City Council Staff Report

Date: JULY 1, 2009 CONSENT CALENDAR

Subject: JOINT ITEM OF THE CITY COUNCIL AND THE COMMUNITY REDEVELOPMENT AGENCY APPROVING AN AMENDED AND RESTATED SUBDIVISION IMPROVEMENT AGREEMENT WITH IRP EL PORTAL ASSOCIATES, LLC ASSOCIATED WITH TENTATIVE TRACT MAP 30050

From: David H. Ready, City Manager

Initiated by: Public Works and Engineering Department

SUMMARY

On July 30, 2008, the City Council authorized staff to prepare an amendment to a Subdivision Improvement Agreement with IRP El Portal Associates, LLC, a Delaware Limited Liability Corporation, to relieve the developer from the responsibility to construct regional flood control improvements along South Palm Canyon Drive for the ALTA Project (Tentative Tract Map 30050) located at the northeast corner of South Palm Canyon Drive and Acanto Drive. The revised agreement has been prepared, and it has been approved by the developer and City Attorney, and is ready for City Council and Agency approval.

RECOMMENDATION:

1) The City Council approve amended conditions of approval for Tentative Tract Map 30050; and

2) The City Council approve the Amended and Restated Subdivision Improvement Agreement by and between the City of Palm Springs and Community Redevelopment Agency of the City of Palm Springs and IRP El Portal Associates, LLC, a Delaware limited liability company, associated with Tentative Tract Map 30050; and

3) The Community Redevelopment Agency approve the Amended and Restated Subdivision Improvement Agreement by and between the City of Palm Springs and Community Redevelopment Agency of the City of Palm Springs and IRP El Portal Associates, LLC, a Delaware limited liability company, associated with Tentative Tract Map 30050; and

ITEM NO. 2.0.

4) Authorize the City Manager and Executive Director to execute the agreement on behalf of the City and Agency.

STAFF ANALYSIS:

On July 30, 2008, the City Council authorized staff to prepare an amendment to a Subdivision Improvement Agreement with IRP El Portal Associates, LLC, a Delaware Limited Liability Corporation, to relieve the developer from the responsibility to construct regional flood control improvements along South Palm Canyon Drive for the ALTA Project (Tentative Tract Map 30050) located at the northeast corner of South Palm Canyon Drive and Acanto Drive. Please refer to the July 30, 2008, staff report (Attachment 1) for more details.

Staff has coordinated with the developer on appropriate amendments to the original Subdivision Improvement Agreement. Staff has also identified changes to the original Conditions of Approval to reflect the Council's authorization to delete the obligations associated with construction of the off-site flood control improvements. All of the recommended changes to the Conditions of Approval relate to Engineering conditions; a full copy of the final amended Conditions of Approval (in legislative format) is included as Attachment 2, as well as Exhibit "A" to the amended agreement.

The revised agreement (see Attachment 3) has been prepared, and it has been approved by the developer and City Attorney, and is ready for City Council and Agency approval.

FISCAL IMPACT:
Approval of the amended Subdivision Agreement and Conditions of Approval, allowing Tract 30050 to be completed without the construction of the flood control improvements, will unencumber $2,033,750 in Community Redevelopment Agency bond proceeds originally earmarked for construction of the Tract 30050 flood control improvements. These funds can now be used for other qualified capital projects in Merged Area #2.

Submitted:

David J. Barakian
Director of Public Works/City Engineer

David H. Ready, City Manager

ATTACHMENTS:
1. July 30, 2008, City Council staff report
2. Amended Conditions of Approval for Tentative Tract Map 30050
3. Amended and Restated Subdivision Improvement Agreement

ATTACHMENT 1

JULY 30, 2008, CITY COUNCIL STAFF REPORT

City Council Staff Report

July 30, 2008

Subject: AUTHORIZE STAFF TO PREPARE AN AMENDMENT TO THE SUBDIVISION IMPROVEMENT AGREEMENT AND MAP CONDITIONS OF APPROVAL WITH IRP EL PORTAL ASSOCIATES, LLC, A DELAWARE LIMITED LIABILITY CORPORATION, FOR TRACT MAP NO. 30050 (ALTA), RELIEVING THE CITY, THE COMMUNITY REDEVELOPMENT AGENCY, AND THE DEVELOPER FROM THE OBLIGATION TO FUND AND CONSTRUCT CERTAIN FLOOD CONTROL IMPROVEMENTS ON SOUTH PALM CANYON DRIVE AND RELEASING NINE RESTRICTED LOTS IN THE TRACT FOR SALE AND DEVELOPMENT

From: David H. Ready, City Manager

Initiated by: Public Works and Engineering Department
Community and Economic Development Department

SUMMARY

This action would authorize Staff to prepare an amendment to a Subdivision Improvement Agreement with IRP El Portal Associates, LLC, a Delaware Limited Liability Corporation, relieving the Developer from the responsibility to construct regional flood control improvements along South Palm Canyon Drive for the Alta Project, located at the northeast corner of South Palm Canyon Drive and Acanto Road. (TM 30050, Case No. 5.0899, PD 271) In addition, the Amendment would relieve the Community Redevelopment Agency of the obligation to fund a major portion of that structure, in the amount of $2,033,750.

The Agency had made a commitment, included in the Subdivision Improvement Agreement, from a Tax Allocation Bond Refinancing in June 2004. Several delays in the acquisition of property for the drainage basin and acquisition of easements onto the Indian Canyons Golf Resort, across allottee property, and obtaining the Riverside County Flood Control District and the Tribal Engineering Department's approval of the flood control structure design, caused the flood control project to be delayed by several years. The original estimated cost of the flood control improvements of $2,033,750 is now significantly out of date. The newest engineer's estimate of the work is at least $2.7 million plus the cost of water line relocation which potentially pushes the total project cost above $4.0 million, beyond the ability of any of the parties to fund at this

point. The Developer has raised the restricted lots out of the flood plain, making them eligible for development once a Letter of Map Revision (LOMR) is received from FEMA.

RECOMMENDATION:

1) AUTHORIZE STAFF TO PREPARE AN AMENDMENT TO THE SUBDIVISION IMPROVEMENT AGREEMENT AND MAP CONDITIONS OF APPROVAL WITH IRP EL PORTAL ASSOCIATES, LLC, A DELAWARE LIMITED LIABILITY CORPORATION, FOR TRACT MAP NO. 30050 (ALTA), RELIEVING THE CITY, THE COMMUNITY REDEVELOPMENT AGENCY, AND THE DEVELOPER FROM THE OBLIGATION TO FUND AND CONSTRUCT FLOOD CONTROL IMPROVEMENTS ON SOUTH PALM CANYON DRIVE AND RELEASING NINE RESTRICTED LOTS IN THE TRACT FOR SALE AND DEVELOPMENT

STAFF ANALYSIS:

As a condition of approval on most development projects, developers are required to construct public improvements that benefit their projects, especially if those improvements are located adjacent to the project site. These costs typically include street and sidewalk improvements, median islands, parkway or greenbelt landscaping, traffic signals, and all flood control and drainage facilities (on site or off site). In Palm Springs, where there exists a Drainage Master Plan in most of the city, the cost of drainage and flood control improvements are rational and predictable, if not inexpensive. In the most expensive portion of the City, in the east-central portion (around Lowe's), a drainage fee of approximately $9,600 per acre is assessed against all development.

Redevelopment Agency History

Over the past fifteen years, several developers have made requests for Community Redevelopment Agency assistance on flood control improvement costs for residential projects in the South Palm Canyon area, particularly the Alta (formerly El Portal) and Monte Sereno projects, because many of the master plan improvements were "regional" in nature: that is, the majority of the benefit actually accrues to properties spread over a wide area and not one particular project. The relatively high cost and regional nature of the improvements is an argument for the public agency to participate in the improvements, rather than requiring their cost to be borne by a single project.

The Canyon Redevelopment Project Area (now part of Merged Area #2) was formed in 1991 specifically to promote development of the area, given the significant infrastructure needs related to flood control and drainage. When the Canyon Redevelopment Project Area was created in 1991, the Agency committed to the developer of the Canyon Park Master Plan that it would fund the development of all flood and drainage infrastructure in the project area, up to a maximum of $300 million over the life of the project (40 years).

The case for Agency assistance was simple: while these residential projects promised to generate significant tax increment for the Agency and would increase the supply of

truly high-end housing in the city, they faced extraordinary costs due to flood control measures required by the Riverside County Flood Control District (RCFC) in order to address the regional offsite hydrology issues. The total anticipated cost of the flood control improvements alone is over $12 million, far more than can be absorbed by either a single developer or the home-buyers in the tract even in $1 million homes, if the project were to remain competitive with others in the Valley. In addition, the City required participation in the development of a bridge over South Palm Canyon Drive, as well as the construction of a fire station to serve the Canyon area.

At the time that Tentative Tract Map 30050 was being considered by the City in 2003, the City was also coordinating preparation of a Master Plan of Drainage for the South Palm Canyon Area, as the area was not included in the City's Drainage Master Plan.

Master Plan of Drainage Fee

The South Palm Canyon Area south of Murray Canyon Drive is not included in the City's Drainage Master Plan described above; therefore, each development proposal is subject to review and approval by RCFC, with each developer bearing the cost of his own direct (on-site) and indirect (off-site) flood control mitigation. The estimate of the entire cost of the master plan flood control improvements in the Canyon is $12 million or more. In addition, there are several areas of infrastructure that need to be upgraded to accommodate current and future development in the Canyon, including the installation of an all-weather bridge on South Palm Canyon Drive and the construction of a new fire station in the Canyon. At least a portion of the flood control and infrastructure costs are "regional," which are often borne by either the public agencies (City/Redevelopment Agency) or shared with other benefiting property owners.

Since 1991, several studies have been completed to determine the appropriate flood control mitigation measures in the Canyon area and to estimate the construction costs, as well as to develop a cost basis for the streets, bridges, and other required public improvements. These flood control studies are a basis for determining the pro rata cost of the flood control improvements for the parcels in the area; in addition, there are estimates available for the necessary streets and traffic improvements.

In 2003, the Agency hired the engineering firm of Berryman & Henigar to conduct a fee study under the provisions of the California Government Code Section 66000 in order to determine the public and private benefit shares of the estimated Master Plan costs and determine an equitable share for developers seeking to develop in the Canyon area. Such a fee was adopted by ordinance based on the conclusions of that study in February 2006 and became effective in April, 2006.

There are a number of factors that complicated the calculation of a fee: the topography of the area means that there is a high degree of disparity between the benefit of a flood control fee across the Canyon, with adjacent tracts being subjected to very different direct requirements for flood control improvements, depending on which is in the flood plain; second, a portion of the area is already developed and may have been developed under more lenient flood control guidelines, suggesting that existing development may derive benefit from the future improvements without paying for them, and that there was

no prior mechanism for collecting an infrastructure impact fee; third, about half the developable Canyon area lies outside the City limits of the City of Palm Springs, making the assessment of those parcels difficult, even though some improvements need to be constructed outside the City; and, fourth, a significant portion of the Canyon is either Indian allottee land or directly owned by the Agua Caliente Band of Cahuilla Indians. While the City has the right to impose development fees on allottee land within the City limits, its ability to assess fees on Tribally owned parcels is circumscribed and the City and Tribe have not yet negotiated the specific terms of a voluntary fee program on Tribal or allottee land outside the City limits.

Nevertheless, the Developer Fee was adopted in February 2006 and is in effect for the Canyon area for all new development.

Infrastructure Costs

The Drainage Master Plan as prepared and summarized by the engineering firm of Tettemer and Associates (now Stantec Consulting, Inc.), include:

	Watershed/Drainage Facilities	**Original Estimated Construction Cost**
	Dry Canyon Improvements	
1	Arenas Lateral	30,000
2	Dry Canyon Debris Basin	37,500
3	Dry Canyon Channel	1,828,750
4	Acanto Drive Storm Drain	137,500
	Palm Canyon Wash	
5	Westerly Bank Rip Rap Protection	1,401,250
12	Westerly Bank Concrete Levee	2,500,000
	Arenas Canyon	
6	Arenas North Channel	1,055,000
7	Andreas North Desilting Basin	1,043,750
8	South Palm Canyon Drive Culvert Crossing	155,000
9	Arenas South Channel	2,000,000
10 11	South Palm Canyon Drive Bridge & Street Improvements	3,494,079
	New Fire Station	2,500,000
	Total Estimated Construction Cost	**$16,747,829**

Specific to the Alta project is a regional flood control improvement that will accept storm water runoff from the mountains south of Acanto Drive and convey it through underground culverts and an open channel, ultimately outletting into the lake located on the Indian Canyons Golf Resort at the northeast corner of South Palm Canyon Drive and Bogert Trail. The construction would not only protect the new homes in Alta from flooding but also provide all weather access to the tract itself and other properties located on Acanto or south by mitigating the sheet flow of water that crosses (and closes) South Palm Canyon Drive in a major storm event.

The developer of the Alta project has had plans prepared by Stantec for construction of the required flood control improvements. The plans prepared by Stantec and specifications prepared by City staff are ready for Agency Board approval and the subsequent advertisement for construction bids. The Engineer's Estimate for this project is $2,700,000.

Agency Financing Proposal

As a result of negotiations with Palm Canyon, LLC (the original Alta developer) commencing in October, 2001, the Agency committed to constructing the Dry Canyon Improvements, which were specifically set forth as obligations under Engineering Conditions 38, 38A, 38B and 38D to Tentative Tract Map 30050 approved by the City on June 19, 2002 (and listed as Items 1-4 in the table above with estimated cost from the Tettemer & Associates study). Conditions of Approval for Tract 30050 required the Developer to construct the drainage improvements described above. The Subdivision Improvement Agreement between the Developer and the City of Palm Springs requires the Developer to design the facility, but anticipates the Agency's contribution toward the construction cost from 2004 Tax Allocation Bond refinancing proceeds. The Developer agreed to obtain or provide: (1) approval of the flood control structure design by RCFC; and (2) acquisition and approval by the BIA of spillway easements onto the golf course and from the underlying allottees. City staff was willing to assist the Developer but the primary responsibility for these two items stayed with the Developer.

The Agency refinanced Tax Allocation Bonds in June 2004 and set aside $2,033,750 for Alta flood control improvements. In 2004 the Agency and Developer expected that amount to be adequate to cover the cost of construction. This project was anticipated to be bid and constructed by the City of Palm Springs on behalf of the Agency once the necessary easements were in place and a design was approved by RCFC. Under tax exempt financing regulations, the Agency should have expended the funds by June, 2007 in order to meet the arbitrage rules under tax exempt financing law. Because that deadline has been missed, the funds are now in a rate-restricted account.

Restrictive Covenant

The City has also recorded a covenant against the Developer's project, restricting the development of nine lots located closest to Palm Canyon Drive, as security for the Developer to move forward with the flood control design. This covenant would be released upon the satisfactory completion of the required off-site improvements, including the flood control improvements. The rationale, in addition to the security, was

that these lots were in the flood plain and would only have that flood plain designation removed once a LOMR was received upon FEMA's acceptance of the installed flood control protection.

However, the Developer has raised the pads out of the flood plain and has requested the City Engineer support its Letter of Map Revision (LOMR) application without the construction of the flood control improvements in order to move forward with marketing them. As described above, if the project went forward without the construction of the flood control improvements the change in the pad height would protect the individual homes, but the overall access to the tract could be cut off, as well as access for anyone living along Acanto Road or south.

Project Delays

Since the beginning of the design process, the project has been challenging. Currently in the event of a major flood, water flows off the mountain and across Palm Canyon Drive and eventually makes its way to the golf course, which is the natural flood control retention area. The nature of the original improvements was that they were designed to take flood water from the Dry Falls area on the west side of Palm Canyon Drive, route the water into an inlet structure on that side of the street on property owned by the Tribe, into a pipe that would cross under South Palm Canyon Drive into a landscaped rip-rap channel flowing northbound along the east side of Palm Canyon Drive, into another box or pipe that would cross under Bogert Trail and empty the water into the lake on the Indian Canyons Golf Resort, near Bogert Trail and Palm Canyon. The benefits were the protection of homes and the ability to have all weather access along South Palm Canyon Drive.

At first delays were design-related. In crossing South Palm Canyon Drive, RCFC required that the box be at least 6 feet high in order to allow for maintenance equipment to get in after a major flood event. Without a debris basin in Dry Falls, the risk was that the structure would carry debris into the box and back up. Without adequate height to get equipment in, RCFC felt they would be unable to maintain the structure, and their Operations staff rejected any plan that did not include 6' of height. Another problem was that a 6' high box would require a vertical realignment of South Palm Canyon Drive, meaning a major rise in the road. In addition, any design crossing South Palm Canyon Drive would require the relocation of a 30 inch Desert Water Agency line and a secondary 16 inch water line at a cost of nearly $1 million. Various design options that included smaller, wider boxes with access from the top never received final approval from RCFC.

At the outlet end of the structure, the Developer was required to obtain easements to carry the water onto the golf course. They obtained through the threat of condemnation a privately-owned parcel for storm water detention (the Stich Parcel) and a leasehold easement from the Agua Caliente Development Authority, the owners of the golf course and the lessee of the land. However, negotiations with the six allottees which own the underlying fee interest on the golf course and adjacent parcels were more difficult and took much longer. The easement over the fee interest, rather than merely the leasehold interest, is necessary in order to effect an easement in perpetuity or "without limitation."

At this point staff understands that an easement has been negotiated between the Developer and allottees but not finalized through the BIA. Without the easements the structure cannot reach the outlet on the golf course.

