

**RECORDED AT REQUEST
OF AND WHEN
RECORDED RETURN TO:**

**CITY OF TEMECULA
Randi Johl
City Clerk
41000 Main Street
Temecula, CA 92590**

**EXEMPT FROM RECORDER'S
FEES PURSUANT TO
GOVERNMENT CODE
SECTIONS 6103 AND 27383 AND
27383.1**

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

PUBLIC IMPROVEMENT CONSTRUCTION AGREEMENT

THIS PUBLIC IMPROVEMENT CONSTRUCTION AGREEMENT is made and entered into as of _____, _____ by and between the City of Temecula, California a Municipal Corporation of the State of California, hereinafter referred to as CITY, and _____, a _____ ("DEVELOPER"). In consideration of the approval and recordation by the City Council of the final map of the Subdivision, DEVELOPER and CITY agree as follows:

1. RECITALS. This Agreement is made with respect to the following purposes and facts that each parties agrees to be true and correct:

A. Project information:

ADDRESS OF DEVELOPER:

NAME OF CONTACT PERSON FOR DEVELOPER: _____

PHONE NUMBER OF CONTACT PERSON: _____

NAME AND LOCATION OF PROJECT ("PROJECT"): _____

LEGAL DESCRIPTION OF PROPERTY ON WHICH PROJECT IS LOCATED (“Property”):

LAND USE APPROVALS FOR THE PROJECT INCLUDING PLANNING COMMISSION OR CITY COUNCIL RESOLUTIONS OR DIRECTOR APPROVALS (“Land Use Approvals”):

ESTIMATED TOTAL COST OF PUBLIC IMPROVEMENTS: \$ _____

COMPLETION DATE: _____

NAME OF SURETY AND BOND NO. FOR PERFORMANCE, LABOR AND MATERIAL, AND WARRANTY BONDS *(Include name, address, phone number and point of contact for surety company)*:

NAME OF SURETY: _____

MAILING ADDRESS: _____

POINT OF CONTACT: _____

PHONE NUMBER: _____

BOND NUMBER(S):

PERFORMANCE: _____

LABOR AND MATERIAL: _____

WARRANTY: _____

B. DEVELOPER is the owner of the Property.

C. City has approved the Project subject to the requirements of the Temecula Municipal Code and conditions contained in the Land Use Approvals. The Land Use Approvals are on file in the Office of the City Clerk and Director of Community Development and are incorporated into this agreement by reference.

D. In consideration of approval of the Land Use Approvals, and as a condition of _____ for the Project, DEVELOPER desires to enter into this Agreement, whereby DEVELOPER promises to install and complete, at DEVELOPER’S own expense, all the public improvement work required by CITY in connection with the proposed Project. DEVELOPER has secured its obligation under this Agreement by improvement security as approved by the City Attorney.

E. Complete improvement plans for the construction; installation and completion of the improvements required by the Land Use Approvals have been prepared by DEVELOPER and approved by the City Engineer (“Improvement Plans”). The Improvement Plans are on file in the Office of the City Engineer and are incorporated into this Agreement by this 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. The facilities to be constructed pursuant to the Improvement Plans shall be known as the "Improvements."

F. An estimate of the cost of construction of the Improvements according to the Improvement Plans has been made and had been approved by the City Engineer. The estimated amount is stated in Section 1, Recitals, of this Agreement. The basis for the estimate is attached as Exhibit "A" to this Agreement and incorporated herein as though set forth in full.

G. The CITY has adopted standards for the construction and installation of improvements within the CITY. The Improvement Plans have been prepared in conformance with the CITY standards in effect on the date of approval of the Land Use Approvals.

H. DEVELOPER recognizes that by approval of the Land Use Entitlements, CITY has conferred substantial rights upon DEVELOPER. As a result, CITY will be damaged to the extent of the cost of installation of the Improvements by DEVELOPER'S failure to perform its obligations under this Agreement, including, but not limited to, DEVELOPER'S obligation to complete construction of the Improvements by the time established in this Agreement. CITY shall be entitled to all legal and equitable remedies available to it pursuant to this Agreement and the laws of the State of California Laws in the event of a default by DEVELOPER, including without limitation, the revocation of the Land Use Entitlements.

