



City of La Quinta

CITY / SA / HA / FA MEETING DATE: July 15, 2014

ITEM TITLE: ADOPT RESOLUTION GRANTING
CONDITIONAL APPROVAL OF FINAL MAP AND
SUBDIVISION IMPROVEMENT AGREEMENTS
ASSOCIATED WITH TRACT MAP NO. 31087, DARBY
ESTATES

AGENDA CATEGORY:

BUSINESS SESSION:

CONSENT CALENDAR: 13

STUDY SESSION:

PUBLIC HEARING:

RECOMMENDED ACTION:

Adopt a resolution granting conditional approval of Final Map and Subdivision Improvement Agreements associated with Tract Map No. 31087; and authorize the City Manager to execute said Agreements.

EXECUTIVE SUMMARY:

- The developer of Darby Estates, Adom Ventures, LLC, has requested conditional approval of a Final Tract Map to allow 30 days to complete technical revision to the map, execute Subdivision Improvement Agreements (SIAs) for on-site and off-site improvements, and pay all required fees.
- Final Map approval is a ministerial action based on the developer meeting all requirements of the conditions of approval for the Tentative Map or by providing agreements and securities for those conditions yet to be met.

FISCAL IMPACT:

None. Bonds of sufficient value will be submitted to secure the incomplete improvements prior to approval of the Final Map.

BACKGROUND/ANALYSIS:

Darby Estates is a residential development located on the south side of Darby Road east of Washington Street (Attachment 1). The developer requests the City Council's conditional approval of the Final Map (Attachment 2) and SIAs (Attachment 3). This will allow the developer 30 days to complete all requirements including making technical corrections to the map, providing securities and executed SIAs for all required improvements, and paying all necessary fees before the Final Map can be recorded. If the developer fails to complete

these items within 30 days, the map will be rescheduled for City Council consideration only after the required items have been received. The developer has started grading but most of the on-site improvements have not been completed. Also, the off-site improvements including the widening of Darby Road have not been started.

Tentative Tract Map No. 31087 was approved at a Planning Commission public hearing on July 27, 2004.

ALTERNATIVES:

Approval of the Final Map is a ministerial action that is required after the developer has satisfactorily completed all conditions of approval. Therefore, staff does not recommend an alternative action.

Report prepared by: Edward J. Wimmer, P.E., Principal Engineer
Report approved for submission by: Timothy R. Jonasson, P.E.
Public Works Director/City Engineer

Attachments: 1. Vicinity Map
 2. Tract Map 31087
 3. SIAs

RESOLUTION NO. 2014 -

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LA QUINTA, CALIFORNIA, GRANTING CONDITIONAL APPROVAL OF THE FINAL MAP AND SUBDIVISION IMPROVEMENT AGREEMENTS ASSOCIATED WITH TRACT MAP NO. 31087 AND AUTHORIZING A TIME EXTENSION FOR SATISFACTORY COMPLETION OF THE CONDITIONAL REQUIREMENTS TO VALIDATE THE APPROVAL

WHEREAS, the City Council conducts only two regular meetings per month and the time interval between these meetings occasionally creates an undue hardship for business enterprises and individuals seeking approval of subdivision maps; and

WHEREAS, the City Council, as a matter of policy, allows a subdivider to have City staff present a map for consideration of approval when the requisite items necessary for a final map approval are nearly, but not completely, finished thus yielding to the subdivider additional production time for preparation of those items; and

WHEREAS, the subdivider has demonstrated to City staff and the City Council that it has made sufficient progress with items required for final map approval, and it is reasonable to expect the subdivider to satisfactorily complete the items, including City staff review time, within thirty (30) days without adversely impacting other ongoing work commitments of City staff; and

WHEREAS, Section 66458(b) of the Subdivision Map Act grants the City Council broad authority to authorize time extensions regarding final map approval, or disapproval, upon receiving it for consideration; and

WHEREAS, the City Council relies on City staff to review all required items for conformance with relevant requirements, and it is therefore appropriate for the City Council to approve the final map subject to review and confirmation of the required items by City staff within a reasonable period of time.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of La Quinta, California, as follows:

SECTION 1. The Final Tract Map 31087 is conditionally approved provided the subdivider submits all required items on or before August 15, 2014.

SECTION 2. The City Council's approval of the final map shall not be considered valid until the City Engineer has signed the map indicating that it conforms to the tentative tract map, the Subdivision Map Act, and all ordinances of the City.

SECTION 3. The City Engineer shall withhold his signature from the map until the subdivider has completed the following requirements and any other requirements not expressly described here to the City Engineer's satisfaction:

- A. Finalize the final tract map and obtain all necessary signatures.
- B. Provide bond securities specified in the Subdivision Improvement Agreements.
- C. Payment of Quimby fees.

SECTION 4. The City Clerk shall withhold affixing the City Seal to the map title page, along with her attesting signature, until the City Engineer has signed the map.

SECTION 5. The time extension for satisfying the requirements of the conditional approval for this final map shall expire when City offices close for regular business on August 15, 2014. If the subdivider has not satisfied the requirements in Section 3, herein, by the expiration deadline, the final map shall be considered disapproved. Disapproval does not deny any rights the subdivider may have under the Map Act to resubmit the final map for approval, or disapproval.

PASSED, APPROVED and ADOPTED at a regular meeting of the La Quinta City Council held on this 15th day of July 2014, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

DON ADOLPH, Mayor
City of La Quinta, California

ATTEST:

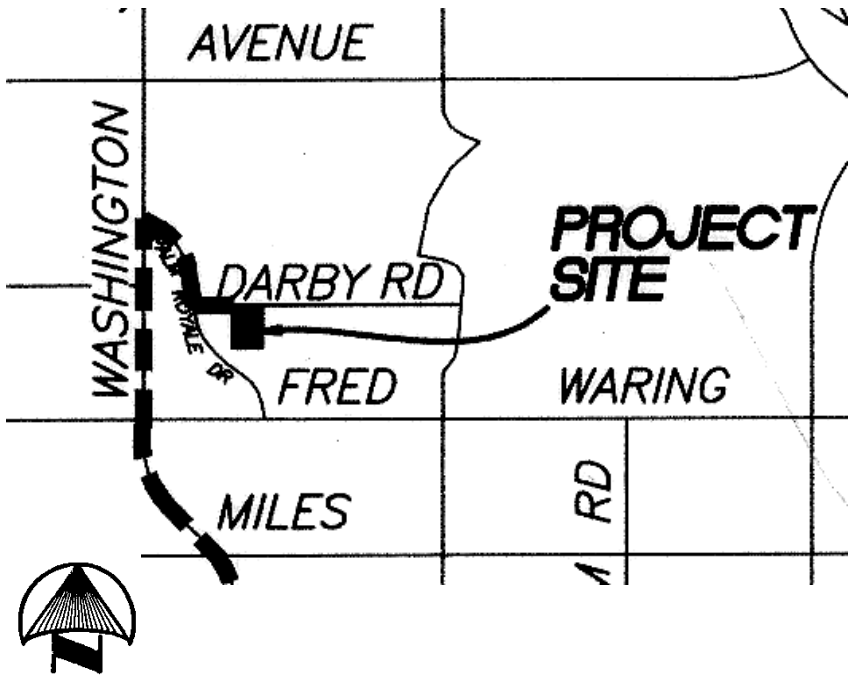
SUSAN MAYSELS, City Clerk
City of La Quinta, California

(CITY SEAL)

APPROVED AS TO FORM:

WILLIAM H. IHRKE, City Attorney
City of La Quinta, California

TRACT MAP NO. 31087



VICINITY MAP

NOT TO SCALE

IN THE CITY OF LA QUINTA COUNTY OF RIVERSIDE, STATE OF CALIFORNIA
TRACT MAP NO. 31087

BEING A SUBDIVISION OF LOT 84 AS SHOWN ON RECORD OF SURVEY FILED IN BOOK 15, PAGE 39 OF RECORDS OF SURVEY, BEING ALSO A PORTION OF THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF SECTION 18, TOWNSHIP 6 SOUTH, RANGE 7 EAST, SAN BERNARDINO MERIDIAN

RECORDERS STATEMENT

FILED THIS _____ DAY OF _____, 2014, AT _____ AM / PM
IN BOOK _____ OF MAPS, AT PAGES _____ AT THE
REQUEST OF THE CITY CLERK OF LA QUINTA, CALIFORNIA

NO. _____
FEE _____
LARRY W. WARD, COUNTY ASSESSOR-CLERK-RECORDER

BY: _____ DEPUTY
SUBMISSION GUARANTEE: FIRST AMERICAN TITLE COMPANY

TAX COLLECTOR'S CERTIFICATE

I HEREBY CERTIFY THAT, ACCORDING TO THE RECORDS OF THIS OFFICE, AS OF THIS DATE, THERE ARE NO LIENS AGAINST THE PROPERTY SHOWN ON THE WITHIN MAP FOR UNPAID STATE, COUNTY, MUNICIPAL OR LOCAL TAXES OR SPECIAL ASSESSMENTS COLLECTED AS TAXES, EXCEPT TAXES OR SPECIAL ASSESSMENTS COLLECTED AS TAXES NOW A LIEN BUT NOT YET PAYABLE, WHICH ARE ESTIMATED TO BE _____

DATED: _____, 2014

BY: _____ DEPUTY
DON KENT, COUNTY TAX COLLECTOR

TAX BOND CERTIFICATE

I HEREBY CERTIFY THAT A BOND IN THE SUM OF \$ _____ HAS BEEN EXECUTED AND FILED WITH THE BOARD OF SUPERVISORS OF THE COUNTY OF RIVERSIDE, CALIFORNIA, CONDITIONED UPON THE PAYMENT OF ALL TAXES, STATE, COUNTY, MUNICIPAL OR LOCAL AND ALL SPECIAL ASSESSMENTS COLLECTED AS TAXES WHICH AT THE TIME OF FILING THIS MAP WITH THE COUNTY RECORDER ARE A LIEN AGAINST THE PROPERTY BUT NOT YET PAYABLE, AND SAID BOND HAS BEEN DULY APPROVED BY SAID BOARD OF SUPERVISORS.