Concurrently with the negotiation for the allottee easements, the Developer needed to obtain an easement for the inlet structure from the Tribe for access onto the Toro Ranch property on the west side of Palm Canyon Drive. However, Tribal engineering staff directed the Developer to redesign the project to provide more flood control protection on Tribally-owned property on the west side of Palm Canyon Drive. This redesign changed the location of the entire flood control channel: rather than crossing under South Palm Canyon Drive near Acanto, the flows would be conveyed north along the west side of South Palm Canyon Drive in a wider open channel on Tribally-owned property with an ultimate culvert crossing at Bogert Trail to the outlet at Indian Canyons Golf Resort. Under this redesign, the City/Agency would have constructed the channel using the bond funds but then dedicated it to the Tribe, which would have needed to provide the City with the same standard indemnification as we would have received from RCFC. After more than a year of Stantec working on a modified design, Tribal staff decided that it was not in the Tribe's best interest to have the structure on the west side of Palm Canyon Drive and agreed to allow the original design to move forward.

The amount spent by the Developer on design is over $750,000 to date, and the Developer had received informal estimates of the actual construction cost of the structure, including the water line relocation, to be in the $3.5 to $4 million range. The Engineer's estimate of the flood control project alone is $2.7 million. The Developer has indicated that they are not prepared to absorb these additional costs considering the relative benefit of the project to the development and the current state of the home building industry. In 2007, the City Engineer directed the Developer to:

- Provide the City with copies of the bids received for the Flood Control Improvements from the contractors that have informally bid the project.

- Complete the construction plans for the flood control improvements, prepared by Stantec, including processing them for approval from RCFC.

- Complete the construction plans and details for the required relocation of Desert Water Agency (DWA) facilities at South Palm Canyon Drive and Bogert Trail necessary for installation of the flood control improvements.

- Complete the acquisition of storm drain easements in favor of the City of Palm Springs from the Tribe and individual Tribal allottees.

- Complete the other required offsite improvements including undergrounding of utilities, street improvements, landscaping, etc. regardless of whether or not the flood control improvements are constructed as these are an obligation under the Subdivision Agreement.

Both the Developer and Consulting Engineer have produced letters that provide additional detail about the design and approval process.

Recommendation

It had been the City/Agency's intention to proceed with formal construction bidding of the flood control improvements as a publicly bid City Project, including requisite utility relocation of DWA facilities, such that the City would receive a valid construction cost for the project and definitively determine the significance of the cost overrun above the Agency's maximum contribution. However, given the Engineer's estimate of $2.7 million for the flood control structure itself, the informal construction bids in the range of $3.5 to $4.0 million for the combined project, and the inability of the Developer to contribute additional funds in a fragile housing market, it is apparent that to proceed with this project, the Developer, City and/or Agency would have to expend additional funds along with the original $2,033,750, which may be better invested in other initiatives, such as improvements in Section 14. Staff's recommendation is to proceed with the Amendment to the Subdivision Improvement Agreement to relieve the Agency and Developer with the responsibility for constructing this regional improvement in favor of the project-based solution of paying the establish drainage fee of $137,000 and raising the pad elevations.

The Developer is still required to complete the other required offsite improvements obligated under the Subdivision Improvement Agreement, including the undergrounding of utilities, street improvements, and landscaping, whether or not the flood control improvements are constructed.

The second recommendation would be to assist the Developer in its LOMR application to FEMA, once the City has received certification that the pads are raised outside the flood plain without the construction of the flood control improvements.

These are the recommendations of staff based on the financial realities of the project today and the activities of the Developer to protect the homes in the tract. However, not building this flood control structure means that the area south of Bogert Trail would remain without an all-weather crossing, including the Alta tract itself. This includes the subdivisions within and outside the City on Acanto Road, and the Indian Canyons themselves, which are several miles south of Acanto. There is no all-weather crossing on South Palm Canyon today and that condition would remain without the drainage structure discussed in this report.

FISCAL IMPACT:

Amending the Subdivision Agreement and Conditions of Approval to allow Tract 30050 to be completed without the construction of the flood control improvements would save the Community Redevelopment Agency at least $2,033,750 in bond proceeds. These funds could be used for other qualified capital projects in Merged Area #2, which includes the Canyon and Section 14.

The Canyon Project Area and Section 14 are in the same Merged Project Area #2.

David J. Barakian
Director of Public Works/City Engineer

John S. Raymond
Director of Community & Economic Development

Thomas J. Wilson
Assistant City Manager

David H. Ready
Executive Director

Attachments: 1) Letter from Andrew I. Sands, IRP EL Portal, LLC (Developer)
2) Letter from William E. Lawson, P.E., Stantec Consulting, Inc. (Engineer)

IRP El PORTAL ASSOCIATES, LLC
3199 Cody Court
Palm Springs, CA 92264

July 17, 2008

Mr. John Raymond
City of Palm Springs
Director of Community and Economic Development
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92262

Re: Alta Flood Control Improvements

Dear Mr. Raymond,

As you know, the design of the Flood Control Improvements have been going on for over four years now. Back in June of 2004, your Agency set aside **$2,033,750** for the Flood Control Improvements in question. At the time, both your Agency and Palm Canyon, LLC, (developer prior to IRP El Portal Associates, LLC) expected the money to be adequate for the cost of construction. However after four years of design changes and delays to accommodate Riverside County Flood Control (RCFC), Desert Water Agency (DWA), the City of Palm Springs, the Tribe, the Allottees, and four years of cost escalation, the $2,033,750 is no longer sufficient to cover the cost of construction.

The history of the Flood Control Improvements design is described in the attached letter from our consulting engineers, who are once again requesting additional funds to be able to complete their services. Without getting in too much detail, the following is a brief history:

To begin with, the original design was modified numerous times in order to meet RCFC's maintenance requirements, the issue being the shallow structures that were initially designed to avoid existing DWA waterlines along South Palm Canyon and Bogart Trail. Then, in negotiating rights and fees for easements with the Tribe and Allottees, the project was more or less put on hold until an agreement could be reached on an alternative location for the Improvements. At the request of the tribe, the decision was made to move the bulk of the Flood Control Improvements from the easterly side to the westerly side of South Palm Canyon Drive. However, after substantial delays and many design considerations, the Tribe reversed their previous decision and the Flood Control Improvements were relocated once again to the easterly side. Additionally, further design changes were mandated as a result of the District's maintenance requirements of having a

6' deep reinforced concrete box (RCB) structure. Ultimately, this requirement resulted in a complete vertical realignment of South Palm Canyon Drive and the relocation of a number of DWA lines.

Per the City's request, we obtained an engineer's estimate to construct the approved Flood Control Improvements. The Improvements were estimated at $2.7 million. This number, however, did not include the cost of the now required vertical realignment of South Palm Canyon Drive and the relocation of DWA lines, nor did it include similar work required on Bogart Trail. The total cost of this project, excluding costs we have incurred to date exceeding $750,000, will now exceed **$4 million.**

As indicated above, over the last four years we have expended in excess of $750,000 on this project trying to bring all the parties and design requirements together. Yet, we still face ongoing design costs, RCFC maintenance fees, and costs associated with purchasing the easements, the latter of which remains unresolved.

We have worked diligently and in good faith to fulfill our obligations under the Conditions of Approval. The costs of the Improvements, however, after years of delays, design changes, and cost escalation are substantially more than the $2,033,750 bond originally set aside. Our costs to date as explained above, have substantially exceeded our initial budgeted financial obligations related to the Conditions of Approval and, given current market conditions, we are not in a position to further exceed our obligations and absorb the difference between the original cost and the projected costs of the newly designed Improvements.

The ten single family lots in our subdivision that were deemed to be in the 100-year flood plain have been raised out of the plain. Therefore, we respectfully request that you relieve us of any further obligations related to the Flood Control Improvements.

Sincerely,

Andrew T. Sands
Executive Vice President

Cc: David Ready
Tom Wilson
Palm Springs City Council

Stantec Consulting Inc.
19 Technology Drive
Irvine CA 92618-2334
Tel: (949) 923-6000
Fax: (949) 923-6121

Stantec

July 16, 2008
File: 2040 014005 - 210

Concert Realty Partners, LLC
601 South Figueroa Street
Suite 3400
Los Angeles, California
90017

Attention: **Mr. Andrew Sands, Managing Partner**

Reference: **South Palm Canyon Channel and Acanto Drive Storm Drain Design, Tract 30050**

Dear Mr. Sands:

Stantec is currently out of funds to continue to service the above referenced project. I have reviewed the various stages of the construction plan preparation for the subject project and will describe below how this design has evolved to where it is today. I have also reviewed the Scope of Services covered by each of the project Change Orders, meeting minutes and other significant project correspondence and documents that have been prepared since the project was acquired by IRP El Portal Associates, LLC, in late 2004. The following paragraphs summarize the results of my findings in this review and we hope that this letter will help explain our request for additional funds.

Construction Plans

Prior to the acquisition of this project by IRP El Portal Associates, LLC, three (3) plan submittals were made to Riverside County Flood Control & Water Conservation District (District) and were dated November 26, 2003, March 3, 2004 and June 30, 2004, respectively. These plans were prepared for Palm Canyon, LLC who preceded IRP El Portal Associates in the development of Tract No. 30050 and the associated Dry Canyon Channel (now referred to as the South Palm Canyon Channel). These initial plans showed the channel as primarily an open trapezoidal channel along the easterly side of South Palm Canyon Drive (SPC Drive) with a reach of RCB (Reinforced Concrete Box) culvert from the inlet on the west side of SPC Drive at Acanto Drive to the open channel on the east side of the street, and similarly, a short reach of RCB passing under Bogert Trail to the outlet in Canyon South Golf Course. The open channel was provided with a slightly weaving bottom alignment and intermittent riprap protection. The Acanto Drive Storm Drain system consisted of 60" ID RCP (Reinforced Concrete Pipe) from Acanto Drive to a junction with the open channel southerly of the tract entrance road, and had 12 catch basin inlets in Acanto Drive. A short 24" RCP storm drain was also provided in Bogert Trail which connected to the RCB there, and two inlets in SPC Drive were also provided. The tract detention basin's 30" ID RCP outlet pipe also connected to the RCB southerly of Bogert Trail. The RCB culvert structures were designed with very shallow heights of only three (3) to four (4) feet in order to clear the existing DWA waterlines in the street. Ultimately, however, the District changed their view and opposed these shallow structures, and asked for alternative design solutions that were more condusive to District maintenance.

Concurrently, ongoing discussions between IRP El Portal Associates and Agua Caliente Development Authority regarding the acquisition of easements for the project revealed that the Tribe wanted the flood control channel to be located on the westerly side of South Palm Canyon Drive for more flood control of Tribal Land.

In June 2004 exhibits were prepared showing a continuous RCB facility, mostly along the westerly side of SPC Drive, but crossing to the east side when there was adequate clearance over the water lines. I recall a number of variations on this concept, but don't have exhibits for more than a few of them. Use of pre-cast RCB's was also studied during this period. In November 2004 an exhibit showing two options was prepared. One option was for a trap channel along the westerly side of SPC Drive with a large RCB crossing the street and continuing on to the golf course outlet. The second option was for a continuous RCB structure, mostly located on the westerly side of the street, but crossing at the same location as in the first option. The 60" ID RCP Acanto Drive storm drain was extended much further north to a point of connection with the RCB in these options.

On January 26, 2005, there was a meeting held at the District in which the issue of District facilities being constructed on Tribal lands was the primary topic of discussion. There was little or no agreement between the District and the Tribe and it was during the months that followed that we postponed the plan review process with the District and began to work more closely with the Tribe and the City of Palm Springs as we continued to work on alternatives. We had a number of meetings with the Tribe, DWA and MSA during that period and on June 3, 2005 the Tribe sent a letter to the City proposing that an open channel be constructed on Tribal lands along the westerly side of SPC Drive.

Progress was slow, however, but with the Tribe's cooperation we did develop an alignment and cross-section for the proposed channel and prepared exhibits showing the channel inlet at the same location previously proposed for the RCB inlet (3rd submittal) at Acanto Drive, but with the outlet connecting to a proposed channel coming from the future westerly Alturas project (now called Eagle Canyon) and passing under SPC Drive north of Bogert Trail into the golf course. In early 2006, Stantec prepared an exhibit showing the topographic mapping requirements for this channel concept and MSA submitted a proposal to perform the necessary field survey work and prepare the topographic map. A meeting was held at the Tribal Planning office on January 11, 2006 to discuss the mapping and design requirements for the channel. A draft Memorandum of Understanding (MOU) was prepared by Dale Walters for the Tribe and submitted to the City, IRP El Portal Associates, and Stantec for review on March 1, 2006. Due to the lack of any further progress with the Tribe, however, the design work soon came to a standstill.

On August 24, 2006, we were advised that Dale Walters had left his position at Tribal Planning and that the Tribe was withdrawing its offer to allow the channel construction on Tribal lands. Concurrently, IRP El Portal Associates asked for increased assistance from Stantec to look for an acceptable solution to the drainage problem. On January 5, 2007, Marcus Fuller of the City of Palm Springs issued an e-mail indicating that the storm drain design effort was being "re-initiated." On March 21, 2007, we met with the District again to come up with a viable solution for the project. Stantec was then instructed by IRP El Portal Associates to prepare preliminary plans ASAP and submit them to the District for review. The requested submittal was made on April 5, 2007.

On May 15, 2007 we received plan check comments from the District, and I attended a meeting with the District on June 12, 2007 to discuss those comments. Although very detailed for a preliminary review, the District's comments formed a good set of design criteria for the preparation of the final construction plans. IRP El Portal Associates however, was reluctant to allow Stantec to proceed with the final plan preparation

until we were sure that the District and City would both support the proposed design. Stantec was eventually allowed to proceed with the final design and the construction plans were submitted to the District for review on December 21, 2007. On January 9, 2008, Marcus Fuller (City) requested that Stantec also prepare Technical Specification and an Engineer's Opinion of the Estimated Construction Cost for the project for use in bidding out the construction of the project. The requested documents and a set of progress plans were submitted to the City and to the IRP El Portal Associates on April 9, 2008.

The submitted documents were not without additional design changes and delays. In order for the District to approve the design, the RCB's height had to be adjusted to meet District maintenance requirements. This in turn resulted in a vertical realignment of SPC Drive and the relocation of the 30" and 16" Desert Water Agency lines. Different options, including smaller, wider RCBs with access from the top were suggested but not approved by the District. The current design, like the 3rd Submittal of 2004, has the flood control channel on the easterly side, but there are significant design differences. Based on comments received from the District and from the City the open portion of the channel is shorter in length now and has a straight alignment and a fully riprap-lined trapezoidal section. Beginning at the tract entrance road the channel is a buried RCB structure that extends upstream to the inlet on the westerly side of SPC Drive. The interior height of the RCB's has been increased to six (6) feet to satisfy District maintenance requirements; according to DWA, this will require a costly relocation of interfering portions of the waterlines in SPC Drive and in Bogart Trail. Maintenance access to the RCB's and open channel remains a design issue with the District, but there is insufficient space available to give them all of the access that they want. The alignment of the Acanto Drive Storm Drain remains relatively unchanged, however, the profile of the pipe has been modified to achieve a minimum slope of one (1) percent, and the pipe material has been changed to a concrete arch section so as to allow the necessary earth cover over the pipe without major changes in the existing grading of the area. At the moment, after several rounds with the District and the City, some additional work on the plans will still be required in order to secure District and City approval of the plans for construction of the project.

Change Orders

To date, fourteen (14) change orders have been processed through IRP El Portal Associates in order to cover the changes in the design direction that have been described above. Additional funding will be required by Stantec to complete the construction plans and to prepare and process a LOMR through FEMA for the final design if these facilities are to be constructed. Please let us know what your earliest convenient time to meet is so that we can outline the additional services required for Stantec to complete your project. If you have any questions in regards to the information provided in this letter, please let me know.

Sincerely,

William E. Lawson

STANTEC CONSULTING INC.
William E. Lawson, PE
Senior Project Manager, Environment
Tel: (949) 923-6173
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c. Joe Long
Kevin Brandt

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ATTACHMENT 2

AMENDED CONDITIONS OF APPROVAL FOR TENTATIVE TRACT MAP 30050

EXHIBIT A

TTM 30050 and Case No. 50899 - PD-271

Northeast corner of South Palm Canyon Drive and Acanto Drive

June 19, 2002
Amended by Council July 1, 2009

CONDITIONS OF APPROVAL

Before final acceptance of the project, all conditions listed below shall be completed to the satisfaction of the City Engineer, the Director of Planning, the Chief of Police, the Fire Chief or their designee, depending on which department recommended the condition.

Any agreements, easements or covenants required to be entered into shall be in a form approved by the City Attorney.

PLANNING

1. The proposed development of the premises shall conform to all applicable regulations of the Palm Springs Zoning Ordinance, Municipal Code, or any other City Codes, ordinances and resolutions which supplement the zoning district regulations.

2. The owner shall defend, indemnify, and hold harmless the City of Palm Springs, its agents, officers, and employees from any claim, action, or proceeding against the City of Palm Springs or its agents, officers or employees to attach, set aside, void or annul, an approval of the City of Palm Springs, its legislative body, advisory agencies, or administrative officers concerning Specific Plan Amendments, TTM 30050 Case No. 5.0899 - PD-271. The City of Palm Springs will promptly notify the applicant of any such claim, action, or proceeding against the City of Palm Springs and the applicant will either undertake defense of the matter and pay the City's associated legal costs or will advance funds to pay for defense of the matter by the City Attorney. If the City of Palm Springs fails to promptly notify the applicant of any such claim, action or proceeding or fails to cooperate fully in the defense, the applicant shall not, thereafter, be responsible to defend, indemnify, or hold harmless the City of Palm Springs. Notwithstanding the foregoing, the City retains the right to settle or abandon the matter without the applicant's consent but should it do so, the City shall waive the indemnification herein, except, the City's decision to settle or abandon a matter following an adverse judgement or failure to appeal, shall not cause a waiver of the indemnification rights herein.