2. DEVELOPER'S OBLIGATIONS TO CONSTRUCT IMPROVEMENTS.

DEVELOPER shall:

A. Comply with all requirements of the Land Use Approvals, and any amendments thereto, and with provisions of the Temecula Municipal Code and State law.

B. Complete by the time established in Section 20 of this Agreement and at DEVELOPER'S own expense, all the public improvement work required on the Land Use Approvals in conformance with the Improvement Plans and the CITY standards.

C. To the extent required by Labor Code Section 1720, DEVELOPER and its contractors shall pay prevailing wages for all work performed for the construction, alteration, demolition, installation, or repair for construction of the Improvements required by this Agreement. In accordance with the provisions of Section 1773 of the Labor Code of the State of California, the City Council has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to perform the work required by this Agreement from the Director of the Department of Industrial Relations. These rates are on file with the City Clerk of Temecula and copies may be obtained at cost at the City Clerk's Office. DEVELOPER shall post a copy of such wage rates at the job site and shall pay the adopted prevailing wage rate as a minimum. DEVELOPER shall comply with the provisions of Sections 1773.8, 1775, 1776, 1777.5, 1777.6 and 1813 of the Labor Code and other applicable laws and regulations with respect to the payment of prevailing wages. Pursuant to the provisions of 1775 of the Labor Code, DEVELOPER shall forfeit to the CITY, as a penalty, the sum of \$1000.00 for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for any work done under this Agreement, by it or by any subcontractor under it, in violation of the

provisions of the Agreement or in violation of any applicable laws or regulations pertaining to the payment of prevailing wages.

D. Furnish the necessary materials for completion of the Improvements in conformity with the Improvement Plans and CITY standards.

E. Acquire and dedicate, or pay the cost of acquisition by CITY, of all right-of-way, easements and other interests in real property for construction or installation of the Improvements, free and clear of all liens and encumbrances. The DEVELOPER'S obligations with regard to acquisition by CITY of off-site right-of-way, easements and other interests in real property shall be subject to a separate Agreement between DEVELOPER and CITY. DEVELOPER shall also be responsible for obtaining any public or private drainage easements or authorizations to accommodate the PROJECT.

3. ACQUISITION AND DEDICATION OF EASEMENT OF RIGHT-OF-WAY. If any of the Improvements contemplated by this Agreement are to be constructed or installed on land not owned by DEVELOPER, no construction or installation shall be commenced before:

A. The offer of dedication to CITY of appropriate right-of-way, easements or other interest in real property, and appropriate authorization from the property owner to allow construction or installation of the Improvements, or

B. The dedication to, and acceptance by, the CITY of appropriate right-of-way, easements or other interests in real property, as determined by the City Engineer, or

C. The issuance by a court of competent jurisdiction pursuant to the State Eminent Domain Law of an order of possession. DEVELOPER shall comply in all respects with the order of possession.

4. SECURITY.

A. DEVELOPER shall at all times guarantee DEVELOPER'S performance of this Agreement by furnishing to CITY, and maintaining, good and sufficient security as required by the Subdivision Laws on forms approved by CITY for the purposes and in the amounts as follows:

1) To assure faithful performance of this Agreement in regard to said Improvements in an amount of 100% of the estimated cost of the Improvements;

2) To secure payment to any contractor, subcontractor, persons renting equipment, or furnishing labor and materials for the Improvements required to be constructed or installed pursuant to this Agreement in the additional amount of 100% of the estimated cost of the Improvements; and

3) To guarantee or warranty the work done pursuant to this Agreement for a period of one year following acceptance thereof by CITY against any defective work or labor done or defective materials furnished in the additional amount of 10% of the estimated cost of the Improvements.

B. The securities required by this Agreement shall be those set forth in Sections 16.30.100.C.1. and 16.30.100.C.2. of the Temecula Municipal Code, subject to the prior written approval of the Director of Public Works and the City Attorney. The securities required by this

Agreement shall be kept on file with the City Clerk. The terms of the security documents referenced in Section 1, Recitals, of 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.

