Plan SI19-002 and Precise Grade Plan and Erosion Control Plan GP18-052**, as amended ("Plan"), incorporated herein by this reference and on file with the City. Applicant promises and agrees to pay all applicable fees and expenses associated with construction of the Improvements, including but not limited to, any of the City's actual costs of all plan check, report review, engineering, inspection and testing services or other service fees rendered or required.

3.2 Alterations to Improvements; Notice to Surety. If during the course of construction and installation of the Improvements the City determines that alterations to the Improvements are necessary, Applicant shall undertake such design and construction changes at its sole cost and expense as may be reasonably required by City. Any and all alterations in the plans and specifications and the Improvements to be completed may be accomplished without first giving prior notice thereof to Applicant's surety for this Agreement.

3.3 Quality of Work. The Improvements shall be engineered, constructed and completed in a skillful and workmanlike manner in accordance with all approved maps, conditions, plans, specifications, standard drawings, and special amendments thereto on file with City, as well as all applicable federal, state and local laws, ordinances, regulations, codes, standards and other requirements applicable at the time work is actually commenced.

3.4 Prior Partial Construction of Improvements. Where construction of any Improvements has been partially completed prior to this Agreement, Applicant agrees to complete such Improvements or assure their completion in accordance with this Agreement.

3.5 Construction Schedule. Unless extended in writing by amendment of this Agreement, Applicant shall fully and adequately complete or have completed the Improvements within **THREE HUNDRED AND SIXTY FIVE DAYS (365)** calendar days following the effective date of this Agreement. This Agreement shall continue in full force and effect until the Improvements have been completed and accepted by the City.

3.6 Acceptance of Improvements. If the Improvements are properly completed by Applicant and approved by City, and if they comply with all applicable federal, state and local laws, ordinances, regulations and other requirements, City shall be authorized to accept the Improvements and furnish Applicant with written notification of said acceptance.

3.7 Surety Bond. Upon the execution of this Agreement, Applicant shall provide City with a faithful performance bond on the form set forth in Exhibit "C", unless other forms are deemed acceptable by the City Engineer and the City Attorney, in the amount of **SIXTY EIGHT THOUSAND DOLLARS (\$68,000.00)** for Improvements and **TWENTY FIVE THOUSAND DOLLARS (\$25,000.00)** for onsite grading, which sum shall be not less than one hundred percent (100%) of the costs to construct the Improvements, to guarantee the faithful performance of the Improvements and all of the provisions of this Agreement. The surety shall be authorized to do business in California and shall be satisfactory to the City. The amount of the bond required hereunder is based upon an approximation of the actual cost of the Improvements; the actual amount of Applicant's obligation under this Agreement shall be the actual cost of the Improvements to be completed and accepted by the City. Upon request of the City, the amount of the bonds shall be subject to adjustment at the sole and absolute discretion of the City if the estimated cost of the Improvements changes. As part of the obligation secured by the surety and in addition to the face amount of the bonds, the surety shall also secure the administrative costs and reasonable expenses and fees, including reasonable attorney's fees and costs, incurred by City in enforcing the obligations of this Agreement. These expenses, fees and costs shall be taxed as costs and included in any judgment rendered. The surety stipulates and agrees that no change, extension of time, alteration or addition to the terms of this Agreement, the Improvements or Plan shall in any way affect its obligation on the bond. In addition, the surety waives notice of any change, extension of time, alteration or addition to the terms of this Agreement, the Improvements or the Plan for the Improvements.

3.8 Indemnification. Except for those damages caused by any acts, omissions or willful misconduct of the City, its officers, employees or agents arising out of or in connection with City's actions under the terms of this Agreement, Applicant and its surety shall defend, indemnify and hold City, its officials, officers, employees, agents and volunteers free and harmless from any and all liability from loss, damage, or injury to property or persons, including wrongful death, in any manner arising out of or incident to any acts, omissions or willful misconduct of Applicant, its officers, employees or agents arising out of or in connection with Applicant's construction of the Improvements and its performance of this Agreement, including without limitation the payment of reasonable attorneys' fees. This indemnification provision shall survive the termination or expiration of this Agreement.