3. That the property owner(s) and successors and assignees in interest shall maintain and repair the improvements including and without limitation sidewalks, bikeways, parking areas, landscape, irrigation, lighting, signs, walls, and fences between the curb and property line, including sidewalk or bikeway easement areas that extend onto private property, in a first class condition, free from waste and debris, and in accordance with all applicable law, rules, ordinances and regulations of all federal, state, and local bodies and agencies having jurisdiction

at the property owner's sole expense. This condition shall be included in the recorded covenant agreement for the property if required by the City.

4. The developer shall be responsible for compliance with the State Endangered Species Act and Federal Endangered Act prior to the issuance of grading permits, if deemed necessary by the applicable resource agencies.

5. The mitigation measures of the environmental assessment shall apply. The applicant shall submit a signed agreement that the mitigation measures outlined as part of the negative declaration or EIR will be included in the plans prior to Planning Commission consideration of the environmental assessment.

6a. The final development plans shall be submitted in accordance with Section 9403.00 of the Zoning Ordinance. Final development plans shall include site plans, building elevations, floor plans, roof plans, grading plans, landscape plans, irrigation plans, exterior lighting plans, sign program, mitigation monitoring program, site cross sections, property development standards and other such documents as required by the Planning Commission. Final development plans shall be submitted within two (2) years of the City Council approval of the preliminary planned development district.

6b. The property development standards for this project shall be Section 92.01.00, R-1-B Zone, except for the modifications to minimum lot size, lot depth, lot width, front and side front setbacks, and detached garages. Front and side front setbacks for the residences and detached garages will be considered at 10 to 15 feet and 20 to 25 feet, respectively, pending submittal of final development plans.

7. Final landscaping, irrigation, exterior lighting, and fencing plans shall be submitted for approval by the Department of Planning and Building prior to issuance of a building permit. Landscape plans shall be approved by the Riverside County Agricultural Commissioner's Office prior to submittal. Final landscape plans shall include the entire street right-of-way landscaped areas. The project shall be responsible for installation and maintenance of all landscaped areas within the right-of-way and easement area.

8. The project is located in an area defined as having an impact on fish and wildlife as defined in Section 711.4 of the Fish and Game Code. Therefore, a fee of $1,250.00 plus an administrative fee of $50.00 shall be submitted by the applicant in the form of a money order or a cashier's check payable to the Riverside County Clerk prior to Council action on the project. This fee shall be submitted by the City to the County Clerk with the Notice of Determination. Action on this application shall not be final until such fee is paid.

9. Prior to issuance of a grading permit, a Fugitive Dust and Erosion Control Plan shall be submitted and approved by the Building Official. Refer to Chapter 8.50 of the Municipal Code for specific requirements.

10. All roof mounted mechanical equipment shall be screened from all possible vantage points both existing and future per Section 93.03.00 of the Zoning Ordinance. The screening shall be considered as an element of the overall design and must blend with the architectural design of the building(s). The exterior elevations and roof plans of the buildings shall indicate any fixtures or

equipment to be located on the roof of the building, the equipment heights, and type of screening. Parapets shall be at least 6" above the equipment for the purpose of screening.

11. The applicant prior to issuance of building permits shall submit a draft declaration of covenants, conditions and restrictions ("CC&R's") to the Director of Planning and Zoning for approval in a form to be approved by the City Attorney, to be recorded prior to issuance of occupancy permits. The CC&R's shall be enforceable by the City, shall not be amended without City approval, shall require maintenance of all property including the equestrian easement and landscaping within right-of-way in a good condition and in accordance with all ordinances.

12. The applicant shall submit to the City of Palm Springs, a deposit in the amount of $2000, for the review of the CC&R's by the City Attorney. A $250 filing fee shall also be paid to the City Planning Department for administrative review purposes.

13. Separate architectural approval and permits shall be required for all signs. A detailed sign program shall be submitted for review and approval by the Planning Commission prior to issuance of building permits.

14. The grading plan shall show the disposition of all cut and fill materials. Limits of site disturbance shall be shown and all disturbed areas shall be fully restored or landscaped.

15. Perimeter walls shall be designed, installed and maintained in compliance with the corner cutback requirements as required in Section 93.02.00.D.

16. The street address numbering/lettering shall not exceed eight inches in height.

17. Manufacturer's cut sheets of all exterior lighting (landscaping, and entry area) shall be submitted for approval prior to final map approval.

18. Drainage swales shall be provided adjacent to all curbs and sidewalks - 3' wide and 6" deep. The irrigation system shall be field tested prior to final approval of the project. Section 14.24.020 of the Municipal Code prohibits nuisance water from entering the public streets, roadways or gutters.

19. The design, height, texture and color of fences and walls shall be submitted for review and approval prior to issuance of building permits.

20. Texture, materials, and colors to be used on the proposed fences and walls shall be submitted for review and approval prior to issuance of building permits.

21. Vehicles associated with the construction of the proposed development including company vehicles or employees vehicles shall not be permitted to park off the proposed building site unless a parking management plan has been approved.

22. All proposed trees within the public right-of-way and within 10 feet of the public sidewalk and/or curb shall have City approved deep root barriers installed per City of Palm Springs Engineering specifications.

23. Prior to the issuance of building permits, locations of all telephone and electrical boxes must be indicated on the building plans and must be completely screened and located in the interior of the building. Electrical transformers must be located toward the interior of the project maintaining a sufficient distance from the frontage(s) of the project. Said transformer(s) must be adequately and decoratively screened.

24. Trash cans shall be screened from view and kept within fifty (50) feet of the street.

25. The applicant shall dedicate a 30' easement and construct a 15' wide equestrian trail between the property line and Lots 27 to 35. Design and details shall be submitted with the final Planned Development plans. The equestrian trail shall be separated from the sidewalk and Lots 27 to 35. A minimum 15' decomposed granite trail, landscape, fencing and signing shall be provided. If SP-1 is amended, and a trail is no longer required, the Planning Commission may delete this condition at Final PD stage.

26. Final development plans shall be prepared in accordance with the Mitigation Monitoring Program for Canyon Redevelopment Plan and the Canyon Park Resort and Spa Specific Plan/EIR. Prior to approval of the Final PD and Final Tract Map, a comprehensive mitigation monitoring report consistent with the Monitoring Program shall be prepared and approved by the Director of Planning and Zoning. The City shall be reimbursed for the cost of preparation and/or review of said report. Refer to City Council Resolution No. 17598 certifying the Final EIR for the Canyon Redevelopment Plan and Canyon Park Resort and Spa Specific Plan for specific details. All mitigation measures, where applicable, shall be adopted as conditions of approval. The following measures are hi-lighted for convenience:

a. Prior to final project acceptance including approval of the final map or planned development district, the City shall establish a formula for the applicant's payment of their "fair share" of the costs of the matters listed below, and applicant shall pay fees pursuant to the formula or post such security as the City Attorney shall determine is appropriate. The fair share formulas shall be based on data developed by City or its consultants to determine the applicant's proportionate responsibility for providing the specified public improvements, and for producing affordable housing, based upon the benefits received by the project and/or impacts caused by the project. The costs shall include not only construction costs, but also design, engineering and other similar costs, as well as City administrative costs including the costs of developing the fair-share formula. Fair-share formulas shall be developed for the following matters:

i) Funding of site acquisition and construction of a fire station providing adequate fire protection services to the project site and vicinity.

ii) Funding of site acquisition and construction of affordable housing meeting the goals of the City's Housing Element. See Section 5-10 (5-184) Jobs and Housing for specific mitigation measures.

iii) Funding of construction of off-site roadway improvements and signals as shown in Table 5.14 of the Canyon Redevelopment Plan and the Canyon Park Resort and Spa Specific Plan Final Environmental Impact Report.

b. Appropriate removal and recompaction of surface soils in areas to support structures will mitigate potential settlements. Building sites planned within the alluvial areas shall be evaluated by the soil engineer for settlement potential during detailed geotechnical studies for design of structures, with respect to the specifics of proposed structure locations, soil conditions, foundation loads, etc. A final soils report shall be submitted with the detailed development plans (grading and structural) for the project.

c. All outdoor lighting constructed on the project site shall be directed at the ground to prevent unnatural lighting from interfering with the activity of nocturnal animals that live in the surrounding natural areas. Exceptions to this condition shall be limited to accent landscape and architectural lighting. All lighting which directly illuminates hillsides and wash areas shall be prohibited. This condition shall be included in the CC&R's.

d. The applicant and the building contractor shall halt grading or any other construction activity in the immediate vicinity immediately if archaeological resources are uncovered during grading. The applicant and/or contractor shall notify the City and Tribal Council in writing and shall summon a qualified archaeologist to determine the significance of uncovered archaeological resources and appropriate mitigation measures.

e. Due to the historical sensitivity of the area, a tribal representative and/or a qualified archaeologist monitor shall be present during all rough grading operations. A written report shall be provided to the City outlining the nature of any resources found on-site, disposition, etc. At the end of construction a written report shall be provided summarizing resources found (if any) and if any additional work is needed.

POLICE DEPARTMENT:

1. Developer shall comply with Section II of Chapter 8.04 of the Palm Springs Municipal Code.

BUILDING DEPARTMENT:

1. Prior to any construction on-site, all appropriate permits must be secured.

FIRE:

1. Fire Department Access: Provide detail on the entry median and entry gate area. A 20 foot unobstructed width is required, including gate openings.

2. Mandatory Fire Sprinklers: Project is beyond a 5-minute response time from closest fire station. All buildings, regardless of size, require an automatic fire sprinkler system. (1003.2.1 CFC)

3. Water Systems and Hydrants: Where underground water mains are to be provided, they shall be installed, completed and in service with fire hydrants or standpipes (Or combinations thereof located as directed by the fire department) not later than the time when combustible materials are delivered to the construction site. (Sec. 903 CFC)

4. Residential fire hydrants: Residential fire hydrants shall be installed in accordance with DWA specifications and standards. No landscape planting, walls, or fencing are permitted within 3 feet of fire hydrants, except ground cover plantings.

5. Site Plan: Provide the fire department with two copies of an approved site plan. Approved locations for fire hydrants will be marked on this site plan, with one copy being returned to the applicant. The second copy will be retained by the fire department.

6. Fire hydrant systems: Following fire department selection of hydrant locations, plans and specifications for fire hydrant systems shall be submitted to the fire department for review and approval prior to construction. (901.2.2.2 CFC)

7. Access During Construction: Access for fire fighting equipment shall be provided to the immediate job site at the start of construction and maintained until all construction is complete. Fire apparatus access roads shall have an unobstructed width of not less than 20 feet and an unobstructed vertical clearance of not less than 13'6". Fire department access roads shall have an all weather driving surface and support a minimum weight of 73,000 lbs. (Sec. 902 CFC). Free access from the street to fire hydrants and to outside connections for standpipes, sprinklers or other fire extinguishing equipment, whether permanent or temporary, shall be provided and maintained at all times.

8. Secondary Emergency Access: The emergency access area shown at the south-west corner of the project (west of Lot 35) must meet the same requirements as an access road in condition #7 above.

ENGINEERING:

The Engineering Department recommends that if this application is approved, such approval is subject to the following conditions being completed in compliance with City standards and ordinances:

STREETS

1. Any improvements within the street right-of-way require a City of Palm Springs Encroachment Permit. Work shall be allowed according to Resolution 17950 - Restricting Street Work on Major and Secondary Thoroughfares.

2. Submit street improvement plans prepared by a Registered Civil Engineer to the Engineering Department. The plan(s) shall be approved by the City Engineer prior to issuance of any grading or building permits.

   Minimum submittal shall include the following, IF applicable:

A. Copy of signed Conditions of Approval from Planning Department.

B. All agreements and improvement plans approved by City Engineer, IF applicable.

C. Proof of processing dedications of right-of-way, easements, encroachment agreements/licenses, covenants, reimbursement agreements, etc. required by these conditions.

PALM CANYON DRIVE SOUTH

The following conditions of approval which refer to the pavement width shall be revised, IF necessary, to agree with the focused traffic study as approved by the City Engineer.

3. Dedicate a 30 foot wide easement for landscape and pedestrian access purposes along the entire frontage.

~~4. Acquire an additional right-of-way width of 10 feet on the west side of the section along the entire frontage for a total right-of-way width of 54 feet.~~

5. Construct a 12 inch wide mow strip, 20 feet EAST of centerline from Acanto Drive to the north tract boundary, with a 35 foot radius curb return and spandrel at the NORTHEAST corner of the intersection of PALM CANYON DRIVE SOUTH and ACANTO DRIVE and at the NORTHEAST AND SOUTHEAST corners of the intersection of PALM CANYON DRIVE SOUTH and STREET 'D" per City of Palm Springs Standard Drawing No. 200 and 206.

6. Construct both halves of a 6 foot wide cross gutter at the intersection of PALM CANYON DRIVE SOUTH and STREET "D" with a flow line parallel with and 20 feet EAST of the centerline of PALM CANYON DRIVE SOUTH in accordance with City of Palm Springs Standard Drawing No. 200 and 206.

~~7. Construct a 15 foot wide pedestrian/bike pathway between the storm water channel and the west tract boundary along the entire frontage in accordance with City of Palm Springs Standard Drawing No. 210 and meeting the approval of the City Engineer and Director of Planning and Building. The pathway shall also serve as the storm channel maintenance roadway. The east 5 feet of the pathway shall be constructed with 6 inch thick (6 sack) Portland Cement Concrete. The west 10 feet of the pathway shall be constructed with 6 inch thick decomposed granite compacted to 90% over 24 inches native soil compacted to 90%, tartan block, OR equal, meeting the approval of the City Engineer and Director of Planning and Building.~~Construct a 15 feet wide meandering equestrian/pedestrian trail along the entire frontage constructed with 6 inch thick decomposed granite compacted to 90% over 24 inches native soils compacted to 90%, tartan block, or equal, meeting the approval of the City Engineer.

8. Remove and replace existing pavement with a minimum pavement section of 3 inch asphalt concrete pavement over 6 inch aggregate base with a minimum subgrade of 24 inches at 95% relative compaction, OR equal, from edge of proposed mow strip to 10 feet west of centerline along the entire frontage in accordance with City of Palm Springs Standard Drawing No. 110 and 315. The pavement section shall be designed, using "R" values, by a licensed Soils

Engineer and submitted to the City Engineer for approval. A redwood header shall be installed along the west edge of pavement.

8a. All improvements on South Palm Canyon Drive shall be completed within six (6) months of City approval of the revised Subdivision Improvement Agreement.

ACANTO DRIVE

9. Construct a 6 inch wedge curb and gutter except where hydrology requires 8 inch wedge curb and gutter, 3 feet NORTH of section/centerline and 32 feet NORTH of section/centerline (distance measured from back of wedge curb on south side to flow line of wedge curb on north side) respectively, from South Palm Canyon Drive to the east tract boundary, with a 35 foot radius curb return and spandrel at the NORTHEAST corner of the intersection of PALM CANYON DRIVE SOUTH and ACANTO DRIVE per City of Palm Springs Standard Drawing No. 200 and 206.

~~10. Construct catch basins, as needed for drainage, and connect to the proposed storm drain line. The wedge curb and gutter shall transition into 6 inch vertical curb and gutter at the catch basin locations. The design shall be reviewed and approved by the City Engineer.~~

11. Construct a 15 foot wide meandering equestrian/pedestrian trail along the entire frontage with 6 inch thick decomposed granite compacted to 90% over 24 inches native soil compacted to 90%, OR equal, meeting the approval of the City Engineer and Director of Planning and Building.

    Construct a redwood header on both sides of the trail along its entire length.

12. Dedicate a 30 foot wide easement for landscape and pedestrian access purposes along the entire frontage via the tract map.

13. Construct ac pavement with a minimum pavement section of 2-1/2 inch asphalt concrete pavement over 4 inch aggregate base with a minimum subgrade of 24 inches at 95% relative compaction, OR equal, from edge of proposed gutter to proposed gutter along the entire frontage in accordance with modified City of Palm Springs Standard Drawing No. 110 and 300. The pavement section shall be designed, using "R" values, by a licensed Soils Engineer and submitted to the City Engineer for approval.

13a. All improvements on Acanto Drive shall be completed within six (6) months of City approval of the revised Subdivision Improvement Agreement.

PRIVATE STREETS

14. The following traffic calming devices, OR equal, (the final configuration to be approved by the City Engineer) shall be incorporated into the on-site streets:

    Narrowed pavement 'chokers' shall be provided at one location on Street "A", one location on Street "C", one location on Street "D", and one location on Street "E", as approved by the City Engineer. Chokers shall be designed with a transition using 25 foot reverse curves and a 40 to 80 foot long, 20 foot wide (10

feet each side of centerline) narrowed travel way. The narrowed travel way shall be constructed with a colored or decorative Portland cement concrete section 6 inches thick as approved by the City Engineer.

The proposed chokers at the east and west ends of Street "D" can be constructed but are not a requirement of these conditions of approval. If they are part of the street improvements, the approval of the City Engineer will be required for the design of same.

15a. Construct a 6 inch wedge curb and gutter except where hydrology requires 8 inch wedge curb and gutter, with the back of the wedge curb being 16.5 feet from both sides of centerline along the entire frontage, with 25 foot radius curb returns and spandrels at the intersection of Street "A" with Street "C" and "D" and at the intersection of Street "D" with Street "B" per City of Palm Springs Standard Drawing No. 200 and 206. Parking shall be allowed on both sides of the street if all buildings are sprinklered and if the parking lanes are clearly marked leaving a clear 20-foot wide vehicular path to satisfy Uniform Fire Code standards. It shall be the responsibility of the Homeowners Association to maintain the delineation and provide signs for the life of the project. Final street design shall be subject to final approval of the Fire Chief, City Engineer, and Director of Planning and Building.