5. ALTERATIONS TO IMPROVEMENT PLANS.

A. Any changes, alterations or additions to the Improvement Plans and specifications or to the Improvements, not exceeding 10% of the original estimated cost of the Improvements, which are mutually agreed upon by the CITY and DEVELOPER, shall not relieve the improvement security given for faithful performance of this Agreement. In the event such changes, alterations, or additions exceed 10% of the original estimated cost of the Improvements, DEVELOPER shall provide improvement security for faithful performance as required by Paragraph 4 of this Agreement for 100% of the total estimated cost of the improvement as changed, altered, or amended.

B. The DEVELOPER shall construct the Improvements in accordance with the CITY standards in effect at the time of adoption of the Land Use Approvals. CITY reserves the right to modify the standards applicable to the PROJECT and this Agreement, when necessary to protect the public health, safety and welfare or comply.

6. INSPECTION.

DEVELOPER shall at all times maintain proper facilities and safe access for inspection of the Improvements by CITY inspector and to the shops wherein any work is in preparation. Upon completion of the work the DEVELOPER 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 Improvements to the City Council. No Improvements shall be finally accepted unless aspects of the work have been inspected and determined to have been completed in accordance with the Improvement Plans and CITY standards. DEVELOPER shall bear all costs of inspection and certification.

7. RELEASE OF SECURITIES.

Subject to approval by the City Council of CITY, the securities required by this Agreement shall be released as follows:

A. Security given for faithful performance of any act, obligation, work or agreement shall be released upon the final completion and acceptance of the act or work.

B. No partial release of faithful performance security or labor and materials security shall be allowed.

C. Within forty-five (45) days of completion of the Improvements, as determined by the City Engineer, the City Engineer shall notify the DEVELOPER the he or she has determined the Improvements to be complete. Within forty-five (45) days of the issuance of the notification by the City Engineer, the release of any remaining performance security shall be placed upon the

agenda of the City Council for acceptance of the Improvements and approval of the release of any remaining performance security. Such acceptance shall not constitute a waiver of defects by CITY. As used in this Agreement the term "completion" shall mean that all items of work necessary to complete the Improvements in accordance with the Improvement Plans have been constructed to the satisfaction of the City Engineer and that no items remain on the punch list prepared by the City Engineer. "Completion" shall not mean partial use or beneficial use of the Improvement.

D. Within forty-five (45) days following the expiration of the time within which claims of lien are required to be recorded pursuant to Chapter 5, Payment Bonds (commencing with Section 9550) of Title 3 of Part 6 of Division 4 of the Civil Code and acceptance of the Improvements, the security given to secure payment to the contractor, his or her subcontractors and to persons furnishing labor, materials or equipment shall be reduced to an amount equal to the total claimed by all claimants for who lien have been filed and of which notice has been given to the legislative body, plus an amount reasonably determined by the City Engineer to be required to assure the performance of any other obligations secured by the Security. The balance of the security shall be released upon the settlement of all claims and obligations for which the security was given.

E. 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 11, the warranty period shall not commence until final acceptance of all the work and Improvements by the City Council.

F. The CITY may retain from any security released, an amount sufficient to cover costs and reasonable expenses and fees, including reasonable attorneys' fees.

8. INJURY TO IMPROVEMENTS, PUBLIC PROPERTY OR PUBLIC UTILITY FACILITIES.

DEVELOPER shall replace or have replaced, or repair or have repaired, as the case may be, all Improvements, public utility facilities and surveying or subdivision monuments which are destroyed or damaged as a result of any work under this Agreement. DEVELOPER 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 the 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.

9. PERMITS.

DEVELOPER shall, at DEVELOPER'S expense, obtain all necessary permits and licenses for the construction and installation of the Improvements, give all necessary notices and pay all fees and taxes required by law.