DATED: _____, 2014

BY: _____ DEPUTY
KEVIN HARPER - IEM
CLERK OF THE BOARD OF SUPERVISORS

CASH TAX BOND
DON KENT
COUNTY TAX COLLECTOR

SIGNATURE OMISSIONS

PURSUANT TO SECTION 66439 OF THE SUBDIVISION MAP ACT, THE SIGNATURES OF THE FOLLOWING OWNERS OF EASEMENTS AND/OR OTHER INTERESTS HAVE BEEN OMITTED:
ONE TWENTY MUTUAL WATER CO. HOLDER OF AN EASEMENT FOR ROADS, WELLS, PIPELINES AND DITCHES AND INCIDENTAL PURPOSES, RECORDED MARCH 17, 1948 AS BOOK 894, PAGE 560 OF OFFICIAL RECORDS.

NOTARY ACKNOWLEDGMENT

STATE OF CALIFORNIA
COUNTY OF RIVERSIDE
I, _____, BEFORE ME, _____, A NOTARY PUBLIC, IN AND FOR SAID STATE, PERSONALLY APPEARED _____ WHO PROVED TO ME TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGE TO ME THAT HE/SHE/HEY/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITIE(S), 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 _____

CERTIFICATE OF ACCEPTANCE

I HEREBY CERTIFY THAT UNDER AUTHORITY GRANTED TO ME BY THE BOARD OF DIRECTORS OF THE IMPERIAL IRRIGATION DISTRICT, PER RESOLUTION NO. 15-90, DATED MARCH 22, 1990, THAT I ACCEPT ON BEHALF OF SAID DISTRICT, ITS SUCCESSORS OR ASSIGNS, THE EASEMENTS OFFERED TO IMPERIAL IRRIGATION DISTRICT AS SHOWN ON THIS MAP FOR ELECTRICAL POWER FACILITIES.

DATE THIS _____ THE DAY OF _____, 2014

BY: _____
SUPERVISOR, REAL ESTATE
IMPERIAL IRRIGATION DISTRICT

OWNERS STATEMENT

WE HEREBY STATE THAT WE ARE THE OWNERS OF THE LAND INCLUDED WITHIN THE SUBDIVISION SHOWN HEREON, THAT WE ARE THE ONLY PERSONS WHOSE CONSENT IS NECESSARY TO PASS A CLEAR TITLE TO SAID LAND, THAT WE CONSENT TO THE MAKING AND RECORDING OF THIS SUBDIVISION MAP AS SHOWN WITHIN THE DISTRICTIVE BORDER LINE.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES: LOTS "A", (CROSSETTE COURT) AND "B" (DARBY ROAD). THE DEDICATION IS TO THE CITY OF LA QUINTA FOR STREET AND PUBLIC UTILITY PURPOSES.

AS A CONDITION OF DEDICATION OF LOT "B", DARBY ROAD, THE OWNERS OF LOT 19 AND "E", ABUTTING THIS HIGHWAY AND DURING SUCH TIME WILL HAVE NO RIGHTS OF VEHICULAR ACCESS EXCEPT THE GENERAL EASEMENT OF TRAVEL. ANY CHANGE OF ALIGNMENT OR WIDTH THAT RESULTS IN THE WIDTH THEREOF SHALL TERMINATE THIS CONDITION OF ACCESS RIGHTS AS TO THE PART AFFECTED.

WE HEREBY DEDICATE TO THE CITY OF LA QUINTA AN EASEMENT TEN (10) FEET IN WIDTH SHOWN ON THIS MAP FOR PEDESTRIAN SIDEWALK PURPOSES LYING OVER LOTS "C", "D", "E", AND WITHIN LOTS 1 THROUGH 19, INCLUSIVE, AND LOT "E", AS SHOWN HEREON.

WE HEREBY DEDICATE TO THE IMPERIAL IRRIGATION DISTRICT, AN EASEMENT OVER ALL PUBLIC STREETS SHOWN ON THIS MAP AND AN ADDITIONAL TEN (10) FEET IN WIDTH ON BOTH SIDES OF AND ADJACENT TO ALL PUBLIC STREETS SHOWN ON THIS MAP FOR THE EXCAVATION, LAYING, CONSTRUCTION, INSTALLATION, MAINTENANCE, OPERATION, INSPECTION, REPAIR, REPLACEMENT, AND REMOVAL OF ELECTRICAL LINES, WIRE, CABLES, DUCTS, SUPPORT, FITTINGS, FACILITIES AND APPURTENANCES, WITH THE RIGHT OF INGRESS AND EGRESS OVER AND WITHIN SAME FOR MAINTENANCE, OPERATION, AND EMERGENCY VEHICLES.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES: DOMESTIC WATER AND SANITATION EASEMENTS OVER LOTS "A", AND "B" AND LYING WITHIN LOTS 1 THROUGH 19, INCLUSIVE, AND LOT "E", AS SHOWN HEREON. THE DEDICATION IS FOR DOMESTIC WATER AND SANITATION PURPOSES. THE EASEMENT SHALL INCLUDE THE RIGHT TO CONSTRUCT, RECONSTRUCT, LAY, RELAY, MAINTAIN, OPERATE, CONTROL, USE AND REMOVE PIPELINES, FITTINGS AND APPURTENANCES, AND TO REMOVE OBJECTS INTERFERING WITH THE CONSTRUCTION, OPERATION, AND MAINTENANCE THEREOF.

WE HEREBY RETAIN LOTS "C", "D", AND "E" FOR PRIVATE LANDSCAPING PURPOSES AND THE MAINTENANCE THEREOF UNTO OURSELVES, SUCCESSORS, ASSIGNEES, AND ALL LOT OWNERS WITHIN THIS SUBDIVISION. THE PRIVATE LANDSCAPING RIGHTS OVER LOT "E" ARE SUBSERVIENT TO THE RIGHTS OF COACHELLA VALLEY WATER DISTRICT.

WE HEREBY RETAIN LOT "F" FOR PRIVATE RETENTION BASIN PURPOSES AND THE MAINTENANCE THEREOF UNTO OURSELVES, SUCCESSORS, ASSIGNEES, AND ALL LOT OWNERS WITHIN THIS SUBDIVISION. THE RETENTION BASIN RIGHTS ARE SUBSERVIENT TO THE RIGHTS OF COACHELLA VALLEY WATER DISTRICT.

OWNERS:
ADOM VENTURES LLC, A DELAWARE LIMITED LIABILITY COMPANY

BY: _____ TITLE: _____

NOTARY ACKNOWLEDGMENT

STATE OF CALIFORNIA
COUNTY OF RIVERSIDE
I, _____, BEFORE ME, _____, A NOTARY PUBLIC, IN AND FOR SAID STATE, PERSONALLY APPEARED _____ WHO PROVED TO ME TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGE TO ME THAT HE/SHE/HEY/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITIE(S), 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 _____

SURVEYORS STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCES AT THE REQUEST OF ADOM VENTURES LLC, A DELAWARE LIMITED LIABILITY COMPANY IN MARCH 2013. I HEREBY CERTIFY THAT I AM A LICENSED SURVEYOR IN THE STATE OF CALIFORNIA AND THAT THE SURVEY DATA THAT WILL BE SET WITHIN ONE YEAR OF FILING THIS MAP WITH THE COUNTY RECORDERS OFFICE AND THAT THE MONUMENTS ARE, OR WILL BE, SUFFICIENT TO ENABLE THE SURVEY TO BE RE-TRACED, AND THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED TENTATIVE MAP. THIS SURVEY IS TRUE AND COMPLETE AS SHOWN.