15b. In the event 15A above cannot be implemented, the project shall comply with the following condition: Construct a 6 inch wedge curb and gutter except where hydrology requires 8 inch wedge curb and gutter, with the back of the wedge curb being 18.5 feet from both sides of centerline along the entire frontage, with 25 foot radius curb returns and spandrels at the intersections of Street "A" with Street "C" and "D" and at the intersection of Street "D" with Street "B"per City of Palm Springs Standard Drawing No. 200 and 206.

16. Construct both halves of a 6 foot wide cross gutter at the intersection of Street "A" with Streets "C" and "D" with a flow line parallel with and 16.5 feet East of the centerline of Street "A" in accordance with City of Palm Springs Standard Drawing No. 200 and 206.

17. Construct both halves of a 6 foot wide cross gutter at the intersection of Street "B" with Street "D" with a flow line parallel with and 16.5 feet West of the centerline of Street "B" in accordance with City of Palm Springs Standard Drawing No. 200 and 206.

18. Construct knuckles at the intersection of Street "A with Street "E" and at the intersection of Street "B" with Streets "C" and "E" in accordance with City of Palm Springs Standard Drawing No. 104.

19. The on-site cul-de-sac shall be constructed in accordance with City of Palm Springs Standard Drawing No. 103, curb portion only.

20. All centerline radii shall be a minimum of 130 feet.

21. Construct minimum 10 wide driveway approaches for all lots in accordance with City of Palm Springs Standard Drawing No. 201.

See Condition No. 22 for gated entrance requirements for Main Entries that are proposed to be gated.

22. The following requirements for a gated entry shall be met to provide adequate setbacks and turning movements for vehicles entering the primary parking facilities of this project:

    A. Provide a minimum curb cut of 100 feet (from BCR to ECR) for the gated Main Entry.

    B. Provide a minimum 50 foot setback to the access gate control mechanism

    C. Provide a turnaround after the mechanism for vehicles unable to enter the project

    D. Security gates shall be a minimum of 20 feet clear width in each direction.

E. Provide separate lane of ingress for residents.

SANITARY SEWER

22. The on-site sewer mains will be maintained by the HOA. Provision for this shall be addressed in the CC & Rs.

23. Connect all sanitary facilities to the City sewer system. Lateral shall not be connected at manhole.

24. Developer shall construct an 8 inch sewer main across all PRIVATE STREET frontages, through the proposed 20 foot wide drainage/sewer easement adjacent to the southwest property line of Lot 9 OR the northeast property line of Lot 8 and through the existing 30 foot wide utility easement to the existing manhole south of the Palm Canyon Drive South and Bogert Trail intersection in accordance with the Master Plan of Sewers and connect to the existing sewer system. The 20 foot wide drainage/sewer easement shall be located entirely within Lot 8 or Lot 9.

25. Submit sewer improvement plans prepared by a Registered Civil Engineer to the Engineering Department. The plan(s) shall be approved by the City Engineer prior to issuance of any grading or building permits.

Minimum submittal shall include the following:

    A. Copy of signed Conditions of Approval from Planning Department.

    B. Proof of processing dedications of right-of-way, easements, encroachment agreements/licenses, covenants, reimbursement agreements, etc. required by these conditions.

    C. Sewer Study/Report, IF required by these conditions.

26. The project is subject to a sewer assessment fee of $146.19 *per lot* for construction of the 15" sewer main in Avenida Granada, Calle Palo Fierro and

Laverne Way. The fee shall be paid prior to issuance of a building permit for individual lots.

GRADING

27. A copy of a Title Report prepared/updated within the past 3 months and copies of record documents shall be submitted to the City Engineer with the first submittal of the Grading Plan.

28. Submit a Grading Plan prepared by a Registered Professional to the Engineering Department for plan check. Grading plan shall be submitted to the Planning Department for comments prior to submittal to the Engineering Department. A PM 10 (dust control) Plan shall be submitted to and approved by the Building Division prior to approval of the grading plan. The Grading Plan shall be approved by the City Engineer prior to issuance of any grading or building permits.

Minimum submittal includes the following:

E. Copy of Planning Department comments regarding the grading plan.

F. Copy of signed Conditions of Approval from Planning Department.

C. Copy of Site Plan stamped approved and signed by the Planning Department.

D. Copy of Title Report prepared/updated within past 3 months.

E. Copy of Soils Report, IF required by these conditions.

F. Copy of Hydrology Study/Report, IF required by these conditions.

G. Copy of the General Construction Activity Storm Water Permit from the State Water Resources Control Board (Phone No. 916 657-0687) to the City Engineer prior to issuance of the grading permit.

29. Drainage swales shall be provided adjacent to all curbs and sidewalks - 3' wide and 6" deep - to keep nuisance water from entering the public streets, roadways, or gutters.

30. Developer shall obtain a General Construction Activity Storm Water Permit from the State Water Resources Control Board (Phone No. (916)-657-0687) and provide a copy of same, when executed, to the City Engineer prior to issuance of the grading permit.

31. In accordance with City of Palm Springs Municipal Code, Section 8.50.00, the developer shall post with the City a cash bond of two thousand dollars ($2,000.00) per acre for mitigation measures of erosion/blowsand relating to his property and development.

32. A soils report prepared by a licensed Geotechnical Engineer shall be required for and incorporated as an integral part of the grading plan for the proposed site. A

copy of the soils report shall be submitted to the Building Department and to the Engineering Department along with plans, calculations and other information subject to approval by the City Engineer prior to the issuance of the grading permit.

33. Contact the Building Department to get information regarding the preparation of the PM10 (dust control) Plan requirements.

34. In cooperation with the Riverside County Agricultural Commissioner and the California Department of Food and Agriculture Red Imported Fire Ant Project, applicants for grading permits involving a grading plan <u>and</u> involving the import or export of soil will be required to present a clearance document from a Department of Food and Agriculture representative in the form of an approved "Notification of Intent To Move Soil From or Within Quarantined Areas of Orange, Riverside, and Los Angeles Counties" (RIFA Form CA-1) or a verbal release from that office prior to the issuance of the City grading permit. The California Department of Food and Agriculture office is located at 73-710 Fred Waring Drive, Palm Desert. (Phone: 760-776-8208)

DRAINAGE

~~35. Developer shall obtain easements dedicated to Riverside County Flood Control and Water Conservation District (RCFC) for flood control and stormwater drainage purposes across Lots 73 and 74 of Tract 16149 (APN's 512-200-022 and 024) and across that certain 1.80 acre parcel of land indicated as floodway on Tract 12848 (APN 512-292-001).~~

36. The developer shall accept all stormwater runoff passing through and falling onto the site and conduct this runoff to an approved drainage structure (if available). On-site retention/detention or other facilities approved by the City Engineer shall be required if off-site drainage structures are unavailable or cannot contain the increased stormwater runoff generated by the development of the site. Provide a hydrology study to determine if the increased stormwater runoff due to development of the site exceeds the capacity of offsite drainage structures (if any exist), and to determine required stromwater runoff mitigation measures for this project.

37. A portion of this property (a portion or all of Lots 2 thru 10, and 13 and Lots A and B) is in Federal Insurance Rate Map (FIRM) zone A and shall conform to all of the FEMA and City of Palm Springs Flood Hazard Ordinance requirements for this zone.

~~38. The developer shall design and construct the storm drain channel and culvert of a non-erodable, natural-type section and configuration capable of conveying the tributary 100-year storm runoff, as approved by RCFC and the City Engineer, along the west tract boundary within an easement for operation and maintenance dedicated to RCFC in a form acceptable to the RCFC.~~

38A. ~~The developer shall design and construct interim inlet works and various appurtenances, across a portion of APN 686-030-004, consistent with RCFC standards, as approved by RCFC and the City Engineer. If public records do not demonstrate the existence of easements that allow for the construction of flood~~

~~control and stormwater drainage improvements within that area of land where interim drainage improvements are required, the developer shall obtain an easement dedicated to RCFC for flood control and stormwater drainage purposes.~~

38B. ~~The developer shall design and construct an interim collection/containment embankment (berm) approximately 350 feet in length across the south portion of APN 513-460-019 as conceptually shown in Exhibits 4 and 5 of the Addendum to the Master Plan of Drainage for the Andreas Alluvial Cone, Dry Canyon, Arenas South and North Canyons and Palm Canyon (from Bogert Trail to 1800 feet Downstream of Bogert Trail) Drainage Courses, City of Palm Springs,dated October 2001, consistent with RCFC standards, as approved by RCFC and the City Engineer. If public records do not demonstrate the existence of easements that allow for the construction of flood control and stormwater drainage improvements within that area of land where interim drainage improvements are required, the developer shall obtain an easement dedicated to RCFC for flood control and stormwater drainage purposes.~~

38C. ~~The developer shall enter into a cooperative agreement with the City and RCFC, or, if not required to be party to a cooperative agreement upon a determination by the City and RCFC, the developer shall agree to comply with operation, maintenance and joint use responsibilities of the drainage channel along the west tract boundary as determined by the City and RCFC. Operation, maintenance and joint use responsibilities applicable to the developer shall be included in provisions of Covenants, Codes and Restrictions (CC&R's) administered by a common Homeowners Association for the project.~~

38D. ~~Developer shall construct a 15 feet wide access road along the easterly side of the drainage channel along the west tract boundary to also be used as a pedestrian trail in a manner acceptable to RCFC and the City Engineer. Developer shall be responsible for all maintenance and repair costs associated with keeping RCFC with clear, free and unobstructed access to the drainage channel.~~

38E. ~~The developer shall pay the City $40,000.00 for maintenance costs as a condition for facilitating RCFC maintenance of the interim drainage improvements associated with this project. If the Developer is party to a cooperative agreement with the City and RCFC, the Developer shall submit payment to the City concurrent with approval of and in compliance with the terms of the cooperative agreement. If the Developer is not party to a cooperative agreement, the Developer shall submit payment to the City prior to issuance of a grading permit.~~

39. ~~The developer shall submit application and pertinent data to the Federal Emergency Management Agency (FEMA) for a Letter of Map Revision (LOMR) and shall provide FEMA's final written determination to the City Engineer prior to issuance of a Certificate of Occupancy or Notice of Completion.~~ This property is located within a special flood hazard area (SFHA), and is subject to the provisions of Chapter 8.68 *et. seq.* ("Flood Damage Prevention") of the Palm Springs Municipal Code, and applicable state and federal laws and regulations. Specifically, this property is located within a designated SFHA identified by Zone A (Base Flood Elevation undetermined) as shown on the current Federal

Insurance Rate Map (FIRM) for the City of Palm Springs, California, Riverside County, Community Panel Number 06065C 1568G, dated August 28, 2008. The applicant shall comply with all applicable local, state and federal laws and regulations associated with development occurring within a SFHA.

39a. Applicant shall provide the Building Department with the elevation of the lowest floor (including basement). The elevation certification shall be done, on a form acceptable to FEMA, by a registered professional civil engineer or surveyor.

39b. In accordance with Chapter 8.68.140(A)5 and Chapter 8.68.140(D)2(b) of the Palm Springs Municipal Code and 44 CFR 60.3(d)(4), the applicant shall be required to submit an application to the Federal Emergency Management Agency (FEMA) for FEMA's issuance of a Letter of Map Revision (LOMR). A complete application for the LOMR, including all appropriate technical studies and hydraulic analyses, record drawings ("as-builts"), topographic surveying, and payment of required FEMA application fees, shall be submitted and approved by FEMA, prior to issuance of a building permit. ***A building permit for construction of any building on this property currently located within a special flood hazard area will not be issued until the City receives final approval of the applicant's LOMR application to FEMA by evidence of a LOMR issued by FEMA.***

GENERAL

40. Any utility cuts in the existing off-site pavement made by this development shall receive trench replacement pavement to match existing pavement plus one additional inch. See City of Palm Springs Standard Drawing No. 115. Pavement shall be restored to a smooth rideable surface.

41. All existing and proposed utility lines that are less than 35 kV on/or adjacent to this project shall be undergrounded. The location and size of the existing overhead facilities shall be provided to the Engineering Department along with written confirmation from the involved utility company(s) that the required deposit to underground the facility(s) has been paid, prior to issuance of a grading permit.

~~All undergrounding of utilities shall be completed prior to issuance of a Certificate of Occupancy.~~

Within six (6) months of City approval of the revised Subdivision Improvement Agreement, the applicant shall pay all utility undergrounding fees to Southern California Edison (SCE) as may be necessary to schedule utility undergrounding; and the applicant shall cause to be constructed all underground utility infrastructure (i.e. conduit and vaults) necessary to relocate the existing above ground utilities into an underground system. Evidence from SCE and other utility companies of intent to relocate existing above ground utilities shall be provided to the City Engineer.

42. All existing utilities shall be shown on the grading/street plans. The existing and proposed service laterals shall be shown from the main line to the property line. The approved original grading/street plans shall be as-built and returned to the

City of Palm Springs Engineering Department prior to issuance of the certificate of occupancy.

43. The developer is advised to contact all utility purveyors for detailed requirements for this project at the earliest possible date.

44. Nothing shall be constructed or planted in the corner cut-off area of any driveway which does or will exceed the height required to maintain an appropriate sight distance per City of Palm Springs Zoning Code 93.02.00, D.

45. All proposed trees within the public right-of-way and within 10 feet of the public sidewalk and/or curb shall have City approved deep root barriers installed per City of Palm Springs Engineering specifications.

MAP

46. The Title Report prepared for subdivision guarantee for the subject property, the traverse closures for the existing parcel and all lots created therefrom, and copies of record documents shall be submitted with the Parcel Map or Final Map to the Engineering Department.

47. The Final Map shall be prepared by a licensed Land Surveyor or qualified Civil Engineer and submitted to the Engineering Department for review. Submittal shall be made prior to issuance of grading or building permits.

TRAFFIC

48. The developer shall provide a minimum of 48 inches of sidewalk clearance around all street furniture, fire hydrants and other above-ground facilities for handicap accessibility. The developer shall provide same through dedication of additional right-of-way and widening of the sidewalk <u>or</u> shall be responsible for the relocation of all existing traffic signal/safety light poles, conduit, pull boxes and all appurtenances located on the PALM CANYON DRIVE SOUTH and ACANTO DRIVE frontages of the subject property.

49. Install a 4-way stop sign at the intersection of Street "A" and Street "D".

    Install a stop sign for vehicles egressing at Palm Canyon Drive South.

    Install a stop sign for vehicles entering Street "B" at Street "D".

    Install a stop sign for vehicles entering Street "A" at Street "C".

50. The developer shall replace all damaged, destroyed, or modified pavement legends and striping that is required by the City Engineer on the PALM CANYON DRIVE SOUTH AND ACANTO DRIVE frontages prior to issuance of a Certificate of Occupancy.

51. Street name signs shall be required at each intersection in accordance with City of Palm Springs Standard Drawing Nos. 620 through 625.

52. Construction signing, lighting and barricading shall be provided for on all projects as required by City Standards or as directed by the City Engineer. As a minimum, all construction signing, lighting and barricading shall be in accordance with State of California, Department of Transportation, "MANUAL OF TRAFFIC CONTROLS FOR CONSTRUCTION AND MAINTENANCE WORK ZONES" dated 1996, or subsequent additions in force at the time of construction.

53. This property is subject to the Transportation Uniform Mitigation Fee based on the RESIDENTIAL SINGLE FAMILY DETACHED ITE Code B land use.

ATTACHMENT 3

AMENDED AND RESTATED SUBDIVISION IMPROVEMENT AGREEMENT

RECORDING REQUESTED BY
AND
WHEN RECORDED MAIL TO:

City of Palm Springs
Attention: CITY CLERK
3200 E. Tahquitz Canyon Way
P.O. Box 2743
Palm Springs, CA 92263-2743

DOCUMENTARY TRANSFER TAX $ Exempt (Revenue & Taxation Code § 11922)

SPACE ABOVE THIS LINE FOR RECORDER'S USE

RECORDING FEE: Exempt (Government Code § 27383)

AMENDED AND RESTATED

SUBDIVISION IMPROVEMENT AGREEMENT

by and between

CITY OF PALM SPRINGS

and

COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF PALM SPRINGS

and

IRP EL PORTAL ASSOCIATES, LLC

a Delaware limited liability company

AMENDED AND RESTATED SUBDIVISION IMPROVEMENT AGREEMENT

THIS AMENDED AND RESTATED SUBDIVISION IMPROVEMENT AGREEMENT ("Agreement") is entered into this _____ day of _____, 20___, by and between the CITY OF PALM SPRINGS, a municipal corporation of the State of California ("City"); the COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF PALM SPRINGS, a public body, corporate and politic ("Agency"); and IRP EL PORTAL ASSOCIATES, LLC, a Delaware limited liability company ("Subdivider").

RECITALS

A. At the time of execution of the original Subdivision Improvement Agreement for Tentative Tract Map 30050, Subdivider was the owner of a parcel (or parcels) of land identified as Tentative Tract Map 30050, located in the City of Palm Springs, County of Riverside, State of California ("Property"). Tentative Tract Map 30050, divided the Property into 67 lots, and contained original conditions of approval for the development of the Property ("Original Conditions"). Concurrent with the execution of this Agreement, the Original Conditions are hereby amended ("Amended Conditions"). A true and correct copy of the Amended Conditions are attached hereto and incorporated herein as Exhibit "A".

B. Subdivider has delivered to City and City has approved (or will approve) plans and specifications and related documents for certain "Works of Improvement", as defined in Section 1.1, which are required to be constructed and installed in order to accommodate the development of the Property.