10. DEFAULT OF DEVELOPER.

A. Default of DEVELOPER shall include, but not limited to: (1) DEVELOPER'S failure to timely commence construction of the Improvements; (2) DEVELOPER'S failure to timely complete construction of the Improvements; (3) DEVELOPER'S failure to timely cure any

defect in the Improvements; (4) DEVELOPER'S failure to perform substantial construction work for a period of 20 calendar days after commencement of the work; (5) DEVELOPER'S insolvency, appointment of a receiver, or the filing of any petition in bankruptcy either voluntary or involuntary which DEVELOPER fails to discharge within thirty (30) days; (6) the commencement of a foreclosure action against the property on which the Project is located, or a portion thereof, or any conveyance on lieu or in avoidance of foreclosure; or (7) DEVELOPER'S failure to perform any other obligation under this Agreement.

B. The CITY reserves to itself all remedies available to it at law or in equity for breach of DEVELOPER'S obligations under this Agreement. The CITY shall have the right, subject to this section, to draw upon or utilize the appropriate security to mitigate CITY damages in event of default by DEVELOPER. The right of CITY to draw upon or utilize the security is additional to and not in lieu of any other remedy available to CITY. It is specifically recognized that the estimated costs and security amounts may not reflect the actual cost of construction or installation of the Improvements and, therefore, CITY damages for DEVELOPER'S default shall be measured by the cost of completing the required Improvements. The sums provided by the improvement security may be used by CITY for the completion of the Improvements in accordance with the improvement plans and specifications contained herein.

C. In the event of DEVELOPER'S default under this Agreement, DEVELOPER authorizes CITY to perform such obligation twenty (20) days after mailing written notice of default to DEVELOPER and to DEVELOPER'S Surety, and agrees to pay the entire cost of such performance by CITY.

D. CITY may, but is not required to, take over the work and prosecute the same to completion, by contract or by any other method CITY may deem advisable, for the account and at the expense of DEVELOPER, and DEVELOPER'S Surety shall be liable to CITY for any excess cost or damages occasioned CITY thereby; and, in such event, CITY, without liability for so doing, may take possession of, and utilize in completing the work, such materials, appliances, plant and other property belonging to DEVELOPER as may be on the site of the work and necessary for performance of the work.

E. Failure of DEVELOPER to comply with the terms of this Agreement shall constitute consent to the filing by CITY of a notice of violation against all the lots in the Project, or to rescind the approval. The remedy provided by this Subsection is in addition to and not in lieu of other remedies available to CITY. DEVELOPER agrees that the choice of remedy or remedies for DEVELOPER'S breach shall be in the discretion of CITY.

F. In the event that DEVELOPER fails to perform any obligation hereunder, DEVELOPER agrees to pay all costs and expenses incurred by CITY in securing performance of such obligations, including costs of suit and reasonable attorney's fees.

G. The failure of CITY to take an enforcement action with respect to a default, or to declare a breach, shall not be construed as a waiver of that default or breach or any subsequent default or breach of DEVELOPER.

11. WARRANTY.

DEVELOPER shall guarantee or warranty the work done pursuant to this Agreement for a period of one year after final acceptance by the City Council of the work and Improvements against

any defective work or labor done or defective materials furnished. Where certain Improvements are to be constructed in phases or sections, the one year warranty period shall commence after CITY acceptance of the last completed portion of the Improvements. 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 DEVELOPER fails to fulfill any of the requirements of this Agreement or the Improvement Plans, DEVELOPER 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 DEVELOPER fail to act promptly or in accordance with this requirement, DEVELOPER hereby authorizes CITY at CITY option, to perform the work twenty (20) days after mailing written notice of default to DEVELOPER and to DEVELOPER'S and agrees to pay the cost of such work by CITY. Should the CITY determine that an urgency requires repairs or replacements to be made before DEVELOPER can be notified, CITY may, in its sole discretion, make the necessary repairs or replacement or perform the necessary work and DEVELOPER shall pay to CITY the cost of such repairs.

12. DEVELOPER NOT AGENT OF CITY.

Neither DEVELOPER nor any of DEVELOPER'S agents or contractors are or shall be considered to be agents of CITY in connection with the performance of DEVELOPER'S obligations under this Agreement.