DATED: _____, 2014

BY: _____
DAVID HACKER, P.L.S. 5128



CITY ENGINEERS STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THE WITHIN MAP OF PARCEL MAP 31087 CONSISTING OF 3 SHEETS; THAT THE SUBDIVISION SHOWN THEREON IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE RECORDS OF THE COUNTY OF RIVERSIDE, CALIFORNIA, AND THAT ALL ALLEGATIONS SUBJECT TO ALL PROVISIONS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCES HAVE BEEN COMPLIED WITH.

DATE: _____, 2014

BY: _____
TIMOTHY R. JONSSON, RCE 45843 EXP. 12-31-14
PUBLIC WORKS DIRECTOR/CITY ENGINEER

CITY SURVEYORS STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THE WITHIN MAP NO. 31087 CONSISTING OF 3 SHEETS AND 1 AM SATISFIED THAT SAID MAP IS TECHNICALLY CORRECT.

DATE: _____, 2014

BY: _____
ERIC A. NELSON, L.S. 5563
ACTING CITY SURVEYOR EXP. 9/30/15

CITY CLERK'S STATEMENT

I, SUSAN MARSELS, CITY CLERK AND EX-OFFICIO CLERK OF THE CITY COUNCIL OF THE CITY OF LA QUINTA, CALIFORNIA, DO HEREBY STATE THAT SAID CITY COUNCIL AT ITS REGULAR MEETING HELD ON THE _____ DAY OF _____, 2014, APPROVED THE WITHIN MAP NO. 31087 AND HEREBY ACCEPTS THE PUBLIC UTILITY EASEMENT, THE PEDESTRIAN SIDEWALK EASEMENT AND SUBJECT TO IMPROVEMENT, LOTS "A" (CROSSETTE COURT) AND "B" (DARBY ROAD) FOR STREET AND PUBLIC UTILITY PURPOSES, AS DEDICATED AND HEREBY ACCEPTS THE REINDEMENT OF VEHICULAR ACCESS RIGHT, AS DEDICATED.

SUSAN MARSELS
CITY CLERK AND EX-OFFICIO CLERK OF THE
CITY COUNCIL OF THE CITY OF LA QUINTA

CERTIFICATE OF ACCEPTANCE

I HEREBY CERTIFY THAT UNDER AUTHORITY GRANTED TO ME BY RESOLUTION NO. 78-948 DATED SEPTEMBER 12, 1978, I ACCEPT ON BEHALF OF COACHELLA VALLEY WATER DISTRICT THE DEDICATION OF EASEMENTS FOR DOMESTIC WATER AND SANITATION PURPOSES AS OFFERED HEREON.

BY: _____
JULIA FERNANDEZ, SECRETARY
COACHELLA VALLEY WATER DISTRICT

CITY OF LA QUINTA

**SUBDIVISION IMPROVEMENT AGREEMENT
TRACT MAP NO. 31087
ON-SITE IMPROVEMENTS**

THIS SUBDIVISION IMPROVEMENT AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, 20 _____, by and between Adom Ventures, LLC, a Delaware limited liability company, hereinafter referred to as "Subdivider," and the City of La Quinta, a municipal corporation of the State of California, hereinafter referred to as "City."

RECITALS:

- A. Subdivider has prepared and submitted to City for final approval and recordation a final map or Tract map (the "Map") of a unit of land in the City of La Quinta, County of Riverside, which unit of land is known as Tract No. 31087 (the "Tract") pursuant to the provisions of Section 66410, et seq. of the California Government Code (the "Subdivision Map Act"). The Subdivision Map Act and City ordinances and regulations relating to the filing, approval and recordation of subdivision maps are sometimes collectively referred to in this Agreement as the "Subdivision Laws."
- B. A tentative map of the Tract has been approved subject to the Subdivision Laws and to the requirements and conditions contained in the Conditions of Approval dated August 25, 2007 (the "Conditions of Approval"). The Conditions of Approval is on file in the office of the City Clerk and is incorporated into this Agreement by reference.
- C. Prior to approval of the Map, Subdivider is required to install or agree to install certain public and private improvements (the "Improvements").
- D. The Improvements have not been installed and accepted at this time.
- E. It is therefore necessary that Subdivider and City enter into an agreement for the installation of the Improvements as provided in Section 66462 of the Subdivision Map Act. In consideration of approval of a final map for the Tract by the City Council, Subdivider desires to enter into this Agreement, whereby Subdivider promises to install and complete, at Subdivider's own expense, all the public improvement work required by City in connection with the proposed Tract. Subdivider has secured this Agreement by improvement security required by the Subdivision Laws and approved by the City.

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

- 1. Improvement Plans. Prior to submittal of the Map for approval by the City Council, Subdivider shall furnish complete original improvement plans for the construction, installation and completion of the Improvements meeting the requirements of the City Engineer. The Improvement Plans for the Tract shall be maintained on file in the office of the City Engineer and shall be incorporated into this Agreement by reference. All references in this Agreement to the Improvement Plans shall include reference to any specifications for the Improvements as approved by the City Engineer.
- 2. Improvements. Subdivider shall construct the Improvements required to be constructed on the Improvement Plans or agreed to be constructed under the Conditions of Approval and this Agreement as more specifically described in Exhibit "A." attached hereto and expressly made a part hereof by this reference, and shall bear the full cost thereof. The methods, standards, specifications, sequence, and scheduling of construction shall be as approved by the City Engineer.
- 3. Improvement Security. Subdivider shall at all times guarantee Subdivider's performance of this Agreement by furnishing to City, and maintaining, good and sufficient security as required by the Subdivision Laws on forms and in the amounts approved by City for the purposes as follows:
 - A. One class of security to be provided by Subdivider, hereinafter referred to as "performance security," shall assure the faithful performance of this Agreement including construction of the Improvements, payment of Subdivider's fair share of Improvements which have been or will be constructed by others ("Participatory Improvements"), and payment of plan check and permit

fees. The performance security shall also include good and sufficient security in the amount of one hundred percent (100%) of the estimated cost of setting subdivision monuments as stated hereafter in this Agreement ("Monumentation Security"). A second class of security to be provided by Subdivider, hereinafter referred to as "payment security," shall assure the payment of the cost of labor, equipment and materials supplied to construct the Improvements. A third class of security to be provided by Subdivider, hereinafter referred to as "warranty security," shall serve as a guarantee and warranty of the Improvements for a period of one year following the completion and acceptance of the Improvements. Subdivider shall furnish performance and payment security prior to and as a condition precedent to City Council approval of the Map. Subdivider shall provide warranty security after Improvements are complete and prior to acceptance of the Improvements by the City Council. Warranty security shall not be required for Monumentation or Participatory Improvements. However, the City may utilize Monumentation Security for performance of or payment for the work in accordance with the Subdivision Map Act.

As part of the obligation secured by each of the performance security, payment security and warranty security, and in addition to the face amount of each such security, each such security shall include and assure the payment of costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing the obligations thereby secured.

- B. Improvement security shall conform with Section 66499 of the California Government Code and may be one or more of the following:
- 1) A cash deposit with City or a responsible escrow agent or trust company, at City's option.
 - 2) Surety bonds, of the form specified in subsection 66499.2 of the California Government Code, issued by a surety or sureties listed in the U.S. Department of Treasury Circular 570 (latest version).
 - 3) Certificates of deposit, in City's name, from one or more financial institutions subject to regulation by the state or federal government and having a financial quality rating of "A" or better and a commitment reliability rating of "R-2" or better on the Investment Data Exchange (of the Los Angeles County Treasurer's office).
 - 4) Irrevocable letters of credit, in a form acceptable to and approved by the City Attorney, issued by one or more financial institutions meeting the requirements of Paragraph (3), pledging that the funds necessary to carry out the completion of the Improvements are on deposit, guaranteed for payment, and constitute a trust fund which is not subject to levy or attachment by any creditor of the depositor until released by City. Letters of credit shall guarantee that all or any portion of the funds available pursuant to the letters of credit will be paid upon the written demand of City and that such written demand need not present documentation of any type as a condition of payment, including proof of loss. The duration of any such letter of credit shall be for a period of not less than one year from the execution of the agreement with which it is provided and shall state, on its face, that the letter of credit will be automatically renewed until such time that City authorizes its expiration or until sixty (60) days after City receives notice from the financial institution of intent to allow expiration of the letter of credit.
 - 5) A lien upon the subdivided property, if City finds that it would not be in the public interest to require the installation of the Improvements sooner than two (2) years after recordation of the final map or Tract map for which the Improvements are required. The lien shall provide a collateral value of three (3) times the estimated cost of the Improvements and shall include the power of sale of the real property, all buildings and improvements thereon, or that may be erected upon or made thereto, together with all hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reservations, remainders, rents, issues, and profits thereof. The collateral value of the property shall be established at Subdivider's expense through an appraisal approved by City.
 - 6) An instrument of credit from an agency of the state, federal or local government, when any agency of the state, federal, or local government provides at least twenty percent (20%) of the financing for the Improvements.