C. Subdivider has agreed to pay its fair share of reasonable costs for certain public improvements, "Mitigation Fees" which will benefit the Property and which will be built at such time as the City has collected a sufficient amount of the Mitigation Fees in the special fund account created specifically for this purpose to pay for the cost of construction for each of the public improvements identified on Exhibit "B".

D. Pursuant to the Conditions, Subdivider, by means of a Final Map for Tentative Tract Map 30050 ("Map"), has offered: (1) to dedicate easements for public utility purposes, together with the right of ingress and egress for service and emergency vehicles and personnel, over Lots "A" through "F", inclusive; (2) to dedicate public utility easements shown as "10' PUE" along and adjacent to all private streets; (3) to dedicate to public use a 21' wide pedestrian/emergency access easement over Lots "I" and "J", which provides the right of ingress and egress for emergency vehicles and personnel; and (4) to dedicate Lots "G", "H", "I" and the westerly 44.00 feet of Lot "F" to public use as a sidewalk and for drainage purposes. A true and correct copy of the Final Map, which illustrates these dedications, is attached hereto and incorporated herein as Exhibit "C".

E. Subdivider acknowledges that the Property is located within a special flood hazard area ("SFHA"), and is subject to the provisions of Chapter 8.68 et seq., entitled Flood Damage Prevention, of the Palm Springs Municipal Code, along with

applicable state and federal laws and regulations. Specifically, this Property is located within a designated SFHA identified by Zone A (Base Flood Elevation undetermined) as shown on the current Federal Insurance Rate Map ("FIRM") for the City of Palm Springs, Riverside County, California, Community Panel Number 06065C-1568G, dated August 28, 2008. Subdivider agrees to comply with all applicable local, state, and federal laws and regulations associated with development occurring within a SFHA.

F. Subdivider shall obtain, and provide to the Building Department prior to the issuance of any building permit, an elevation certification on a form acceptable to Federal Emergency Management Agency ("FEMA"), prepared and certified by a registered professional civil engineer or surveyor.

G. In accordance with Chapter 8.68.140(A)(5) and Chapter 8.68.140(D)(2)(b) of the Palm Springs Municipal Code, and 44 CFR 60.3(d)(4), the Subdivider shall be required to, and agrees and acknowledges that it will, submit an application to FEMA for FEMA's issuance of a Letter of Map Revision ("LOMR"). A complete application for the LOMR, including all appropriate technical studies and hydraulic analyses, record drawings ("as-builts"), topographic surveying, and payment of required FEMA application fees, shall be submitted and approved by FEMA, prior to issuance of a building permit for a portion or all of Lots 2 through 10, inclusive, and Lot 13, and lettered Lots A and B (collectively hereinafter, "FEMA Property"). A building permit for construction of any building on this property currently located within a SFHA will not be issued until the City receives final approval of the Subdivider's LOMR application to FEMA by evidence of a LOMR issued by FEMA, said requirement based on the City's need to protect the public's health, safety, and welfare. Based thereon, the City Council has determined that any prior obligation of the Subdivider to provide the El Portal drainage improvements is no longer required.

H. Subdivider's agreement to: (1) construct and install the Works of Improvement, (2) offer to dedicate the streets, easements and other improvements and facilities, as shown on the Map, (3) pay all utility undergrounding fees to Southern California Edison ("SCE") as may be necessary to schedule utility undergrounding, (4) cause to be constructed all underground utility infrastructure (i.e. conduit and vaults) necessary to relocate the existing above-ground utilities into an underground system, (5) provide evidence from SCE and any other utility companies of intent to relocate existing above-ground utilities, to City Engineer no later than six (6) months following the City's approval of this Agreement, (6) complete all improvements on Acanto Drive no later than no later than six (6) months following the City's approval of this Agreement, (7) complete all improvements on South Palm Canyon Drive no later than no later than six (6) months following the City's approval of this Agreement.

COVENANTS

Based upon the foregoing Recitals, which are incorporated herein by reference, and in consideration of City's approval of the Map for the Property and permitting development of the Property to proceed, Subdivider agrees to timely perform all of its obligations as set forth herein.

1. Subdivider's Obligations.

1.1. Works of Improvement. Except as set forth specifically in Section 1.1A or Section 3 hereunder, Subdivider agrees, at its sole cost and expense, to construct or install or cause to be constructed or installed the on-site and off-site street, on-site drainage, on-site domestic water, on-site sanitary sewer and other on-site improvements (herein sometimes collectively referred to as the "Works of Improvement", which explicitly excludes the El Portal Drainage Improvements), as the same may be supplemented and revised from time to time as set forth herein (said plans and specifications, together with all related documents, are referred to herein as the "Plans"). Subdivider has previously completed construction of all on-site improvements, leaving certain off-site improvements to be completed on Acanto Drive and South Palm Canyon Drive (referred to herein as "Remaining Improvements"). The estimated construction cost for the Remaining Improvements is $876,300. Subdivider shall complete or cause to be completed the undergrounding of all above-ground utilities, and the Remaining Improvements no later than six (6) months after the final approval date of the LOMR or approval of this Agreement by the City, whichever occurs later.

1.1A Construction of Remaining Improvements by City. City has awarded a contract for construction of certain street improvements on South Palm Canyon Drive, extending from Murray Canyon Drive to south of Bogert Trail (referred to herein as "City Project No. 05-03"). City Project No. 05-03 overlaps the Remaining Improvements to be constructed by Subdivider, and it is to the mutual benefit of City and Subdivider that City include construction of the Remaining Improvements as part of City Project No. 05-03 on behalf of Subdivider. Upon receipt of cash deposit representing Subdivider's payment to City for construction of the Remaining Improvements (in accordance with City's negotiated contract price with its contractor for City Project No. 05-03), Subdivider shall have no further obligations related to the Remaining Improvements with the exception of completing the undergrounding of all above-ground utilities. If City constructs the Remaining Improvements on behalf of Subdivider, at the time undergrounding of all above-ground utilities are completed, the securities required in Section 5 hereunder shall be released by City. Subdivider acknowledges its remaining obligation to complete the undergrounding of all above-ground utilities itself within six (6) months of City's approval of this Agreement, and City's rights to enforce this obligation which may include, but not be limited to, withholding issuance of building permits for construction of any building on the Property.

1.2. Mitigation Fees for Future Improvements. Prior to the issuance of each residential building permit for construction within the Property, Subdivider shall pay those Mitigation Fees identified in Exhibit "B." The fee schedule set forth on Exhibit "B" applies for the calendar year specified on the exhibit. If permits are not obtained within the specified calendar year, the Mitigation Fees may be adjusted in accordance with the final engineering spread study for "Canyon South," as approved by the City but shall not exceed the Consumer Price Index for Riverside County. Said Mitigation Fees shall be held in a fund for the specific purpose associated with each fee until adequate amounts are collected to construct the applicable public improvement.

1.3. Other Obligations Referenced in Conditions of Tentative Map Approval. Except as set forth specifically in Section 3 below, Subdivider shall satisfy all of the Conditions on the Tentative Map for the Property, as listed on Exhibit "B".

1.4. Intent of Plans for Works of Improvement. The intent of the Plans referenced in Section 1.1 is to prescribe the complete Works of Improvement which Subdivider shall perform or cause to be performed in a manner acceptable to the City Engineer (or his/her designee) and in full compliance with all codes and the terms of this Agreement. Subdivider shall complete a functional or operable improvement or facility in accordance with the intent of the approved Plans, even though the Plans may not specifically call out all items of work required for the contractor to complete its tasks, incidental appurtenances, materials, and the like. If any omissions are made or information necessary to carry out the full intent and meaning of the Plans, Subdivider or its contractor shall immediately notify its design engineer who will seek approval of the City Engineer for furnishing of detailed instructions. In the event of any doubt or question arising regarding the true meaning of any of the Plans, reference shall be made to the City Engineer whose decision thereon shall be final.

Subdivider recognizes that the Plans consist of general drawings. All authorized alterations affecting the requirements and information given on the Plans shall be in writing and approved by the City Engineer. The Plans shall be supplemented by such working or shop drawings as are necessary to adequately control the work. Without the City Engineer's prior written approval, no change shall be made by Subdivider or Subdivider's contractor to any plan, specification, or working or shop drawing after it has been stamped as approved.

1.5. Survey Monuments. Before final approval of street improvements, Subdivider will place survey monument(s) as shown on the Map (Exhibit "C") in accordance with the provisions of the State Subdivision Map Act and the Subdivision Ordinance of the City. Subdivider shall provide security for such obligation as provided in Section 5.1(a)(3) and, after setting the monument(s), Subdivider shall furnish the City Engineer with written notice of the setting of said monument(s) and written proof of having paid the engineer or surveyor for the setting of said monument(s).

1.6. Performance of Works of Improvement. Subdivider shall furnish or cause to be furnished all materials, labor, tools, equipment, utilities, transportation, and incidentals required to perform Subdivider's obligations under this Agreement for the Works of Improvement. This Section shall not apply in the event City constructs the Remaining Improvements in accordance with Section 1.1A herein.

1.7. Changes to the Works of Improvement. The City Engineer, without invalidating this Agreement and without notification to any of the sureties or financial institutions referenced in Section 5, may order extra work or may make reasonable changes by altering or deleting any portion of the Works of Improvement as deemed reasonably necessary or desirable by the City Engineer and to accomplish the purposes of this Agreement and to protect the public health, safety, or welfare. The City Engineer shall notify Subdivider or Subdivider's contractor in writing (by Correction Notice) at the time a determination has been made to require changes in the work. No field changes performed or proposed by Subdivider or its contractor shall be binding on City unless

approved in writing by the City Engineer. This Section shall not apply in the event City constructs the Remaining Improvements in accordance with Section 1.1A herein.

1.8. Defective Work on the Works of Improvement. Subdivider shall cause its contractor to repair, reconstruct, replace, or otherwise make acceptable any portions of the Works of Improvement which are found by the City Engineer to be defective. This Section shall not apply in the event City constructs the Remaining Improvements in accordance with Section 1.1A herein.

1.9. No Warranty by City on the Works of Improvement. The Plans for the Works of Improvement have been prepared by or on behalf of Subdivider or its consultants or contractors, and City makes no representation or warranty, express or implied, to Subdivider or to any other person regarding the adequacy of the Plans or related documents.

1.10. Authority of the City Engineer with Respect to Works of Improvement. In addition to the authority granted to the City Engineer elsewhere in this Agreement, the City Engineer shall have the authority to decide all questions which may arise as to the quality and acceptability of materials furnished and work performed on the Works of Improvement, and all questions as to the satisfactory and acceptable fulfillment of the terms of this Agreement in accordance with approved Plans by Subdivider and Subdivider's contractor.

1.11. Documents Available at the Site of the Works of Improvement. Subdivider shall cause its contractor to keep a copy of all approved Plans at the job site and shall give access thereto to the City's inspectors and engineers at all times. This Section shall not apply in the event City constructs the Remaining Improvements in accordance with Section 1.1A herein.

1.12. Inspection of Works of Improvement. Subdivider shall have an authorized representative on the job site within 4 hours notice during which work is being done who has full authority to act for Subdivider, or its design engineer, and Subdivider's contractor(s) regarding the Works of Improvement. Subdivider shall cause its contractor to furnish the City with all materials reasonably necessary to ascertain whether or not the Works of Improvement as performed are in accordance with the requirements and intent of this Agreement, including the Plans. If the City inspector requests it, the contractor at any time before acceptance of the Works of Improvement shall remove or uncover such portions of the finished work as may be directed which have not previously been inspected. After examination, the contractor shall restore said portions of the work to the standards required hereunder. Inspection or supervision by the City shall not be considered as direct control of the individual workmen on the job site. Nonetheless, City's inspector shall have the authority to stop any and all work not in accordance with the requirements contained or referenced in this Agreement.

The inspection of the work by City shall not relieve Subdivider or its contractor of any obligations to fulfill this Agreement as herein provided and unsuitable materials, as determined in the reasonable judgement of the City Engineer, or work may be rejected notwithstanding that such materials or work may have been previously overlooked or accepted.

This Section shall not apply in the event City constructs the Remaining Improvements in accordance with Section 1.1A herein.

1.13. Compliance With Law. In addition to the express provisions of this Agreement and the Plans, Subdivider shall cause construction of the Works of Improvement to be completed in accordance with all other applicable federal, state, and local laws, ordinances, rules and regulations. This Section shall not apply in the event City constructs the Remaining Improvements in accordance with Section 1.1A herein.

1.14. Suspension of Work on Works of Improvement. City Engineer shall have authority to order suspension of the work on the Works of Improvement for failure of the Subdivider and/or its contractor to comply with law pursuant to Section 1.13. In case of suspension of work for any cause whatever. Subdivider and its contractor shall be responsible for all materials and shall store them properly, if necessary, and shall provide suitable drainage and erect temporary structures where necessary. This Section shall not apply in the event City constructs the Remaining Improvements in accordance with Section 1.1A herein.

1.15. Final Acceptance of Works of Improvement. After Subdivider's contractor has completed all of the Works of Improvement, Subdivider shall then request a final inspection of the work. If items are found by the inspector to be incomplete or not in compliance with this Agreement or any of the requirements contained or referenced herein, City will inform the contractor of such items. After the contractor has completed these items, the procedure shall then be the same as specified above for the contractor's initial request for final inspection. If items are found by City's inspector to be incomplete or not in compliance after two (2) "final" inspections, City may require the contractor, as a condition to performing further field inspections, to submit in writing a detailed statement of the work performed subsequent to the date of the previous inspection which was found to be incomplete or not in compliance at that time.

No inspection or acceptance pertaining to specific parts of the Works of Improvement shall be construed as final acceptance of any part until the overall final acceptance by City is made. Final acceptance shall not constitute a waiver by City of defective work subsequently discovered.

The date on which the Works of Improvement will be considered as complete shall be the date of the Notice of Acceptance.

This Section shall not apply in the event City constructs the Remaining Improvements in accordance with Section 1.1A herein.

2. Time for Performance of Works of Improvement.

2.1. Commencement and Completion Dates for Works of Improvement. Subject to Section 2.2 and 2.3 below, Subdivider shall (i) commence with construction and installation of the Remaining Improvements forty-five (45) days following City's approval of the Plans ("Commencement Date"); and (ii) complete or cause to be completed all of the Remaining Improvements six (6) months after City's approval of this Agreement. Extensions of time may be granted upon mutual agreement of the City Engineer and Subdivider, in writing, as required by the City Engineer or his designee.

The provisions of this Section 2.1 shall not apply to the commencement and completion of the City's obligations set forth in Section 3 of this Agreement. This Section shall not apply in the event City constructs the Remaining Improvements in accordance with Section 1.1A herein.

2.2. Phasing Requirements for Works of Improvement. Notwithstanding the provisions of Section 2.1, City reserves the right to control and regulate the phasing of completion of specific Works of Improvement as required to comply with applicable City ordinances, regulations, and rules relating to the timely provision of public services and facilities. In addition to whatever other remedies City may have for Subdivider's failure to satisfy such phasing requirements, as the same now exist or as may be amended from time to time. Subdivider acknowledges City's right to withhold the issuance of further building permits on the Property until such phasing requirements are satisfied. Prior to issuance of building permits, Subdivider shall provide satisfactory evidence that all applicable requirements that are a condition to issuance of building permits have been satisfied. Such requirements may include the payment of fees, construction of improvements, or both. Final inspections or issuance of Certificates of Occupancy may be withheld from the Subdivider by the City, if, upon a determination by the City Engineer or his designee, completion of specific Works of Improvements or other reasonable requirements associated with the development of the Property have not been completed to his satisfaction. This Section shall not apply in the event City constructs the Remaining Improvements in accordance with Section 1.1A herein.

2.3. Force Majeure. Notwithstanding the provisions of Section 2.1, Subdivider's time for commencement and completion of the Works of Improvement shall be extended for the period of any enforced delay due to circumstances beyond the control and without the fault of Subdivider, including, to the extent applicable, adverse weather conditions, flood, earthquakes, strikers, lockouts, acts or failures to act of a public agency (including City), required changes to the Scope of Work required by City, and similar causes; provided, however, that the period of any enforced delay hereunder shall not include any period longer than five (5) days prior to City's receipt of a written notice from Subdivider or its contractor detailing the grounds for Subdivider's claim to a right to extend its time for performance hereunder. City Engineer shall evaluate all claims to Force Majeure and his decision shall be final.

2.4. Continuous Work on Works of Improvement. After commencement of construction of the Works of Improvement (or separate portions thereof), Subdivider shall cause such work to be diligently pursued to completion, and shall not abandon the work for a consecutive period or more than thirty (30) days, events of Force Majeure excepted. This Section shall not apply in the event City constructs the Remaining Improvements in accordance with Section 1.1A herein.

2.5. Reversion to Acreage. In addition to whatever other rights City may have due to Subdivider's failure to timely perform its obligations hereunder, Subdivider recognizes that City reserves the right to revert the Property to acreage subject to the limitations and requirements set forth in California Government Code Sections 66499.11-66499.20-3/4. In this regard, Subdivider agrees that if the Works of Improvement have not been completed on or before the later of two (2) years from the date of this Agreement or within the time allowed herein, whichever is the later, and if City thereafter initiates proceedings to revert the Property to acreage, pursuant to

Government Code Section 66499.16, Subdivider hereby consents to reversion and agrees that any improvements made by or on behalf of Subdivider shall not be considered in determining City's authority to revert the Property to acreage.

2.6. Time of the Essence on Works of Improvement. Time is of the essence of Subdivider's, City's, and Agency's performance of all of its obligations under this Agreement.

3. El Portal Drainage Improvements. Subdivider shall promise not to construct any facility, infrastructure, or building on Lots 2 through 10, and 13 within the Map until storm water protection by a means other than the construction of the El Portal Drainage Improvements is achieved as approved by the City.