3.9 Remedies Upon Default. Upon Applicant's failure to perform any of its obligations hereunder ("Default"), and at any time after any such Default, City may make a written demand upon Applicant or its surety, or both, to immediately remedy or cure any such default ("Default Notice"). If the Default is not cured within ten (10) days of such Default Notice, City may then complete all remaining work, arrange for the completion of all remaining work, and/or conduct such remedial activity as in its sole and absolute discretion it believes is required. All such work or remedial activity shall be at the sole and absolute expense and obligation of Applicant and its surety, without the necessity of giving any further notice to Applicant or surety. City's right to take such actions shall in no way be limited by the fact that Applicant or its surety may have constructed any of the required Improvements at the time of City's demand for performance. In the event City elects to

complete or arrange for completion of the remaining work and improvements, City may require all work by Applicant or its surety to cease in order to permit adequate coordination by City.

3.10 License to Enter, Inspect and Complete. For the purpose of assuring compliance with this Agreement, Applicant grants the City, its employees, independent contractors, agents and assigns, the license to enter the Property, and guarantees the City's right to reasonable access for the purpose of: (i) inspecting the progress of the Improvements throughout the term of this Agreement; and (ii) completing Improvements in the event of Default as defined in Section 3.9 ("License"). City will use good faith efforts to minimize any interference that the City's entry may have upon the Applicant's use and occupancy. The License shall remain valid until the improvements are completed to the satisfaction of the City. The ability of the City to enter the Property and complete the Improvements is of particular concern to the City, and it is because of this License the City has agreed to enter into this Agreement.

3.11 Attorney's Fees. Should either Party bring a legal action for the purpose of protecting or enforcing its rights and obligations under this Agreement, the prevailing Party shall be entitled, in addition to other relief, to the recovery of its attorney's fees, expenses and costs of suit.

3.12 Notices. All notices to be given hereunder shall be in writing and may be made either by personal delivery or by registered or certified mail, postage prepaid, return receipt requested. Mailed notices shall be addressed to the parties at the addresses listed below, but each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of two (2) days after the date of mailing.

City:
City of Yorba Linda
4845 Casa Loma Avenue
Yorba Linda, CA 92886
Attn: Matthew Simonetti

Applicant:
Robert Kerry Peterson & Debra Lynn Peterson
4995 Greenhaven Street
Yorba Linda, CA 92886
(714) 981-9738

3.13 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements, either written or oral, express or implied. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

3.14 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties, and shall not be assigned by Applicant without the prior written consent of City.

3.15 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Orange County.

3.16 Waiver. The City's failure to insist upon strict compliance with any provision of this Agreement or to exercise any right or privilege provided herein, or City's waiver of any breach hereunder, shall not relieve the Applicant of any of its obligations hereunder, whether of the same or similar type. The foregoing shall be true whether the City's actions are intentional or unintentional. Applicant agrees to waive, as a defense, counterclaim or setoff, any and all defects, irregularities or deficiencies in the authorization, execution or performance of the Improvements or this Agreement, as well as the laws, rules, regulations, ordinances or resolutions of City with regards to the authorization, execution or performance of the Improvements or this Agreement.

CITY OF YORBA LINDA

By: 
Mark Pulone
City Manager

Attest:

By: 
for Marcia Brown
City Clerk

Approved as to form:

By: 
Rutan & Tucker, LLP
City Attorney

THE KERRY AND DEBRA PETERSON TRUST

By: 

Robert Kerry Peterson
Print Name

Trustee
Title

By: 

Debra Lynn Peterson
Print Name

Trustee
Title

NOTE: APPROPRIATE NOTARIAL ACKNOWLEDGMENTS OF EXECUTION BY PRINCIPAL MUST BE ATTACHED TO THE AGREEMENT.