- 7) When Subdivider is a non-profit organization, security may be negotiable bonds, of the kind approved for securing deposits of public moneys with City or in favor of City, as specified in Section 16430 of the California Government Code, deposited, at City's option, with City or a responsible escrow agent or trust company.
- C. All securities shall be furnished in accordance with the provisions of Exhibit A. The amount of the performance security shall equal one hundred percent (100%) of the estimated cost of constructing the Improvements, including payment of plan check and permit fees, as estimated by the City Engineer or a duly authorized representative of the City Engineer. The amount of Payment security shall equal the amount of the amount of performance security, except as otherwise set forth in Exhibit A, and shall be furnished as a separate security. Warranty security shall equal Ten Percent (10%) of the amount of performance security except as otherwise set forth in Exhibit A. The securities required by this Agreement shall be kept on file with the City Clerk. The terms of the security documents specified in this Agreement are incorporated into this Agreement by this reference. If any security is replaced by another approved security, the replacement shall be filed with the City Clerk and, upon filing, shall be deemed to have been made a part of and incorporated into this Agreement. Upon filing of a replacement security with the City Clerk, the former security may be released. The City Engineer shall approve replacement of security.
 - D. At the time of submittal of security, Subdivider shall pay to City administrative fees applicable to the form of security provided. Administrative fees shall apply to the subdivision (final map, Tract map or waiver of Tract map) rather than to individual security instruments. The fees shall be paid separately for each different form and/or source (surety or financial institution) of security initially submitted and for substitution of securities but shall not be required for submittal of warranty security if the warranty security is of the same form and from the same source as the performance security it replaces. Administrative fees for security shall be as follows:
 - 1) For certificates of deposit, bonds and letters of credit as described in Paragraphs 2), 3) and 4) of SECTION 3.B., which require the establishment of evidence of the reliability of the surety or financial institution, the administrative fee shall be One Hundred Fifty Dollars (\$150.00).
 - 2) For liens on real property as described in Paragraph 5) of SECTION 3.B., for which City will prepare lien agreements and subordination agreements, administer valuation of the real property and administer the agreements over the life of the lien, all of which require legal assistance and financial advice, Subdivider shall pay to City an administration fee of One Half of One Percent (0.5%) of the estimated cost of the improvements secured but not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00).
 - 3) For other forms of security listed in Section 3 B, above, there will be no administrative fee.
 - E. Participatory Improvements, if any, are identified in Exhibit A. Security for Participatory Improvements shall remain in place until the Participatory Improvements are constructed and actual costs are known and paid by Subdivider, or until Subdivider pays to City the estimated cost of the Participatory Improvements, and shall guarantee the reimbursement by Subdivider of Subdivider's share of the cost of the Participatory Improvements. Payment security and warranty security shall not be required for Participatory Improvements.

Upon written demand from City, Subdivider shall deposit cash with City in lieu of or in replacement of security guaranteeing Participatory Improvements. If Subdivider fails to deposit said cash within 30 days of the date of the written demand from City, City may present a written demand to Subdivider's Surety for payment of said cash and Subdivider's Surety shall pay to City the lesser of: 1) the amount demanded, or 2) the amount of the security.
 - F. Security shall not expire, be reduced or become wholly or partially invalid for any reason, including non-payment of premiums, modifications of this Agreement and/or expiration of the time for performance stated in this Agreement.
 - G. Security shall be released in the following manner:

- 1) Performance security shall be released upon the final completion and acceptance or approval, by the City Council of the Improvements subject to the provisions of Section 10 of this Agreement.
 - 2) The City Engineer may authorize partial reduction of performance security as work progresses, upon application by Subdivider. However, no such reduction shall be for an amount less than Ten Percent (10%) of the total performance security provided for the faithful performance of the act or work. In no event shall security be reduced below that required to guarantee the completion of the act or work or obligation secured, plus Ten Percent (10%). The City Engineer shall not allow more than two partial reductions of security furnished for any improvement agreement.
 - 3) Participatory Improvement security shall be released upon payment by Subdivider of Subdivider's share of the cost or estimated cost of the Participatory Improvements.
 - 4) If City receives no notice of recorded claims of lien, labor and materials security shall be released in full 90 days after final acceptance and/or approval by the City Council, of the Improvements. If City receives notice of any recorded lien, the provisions of the Subdivision Map Act shall apply.
 - 5) No security given for the guarantee or warranty of work shall be released until the expiration of the warranty period and until any claims filed during the warranty period have been settled. As provided in paragraph 13 of this Agreement, the warranty period shall not commence until final acceptance of all the work and improvements by the City pursuant to Paragraph 10. Warranty security not utilized during the warranty period shall be released one year after final acceptance or approval by the City Council of all Improvements. However, if at the end of the one-year warranty period, there are one or more outstanding requests by City for performance of work or provision of materials under the terms of the warranty, warranty security shall be retained until the outstanding requests are satisfied or until Subdivider has made other arrangements satisfactory to the City Engineer.
 - 6) City may retain from any security released an amount sufficient to cover costs and reasonable expenses and fees, including reasonable attorneys' fees.
4. Permits Required. Prior to commencing any phase of work, Subdivider shall obtain all permits required for that phase of work and pay all required fees. Work performed under a permit or permits shall comply with all provisions of the required permits.
 5. Off-site Improvements. When the construction of one or more of the Improvements requires or necessitates the acquisition of real property not owned by Subdivider or City, Subdivider shall use its best efforts purchase such real property at a reasonable price. In the event that Subdivider is unsuccessful, despite its best efforts, to acquire such real property at a reasonable price, Subdivider may request in writing that City attempt to acquire such real property. City may, but is not required to, agree to attempt to acquire such real property on behalf of Subdivider. If City so agrees, City and Subdivider shall enter a separate written agreement in a form acceptable to the City Attorney. Said separate agreement shall provide that Subdivider advance to City One Hundred Fifty Percent (150%) of the appraised fair market value of the real property. Any unexpended portion of said advance shall be refunded to Subdivider. Any additional funds required for acquisition of the real property shall be paid by Subdivider to City upon the conveyance of said real property to Subdivider. In no event shall the failure of Subdivider or City to acquire such real property excuse, waive, or otherwise terminate Subdivider's obligation to construct the applicable improvement pursuant to this Agreement or the Conditions of Approval.
 6. Completion of Improvements; Inspection.
 - 6.1 Construction of Improvements. Subdivider shall begin construction of the Improvements within ninety (90) days and shall complete construction within twelve (12) months after the approval of this Agreement. Portions of the Improvements may be completed at a later date, as determined by the City Engineer or as set forth in Exhibit A. Failure by Subdivider to begin or complete construction of the Improvements within the specified time periods shall constitute cause for City, in its sole discretion and when it deems necessary, to declare Subdivider in default of this agreement, to revise

improvement security requirements as necessary to ensure completion of the improvements, and/or to require modifications in the standards or sequencing of the Improvements in response to changes in standards or conditions affecting or affected by the Improvements. Said failure shall not otherwise affect the validity of this agreement or Subdivider's obligations hereunder.

6.2 Inspection. Subdivider shall at all times maintain proper facilities and safe access for inspection of the public improvements by City and to the shops wherein any work is in preparation. Upon completion of the work, the Subdivider may request a final inspection by the City Engineer or the City Engineer's authorized representative. If the City Engineer or the designated representative determines that the work has been completed in accordance with this Agreement, then the City Engineer shall certify the completion of the public improvements to the City Council. No improvements shall be finally accepted unless all aspects of the work have been inspected and determined to have been completed in accordance with the Improvement Plans and City standards and accepted by the City as described in Paragraph 10 of this Agreement. Subdivider shall bear all costs of plan check, inspection and certification.

7. Force Majeure. In the event that Subdivider is unable to perform within the time limits herein due to strikes, act of God, or other events beyond Subdivider's control, the time limits for obligations affected by such events will be extended by the period of such events.
8. Time Extension. Subdivider may make application in writing to the City Council for an extension of time for completion of the Improvements. The City Council, in its sole and absolute discretion, may approve or deny the request or conditionally approve the extension with additions or revisions to the terms and conditions of this Agreement.

As a condition of the time extension, Subdivider shall furnish securities, similar in form and substance to those required in SECTION 3 hereinabove, to cover the period of extension. The value of the securities shall be sufficient to ensure the performance of and payment for Improvements that remain incomplete at the time of the extension, and to provide warranty security on completed Improvements.

9. Survey Monuments. Before final approval of street improvements, Subdivider shall place survey monuments in accordance with the provisions of Sections 66495, et sec. of the Subdivision Map Act and of the La Quinta Municipal Code. Subdivider shall provide the City Engineer written proof that the monuments have been set, evidence of payment and receipt thereof by the engineer or surveyor setting the monuments, and intersection monument tie-outs for monuments set in public streets.
10. Final Acceptance of Improvements. At the completion of construction and prior to acceptance of the Improvements by City, Subdivider shall submit a request for final approval by City. The request shall be accompanied by any required certifications from Subdivider's engineers or surveyors, approval letters from other agencies having jurisdiction over and approval authority for improvements required by this Agreement or the Conditions of Approval, and any required construction quality documentation not previously submitted.