3.1. Special Flood Hazard Area. Subdivider acknowledges that the Property is located within a special flood hazard area ("SFHA"), and is subject to the provisions of Chapter 8.68 et seq., entitled Flood Damage Prevention, of the Palm Springs Municipal Code, along with applicable state and federal laws and regulations. Specifically, this Property is located within a designated SFHA identified by Zone A (Base Flood Elevation undetermined) as shown on the current Federal Insurance Rate Map ("FIRM") for the City of Palm Springs, Riverside County, California, Community Panel Number 06065C-1568G, dated August 28, 2008. Subdivider agrees to comply with all applicable local, state, and federal laws and regulations associated with development occurring within a SFHA.

3.2. FEMA Clearances and Building Permits. Subdivider shall obtain, and provide to the Building Department prior to the issuance of any building permit related to the FEMA Property, an elevation certification on a form acceptable to Federal Emergency Management Agency ("FEMA"), prepared and certified by a registered professional civil engineer or surveyor. In accordance with Chapter 8.68.140(A)(5) and Chapter 8.68.140(D)(2)(b) of the Palm Springs Municipal Code, and 44 CFR 60.3(d)(4), the Subdivider shall be required to, and agrees and acknowledges that it will, submit an application to FEMA for FEMA's issuance of a Letter of Map Revision ("LOMR"). A complete application for the LOMR, including all appropriate technical studies and hydraulic analyses, record drawings ("as-builts"), topographic surveying, and payment of required FEMA application fees, shall be submitted and approved by FEMA, prior to issuance of a building permit. A building permit for construction of any building on this property currently located within a SFHA will not be issued until the City receives final approval of the Subdivider's LOMR application to FEMA by evidence of a LOMR issued by FEMA, said requirement based on the City's need to protect the public's health, safety, and welfare.

3.3. FEMA Clearances and Covenant Not to Use. City and Agency agree to record a Release of Covenant to Use as One ("Release") in the form attached hereto as Exhibit D, releasing the Covenant to Use as One recorded on October 22, 2004, as Document No. 2004-0839118, in the Office of the County Recorder, County of Riverside. Said recordation of the Release is conditioned upon the fact that Subdivider shall first obtain and City shall receive final approval of the Subdivider's LOMR application to FEMA by evidence of a LOMR issued by FEMA, said requirement based on the City's need to protect the public's health, safety, and welfare. The City Manager

of City and the Chairman of Agency are hereby authorized to execute the Release upon satisfaction of the aforesaid condition placed on Subdivider.

4. Labor.

4.1. Labor Standards/Prevailing Wages. Subdivider shall be responsible for causing all contractors and subcontractors performing any of the Works of Improvement to comply with all applicable federal and state labor standards, including, to the extent applicable, the prevailing wage requirements promulgated by the Director of Industrial Relations of the State of California Department of Labor.

4.2. Nondiscrimination. Subdivider agrees that no contractor or subcontractor performing any of the Works of Improvement shall discriminate against any employee or prospective employee with respect to such work in hiring, promotion, seniority, or any other terms and conditions of employment on the grounds of race, creed, color, national origin, ancestry, religion, sex, or marital status.

4.3. Licensed Contractors. Subdivider shall cause all of the Works of Improvement to be constructed by contractors and subcontractors with valid California Contractors' licenses for the type of work being performed.

4.4. Worker's Compensation. Subdivider shall cause every contractor and subcontractor performing any of the Works of Improvement to carry Workers' Compensation Insurance as required by the Labor Code of the State of California and shall cause each such contractor and subcontractor to submit to City a Certificate of Insurance verifying such coverage prior to such contractor or subcontractor entering onto the job site.

5. Security.

5.1. Required Security.

(a) At the time Subdivider executes this Agreement, Subdivider shall furnish to City the following bonds, letters of credit, instruments of credit (assignment of deposit account) or other security acceptable to City in its sole and absolute discretion and satisfying the requirements of the applicable provisions of this Section 5 below (hereinafter "Security Instruments"):

1) A Security Instrument securing Subdivider's faithful performance of all of the Works of Improvement ("Faithful Performance Security Instrument"), in the amount of $876,300 which is equal to 100% of the estimated construction cost referenced in Section 1.1.

2) A Security Instrument guaranteeing the payment to contractors, subcontractors, and other persons furnishing labor, materials, and/or equipment ("Labor and Materials Security Instrument") with respect to the Works of Improvement in an amount equal to $438,150 which is equal to 50% of the estimated construction cost referenced in Section 1.1.

3) A Security Instrument guaranteeing the payment of the cost of setting monuments as required in Section 1.5 in the amount of $10,050.00 which is equal to 100% of the cost thereof.

This Agreement shall not be effective for any purpose until such Security Instruments are supplied to and approved by City in accordance herewith.

(b) Required Security Instrument for Maintenance and Warranty of Works of Improvement. Prior to the City Council's acceptance of the Works of Improvement and recordation of a Notice of Completion, Subdivider shall deliver a Security Instrument warranting the work accepted for a period of one (1) year following said acceptance ("Maintenance and Warranty Security Instrument"), in the amount of $270,000 which is equal to 15% of the estimated construction cost set forth in Section 1.1 or a suitable amount determined by the City Engineer.

5.2. Form of Security Instruments. All Security Instruments shall be in the amounts required under Section 5.1 (a) or 5.1(b), as applicable, shall meet the following minimum requirements and otherwise shall be in a form provided by City or otherwise approved by the City Attorney:

(a) Bonds. For Security Instruments provided in the form of bonds, any such bond must be issued and executed by an insurance company or bank authorized to transact surety business in the State of California. Any insurance company acting as surety shall have a minimum rating of A-IX, as rated by the current edition of Best's Key Rating Guide published by A.M. Best's Company, Oldwick, New Jersey, 08858. Any bank acting as surety shall have a minimum rating of AA, as rated by Moody's or Standard & Poor's.

(b) Letters of Credit. For Security Instruments which are letters of credit, any letter of credit shall be an original separate unconditional, Irrevocable, negotiable and transferable commercial letter of credit issued by a financial institution with offices in the State of California acceptable to City. Any such letter of credit shall specifically permit City to draw on same by unilateral certification of the City Engineer of the City that Subdivider is in default under its payment or performance obligations hereunder or in the event Subdivider fails to deliver a replacement letter of credit not less than thirty (30) days prior to the date of expiration of any such letter of credit and shall further be subject to the provisions of Section 5.4.

(c) Instrument of Credit. For Security Instruments which are Instruments of Credit, any Instrument of Credit shall be an assignment of deposit account assigning as security to City all of Subdivider's interest in funds on deposit in one or more bank accounts with financial institutions acceptable to City.

(d) A Lien on the Property. For Security Instruments provided in the form of a lien on property, Subdivider must provide the City with current appraisals and title reports, as well as all other documentation requested by the City Attorney, and all liens must be evidenced by a recordable Deed of Trust in a form approved by the City Attorney.

(e) General Requirements for all Security Instruments.

1) Payments under any Security Instruments shall be required to be made (and, with respect to bonds, litigation shall be required to be instituted and maintained) in the City of Palm Springs, State of California (and the Security Instrument shall so provide).

2) Each Security Instrument shall have a minimum term of one (1) year after the deadline for Subdivider's completing the Works of Improvement, in accordance with Section 2.1 (other than Instruments of Credit, which shall have no defined term or expiration date).

3) Each Security Instrument shall provide that changes may be made in the Works of Improvement pursuant to the terms of this Agreement without notice to any issuer or surety and without affecting the obligations under such Security Instrument.

5.3. Subdivider's Liability. While no action of Subdivider shall be required in order for City to realize on its security under any Security Instrument, Subdivider agrees to cooperate with City to facilitate City's realization under any Security Instrument, and to take no action to prevent City from such realization of any Security Instrument. Notwithstanding the giving of any Security Instrument or the subsequent expiration of any Security Instrument or any failure by any surety or financial institution to perform its obligations with respect thereto, Subdivider shall be personally liable for performance under this Agreement and for payment of the reasonable cost of the labor and materials for the improvements required to be constructed or installed hereby and shall, within ten (10) days after receipt of a written demand, deliver to City such substitute security as City shall require satisfying the requirements in this Section 5.

5.4. Letters of Credit.

(a) In the event a letter of credit is given pursuant to Section 5.2(b), City shall be entitled to draw on any such letter of credit if a replacement letter of credit (expiring in not less than one (1) year, unless City agrees to a lesser term in City's sole and absolute discretion) is not delivered not less than thirty (30) days prior to the expiration of the original letter of credit, such substitute letter of credit being in the same amount and having the terms and conditions as the initial letter of credit delivered hereunder, issued by a financial institution acceptable to City as of the date of delivery of the replacement letter of credit.

(b) In the event of draw by the City on a letter of credit, the City may elect, in its sole and absolute discretion, to apply any such funds drawn to the obligations secured by such letter of credit or to hold such funds in an account under the control of the City, with no interest accruing thereon for the benefit of the Subdivider. If the City elects to hold the funds in an account pursuant to the foregoing, City may thereafter at any time elect instead to apply such funds as provided in the foregoing. Subdivider agrees and hereby grants City a security interest in such account to the extent required for City to realize on its interests therein and agrees to execute and deliver to City any other documents requested by City in order to evidence the creation and perfection of City's security interest in such account.

5.5. Release of Security Instruments.

(a) City shall release the Faithful Performance Security Instrument and Labor and Materials Security Instrument when all of the following have occurred:

1) Subdivider has made written request for release and provided evidence of satisfaction of all other requirements in this Section 5.5;

2) the Works of Improvement have been accepted and Notices of Completion have been recorded within the time specified by statute;

3) Subdivider has delivered the Maintenance and Warranty Security Instrument; and

4) subject to the following sentences after passage of the time within which lien claims are required to be made pursuant to Civil Code Section 3314, *et seq.* If lien claims have been timely filed, City shall hold the Labor and Materials Security Instrument until such claims have been resolved, Subdivider has provided a statutory bond, or otherwise as required by applicable law. In the event that Subdivider failed to record Notices of Completion, City shall hold the Security Instruments for an additional six (6) month period beyond the ninety (90) day statutory time period for the filing of a mechanic's lien.

(b) City shall release the Maintenance and Warranty Security Instrument upon Subdivider's written request upon the expiration of the warranty period, provided no claims are outstanding at that time regarding defective work.

(c) Subdivider may request a partial release based on the completion and acceptance of any given Work of Improvement subject to the same process and requirements set forth in this Sub-section 5.5.

(d) As identified in Section 1.1A herein, if City constructs the Remaining Improvements on behalf of Subdivider, at the time relocation of all existing above-ground utilities into an underground system is completed, the securities required in Section 5 herein shall be released by City.

5.6 Return of Original Deposit. Pursuant to the original Conditions of Approval for Tentative Tract Map 30050, Subdivider was required to post a deposit related to the maintenance of the El Portal drainage improvements in the amount of $40,000 ("Original Deposit"). Concurrent with the recordation of the Release of Covenant Not to Use, City shall return the Original Deposit to Subdivider. The City's Director of Finance is hereby authorized to return said Original Deposit pursuant hereto.

5.7 Return of Condemnation Deposit. Pursuant to the original Subdivision Improvement Agreement for Tentative Tract Map 30050, Subdivider was required to post a deposit in the amount of $25,000 related to potential condemnation proceedings for easement(s) related to the El Portal drainage improvements ("Condemnation Deposit"). Since acquisition of the easement(s) is no longer required, the City's Director of Finance is hereby authorized to return said Original Deposit pursuant hereto.

6. Cost of Construction of Works of Improvement and Provision of Inspection Service.

6.1. Subdivider Responsible for All Costs of Construction of Works of Improvement. Subdivider shall be responsible for payment of all costs incurred for construction and installation of the Works of Improvement.

6.2. Payment to City for Cost of Related Inspection and Engineering Services for the Works of Improvement. Subdivider shall compensate City for all of City's costs reasonably incurred in having its authorized representative make the usual and customary inspections of the Works of Improvement. In addition, Subdivider shall compensate City for all design, plan check, and evaluation of any proposed or agreed-upon changes in the work. The procedures for deposit and payment of such fees shall be as established by the City Council. In no event shall Subdivider be entitled to additional inspections or a final inspection and acceptance of any of the Works of Improvement until all City fees and charges have been fully paid, including without limitation, charges for applicable penalties and additional required inspections. This Section shall not apply in the event City constructs the Remaining Improvements in accordance with Section 1.1A herein.

7. Acceptance of Offers of Dedication. The City Council shall pass, as appropriate, resolutions accepting all offers of dedication shown on the Map (Exhibit "C"), with acceptance to become effective upon completion and acceptance by City of the Works of Improvement. Such resolution(s) shall authorize the City Clerk to execute the Certificate made a part of the Map regarding said acceptance of the offer of dedication.

8. Warranty of Work on Works of Improvement. Subdivider shall guarantee all Works of Improvement against defective materials and workmanship for a period of one (1) year from the date of final acceptance. If any of the Works of Improvement should fail or prove defective within said one (1) year period due to any reason other than improper maintenance, or if any settlement of fill or backfill occurs, or should any portion of the Works of Improvement fail to fulfill any requirements of the Plans, Subdivider, within fifteen (15) days after written notice of such defects, or within such shorter time as may reasonably be determined by the City in the event of emergency, shall commence to repair or replace the same together with any other work which may be damaged or displaced in so doing. Should Subdivider fail to remedy defective material and/or workmanship or make replacements or repairs within the period of time set forth above, City may make such repairs and replacements and the actual cost of the required labor and materials shall be chargeable to and payable by Subdivider. The warranty provided herein shall not be in lieu of, but shall be in addition to, any warranties or other obligations otherwise imposed by law. This Section shall not apply in the event City constructs the Remaining Improvements in accordance with Section 1.1A herein.

9. Default.

9.1. Remedies Not Exclusive. In any case where this Agreement provides a specific remedy to City for a default by Subdivider hereunder, such remedy shall be in addition to, and not exclusive of, City's right to pursue any other administrative, legal, or equitable remedy to which it may by entitled.

9.2. City Right to Perform Work. In addition to whatever other rights or remedies it may have for Subdivider's default hereunder, in the event Subdivider shall fail to timely perform any work required to be performed under this Agreement and such failure shall continue for a period of twenty (20) days after receipt of written notice of default from City, or thereafter Subdivider shall fail to diligently and continuously pursue the cure of any such default to completion, City shall have the right to enter into the Property and perform any of the uncompleted work by force account or contract or both and thereupon recover from Subdivider or any Security Instrument, or both, the full reasonable cost and expense thereby incurred by City. This Section shall not apply in the event City constructs the Remaining Improvements in accordance with Section 1.1A herein.

9.3. Attorney's Fees and Costs. In the event that Subdivider fails to perform any obligation under this Agreement, Subdivider agrees to pay all reasonable costs and expenses incurred by City in securing performance of such obligations, including reasonable costs of suit and reasonable attorney's fees. In the event of any dispute arising out of Subdivider's performance of its obligations under this Agreement or under any of the Security Instruments referenced herein, the prevailing party in such action, in addition to any other relief which may be granted, shall be entitled to recover its reasonable attorney's fees and costs. Such attorney's fees and cost shall include fees and costs on any appeal, and in addition a party entitled to attorney's fees and costs shall be entitled to all other reasonable costs incurred in investigating such action, taking depositions and discovery, retaining expert witnesses, and all other necessary and related reasonable costs with respect to the litigation. All such fees and costs shall be deemed to have accrued on commencement of the action and shall be enforceable whether or not the action is prosecuted to judgment.

10. Indemnity. Subdivider agrees to indemnify, defend, and hold harmless City and City's officers, employees, and agents from and against any and all claims, liabilities, losses, damages, causes of action, and obligations arising out of Subdivider's failure to perform the construction and installation of the Works of Improvement in accordance with the requirements contained or referenced in this Agreement. Said indemnity obligation shall apply to personal injury, death, property damage, economic loss, and any other monetary damage or penalty to which City may be subjected, including without limitation, attorney's fees and reasonable costs and the reasonable costs of realizing on any Security Instrument provided by Subdivider pursuant to the terms hereof. Such indemnity obligation shall not extend to any loss resulting from City's sole negligence or wilful misconduct.

11. General Provisions.

11.1. Institution of Legal Actions. In addition to any other rights or remedies, either party may institute a legal action to cure, correct or remedy consistent with the purpose of this Agreement.

11.2. Interest. In the event of a default or breach by Subdivider which continues beyond any applicable notice and cure period, City shall be entitled to reimbursement from Subdivider of all reasonable costs and expenses incurred by City incurring the default plus interest at eight percent (8%).

11.3. Choice of Forum. Legal actions must be instituted and maintained in the appropriate court in the County of Riverside, State of California.

11.4. State Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

11.5. Successors and Assigns. This Agreement shall be binding upon all successors and assigns to Subdivider's right, title, and interest in and to the Property and any portion thereof.

11.6. No Third Party Beneficiaries. This Agreement is intended to benefit only the parties hereto and their respective successors and assigns. Neither City nor Subdivider intend to create any third party beneficiary rights in this Agreement in any contractor, subcontractor, member of the general public, or other person or entity.

11.7. Entire Agreement; Waivers and Amendments. This Agreement integrates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations and previous agreements between the parties with respect to all or part of the subject matter hereof, except as may be expressly provided herein. All waivers of the provisions of this Agreement must be in writing and signed by an authorized representative of the party to be charged, and all amendments hereto must be in writing and signed by the appropriate representatives of both parties.

11.8. Corporate Authority.The persons executing this Agreement on behalf of the parties hereto warrant the (I) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into of this Agreement does not violate any provisions of any other Agreement to which said party is bound.

