

City of La Quinta
REIMBURSEMENT AGREEMENT

XXXXXXXXXXXXXXXXX IMPROVEMENTS

(FROM THE NORTHERLY TERMINUS OF XXXXX STREET TO XXXXXXXX ROAD AND FROM XXXXXXXX ROAD TO THE NORTHERLY BOUNDARY OF TENTATIVE TRACT MAP NO. XXXXX)

THIS REIMBURSEMENT AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, 2009, by and between _____ a Limited Liability Company ("Developer"), and the **City of La Quinta**, California, a California Municipal Corporation (the "City").

RECITALS:

A. Developer is the subdivider and developer of Tentative Map No. 33444 located in the City of La Quinta (the "Project") subject to the conditions of approval found in City Council Resolution 2005-082 ("Conditions of Approval").

B. The Conditions of Approval obligate Developer to construct certain improvements on Jefferson Street including, as more specifically described in the Conditions of Approval, the following: (a) widening of xxxxxxxx Street from the northerly terminus of xxxxxxxx Street Realignment to xxxxxxx Road to its ultimate width (curb to curb equaling seventy two (72) feet) in order to accommodate a secondary arterial with Class II Bike Lane; and (b) widening xxxxxxxx Street from xxxxxxxxxxxx Road to the northerly boundary of Tentative Map No. xxxxx to its ultimate width (curb to curb equaling seventy two (72) feet) to accommodate additional vehicle lanes, a bike land, and a landscaped median (the "Required Improvements").

C. Development affected by the Required Improvements on Tract Maps No. xxxxx and xxxxx have previously obligated monies to cover _____% of the cost to the Required Improvements. As part of the Conditions of Approval for the Project, the City also agreed to reimburse Developer a portion of the costs for the Required Improvements as more specifically set out herein.

D. Pursuant to the City Development Impact Fee Program ("Program"), adopted October 7, 2008, Developer is required to pay Development Impact Fees ("Fees") to fund these and other improvements as Tract No. xxxxx is constructed. Said Fees include a Transportation Improvement Fee component ("Transportation Fee") that funds regional serving transportation improvements.

E. The City Engineer has reviewed the scope and cost associated with the Required Improvements and has determined that the Required Improvements are covered by the Project and are eligible for reimbursement, subject to certain limitations discussed herein under.

F. The parties hereto desire to enter into this Agreement to effectuate the terms of the City's reimbursement to Developer of actual costs incurred by Developer in constructing the Required Improvements eligible for reimbursement.

AGREEMENT

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

1. Responsibilities of Developer. Developer shall construct the Required Improvements defined in Exhibit "A" attached hereto and incorporated by this reference and bear the cost thereof even if the Estimated Cost set forth on Exhibit "A" is inadequate to cover said cost. The Required Improvements shall be constructed in accordance with all applicable City and State codes and regulations, including the obligation to secure bonds and guarantees pursuant to Section 14.16.180 of the Municipal Code of the City of La Quinta, and shall comply with each of the applicable provisions in the Conditions of Approval, incorporated in full herein by this reference. Upon completion and acceptance of said Required Improvements by the City, Developer shall submit to the City invoices and supporting documentation for those costs.

2. Responsibilities of City. The City Engineer shall either approve or disapprove the invoices and submit the approved invoices for payment through the City's Demand Register. The City Engineer shall provide Developer with a written explanation for any portion of an invoice that is disapproved.

3. Amount of Reimbursement. City's obligation to reimburse Developer shall be based on actual costs incurred by Developer for items eligible for reimbursement under the Program and for any additional items reimbursement under the Program required in the course of construction of the Required Improvements, as evidenced by the invoices submitted by Developer pursuant to Section 1 herein, and agreed to in writing by the parties hereto. Developer shall not be entitled to reimbursement by City of an amount exceeding _____% of the Actual Cost for the Required Improvement. Regardless of the Actual Cost of the Required Improvements, City shall not be required to pay Developer an amount in excess of City's \$ _____ reimbursement responsibility as reflected in Exhibit "A."

4. Warranty. Developer agrees to obtain from each contractor performing any aspect of the Required Improvements a warranty in the City's favor for the repair or replacement of faulty work or materials for a period of one year following completion of the Required Improvements and the City's acceptance thereof, which acceptance shall not be subject to completion of all improvements for the Tract.

5. Disputes. In the event of any dispute arising under this Agreement, the injured party shall notify the injuring party of its contentions by submitting a claim therefore. The injured party shall continue performing its obligations incurred herein so long as the injuring party commences to cure such injuring action within ten (10) days of service of such notice and completes the cure within forty-five (45) days after the notification, or such longer period as may be necessary or agreed upon by both parties to this Agreement.

6. Attorneys' Fees. If either party commences an action against the other arising out of or in connection with this Agreement, including the filing of a lien or other legal action to compel payment of

the Reimbursement, the prevailing party shall be entitled to recover reasonable attorneys' fees and legal costs from the losing party related to enforcement of the provisions of this Agreement.

7. Indemnification. Developer agrees to indemnify, defend, and hold City and its officers, employees, agents, representatives, and assigns ("City Indemnitees") harmless from and against any losses, claims, demands, actions, or causes of action ("Claims"), of any nature whatsoever, arising out of or in any way connected with the performance of Developer, its officers, employees, agents, or representatives under this Agreement, including costs of suit and reasonable attorneys' fees. In the event the City Indemnitees are made a party to any action, lawsuit, or other adversarial proceeding in any way involving such Claims, Developer shall provide a defense to the City Indemnitees, or at the City's option, reimburse the City Indemnitees their costs of defense, including reasonable attorneys' fees, incurred in defense of such claim. In addition, Developer shall be obligated to promptly pay any final judgment or portion thereof rendered against the City Indemnitees.