Upon receipt of said request, the City Engineer or a duly-authorized representative will review the required documentation and will inspect the Improvements. If the Improvements are determined to be in accordance with applicable City standards and specifications, and as provided herein, obligations required by the Conditions set forth in the Conditions of Approval and this Agreement have been satisfied, and Subdivider has provided revised plans as required in Paragraph 12, hereinafter, the City Engineer shall recommend acceptance of the Improvements by the City Council.

11. Injury to Improvements. Until such time as the Improvements are accepted by City in accordance with Paragraph 10, Subdivider shall be responsible for and bear the risk of loss to any of the improvements constructed or installed. Until such time as all Improvements required by this Agreement are fully completed and accepted by City, Subdivider will be responsible for the care, maintenance of, and any damage to such improvements. City shall not, nor shall any officer or employee thereof, be liable or responsible for any accident, loss or damage, regardless of cause, happening or occurring to the work or improvements specified in this Agreement prior to the completion and acceptance of the work or improvements. All such risks shall be the responsibility of and are hereby assumed by Subdivider.

12. Revisions to Plans. When the Improvements have been inspected and approved by the City Engineer, Subdivider shall make any necessary revisions to the original plans held by City so the plans depict the actual Improvements constructed. When necessary revisions have been made, each separate sheet of the plans shall be clearly marked with the words "As-Built," "As-Constructed," or "Record Drawing," the marking shall be stamped by an engineer or surveyor, as appropriate for the improvements thereon, who is licensed to practice in California, and the plans shall be resubmitted to the City Engineer.
13. Improvement Warranty. Subdivider hereby guarantees the Improvements to City for a period of one (1) year, beginning on the date of final acceptance of the Improvements by the City Council, against any defective work or labor done, or defective materials furnished, and shall repair or replace such defective work or materials. If within the warranty period any work or improvement or part of any work or improvement done, furnished, installed, constructed or caused to be done, furnished, installed or constructed by Subdivider fails to fulfill any of the requirements of this Agreement or the improvement plans and specifications referred to herein, Subdivider shall without delay and without any cost to City, repair or replace or reconstruct any defective or otherwise unsatisfactory part or parts of the work or structure. Should Subdivider fail to act promptly or in accordance with this requirement, Subdivider hereby authorizes City, at City's sole option, to perform the work twenty (20) days after mailing written notice of default to Subdivider and to Subdivider's Surety, and agrees to pay the cost of such work by City. Should City determine that an urgency requires repairs or replacements to be made before Subdivider can be notified, City may, in its sole discretion, make the necessary repairs or replacement or perform the necessary work and Subdivider shall pay to City the cost of such repairs
14. Release of Security. City shall retain and release securities in accordance with the provisions of Section 3 of this agreement. Prior to the release of payment security, the City Engineer may require Subdivider to provide a title report or other evidence sufficient to show claims of lien, if any, that may affect the amount of payment security released.
15. City Right to Cure. If Subdivider fails to perform any obligation hereunder and such obligation has not been performed, or commenced and diligently pursued, within sixty (60) days after written notice of default from City, then City may perform the obligation, and Subdivider shall pay the entire cost of such performance by City including costs of suit and reasonable attorney's fees incurred by City in enforcing such obligation. In cases of emergency or compelling public interest, as determined by the City Engineer, the requirement for written notice of default and/or the passage of sixty (60) days shall be deemed waived and all other provisions of this Article shall remain in effect.
16. Injury to Public Improvements, Public Property or Public Utility Facilities. Subdivider shall replace or have replaced, or repair or have repaired, as the case may be, all public improvements, public utilities facilities and surveying or subdivision monuments which are destroyed or damaged as a result of any work performed under this Agreement. Subdivider shall bear the entire cost of replacement or repairs of any and all public or public utility property damaged or destroyed by reason of any work done under this Agreement, whether such property is owned by the United States or any agency thereof, or the State of California, or any agency or political subdivision thereof, or by City or any public or private utility corporation or by any combination of such owners. Any repair or replacement shall be to the satisfaction, and subject to the approval, of the City Engineer.
17. Indemnification.
 - a. Neither City nor any and all of its officials, employees and agents ("Indemnified Parties") shall not be liable for any injury to persons or property occasioned by reason of the acts or omissions of Subdivider, its agents or employees in the performance of this Agreement. Subdivider further agrees to protect and hold harmless Indemnified Parties from any and all claims, demands, causes of action, liability or loss of any sort, including, but not limited to, attorney fees and litigation expenses, because of, or arising out of, acts or omissions of Subdivider, its agents or employees in the performance of this Agreement, including all claims, demands, causes of action, liability, or loss because of, or arising out of, in whole or in part, the design of construction of the Improvements. This indemnification and agreement to hold harmless shall extend to injuries to persons and damages or taking of property resulting from the design or construction of said subdivision, and the public improvements as provided herein, and in addition, to adjacent property owners as a consequence of the diversion of waters from the design or construction of public drainage systems, streets and other public improvements.

b. Acceptance by City of the Improvements shall not constitute an assumption by City of any responsibility for any damage or taking covered by this paragraph. City shall not be responsible for the design or construction of the subdivision or the improvements pursuant to the approved Improvement Plans or map, regardless of any negligent action or inaction taken by City in approving the plans or map, unless the particular improvement design was specifically required by City over written objection by Subdivider submitted to the City Engineer before approval of the particular improvement design, which objection indicated that the particular improvement design was dangerous or defective and suggested an alternative safe and feasible design. Except as may be provided above, City shall not be liable for any negligence, nonfeasance, misfeasance or malfeasance in approving, reviewing, checking, or correcting any plans or specifications or in approving, reviewing or inspecting any work or construction. Nothing contained in this paragraph is intended to or shall be deemed to limit or waive any protections or immunities afforded by law to City or any and all of its officials, employees and agents ("Indemnified Parties"), by virtue of city's approval of the plan or design of the Improvements, including without limitation the protections and immunities afforded by Government Code Section 830.6. After acceptance of the improvements, Subdivider shall remain obligated to eliminate any defect in design or dangerous condition caused by the design or construction defect; however, Subdivider shall not be responsible for routine maintenance. Provisions of this paragraph shall remain in full force and effect for ten (10) years following the acceptance by City of the Improvements. It is the intent of this paragraph that Subdivider shall be responsible for all liability for design and construction of the Improvements installed or work done pursuant to this Agreement and that city shall not be liable for any negligence, nonfeasance, misfeasance or malfeasance in approving, reviewing, checking, or correcting any plans or specifications or in approving, reviewing or inspecting any work or construction. The Improvement Security shall not be required to cover the provisions of this paragraph.

18. No Modification of Conditions. This Agreement shall in no respect act to modify or amend any provision of the Conditions of Approval. In the event that any requirement or condition of this Agreement is inconsistent with or fails to include one or more provisions of the Conditions of Approval, which document(s) is (are) incorporated herein by reference, the provisions in the Conditions of Approval shall remain in effect and shall control.

19. Severability. In the event that a court of competent jurisdiction determines that any provision or provisions of this Agreement are unenforceable, all provisions not so held shall remain in full force and effect.

20. Subdivider No Agent of City. Neither Subdivider nor any of Subdivider's agents, employees, or contractors are or shall be considered to be agents of City in connection with the performance of Subdivider's obligations under this Agreement.

21. General Provisions.

A. All notices pursuant to this Agreement shall be in writing and shall be personally delivered or sent by registered or certified mail, return receipt requested, to the parties at their respective addresses indicated hereon. Notices personally delivered shall be effective upon delivery. Notices mailed as provided herein and sent postage prepaid shall be effective upon the date of delivery or refusal indicated on the return receipt. Either party may change its address for notices hereunder by notice to the other given in the manner provided in this subparagraph.

B. The terms, conditions, covenants, and agreements set forth herein shall apply to and bind the heirs, executors, administrators, assigns, and successors of the parties hereto.

C. Neither party to this Agreement relies upon any warranty or representation not contained in this Agreement.

D. This Agreement shall be governed by and interpreted with respect to the laws of the State of California.

E. In the event of any dispute between the parties with respect to this Agreement, the prevailing party shall be entitled to prompt payment of its reasonable attorneys' fees from the non-prevailing party.

Exhibit A
SECURITY – TRACT MAP NO. 31087
ON-SITE IMPROVEMENTS

Improvements designated as "Participatory" have been or will be constructed by others. Security for Participatory Improvements shall remain in place indefinitely until called upon or released by City.

Monumentation security shall guarantee performance of or payment for the work and shall be utilized or released as specified in Chapter 4, Article 9 of the Subdivision Map Act.