13. INJURY TO WORK.

Until such time as the Improvements are accepted by CITY, DEVELOPER 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, DEVELOPER will be responsible for the care, maintenance of, and any damage to such improvement. 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 DEVELOPER.

14. OTHER AGREEMENTS.

Nothing contained in this Agreement shall preclude CITY from expending monies pursuant to Agreements concurrently or previously executed between the parties, or from entering into Agreements with other developers for the apportionment of costs of water and sewer mains, or other improvements, pursuant to the provisions of the CITY ordinance providing therefore, nor shall anything in this Agreement commit CITY of any such apportionment.

15. DEVELOPER'S OBLIGATION TO WARN PUBLIC DURING CONSTRUCTION.

Until final acceptance of the Improvements, DEVELOPER shall give good and adequate warning to the public of each and every dangerous condition existent in said Improvements, and will take all reasonable actions to protect the public from such dangerous condition.

16. VESTING OF OWNERSHIP OF IMPROVEMENTS.

Upon acceptance of the work on behalf of CITY and recordation of the Notice of Completion, ownership of the Improvements constructed pursuant to this Agreement shall vest in CITY.

17. INDEMNITY/HOLD HARMLESS.

A. CITY, its elected officers, officers, or employees, shall not be liable for injury to persons or property occasioned by reason of the acts or omissions of DEVELOPER, its officers, employees, agents or contractors in the performance of this Agreement. DEVELOPER further agrees to protect and hold harmless CITY, its officials and employees from any and all claims, demands, causes or action, liability or loss of any sort, because of, or arising out of, acts or omissions of DEVELOPER, 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 or construction of the Improvements.

B. 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 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 Improvements.

C. Acceptance by the CITY of the Improvements shall not constitute an assumption by the CITY of any responsibility for the design or construction of the subdivision or the Improvements pursuant to the approved improvement plans, regardless of any negligent action or inaction taken by the CITY in approving the plans for the Improvements, unless the particular improvement design was specifically required by CITY over written objection by DEVELOPER 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.

D. After acceptance of the Improvements, the DEVELOPER shall remain obligated to eliminate any defect in design or dangerous condition causes by the design or construction defect; however DEVELOPER shall not be responsible for routine maintenance.

E. Provisions of this paragraph shall remain in full force and effect for ten years following the acceptance by the CITY of Improvements. It is the intent of this action that DEVELOPER 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.

F. The improvement security shall not be required to cover the provisions of this paragraph.

18. SALE OR DISPOSITION OF PROPERTY.

Sale or other disposition of this Pproperty will not relieve DEVELOPER from the obligations set forth herein. If DEVELOPER sells the Property or any portion of the Property to any other person, the DEVELOPER may request a novation of this Agreement and a substitution

of security. Nothing in the novation shall relieve the DEVELOPER of the obligations under Paragraph 17 for the work or improvement done by DEVELOPER.

19. TIME FOR COMPLETION OF WORK/TIME EXTENSION.

A. DEVELOPER shall complete construction of the Improvements required by this Agreement within eighteen (18) months of this Agreement.

B. In the event good cause exists as determined by the City Engineer, the time for completion of the Improvements hereunder may be extended. The extension shall be made by writing executed by the City Engineer. The City Engineer shall be the sole and final judge as to whether or not good cause has been shown to entitle DEVELOPER to an extension. Delay, other than delay in the commencement of work, resulting from an act of CITY, or by an act of God, which DEVELOPER, could not have reasonably foreseen, or by storm or inclement weather which prevent the conducting of work, and which were not caused by or contributed to by DEVELOPER, shall constitute good cause for an extension of time for completion. As a condition of such extension, the City Engineer may require DEVELOPER to furnish new security guaranteeing performance of this Agreement as extended in an increased amount as necessary to compensate for any increase in construction costs as determined by the City Engineer.

C. Any such extension may be granted without notice to DEVELOPER'S Surety and shall not affect the validity of this Agreement or release the Surety or Sureties on any security given for this Agreement.