8. City Officers and Employees. No officer or employee of City shall be personally liable to Developer or any successor-in-interest in the event of any default or breach by City or for any amount which may become due to Developer or to its successor or for breach of any obligation of the terms of this Agreement.

9. Term of Agreement. This Agreement shall remain in full force and effect for two years following the date it has been executed by both parties.

10. Insurance. Developer shall concurrently with the execution of this Agreement, furnish the City satisfactory evidence of insurance of the kinds and in the amounts specified below. This insurance shall be kept in full force and effect by Developer in perpetuity and all premiums thereon shall be promptly paid by it. Each policy shall further state that it cannot be canceled without 30 days unconditional written notice to the City and shall name the City as an additional insured. Developer shall furnish evidence of having in effect, and shall maintain, Workers Compensation Insurance coverage of not less than the statutory amount or otherwise show a certificate of self-insurance, in accordance with the Workers Compensation laws of the State of California. Failure to maintain the required amounts and types of coverage throughout the duration of this Contract shall constitute a material breach of this Contract.

a. Commercial General Liability Policy

The Contractor shall take out and maintain during the life of the Contract, a Commercial General Liability Policy, on an occurrence basis, with a minimum limit of not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage for any one occurrence and a Two Million Dollar (\$2,000,000) annual project aggregate, for all of the following:

- i) Premises Operations, including Explosion, Collapse and Underground (X, C, and U) Coverage.
- ii) Completed Operations/Products, including X, C, and U Coverage.
- iii) Independent Contractors.
- iv) Blanket Contractual.

v) Deductible shall not exceed One Thousand Dollars (\$1,000).

b. Commercial Business Auto Policy

The Contractor shall take out and maintain during the life of this Contract a Commercial Business Auto Policy, on an occurrence basis, with a minimum amount of not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage, providing at least all of the following coverage:

- i) Coverage shall be applicable to any and all leased, owned, hired, or non-owned vehicles used in pursuit of any of the activities associated with this Contract.
- ii) Any and all mobile equipment, including cranes, which is not covered under said Commercial Business Auto Policy shall have said coverage provided for under the Commercial General Liability Policy.
- iii) Deductible shall not exceed One Thousand Dollars (\$1,000).

11. Notice. Any notice, demand, request, consent, approval, or communication either party desires or is required to give to the other party or any person shall be in writing and either served personally or sent by prepaid, first-class mail to the address set forth below. Notice shall be deemed communicated forty-eight (48) hours from the time of mailing if mailed as provided in this Section.

To City: City of La Quinta
78-495 Calle Tampico
La Quinta, California 92253
Attn: City Engineer
760/777-7075

To Developer: _____

Attn: _____

12. Assignment of Agreement. Neither party may assign its obligations hereunder to any assignee without the knowledge and with written consent of the other party hereto which other party shall not unreasonably withhold consent. Assignment may be made only to an assignee willing, financially capable, and competent to carry out the assignor's obligations.

13. General Provisions.

A. Except as otherwise provided herein, 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.

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

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

D. Any failure or delay by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any rights or remedies provided for herein.

E. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing signed by both parties.

F. In the event that any provision or provisions of this Agreement are held unenforceable, all provisions not so held shall remain in full force and effect.

G. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by so executing this Agreement the parties are formally bound to the provisions of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

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

CITY OF LA QUINTA:

Thomas P. Genovese, City Manager

Date

ATTEST:

Veronica Montecino, City Clerk
City of La Quinta

Date

Approved as to Form:

M. Katherine Jenson, City Attorney
City of La Quinta

Date

DEVELOPER:

By: _____

Date

Title: _____

Exhibit "A"
REQUIRED IMPROVEMENTS – TRACT NO. XXXXX

<u>Item #</u>	<u>Description</u>	<u>Units</u>	<u>Unit Cost</u>	<u>Quantity</u>	<u>Total Cost</u>
1	Street Improvements for xxxxxxxx Street Realignment (Northerly Terminus to xxxxxxxxxxxx Road)				
	Obligation of Tract Map No. xxxxx for ¾ of full width street improvements for xxxxxxxx Street along the xxxxxxxx Specific Plan xx-xxx frontage of existing Avenue xx	L.S.	\$xxxxx	1	\$xxxxx
	Remaining Street Improvements obligation of City of La Quinta to include ¼ of full width street improvements for Avenue xx along the xxxxxxxx Specific Plan xx-xxx frontage of existing Avenue xx ¹ and Full street improvements from the westerly boundary of xxxxxxxxxxxx Specific Plan xx-xxx to xxxxxxxxxxxxxxxxxxxx Road ¹	L.F.	\$xxx	xxxx	\$xxxxxx
		L.F.	\$xxx	xxxx	\$xxxxxx
2	Street Improvements for xxxxxxxx Street Realignment (xxxxxxxxxx Road to Northerly boundary of Tentative Tract Map No. xxxxx)				
	Obligation of Tract Map No. xxxxx for 1/2 of full width street improvements for xxxxxxxx Street Realignment along the easterly boundary	L.S.	\$xxxxx	1	\$xxxxx
	Remaining ½ of full width street improvements for xxxxxxxxxxxx Street Realignment (City of La Quinta Obligation) ¹	L.F.	\$xxx	xxxx	\$xxxxxx
	Total Estimated Cost for Required Improvements, not to exceed:				\$xxxxxxxxx

Notes 1. Development Impact Fee Study adopted October 7, 2008