As elements of the work are completed, Subdivider may request a maximum of two partial releases of performance security. Partial releases shall be for not less than ten percent (10%) of the total performance security for the Tract and shall not reduce total performance security below the amount necessary to complete the Improvements plus ten percent (10%) of the original amount. Partial releases of performance security will be evaluated and may be granted, in whole or in part, by the City Engineer. Requests for partial releases, setting forth in detail the amount of work completed and the value thereof, shall be made in writing to the City Engineer.

Labor & materials security shall remain in place until 90 days after all required Tract improvements are complete and accepted by the City Council.

Improvement Description	Performance	Labor & Materials
Street	\$ 131,960	\$ -
Storm Drain	\$ 91,500	\$ -
Domestic Water	\$ 125,315	\$ -
Sanitary Sewer	\$ 71,852	\$ -
Dry Utilities	\$ 22,800	\$ -
Monumentation	\$ 9,500	\$ -
Landscaping / Fine Grading	\$ 47,500	\$ -
Walls	\$ 252,120	
Totals	\$ 752,547	\$ -
Standard 10% Contingency	\$ 75,255	\$ -
Total Construction Cost	\$ 827,802	\$ -
Professional Fees, Design 10%	\$ 82,780	\$ -
Professional Fees, Const 10%	\$ 82,780	\$ -
Bond Amount	\$ 993,362	\$ -

SUBDIVISION IMPROVEMENT AGREEMENT
TRACT MAP NO. 31087
OFF-SITE IMPROVEMENTS

THIS SUBDIVISION IMPROVEMENT AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, 20 _____, by and between Adom Ventures, LLC, a Delaware limited liability company, hereinafter referred to as "Subdivider," and the City of La Quinta, a municipal corporation of the State of California, hereinafter referred to as "City."

RECITALS:

- A. Subdivider has prepared and submitted to City for final approval and recordation a final map or Tract map (the "Map") of a unit of land in the City of La Quinta, County of Riverside, which unit of land is known as Tract No. 31087 (the "Tract") pursuant to the provisions of Section 66410, et seq. of the California Government Code (the "Subdivision Map Act"). The Subdivision Map Act and City ordinances and regulations relating to the filing, approval and recordation of subdivision maps are sometimes collectively referred to in this Agreement as the "Subdivision Laws."
- B. A tentative map of the Tract has been approved subject to the Subdivision Laws and to the requirements and conditions contained in the Conditions of Approval dated August 25, 2007 (the "Conditions of Approval"). The Conditions of Approval are on file in the office of the City Clerk and is incorporated into this Agreement by reference.
- C. Prior to approval of the Map, Subdivider is required to install or agree to install certain public and private improvements (the "Improvements").
- D. The Improvements have not been installed and accepted at this time.
- E. It is therefore necessary that Subdivider and City enter into an agreement for the installation of the Improvements as provided in Section 66462 of the Subdivision Map Act. In consideration of approval of a final map for the Tract by the City Council, Subdivider desires to enter into this Agreement, whereby Subdivider promises to install and complete, at Subdivider's own expense, all the public improvement work required by City in connection with the proposed Tract. Subdivider has secured this Agreement by improvement security required by the Subdivision Laws and approved by the City.

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. Improvement Plans. Prior to submittal of the Map for approval by the City Council, Subdivider shall furnish complete original improvement plans for the construction, installation and completion of the Improvements meeting the requirements of the City Engineer. The Improvement Plans for the Tract shall be maintained on file in the office of the City Engineer and shall be incorporated into this Agreement by reference. All references in this Agreement to the Improvement Plans shall include reference to any specifications for the Improvements as approved by the City Engineer.
2. Improvements. Subdivider shall construct the Improvements required to be constructed on the Improvement Plans or agreed to be constructed under the Conditions of Approval and this Agreement as more specifically described in Exhibit "A." attached hereto and expressly made a part hereof by this reference, and shall bear the full cost thereof. The methods, standards, specifications, sequence, and scheduling of construction shall be as approved by the City Engineer.
3. Improvement Security. Subdivider shall at all times guarantee Subdivider's performance of this Agreement by furnishing to City, and maintaining, good and sufficient security as required by the Subdivision Laws on forms and in the amounts approved by City for the purposes as follows:
 - A. One class of security to be provided by Subdivider, hereinafter referred to as "performance security," shall assure the faithful performance of this Agreement including construction of the Improvements, payment of Subdivider's fair share of Improvements which have been or will be constructed by others ("Participatory Improvements"), and payment of plan check and permit

fees. The performance security shall also include good and sufficient security in the amount of one hundred percent (100%) of the estimated cost of setting subdivision monuments as stated hereafter in this Agreement ("Monumentation Security"). A second class of security to be provided by Subdivider, hereinafter referred to as "payment security," shall assure the payment of the cost of labor, equipment and materials supplied to construct the Improvements. A third class of security to be provided by Subdivider, hereinafter referred to as "warranty security," shall serve as a guarantee and warranty of the Improvements for a period of one year following the completion and acceptance of the Improvements. Subdivider shall furnish performance and payment security prior to and as a condition precedent to City Council approval of the Map. Subdivider shall provide warranty security after Improvements are complete and prior to acceptance of the Improvements by the City Council. Warranty security shall not be required for Monumentation or Participatory Improvements. However, the City may utilize Monumentation Security for performance of or payment for the work in accordance with the Subdivision Map Act.

As part of the obligation secured by each of the performance security, payment security and warranty security, and in addition to the face amount of each such security, each such security shall include and assure the payment of costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing the obligations thereby secured.

- B. Improvement security shall conform with Section 66499 of the California Government Code and may be one or more of the following:
- 1) A cash deposit with City or a responsible escrow agent or trust company, at City's option.
 - 2) Surety bonds, of the form specified in subsection 66499.2 of the California Government Code, issued by a surety or sureties listed in the U.S. Department of Treasury Circular 570 (latest version).
 - 3) Certificates of deposit, in City's name, from one or more financial institutions subject to regulation by the state or federal government and having a financial quality rating of "A" or better and a commitment reliability rating of "R-2" or better on the Investment Data Exchange (of the Los Angeles County Treasurer's office).
 - 4) Irrevocable letters of credit, in a form acceptable to and approved by the City Attorney, issued by one or more financial institutions meeting the requirements of Paragraph (3), pledging that the funds necessary to carry out the completion of the Improvements are on deposit, guaranteed for payment, and constitute a trust fund which is not subject to levy or attachment by any creditor of the depositor until released by City. Letters of credit shall guarantee that all or any portion of the funds available pursuant to the letters of credit will be paid upon the written demand of City and that such written demand need not present documentation of any type as a condition of payment, including proof of loss. The duration of any such letter of credit shall be for a period of not less than one year from the execution of the agreement with which it is provided and shall state, on its face, that the letter of credit will be automatically renewed until such time that City authorizes its expiration or until sixty (60) days after City receives notice from the financial institution of intent to allow expiration of the letter of credit.
 - 5) A lien upon the subdivided property, if City finds that it would not be in the public interest to require the installation of the Improvements sooner than two (2) years after recordation of the final map or Tract map for which the Improvements are required. The lien shall provide a collateral value of three (3) times the estimated cost of the Improvements and shall include the power of sale of the real property, all buildings and improvements thereon, or that may be erected upon or made thereto, together with all hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reservations, remainders, rents, issues, and profits thereof. The collateral value of the property shall be established at Subdivider's expense through an appraisal approved by City.
 - 6) An instrument of credit from an agency of the state, federal or local government, when any agency of the state, federal, or local government provides at least twenty percent (20%) of the financing for the Improvements.