20. GENERAL

A. Time of the Essence. Time is of the essence of this Agreement.

B. Lender Consent and Subordination Agreement. This Agreement shall not be effective and shall not be recorded until such time as all persons with an interest in the Property, or holding a deed of trust or lien in the Property or a portion of the Property, have duly executed a Consent and Subordination in a form acceptable to the City Attorney. The originals of any such Consent and Subordination shall be attached hereto and recorded with this First Amendment.

C. Recordation. This Agreement shall be recorded by City with the County Recorder of Riverside County. Amendments approved by the Parties, and any cancellation or termination of this Agreement, shall be similarly recorded.

D. Binding Effect. This Agreement, and all of the terms and conditions hereof, shall be binding upon and inure to the benefit of the Parties, any subsequent Developer of all or any portion of the Property or the Property, and their respective assigns, heirs or successors in interest, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Property. The provisions of this Agreement shall constitute mutual covenants which shall run with the land comprising the Property for the benefit thereof, and the burdens and benefits hereof shall bind and inure to the benefit of each of the Parties hereto and all successors in interest to the Parties hereto for the term of this Agreement.

E. Legal Responsibilities. The DEVELOPER shall keep itself informed of all local, State and Federal Laws and regulations which in any manner affect those employed by it or in any way affect the performance of its obligations pursuant to this Agreement. The

DEVELOPER shall at all times observe and comply with all such laws and regulations and shall require its contractors and subcontractors to comply with all such laws and regulations. The CITY, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the DEVELOPER to comply with this section.

F. No Vesting of Project Rights. Performance by DEVELOPER of this Agreement shall not be construed to vest DEVELOPER'S rights with respect to any change in any zoning or building law or ordinance.

G. Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by mail, postage prepaid and addressed as provided in this Section. Notice shall be effective on the date it is delivered in person, or, if mailed, on the date of deposit in the United States Mail. Notices shall be addressed as follows unless a written change of address is filed with the CITY:

Notice to CITY:

City of Temecula
Patrick Thomas,
Director of Public Works/City Engineer
41000 Main Street
Temecula, CA 92590

Notice to DEVELOPER:

H. Severability. The provisions of this Agreement are severable. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect unless amended or modified by the mutual consent of the parties.

I. Captions. The captions of this Agreement are for convenience and reference only and shall not define, explain, modify, limit, exemplify, or aid in the interpretation, construction or meaning of any provisions of this Agreement.

J. Litigation or Arbitration. In the event that suit or arbitration is brought to enforce the terms of this contract, the prevailing party shall be entitled to litigation costs and reasonable attorney's fees.

K. Entire Agreement. This Agreement constitutes the entire Agreement of the parties with respect to the subject matter. All modifications, amendments, or waivers of the terms of this Agreement must be in writing and signed by the appropriate representatives of the parties. In the case of the CITY, the appropriate party shall be the City Manager.

[Agreement continues on next page]

IN WITNESS WHEREOF, this Agreement is executed by CITY, by and through its Mayor.

DEVELOPER*:

CITY OF TEMECULA,
a municipal corporation

_____,
a _____

By: _____
Name: _____
Title: _____

Zak Schwank
Mayor

By: _____
Name: _____
Title: _____

ATTEST:

Randi Johl
City Clerk

(Proper Notarization of DEVELOPER'S signature is required and shall be attached)

RECOMMENDED FOR APPROVAL:

Patrick Thomas
Director of Public Works/City Engineer

***Important.** If DEVELOPER is a corporation, the corporation must be represented by two individuals who shall execute this Agreement on behalf of the corporation as follows: (A) one from the corporation's "Operational Group" (Chair of the Board, President, or a Vice-President) and; (B) one from the corporation's "Financial Group" (Secretary, Assistant Secretary, Chief Financial Officer, Treasurer or Assistant Treasurer). See California Corporations Code section 313. A corporate resolution designating an individual officer to execute agreements on behalf of the corporation will be accepted. If the DEVELOPER is a limited liability company, then the managing member shall represent the DEVELOPER and execute the Agreement on behalf of the limited liability company. If the DEVELOPER is a partnership, the managing partner shall execute the Agreement on behalf of the partnership.].

APPROVED AS TO FORM:

Peter M. Thorson
City Attorney