11.9. Notices. No notice, request, demand, instruction, or other document to be given hereunder to any Party shall be effective for any purpose unless personally delivered to the person at the appropriate address set forth below (in which event such notice shall be deemed effective only upon such delivery), delivered by air courier next-day delivery (e.g. Federal Express), delivered by mail, sent by registered or certified mail, return receipt requested, or sent via telecopier, as follows:

If to City, to:	Attn: James Thompson, City Clerk City of Palm Springs 3200 E. Tahquitz Canyon Way Palm Springs, CA 92262 Facsimile No.: (760) 322-8332 Telephone No.: (760) 323-8204
If to Subdivider, to:	Attn: Ron White IRP El Portal Associates, LLC 3199 Cody Court, Palm Springs, CA 92264 Facsimile No.: (760) 320-1017 Telephone No.: (760) 320-1017

IN WITNESS WHEREOF, the parties hereto have executed this Subdivision Improvement Agreement as of the date first above written.

ATTEST:

By: _____
James Thompson, City Clerk

CITY OF PALM SPRINGS, CALIFORNIA

By: _____
David H. Ready, City Manager

ATTEST:

By: _____
James Thompson, Secretary

COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF PALM SPRINGS, CALIFORNIA

By: _____
David H. Ready, Executive Director

REVIEWED AND APPROVED BY:
WOODRUFF, SPRADLIN & SMART

_____ For
Douglas C. Holland, City Attorney

SUBDIVIDER:

IRP El Portal Associates, LLC, a Delaware Limited Liability Company

By: IRP El Portal Member, LLC, a Delaware Limited Liability Company, its Member

By: _____
Brad Muth, Managing Director

ALL-PURPOSE ACKNOWLEDGMENT

State of _____

County of _____

On _____ before me, _____,
Date Name, Title of Officer
personally appeared _____,
NAME(S) OF SIGNER(S)

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

CAPACITY CLAIMED BY SIGNER

☐ INDIVIDUAL(S)
☐ CORPORATE
_____

OFFICER(S)_____
TITLE(S)

☐ PARTNER(S)
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ SUBSCRIBING WITNESS
☐ GUARDIAN/CONSERVATOR
☐ OTHER
_____
_____
_____

SIGNER IS REPRESENTING:

_____
_____

ATTENTION NOTARY: Although the information requested below is **OPTIONAL**, it could prevent fraudulent attachment of this certificate to unauthorized document.

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT:

Title or Type of Document _____

Number of Pages _____ DATE of DOCUMENT _____

Signer(s) Other Than Named Above_____

EXHIBIT A
AMENDED CONDITIONS OF APPROVAL

EXHIBIT A

TTM 30050 and Case No. 50899 - PD-271

Northeast corner of South Palm Canyon Drive and Acanto Drive

June 19, 2002
Amended by Council July 1, 2009

CONDITIONS OF APPROVAL

Before final acceptance of the project, all conditions listed below shall be completed to the satisfaction of the City Engineer, the Director of Planning, the Chief of Police, the Fire Chief or their designee, depending on which department recommended the condition.

Any agreements, easements or covenants required to be entered into shall be in a form approved by the City Attorney.

PLANNING

1. The proposed development of the premises shall conform to all applicable regulations of the Palm Springs Zoning Ordinance, Municipal Code, or any other City Codes, ordinances and resolutions which supplement the zoning district regulations.

2. The owner shall defend, indemnify, and hold harmless the City of Palm Springs, its agents, officers, and employees from any claim, action, or proceeding against the City of Palm Springs or its agents, officers or employees to attach, set aside, void or annul, an approval of the City of Palm Springs, its legislative body, advisory agencies, or administrative officers concerning Specific Plan Amendments, TTM 30050 Case No. 5.0899 - PD-271. The City of Palm Springs will promptly notify the applicant of any such claim, action, or proceeding against the City of Palm Springs and the applicant will either undertake defense of the matter and pay the City's associated legal costs or will advance funds to pay for defense of the matter by the City Attorney. If the City of Palm Springs fails to promptly notify the applicant of any such claim, action or proceeding or fails to cooperate fully in the defense, the applicant shall not, thereafter, be responsible to defend, indemnify, or hold harmless the City of Palm Springs. Notwithstanding the foregoing, the City retains the right to settle or abandon the matter without the applicant's consent but should it do so, the City shall waive the indemnification herein, except, the City's decision to settle or abandon a matter following an adverse judgement or failure to appeal, shall not cause a waiver of the indemnification rights herein.

3. That the property owner(s) and successors and assignees in interest shall maintain and repair the improvements including and without limitation sidewalks, bikeways, parking areas, landscape, irrigation, lighting, signs, walls, and fences between the curb and property line, including sidewalk or bikeway easement areas that extend onto private property, in a first class condition, free from waste and debris, and in accordance with all applicable law, rules, ordinances and regulations of all federal, state, and local bodies and agencies having jurisdiction

at the property owner's sole expense. This condition shall be included in the recorded covenant agreement for the property if required by the City.

4. The developer shall be responsible for compliance with the State Endangered Species Act and Federal Endangered Act prior to the issuance of grading permits, if deemed necessary by the applicable resource agencies.

5. The mitigation measures of the environmental assessment shall apply. The applicant shall submit a signed agreement that the mitigation measures outlined as part of the negative declaration or EIR will be included in the plans prior to Planning Commission consideration of the environmental assessment.

6a. The final development plans shall be submitted in accordance with Section 9403.00 of the Zoning Ordinance. Final development plans shall include site plans, building elevations, floor plans, roof plans, grading plans, landscape plans, irrigation plans, exterior lighting plans, sign program, mitigation monitoring program, site cross sections, property development standards and other such documents as required by the Planning Commission. Final development plans shall be submitted within two (2) years of the City Council approval of the preliminary planned development district.

6b. The property development standards for this project shall be Section 92.01.00, R-1-B Zone, except for the modifications to minimum lot size, lot depth, lot width, front and side front setbacks, and detached garages. Front and side front setbacks for the residences and detached garages will be considered at 10 to 15 feet and 20 to 25 feet, respectively, pending submittal of final development plans.

7. Final landscaping, irrigation, exterior lighting, and fencing plans shall be submitted for approval by the Department of Planning and Building prior to issuance of a building permit. Landscape plans shall be approved by the Riverside County Agricultural Commissioner's Office prior to submittal. Final landscape plans shall include the entire street right-of-way landscaped areas. The project shall be responsible for installation and maintenance of all landscaped areas within the right-of-way and easement area.

8. The project is located in an area defined as having an impact on fish and wildlife as defined in Section 711.4 of the Fish and Game Code. Therefore, a fee of $1,250.00 plus an administrative fee of $50.00 shall be submitted by the applicant in the form of a money order or a cashier's check payable to the Riverside County Clerk prior to Council action on the project. This fee shall be submitted by the City to the County Clerk with the Notice of Determination. Action on this application shall not be final until such fee is paid.

9. Prior to issuance of a grading permit, a Fugitive Dust and Erosion Control Plan shall be submitted and approved by the Building Official. Refer to Chapter 8.50 of the Municipal Code for specific requirements.

10. All roof mounted mechanical equipment shall be screened from all possible vantage points both existing and future per Section 93.03.00 of the Zoning Ordinance. The screening shall be considered as an element of the overall design and must blend with the architectural design of the building(s). The exterior elevations and roof plans of the buildings shall indicate any fixtures or

equipment to be located on the roof of the building, the equipment heights, and type of screening. Parapets shall be at least 6" above the equipment for the purpose of screening.

11. The applicant prior to issuance of building permits shall submit a draft declaration of covenants, conditions and restrictions ("CC&R's") to the Director of Planning and Zoning for approval in a form to be approved by the City Attorney, to be recorded prior to issuance of occupancy permits. The CC&R's shall be enforceable by the City, shall not be amended without City approval, shall require maintenance of all property including the equestrian easement and landscaping within right-of-way in a good condition and in accordance with all ordinances.

12. The applicant shall submit to the City of Palm Springs, a deposit in the amount of $2000, for the review of the CC&R's by the City Attorney. A $250 filing fee shall also be paid to the City Planning Department for administrative review purposes.

13. Separate architectural approval and permits shall be required for all signs. A detailed sign program shall be submitted for review and approval by the Planning Commission prior to issuance of building permits.

14. The grading plan shall show the disposition of all cut and fill materials. Limits of site disturbance shall be shown and all disturbed areas shall be fully restored or landscaped.

15. Perimeter walls shall be designed, installed and maintained in compliance with the corner cutback requirements as required in Section 93.02.00.D.

16. The street address numbering/lettering shall not exceed eight inches in height.

17. Manufacturer's cut sheets of all exterior lighting (landscaping, and entry area) shall be submitted for approval prior to final map approval.

18. Drainage swales shall be provided adjacent to all curbs and sidewalks - 3' wide and 6" deep. The irrigation system shall be field tested prior to final approval of the project. Section 14.24.020 of the Municipal Code prohibits nuisance water from entering the public streets, roadways or gutters.

19. The design, height, texture and color of fences and walls shall be submitted for review and approval prior to issuance of building permits.

20. Texture, materials, and colors to be used on the proposed fences and walls shall be submitted for review and approval prior to issuance of building permits.

21. Vehicles associated with the construction of the proposed development including company vehicles or employees vehicles shall not be permitted to park off the proposed building site unless a parking management plan has been approved.

22. All proposed trees within the public right-of-way and within 10 feet of the public sidewalk and/or curb shall have City approved deep root barriers installed per City of Palm Springs Engineering specifications.

23. Prior to the issuance of building permits, locations of all telephone and electrical boxes must be indicated on the building plans and must be completely screened and located in the interior of the building. Electrical transformers must be located toward the interior of the project maintaining a sufficient distance from the frontage(s) of the project. Said transformer(s) must be adequately and decoratively screened.

24. Trash cans shall be screened from view and kept within fifty (50) feet of the street.

25. The applicant shall dedicate a 30' easement and construct a 15' wide equestrian trail between the property line and Lots 27 to 35. Design and details shall be submitted with the final Planned Development plans. The equestrian trail shall be separated from the sidewalk and Lots 27 to 35. A minimum 15' decomposed granite trail, landscape, fencing and signing shall be provided. If SP-1 is amended, and a trail is no longer required, the Planning Commission may delete this condition at Final PD stage.

26. Final development plans shall be prepared in accordance with the Mitigation Monitoring Program for Canyon Redevelopment Plan and the Canyon Park Resort and Spa Specific Plan/EIR. Prior to approval of the Final PD and Final Tract Map, a comprehensive mitigation monitoring report consistent with the Monitoring Program shall be prepared and approved by the Director of Planning and Zoning. The City shall be reimbursed for the cost of preparation and/or review of said report. Refer to City Council Resolution No. 17598 certifying the Final EIR for the Canyon Redevelopment Plan and Canyon Park Resort and Spa Specific Plan for specific details. All mitigation measures, where applicable, shall be adopted as conditions of approval. The following measures are hi-lighted for convenience:

a. Prior to final project acceptance including approval of the final map or planned development district, the City shall establish a formula for the applicant's payment of their "fair share" of the costs of the matters listed below, and applicant shall pay fees pursuant to the formula or post such security as the City Attorney shall determine is appropriate. The fair share formulas shall be based on data developed by City or its consultants to determine the applicant's proportionate responsibility for providing the specified public improvements, and for producing affordable housing, based upon the benefits received by the project and/or impacts caused by the project. The costs shall include not only construction costs, but also design, engineering and other similar costs, as well as City administrative costs including the costs of developing the fair-share formula. Fair-share formulas shall be developed for the following matters:

i) Funding of site acquisition and construction of a fire station providing adequate fire protection services to the project site and vicinity.

ii) Funding of site acquisition and construction of affordable housing meeting the goals of the City's Housing Element. See Section 5-10 (5-184) Jobs and Housing for specific mitigation measures.

iii) Funding of construction of off-site roadway improvements and signals as shown in Table 5.14 of the Canyon Redevelopment Plan and the Canyon Park Resort and Spa Specific Plan Final Environmental Impact Report.

b. Appropriate removal and recompaction of surface soils in areas to support structures will mitigate potential settlements. Building sites planned within the alluvial areas shall be evaluated by the soil engineer for settlement potential during detailed geotechnical studies for design of structures, with respect to the specifics of proposed structure locations, soil conditions, foundation loads, etc. A final soils report shall be submitted with the detailed development plans (grading and structural) for the project.

c. All outdoor lighting constructed on the project site shall be directed at the ground to prevent unnatural lighting from interfering with the activity of nocturnal animals that live in the surrounding natural areas. Exceptions to this condition shall be limited to accent landscape and architectural lighting. All lighting which directly illuminates hillsides and wash areas shall be prohibited. This condition shall be included in the CC&R's.

d. The applicant and the building contractor shall halt grading or any other construction activity in the immediate vicinity immediately if archaeological resources are uncovered during grading. The applicant and/or contractor shall notify the City and Tribal Council in writing and shall summon a qualified archaeologist to determine the significance of uncovered archaeological resources and appropriate mitigation measures.

e. Due to the historical sensitivity of the area, a tribal representative and/or a qualified archaeologist monitor shall be present during all rough grading operations. A written report shall be provided to the City outlining the nature of any resources found on-site, disposition, etc. At the end of construction a written report shall be provided summarizing resources found (if any) and if any additional work is needed.

POLICE DEPARTMENT:

1. Developer shall comply with Section II of Chapter 8.04 of the Palm Springs Municipal Code.

BUILDING DEPARTMENT:

1. Prior to any construction on-site, all appropriate permits must be secured.

FIRE:

1. Fire Department Access: Provide detail on the entry median and entry gate area. A 20 foot unobstructed width is required, including gate openings.

2. Mandatory Fire Sprinklers: Project is beyond a 5-minute response time from closest fire station. All buildings, regardless of size, require an automatic fire sprinkler system. (1003.2.1 CFC)

3. Water Systems and Hydrants: Where underground water mains are to be provided, they shall be installed, completed and in service with fire hydrants or standpipes (Or combinations thereof located as directed by the fire department) not later than the time when combustible materials are delivered to the construction site. (Sec. 903 CFC)

4. Residential fire hydrants: Residential fire hydrants shall be installed in accordance with DWA specifications and standards. No landscape planting, walls, or fencing are permitted within 3 feet of fire hydrants, except ground cover plantings.

5. Site Plan: Provide the fire department with two copies of an approved site plan. Approved locations for fire hydrants will be marked on this site plan, with one copy being returned to the applicant. The second copy will be retained by the fire department.

6. Fire hydrant systems: Following fire department selection of hydrant locations, plans and specifications for fire hydrant systems shall be submitted to the fire department for review and approval prior to construction. (901.2.2.2 CFC)

7. Access During Construction: Access for fire fighting equipment shall be provided to the immediate job site at the start of construction and maintained until all construction is complete. Fire apparatus access roads shall have an unobstructed width of not less than 20 feet and an unobstructed vertical clearance of not less than 13'6". Fire department access roads shall have an all weather driving surface and support a minimum weight of 73,000 lbs. (Sec. 902 CFC). Free access from the street to fire hydrants and to outside connections for standpipes, sprinklers or other fire extinguishing equipment, whether permanent or temporary, shall be provided and maintained at all times.

8. Secondary Emergency Access: The emergency access area shown at the south-west corner of the project (west of Lot 35) must meet the same requirements as an access road in condition #7 above.

ENGINEERING:

The Engineering Department recommends that if this application is approved, such approval is subject to the following conditions being completed in compliance with City standards and ordinances:

STREETS

1. Any improvements within the street right-of-way require a City of Palm Springs Encroachment Permit. Work shall be allowed according to Resolution 17950 - Restricting Street Work on Major and Secondary Thoroughfares.

2. Submit street improvement plans prepared by a Registered Civil Engineer to the Engineering Department. The plan(s) shall be approved by the City Engineer prior to issuance of any grading or building permits.

   Minimum submittal shall include the following, IF applicable:

A. Copy of signed Conditions of Approval from Planning Department.

B. All agreements and improvement plans approved by City Engineer, IF applicable.

C. Proof of processing dedications of right-of-way, easements, encroachment agreements/licenses, covenants, reimbursement agreements, etc. required by these conditions.

PALM CANYON DRIVE SOUTH

The following conditions of approval which refer to the pavement width shall be revised, IF necessary, to agree with the focused traffic study as approved by the City Engineer.

3. Dedicate a 30 foot wide easement for landscape and pedestrian access purposes along the entire frontage.

~~4. Acquire an additional right-of-way width of 10 feet on the west side of the section along the entire frontage for a total right-of-way width of 54 feet.~~

5. Construct a 12 inch wide mow strip, 20 feet EAST of centerline from Acanto Drive to the north tract boundary, with a 35 foot radius curb return and spandrel at the NORTHEAST corner of the intersection of PALM CANYON DRIVE SOUTH and ACANTO DRIVE and at the NORTHEAST AND SOUTHEAST corners of the intersection of PALM CANYON DRIVE SOUTH and STREET 'D" per City of Palm Springs Standard Drawing No. 200 and 206.

6. Construct both halves of a 6 foot wide cross gutter at the intersection of PALM CANYON DRIVE SOUTH and STREET "D" with a flow line parallel with and 20 feet EAST of the centerline of PALM CANYON DRIVE SOUTH in accordance with City of Palm Springs Standard Drawing No. 200 and 206.

~~7. Construct a 15 foot wide pedestrian/bike pathway between the storm water channel and the west tract boundary along the entire frontage in accordance with City of Palm Springs Standard Drawing No. 210 and meeting the approval of the City Engineer and Director of Planning and Building. The pathway shall also serve as the storm channel maintenance roadway. The east 5 feet of the pathway shall be constructed with 6 inch thick (6 sack) Portland Cement Concrete. The west 10 feet of the pathway shall be constructed with 6 inch thick decomposed granite compacted to 90% over 24 inches native soil compacted to 90%, tartan block, OR equal, meeting the approval of the City Engineer and Director of Planning and Building.~~Construct a 15 feet wide meandering equestrian/pedestrian trail along the entire frontage constructed with 6 inch thick decomposed granite compacted to 90% over 24 inches native soils compacted to 90%, tartan block, or equal, meeting the approval of the City Engineer.