- 7) When Subdivider is a non-profit organization, security may be negotiable bonds, of the kind approved for securing deposits of public moneys with City or in favor of City, as specified in Section 16430 of the California Government Code, deposited, at City's option, with City or a responsible escrow agent or trust company.
- C. All securities shall be furnished in accordance with the provisions of Exhibit A. The amount of the performance security shall equal one hundred percent (100%) of the estimated cost of constructing the Improvements, including payment of plan check and permit fees, as estimated by the City Engineer or a duly authorized representative of the City Engineer. The amount of Payment security shall equal the amount of the amount of performance security, except as otherwise set forth in Exhibit A, and shall be furnished as a separate security. Warranty security shall equal Ten Percent (10%) of the amount of performance security except as otherwise set forth in Exhibit A. The securities required by this Agreement shall be kept on file with the City Clerk. The terms of the security documents specified in this Agreement are incorporated into this Agreement by this reference. If any security is replaced by another approved security, the replacement shall be filed with the City Clerk and, upon filing, shall be deemed to have been made a part of and incorporated into this Agreement. Upon filing of a replacement security with the City Clerk, the former security may be released. The City Engineer shall approve replacement of security.
 - D. At the time of submittal of security, Subdivider shall pay to City administrative fees applicable to the form of security provided. Administrative fees shall apply to the subdivision (final map, Tract map or waiver of Tract map) rather than to individual security instruments. The fees shall be paid separately for each different form and/or source (surety or financial institution) of security initially submitted and for substitution of securities but shall not be required for submittal of warranty security if the warranty security is of the same form and from the same source as the performance security it replaces. Administrative fees for security shall be as follows:
 - 1) For certificates of deposit, bonds and letters of credit as described in Paragraphs 2), 3) and 4) of SECTION 3.B., which require the establishment of evidence of the reliability of the surety or financial institution, the administrative fee shall be One Hundred Fifty Dollars (\$150.00).
 - 2) For liens on real property as described in Paragraph 5) of SECTION 3.B., for which City will prepare lien agreements and subordination agreements, administer valuation of the real property and administer the agreements over the life of the lien, all of which require legal assistance and financial advice, Subdivider shall pay to City an administration fee of One Half of One Percent (0.5%) of the estimated cost of the improvements secured but not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00).
 - 3) For other forms of security listed in Section 3 B, above, there will be no administrative fee.
 - E. Participatory Improvements, if any, are identified in Exhibit A. Security for Participatory Improvements shall remain in place until the Participatory Improvements are constructed and actual costs are known and paid by Subdivider, or until Subdivider pays to City the estimated cost of the Participatory Improvements, and shall guarantee the reimbursement by Subdivider of Subdivider's share of the cost of the Participatory Improvements. Payment security and warranty security shall not be required for Participatory Improvements.

Upon written demand from City, Subdivider shall deposit cash with City in lieu of or in replacement of security guaranteeing Participatory Improvements. If Subdivider fails to deposit said cash within 30 days of the date of the written demand from City, City may present a written demand to Subdivider's Surety for payment of said cash and Subdivider's Surety shall pay to City the lesser of: 1) the amount demanded, or 2) the amount of the security.
 - F. Security shall not expire, be reduced or become wholly or partially invalid for any reason, including non-payment of premiums, modifications of this Agreement and/or expiration of the time for performance stated in this Agreement.
 - G. Security shall be released in the following manner:

- 1) Performance security shall be released upon the final completion and acceptance or approval, by the City Council of the Improvements subject to the provisions of Section 10 of this Agreement.
 - 2) The City Engineer may authorize partial reduction of performance security as work progresses, upon application by Subdivider. However, no such reduction shall be for an amount less than Ten Percent (10%) of the total performance security provided for the faithful performance of the act or work. In no event shall security be reduced below that required to guarantee the completion of the act or work or obligation secured, plus Ten Percent (10%). The City Engineer shall not allow more than two partial reductions of security furnished for any improvement agreement.
 - 3) Participatory Improvement security shall be released upon payment by Subdivider of Subdivider's share of the cost or estimated cost of the Participatory Improvements.
 - 4) If City receives no notice of recorded claims of lien, labor and materials security shall be released in full 90 days after final acceptance and/or approval by the City Council, of the Improvements. If City receives notice of any recorded lien, the provisions of the Subdivision Map Act shall apply.
 - 5) No security given for the guarantee or warranty of work shall be released until the expiration of the warranty period and until any claims filed during the warranty period have been settled. As provided in paragraph 13 of this Agreement, the warranty period shall not commence until final acceptance of all the work and improvements by the City pursuant to Paragraph 10. Warranty security not utilized during the warranty period shall be released one year after final acceptance or approval by the City Council of all Improvements. However, if at the end of the one-year warranty period, there are one or more outstanding requests by City for performance of work or provision of materials under the terms of the warranty, warranty security shall be retained until the outstanding requests are satisfied or until Subdivider has made other arrangements satisfactory to the City Engineer.
 - 6) City may retain from any security released an amount sufficient to cover costs and reasonable expenses and fees, including reasonable attorneys' fees.
4. Permits Required. Prior to commencing any phase of work, Subdivider shall obtain all permits required for that phase of work and pay all required fees. Work performed under a permit or permits shall comply with all provisions of the required permits.
 5. Off-site Improvements. When the construction of one or more of the Improvements requires or necessitates the acquisition of real property not owned by Subdivider or City, Subdivider shall use its best efforts purchase such real property at a reasonable price. In the event that Subdivider is unsuccessful, despite its best efforts, to acquire such real property at a reasonable price, Subdivider may request in writing that City attempt to acquire such real property. City may, but is not required to, agree to attempt to acquire such real property on behalf of Subdivider. If City so agrees, City and Subdivider shall enter a separate written agreement in a form acceptable to the City Attorney. Said separate agreement shall provide that Subdivider advance to City One Hundred Fifty Percent (150%) of the appraised fair market value of the real property. Any unexpended portion of said advance shall be refunded to Subdivider. Any additional funds required for acquisition of the real property shall be paid by Subdivider to City upon the conveyance of said real property to Subdivider. In no event shall the failure of Subdivider or City to acquire such real property excuse, waive, or otherwise terminate Subdivider's obligation to construct the applicable improvement pursuant to this Agreement or the Conditions of Approval.
 6. Completion of Improvements; Inspection.
 - 6.1 Construction of Improvements. Subdivider shall begin construction of the Improvements within ninety (90) days and shall complete construction within twelve (12) months after the approval of this Agreement. Portions of the Improvements may be completed at a later date, as determined by the City Engineer or as set forth in Exhibit A. Failure by Subdivider to begin or complete construction of the Improvements within the specified time periods shall constitute cause for City, in its sole discretion and when it deems necessary, to declare Subdivider in default of this agreement, to revise

improvement security requirements as necessary to ensure completion of the improvements, and/or to require modifications in the standards or sequencing of the Improvements in response to changes in standards or conditions affecting or affected by the Improvements. Said failure shall not otherwise affect the validity of this agreement or Subdivider's obligations hereunder.

6.2 Inspection. Subdivider shall at all times maintain proper facilities and safe access for inspection of the public improvements by City and to the shops wherein any work is in preparation. Upon completion of the work, the Subdivider may request a final inspection by the City Engineer or the City Engineer's authorized representative. If the City Engineer or the designated representative determines that the work has been completed in accordance with this Agreement, then the City Engineer shall certify the completion of the public improvements to the City Council. No improvements shall be finally accepted unless all aspects of the work have been inspected and determined to have been completed in accordance with the Improvement Plans and City standards and accepted by the City as described in Paragraph 10 of this Agreement. Subdivider shall bear all costs of plan check, inspection and certification.

7. Force Majeure. In the event that Subdivider is unable to perform within the time limits herein due to strikes, act of God, or other events beyond Subdivider's control, the time limits for obligations affected by such events will be extended by the period of such events.
8. Time Extension. Subdivider may make application in writing to the City Council for an extension of time for completion of the Improvements. The City Council, in its sole and absolute discretion, may approve or deny the request or conditionally approve the extension with additions or revisions to the terms and conditions of this Agreement.

As a condition of the time extension, Subdivider shall furnish securities, similar in form and substance to those required in SECTION 3 hereinabove, to cover the period of extension. The value of the securities shall be sufficient to ensure the performance of and payment for Improvements that remain incomplete at the time of the extension, and to provide warranty security on completed Improvements.

9. Survey Monuments. Before final approval of street improvements, Subdivider shall place survey monuments in accordance with the provisions of Sections 66495, et sec. of the Subdivision Map Act and of the La Quinta Municipal Code. Subdivider shall provide the City Engineer written proof that the monuments have been set, evidence of payment and receipt thereof by the engineer or surveyor setting the monuments, and intersection monument tie-outs for monuments set in public streets.
10. Final Acceptance of Improvements. At the completion of construction and prior to acceptance of the Improvements by City, Subdivider shall submit a request for final approval by City. The request shall be accompanied by any required certifications from Subdivider's engineers or surveyors, approval letters from other agencies having jurisdiction over and approval authority for improvements required by this Agreement or the Conditions of Approval, and any required construction quality documentation not previously submitted.

Upon receipt of said request, the City Engineer or a duly-authorized representative will review the required documentation and will inspect the Improvements. If the Improvements are determined to be in accordance with applicable City standards and specifications, and as provided herein, obligations required by the Conditions set forth in the Conditions of Approval and this Agreement have been satisfied, and Subdivider has provided revised plans as required in Paragraph 12, hereinafter, the City Engineer shall recommend acceptance of the Improvements by the City Council.

11. Injury to Improvements. Until such time as the Improvements are accepted by City in accordance with Paragraph 10, Subdivider shall be responsible for and bear the risk of loss to any of the improvements constructed or installed. Until such time as all Improvements required by this Agreement are fully completed and accepted by City, Subdivider will be responsible for the care, maintenance of, and any damage to such improvements. City shall not, nor shall any officer or employee thereof, be liable or responsible for any accident, loss or damage, regardless of cause, happening or occurring to the work or improvements specified in this Agreement prior to the completion and acceptance of the work or improvements. All such risks shall be the responsibility of and are hereby assumed by Subdivider.