EXHIBIT "A"

LEGAL DESCRIPTION OF APPLICANT'S PROPERTY

THAT PORTION OF LOT 2 AND THE STREETS ADJOINING IN BLOCK 29 OF THE YORBA LINDA TRACT, IN THE CITY OF YORBA LINDA, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN BOOK 5 PAGES 17 AND 18 OF MISCELLANEOUS MAPS, RECORDS OF SAID ORANGE COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF THOSE 50-FOOT STREETS ADJOINING SAID LOT 2 ON THE NORTH AND THE EAST AS SAID STREETS ARE SHOWN ON THE MAP OF SAID YORBA LINDA TRACT, AND RUNNING THENCE SOUTHERLY ALONG THE CENTER LINE OF SAID STREET ADJOINING SAID LOT ON THE EAST, 158.26 FEET TO THE TRUE POINT OF BEGINNING OF THE BOUNDARY LINE OF THE LAND DESCRIBED HEREIN; THENCE SOUTHERLY ALONG THE CENTER LINE OF SAID STREET ADJOINING SAID LOT ON THE EAST, 225.19 FEET; THENCE WESTERLY 550.86 FEET TO A POINT IN THE WESTERLY LINE OF SAID LOT DISTANT SOUTHERLY MEASURED ALONG SAID WESTERLY LINE OF SAID LOT DISTANT SOUTHERLY MEASURED ALONG SAID WESTERLY LINE 383.46 FEET FROM THE INTERSECTION OF THE NORTHERLY EXTENSION OF SAID WESTERLY LINE OF SAID CENTER LINE OF THE 50-FOOT STREET ADJOINING SAID LOT ON THE NORTH; THENCE NORTHERLY ALONG SAID WESTERLY LINE 225.19 FEET; THENCE EASTERLY 550.59 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM THE WESTERLY 200 FEET THEREOF.

APN: 343-291-12

EXHIBIT "B"

DESCRIPTION/LIST OF IMPROVEMENTS

Developer shall perform all work and furnish all materials necessary, in the opinion of the City Engineer and on his order, to complete the following Improvements in accordance with the plans and specifications on file with the City or with any changes required or ordered by the City Engineer which, in his opinion, are necessary or required to complete this work.

The Developer is required to perform the following Improvements under this Agreement:

SITE GRADING
STORM DRAIN STRUCTURES
CONCRETE CURB, GUTTER, AND SIDEWALK
STREET IMPROVEMENTS
GRADED TRAIL
TRAFFIC CONTROL
DOMESTIC SEWER SYSTEM
DOMESTIC WATER SYSTEM

EXHIBIT "C"

SURETY BOND

As evidence of understanding the provisions contained in this Agreement, and of the Applicant's intent to comply with same, the Applicant has submitted the below described security in the amounts required by this Agreement, and has affixed the appropriate signatures thereto:

PERFORMANCE BOND PRINCIPAL AMOUNT: \$68,000.00

Surety: Philadelphia Indemnity Insurance Company

Attorney-in-fact: Douglas A. Rapp

Address: 231 St. Asaph's Rd, Suite 100
Bala Cynwyd, PA 19004-0950

LABOR AND MATERIALS BOND PRINCIPAL AMOUNT: \$68,000.00

Surety: Philadelphia Indemnity Insurance Company

Attorney-in-fact: Douglas A. Rapp

Address: 231 St. Asaph's Rd, Suite 100
Bala Cynwyd, PA 19004-0950

GRADING BOND PRINCIPAL AMOUNT: \$25,000.00

Surety: Philadelphia Indemnity Insurance Company

Attorney-in-fact: Douglas A. Rapp

Address: 231 St. Asaph's Rd, Suite 100
Bala Cynwyd, PA 19004-0950

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**CIVIL CODE § 1189**

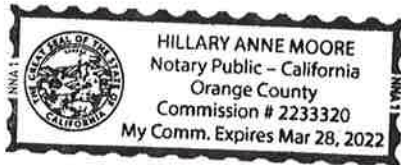
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of orange)
On April 21, 2020 before me, Hillary Anne Moore, Notary Public,
Date Here Insert Name and Title of the Officer
personally appeared Robert Kerry Peterson and
Name(s) of Signer(s)
Debra Lynn Peterson

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Hillary Anne Moore
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Improvement Agreement Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____