12. Revisions to Plans. When the Improvements have been inspected and approved by the City Engineer, Subdivider shall make any necessary revisions to the original plans held by City so the plans depict the actual Improvements constructed. When necessary revisions have been made, each separate sheet of the plans shall be clearly marked with the words "As-Built," "As-Constructed," or "Record Drawing," the marking shall be stamped by an engineer or surveyor, as appropriate for the improvements thereon, who is licensed to practice in California, and the plans shall be resubmitted to the City Engineer.
13. Improvement Warranty. Subdivider hereby guarantees the Improvements to City for a period of one (1) year, beginning on the date of final acceptance of the Improvements by the City Council, against any defective work or labor done, or defective materials furnished, and shall repair or replace such defective work or materials. If within the warranty period any work or improvement or part of any work or improvement done, furnished, installed, constructed or caused to be done, furnished, installed or constructed by Subdivider fails to fulfill any of the requirements of this Agreement or the improvement plans and specifications referred to herein, Subdivider shall without delay and without any cost to City, repair or replace or reconstruct any defective or otherwise unsatisfactory part or parts of the work or structure. Should Subdivider fail to act promptly or in accordance with this requirement, Subdivider hereby authorizes City, at City's sole option, to perform the work twenty (20) days after mailing written notice of default to Subdivider and to Subdivider's Surety, and agrees to pay the cost of such work by City. Should City determine that an urgency requires repairs or replacements to be made before Subdivider can be notified, City may, in its sole discretion, make the necessary repairs or replacement or perform the necessary work and Subdivider shall pay to City the cost of such repairs
14. Release of Security. City shall retain and release securities in accordance with the provisions of Section 3 of this agreement. Prior to the release of payment security, the City Engineer may require Subdivider to provide a title report or other evidence sufficient to show claims of lien, if any, that may affect the amount of payment security released.
15. City Right to Cure. If Subdivider fails to perform any obligation hereunder and such obligation has not been performed, or commenced and diligently pursued, within sixty (60) days after written notice of default from City, then City may perform the obligation, and Subdivider shall pay the entire cost of such performance by City including costs of suit and reasonable attorney's fees incurred by City in enforcing such obligation. In cases of emergency or compelling public interest, as determined by the City Engineer, the requirement for written notice of default and/or the passage of sixty (60) days shall be deemed waived and all other provisions of this Article shall remain in effect.
16. Injury to Public Improvements, Public Property or Public Utility Facilities. Subdivider shall replace or have replaced, or repair or have repaired, as the case may be, all public improvements, public utilities facilities and surveying or subdivision monuments which are destroyed or damaged as a result of any work performed under this Agreement. Subdivider shall bear the entire cost of replacement or repairs of any and all public or public utility property damaged or destroyed by reason of any work done under this Agreement, whether such property is owned by the United States or any agency thereof, or the State of California, or any agency or political subdivision thereof, or by City or any public or private utility corporation or by any combination of such owners. Any repair or replacement shall be to the satisfaction, and subject to the approval, of the City Engineer.
17. Indemnification.
 - a. Neither City nor any and all of its officials, employees and agents ("Indemnified Parties") shall not be liable for any injury to persons or property occasioned by reason of the acts or omissions of Subdivider, its agents or employees in the performance of this Agreement. Subdivider further agrees to protect and hold harmless Indemnified Parties from any and all claims, demands, causes of action, liability or loss of any sort, including, but not limited to, attorney fees and litigation expenses, because of, or arising out of, acts or omissions of Subdivider, its agents or employees in the performance of this Agreement, including all claims, demands, causes of action, liability, or loss because of, or arising out of, in whole or in part, the design of construction of the Improvements. This indemnification and agreement to hold harmless shall extend to injuries to persons and damages or taking of property resulting from the design or construction of said subdivision, and the public improvements as provided herein, and in addition, to adjacent property owners as a consequence of the diversion of waters from the design or construction of public drainage systems, streets and other public improvements.

b. Acceptance by City of the Improvements shall not constitute an assumption by City of any responsibility for any damage or taking covered by this paragraph. City shall not be responsible for the design or construction of the subdivision or the improvements pursuant to the approved Improvement Plans or map, regardless of any negligent action or inaction taken by City in approving the plans or map, unless the particular improvement design was specifically required by City over written objection by Subdivider submitted to the City Engineer before approval of the particular improvement design, which objection indicated that the particular improvement design was dangerous or defective and suggested an alternative safe and feasible design. Except as may be provided above, City shall not be liable for any negligence, nonfeasance, misfeasance or malfeasance in approving, reviewing, checking, or correcting any plans or specifications or in approving, reviewing or inspecting any work or construction. Nothing contained in this paragraph is intended to or shall be deemed to limit or waive any protections or immunities afforded by law to City or any and all of its officials, employees and agents ("Indemnified Parties"), by virtue of city's approval of the plan or design of the Improvements, including without limitation the protections and immunities afforded by Government Code Section 830.6. After acceptance of the improvements, Subdivider shall remain obligated to eliminate any defect in design or dangerous condition caused by the design or construction defect; however, Subdivider shall not be responsible for routine maintenance. Provisions of this paragraph shall remain in full force and effect for ten (10) years following the acceptance by City of the Improvements. It is the intent of this paragraph that Subdivider shall be responsible for all liability for design and construction of the Improvements installed or work done pursuant to this Agreement and that city shall not be liable for any negligence, nonfeasance, misfeasance or malfeasance in approving, reviewing, checking, or correcting any plans or specifications or in approving, reviewing or inspecting any work or construction. The Improvement Security shall not be required to cover the provisions of this paragraph.

18. No Modification of Conditions. This Agreement shall in no respect act to modify or amend any provision of the Conditions of Approval. In the event that any requirement or condition of this Agreement is inconsistent with or fails to include one or more provisions of the Conditions of Approval, which document(s) is (are) incorporated herein by reference, the provisions in the Conditions of Approval shall remain in effect and shall control.

19. Severability. In the event that a court of competent jurisdiction determines that any provision or provisions of this Agreement are unenforceable, all provisions not so held shall remain in full force and effect.

20. Subdivider No Agent of City. Neither Subdivider nor any of Subdivider's agents, employees, or contractors are or shall be considered to be agents of City in connection with the performance of Subdivider's obligations under this Agreement.

21. General Provisions.

A. All notices pursuant to this Agreement shall be in writing and shall be personally delivered or sent by registered or certified mail, return receipt requested, to the parties at their respective addresses indicated hereon. Notices personally delivered shall be effective upon delivery. Notices mailed as provided herein and sent postage prepaid shall be effective upon the date of delivery or refusal indicated on the return receipt. Either party may change its address for notices hereunder by notice to the other given in the manner provided in this subparagraph.

B. The terms, conditions, covenants, and agreements set forth herein shall apply to and bind the heirs, executors, administrators, assigns, and successors of the parties hereto.

C. Neither party to this Agreement relies upon any warranty or representation not contained in this Agreement.

D. This Agreement shall be governed by and interpreted with respect to the laws of the State of California.

E. In the event of any dispute between the parties with respect to this Agreement, the prevailing party shall be entitled to prompt payment of its reasonable attorneys' fees from the non-prevailing party.

Exhibit A
SECURITY – TRACT MAP NO. 31087
OFF-SITE IMPROVEMENTS

Improvements designated as "Participatory" have been or will be constructed by others. Security for Participatory Improvements shall remain in place indefinitely until called upon or released by City.

Monumentation security shall guarantee performance of or payment for the work and shall be utilized or released as specified in Chapter 4, Article 9 of the Subdivision Map Act.

As elements of the work are completed, Subdivider may request a maximum of two partial releases of performance security. Partial releases shall be for not less than ten percent (10%) of the total performance security for the Tract and shall not reduce total performance security below the amount necessary to complete the Improvements plus ten percent (10%) of the original amount. Partial releases of performance security will be evaluated and may be granted, in whole or in part, by the City Engineer. Requests for partial releases, setting forth in detail the amount of work completed and the value thereof, shall be made in writing to the City Engineer.

Labor & materials security shall remain in place until 90 days after all required Tract improvements are complete and accepted by the City Council.

Improvement Description	Performance	Labor & Materials
Street	\$ 43,105	\$ 43,105
Storm Drain	\$ 12,000	\$ 12,000
Domestic Water	\$ 10,000	\$ 10,000
Sanitary Sewer	\$ 5,000	\$ 5,000
Landscaping / Grading	\$ 10,000	\$ 10,000
Totals	\$ 80,105	\$ 80,105
Standard 10% Contingency	\$ 8,011	\$ 8,011
Total Construction Cost	\$ 88,116	\$ 88,116
Professional Fees, Design 10%	\$ 8,812	\$ 8,812
Professional Fees, Const 10%	\$ 8,812	\$ 8,812
Bond Amount	\$ 105,740	\$ 105,740