8. Remove and replace existing pavement with a minimum pavement section of 3 inch asphalt concrete pavement over 6 inch aggregate base with a minimum subgrade of 24 inches at 95% relative compaction, OR equal, from edge of proposed mow strip to 10 feet west of centerline along the entire frontage in accordance with City of Palm Springs Standard Drawing No. 110 and 315. The pavement section shall be designed, using "R" values, by a licensed Soils

Engineer and submitted to the City Engineer for approval. A redwood header shall be installed along the west edge of pavement.

8a. All improvements on South Palm Canyon Drive shall be completed within six (6) months of City approval of the revised Subdivision Improvement Agreement.

ACANTO DRIVE

9. Construct a 6 inch wedge curb and gutter except where hydrology requires 8 inch wedge curb and gutter, 3 feet NORTH of section/centerline and 32 feet NORTH of section/centerline (distance measured from back of wedge curb on south side to flow line of wedge curb on north side) respectively, from South Palm Canyon Drive to the east tract boundary, with a 35 foot radius curb return and spandrel at the NORTHEAST corner of the intersection of PALM CANYON DRIVE SOUTH and ACANTO DRIVE per City of Palm Springs Standard Drawing No. 200 and 206.

~~10. Construct catch basins, as needed for drainage, and connect to the proposed storm drain line. The wedge curb and gutter shall transition into 6 inch vertical curb and gutter at the catch basin locations. The design shall be reviewed and approved by the City Engineer.~~

11. Construct a 15 foot wide meandering equestrian/pedestrian trail along the entire frontage with 6 inch thick decomposed granite compacted to 90% over 24 inches native soil compacted to 90%, OR equal, meeting the approval of the City Engineer and Director of Planning and Building.

    Construct a redwood header on both sides of the trail along its entire length.

12. Dedicate a 30 foot wide easement for landscape and pedestrian access purposes along the entire frontage via the tract map.

13. Construct ac pavement with a minimum pavement section of 2-1/2 inch asphalt concrete pavement over 4 inch aggregate base with a minimum subgrade of 24 inches at 95% relative compaction, OR equal, from edge of proposed gutter to proposed gutter along the entire frontage in accordance with modified City of Palm Springs Standard Drawing No. 110 and 300. The pavement section shall be designed, using "R" values, by a licensed Soils Engineer and submitted to the City Engineer for approval.

13a. All improvements on Acanto Drive shall be completed within six (6) months of City approval of the revised Subdivision Improvement Agreement.

PRIVATE STREETS

14. The following traffic calming devices, OR equal, (the final configuration to be approved by the City Engineer) shall be incorporated into the on-site streets:

    Narrowed pavement 'chokers' shall be provided at one location on Street "A", one location on Street "C", one location on Street "D", and one location on Street "E", as approved by the City Engineer. Chokers shall be designed with a transition using 25 foot reverse curves and a 40 to 80 foot long, 20 foot wide (10

feet each side of centerline) narrowed travel way. The narrowed travel way shall be constructed with a colored or decorative Portland cement concrete section 6 inches thick as approved by the City Engineer.

The proposed chokers at the east and west ends of Street "D" can be constructed but are not a requirement of these conditions of approval. If they are part of the street improvements, the approval of the City Engineer will be required for the design of same.

15a. Construct a 6 inch wedge curb and gutter except where hydrology requires 8 inch wedge curb and gutter, with the back of the wedge curb being 16.5 feet from both sides of centerline along the entire frontage, with 25 foot radius curb returns and spandrels at the intersection of Street "A" with Street "C" and "D" and at the intersection of Street "D" with Street "B" per City of Palm Springs Standard Drawing No. 200 and 206. Parking shall be allowed on both sides of the street if all buildings are sprinklered and if the parking lanes are clearly marked leaving a clear 20-foot wide vehicular path to satisfy Uniform Fire Code standards. It shall be the responsibility of the Homeowners Association to maintain the delineation and provide signs for the life of the project. Final street design shall be subject to final approval of the Fire Chief, City Engineer, and Director of Planning and Building.

15b. In the event 15A above cannot be implemented, the project shall comply with the following condition: Construct a 6 inch wedge curb and gutter except where hydrology requires 8 inch wedge curb and gutter, with the back of the wedge curb being 18.5 feet from both sides of centerline along the entire frontage, with 25 foot radius curb returns and spandrels at the intersections of Street "A" with Street "C" and "D" and at the intersection of Street "D" with Street "B"per City of Palm Springs Standard Drawing No. 200 and 206.

16. Construct both halves of a 6 foot wide cross gutter at the intersection of Street "A" with Streets "C" and "D" with a flow line parallel with and 16.5 feet East of the centerline of Street "A" in accordance with City of Palm Springs Standard Drawing No. 200 and 206.

17. Construct both halves of a 6 foot wide cross gutter at the intersection of Street "B" with Street "D" with a flow line parallel with and 16.5 feet West of the centerline of Street "B" in accordance with City of Palm Springs Standard Drawing No. 200 and 206.

18. Construct knuckles at the intersection of Street "A with Street "E" and at the intersection of Street "B" with Streets "C" and "E" in accordance with City of Palm Springs Standard Drawing No. 104.

19. The on-site cul-de-sac shall be constructed in accordance with City of Palm Springs Standard Drawing No. 103, curb portion only.

20. All centerline radii shall be a minimum of 130 feet.

21. Construct minimum 10 wide driveway approaches for all lots in accordance with City of Palm Springs Standard Drawing No. 201.

See Condition No. 22 for gated entrance requirements for Main Entries that are proposed to be gated.

22. The following requirements for a gated entry shall be met to provide adequate setbacks and turning movements for vehicles entering the primary parking facilities of this project:

    A. Provide a minimum curb cut of 100 feet (from BCR to ECR) for the gated Main Entry.

    B. Provide a minimum 50 foot setback to the access gate control mechanism

    C. Provide a turnaround after the mechanism for vehicles unable to enter the project

    D. Security gates shall be a minimum of 20 feet clear width in each direction.

E. Provide separate lane of ingress for residents.

SANITARY SEWER

22. The on-site sewer mains will be maintained by the HOA. Provision for this shall be addressed in the CC & Rs.

23. Connect all sanitary facilities to the City sewer system. Lateral shall not be connected at manhole.

24. Developer shall construct an 8 inch sewer main across all PRIVATE STREET frontages, through the proposed 20 foot wide drainage/sewer easement adjacent to the southwest property line of Lot 9 OR the northeast property line of Lot 8 and through the existing 30 foot wide utility easement to the existing manhole south of the Palm Canyon Drive South and Bogert Trail intersection in accordance with the Master Plan of Sewers and connect to the existing sewer system. The 20 foot wide drainage/sewer easement shall be located entirely within Lot 8 or Lot 9.

25. Submit sewer improvement plans prepared by a Registered Civil Engineer to the Engineering Department. The plan(s) shall be approved by the City Engineer prior to issuance of any grading or building permits.

Minimum submittal shall include the following:

    A. Copy of signed Conditions of Approval from Planning Department.

    B. Proof of processing dedications of right-of-way, easements, encroachment agreements/licenses, covenants, reimbursement agreements, etc. required by these conditions.

    C. Sewer Study/Report, IF required by these conditions.

26. The project is subject to a sewer assessment fee of $146.19 *per lot* for construction of the 15" sewer main in Avenida Granada, Calle Palo Fierro and

Laverne Way. The fee shall be paid prior to issuance of a building permit for individual lots.

GRADING

27. A copy of a Title Report prepared/updated within the past 3 months and copies of record documents shall be submitted to the City Engineer with the first submittal of the Grading Plan.

28. Submit a Grading Plan prepared by a Registered Professional to the Engineering Department for plan check. Grading plan shall be submitted to the Planning Department for comments prior to submittal to the Engineering Department. A PM 10 (dust control) Plan shall be submitted to and approved by the Building Division prior to approval of the grading plan. The Grading Plan shall be approved by the City Engineer prior to issuance of any grading or building permits.

Minimum submittal includes the following:

E. Copy of Planning Department comments regarding the grading plan.

F. Copy of signed Conditions of Approval from Planning Department.

C. Copy of Site Plan stamped approved and signed by the Planning Department.

D. Copy of Title Report prepared/updated within past 3 months.

E. Copy of Soils Report, IF required by these conditions.

F. Copy of Hydrology Study/Report, IF required by these conditions.

G. Copy of the General Construction Activity Storm Water Permit from the State Water Resources Control Board (Phone No. 916 657-0687) to the City Engineer prior to issuance of the grading permit.

29. Drainage swales shall be provided adjacent to all curbs and sidewalks - 3' wide and 6" deep - to keep nuisance water from entering the public streets, roadways, or gutters.

30. Developer shall obtain a General Construction Activity Storm Water Permit from the State Water Resources Control Board (Phone No. (916)-657-0687) and provide a copy of same, when executed, to the City Engineer prior to issuance of the grading permit.

31. In accordance with City of Palm Springs Municipal Code, Section 8.50.00, the developer shall post with the City a cash bond of two thousand dollars ($2,000.00) per acre for mitigation measures of erosion/blowsand relating to his property and development.

32. A soils report prepared by a licensed Geotechnical Engineer shall be required for and incorporated as an integral part of the grading plan for the proposed site. A

copy of the soils report shall be submitted to the Building Department and to the Engineering Department along with plans, calculations and other information subject to approval by the City Engineer prior to the issuance of the grading permit.

33. Contact the Building Department to get information regarding the preparation of the PM10 (dust control) Plan requirements.

34. In cooperation with the Riverside County Agricultural Commissioner and the California Department of Food and Agriculture Red Imported Fire Ant Project, applicants for grading permits involving a grading plan and involving the import or export of soil will be required to present a clearance document from a Department of Food and Agriculture representative in the form of an approved "Notification of Intent To Move Soil From or Within Quarantined Areas of Orange, Riverside, and Los Angeles Counties" (RIFA Form CA-1) or a verbal release from that office prior to the issuance of the City grading permit. The California Department of Food and Agriculture office is located at 73-710 Fred Waring Drive, Palm Desert. (Phone: 760-776-8208)

DRAINAGE

~~35. Developer shall obtain easements dedicated to Riverside County Flood Control and Water Conservation District (RCFC) for flood control and stormwater drainage purposes across Lots 73 and 74 of Tract 16149 (APN's 512-200-022 and -024) and across that certain 1.80 acre parcel of land indicated as floodway on Tract 12848 (APN 512-292-001).~~

36. The developer shall accept all stormwater runoff passing through and falling onto the site and conduct this runoff to an approved drainage structure (if available). On-site retention/detention or other facilities approved by the City Engineer shall be required if off-site drainage structures are unavailable or cannot contain the increased stormwater runoff generated by the development of the site. Provide a hydrology study to determine if the increased stormwater runoff due to development of the site exceeds the capacity of offsite drainage structures (if any exist), and to determine required stromwater runoff mitigation measures for this project.

37. A portion of this property (a portion or all of Lots 2 thru 10, and 13 and Lots A and B) is in Federal Insurance Rate Map (FIRM) zone A and shall conform to all of the FEMA and City of Palm Springs Flood Hazard Ordinance requirements for this zone.

~~38. The developer shall design and construct the storm drain channel and culvert of a non-erodable, natural-type section and configuration capable of conveying the tributary 100-year storm runoff, as approved by RCFC and the City Engineer, along the west tract boundary within an easement for operation and maintenance dedicated to RCFC in a form acceptable to the RCFC.~~

38A. ~~The developer shall design and construct interim inlet works and various appurtenances, across a portion of APN 686-030-004, consistent with RCFC standards, as approved by RCFC and the City Engineer. If public records do not demonstrate the existence of easements that allow for the construction of flood~~

~~control and stormwater drainage improvements within that area of land where interim drainage improvements are required, the developer shall obtain an easement dedicated to RCFC for flood control and stormwater drainage purposes.~~

38B. ~~The developer shall design and construct an interim collection/containment embankment (berm) approximately 350 feet in length across the south portion of APN 513-460-019 as conceptually shown in Exhibits 4 and 5 of the Addendum to the Master Plan of Drainage for the Andreas Alluvial Cone, Dry Canyon, Arenas South and North Canyons and Palm Canyon (from Bogert Trail to 1800 feet Downstream of Bogert Trail) Drainage Courses, City of Palm Springs,dated October 2001, consistent with RCFC standards, as approved by RCFC and the City Engineer. If public records do not demonstrate the existence of easements that allow for the construction of flood control and stormwater drainage improvements within that area of land where interim drainage improvements are required, the developer shall obtain an easement dedicated to RCFC for flood control and stormwater drainage purposes.~~

38C. ~~The developer shall enter into a cooperative agreement with the City and RCFC, or, if not required to be party to a cooperative agreement upon a determination by the City and RCFC, the developer shall agree to comply with operation, maintenance and joint use responsibilities of the drainage channel along the west tract boundary as determined by the City and RCFC. Operation, maintenance and joint use responsibilities applicable to the developer shall be included in provisions of Covenants, Codes and Restrictions (CC&R's) administered by a common Homeowners Association for the project.~~

38D. ~~Developer shall construct a 15 feet wide access road along the easterly side of the drainage channel along the west tract boundary to also be used as a pedestrian trail in a manner acceptable to RCFC and the City Engineer. Developer shall be responsible for all maintenance and repair costs associated with keeping RCFC with clear, free and unobstructed access to the drainage channel.~~

38E. ~~The developer shall pay the City $40,000.00 for maintenance costs as a condition for facilitating RCFC maintenance of the interim drainage improvements associated with this project. If the Developer is party to a cooperative agreement with the City and RCFC, the Developer shall submit payment to the City concurrent with approval of and in compliance with the terms of the cooperative agreement. If the Developer is not party to a cooperative agreement, the Developer shall submit payment to the City prior to issuance of a grading permit.~~

39. ~~The developer shall submit application and pertinent data to the Federal Emergency Management Agency (FEMA) for a Letter of Map Revision (LOMR) and shall provide FEMA's final written determination to the City Engineer prior to issuance of a Certificate of Occupancy or Notice of Completion.~~ This property is located within a special flood hazard area (SFHA), and is subject to the provisions of Chapter 8.68 *et. seq.* ("Flood Damage Prevention") of the Palm Springs Municipal Code, and applicable state and federal laws and regulations. Specifically, this property is located within a designated SFHA identified by Zone A (Base Flood Elevation undetermined) as shown on the current Federal

Insurance Rate Map (FIRM) for the City of Palm Springs, California, Riverside County, Community Panel Number 06065C 1568G, dated August 28, 2008. The applicant shall comply with all applicable local, state and federal laws and regulations associated with development occurring within a SFHA.

39a. Applicant shall provide the Building Department with the elevation of the lowest floor (including basement). The elevation certification shall be done, on a form acceptable to FEMA, by a registered professional civil engineer or surveyor.

39b. In accordance with Chapter 8.68.140(A)5 and Chapter 8.68.140(D)2(b) of the Palm Springs Municipal Code and 44 CFR 60.3(d)(4), the applicant shall be required to submit an application to the Federal Emergency Management Agency (FEMA) for FEMA's issuance of a Letter of Map Revision (LOMR). A complete application for the LOMR, including all appropriate technical studies and hydraulic analyses, record drawings ("as-builts"), topographic surveying, and payment of required FEMA application fees, shall be submitted and approved by FEMA, prior to issuance of a building permit. ***A building permit for construction of any building on this property currently located within a special flood hazard area will not be issued until the City receives final approval of the applicant's LOMR application to FEMA by evidence of a LOMR issued by FEMA.***

GENERAL

40. Any utility cuts in the existing off-site pavement made by this development shall receive trench replacement pavement to match existing pavement plus one additional inch. See City of Palm Springs Standard Drawing No. 115. Pavement shall be restored to a smooth rideable surface.

41. All existing and proposed utility lines that are less than 35 kV on/or adjacent to this project shall be undergrounded. The location and size of the existing overhead facilities shall be provided to the Engineering Department along with written confirmation from the involved utility company(s) that the required deposit to underground the facility(s) has been paid, prior to issuance of a grading permit.

~~All undergrounding of utilities shall be completed prior to issuance of a Certificate of Occupancy.~~

Within six (6) months of City approval of the revised Subdivision Improvement Agreement, the applicant shall pay all utility undergrounding fees to Southern California Edison (SCE) as may be necessary to schedule utility undergrounding; and the applicant shall cause to be constructed all underground utility infrastructure (i.e. conduit and vaults) necessary to relocate the existing above ground utilities into an underground system. Evidence from SCE and other utility companies of intent to relocate existing above ground utilities shall be provided to the City Engineer.

42. All existing utilities shall be shown on the grading/street plans. The existing and proposed service laterals shall be shown from the main line to the property line. The approved original grading/street plans shall be as-built and returned to the

City of Palm Springs Engineering Department prior to issuance of the certificate of occupancy.

43. The developer is advised to contact all utility purveyors for detailed requirements for this project at the earliest possible date.

44. Nothing shall be constructed or planted in the corner cut-off area of any driveway which does or will exceed the height required to maintain an appropriate sight distance per City of Palm Springs Zoning Code 93.02.00, D.

45. All proposed trees within the public right-of-way and within 10 feet of the public sidewalk and/or curb shall have City approved deep root barriers installed per City of Palm Springs Engineering specifications.

MAP

46. The Title Report prepared for subdivision guarantee for the subject property, the traverse closures for the existing parcel and all lots created therefrom, and copies of record documents shall be submitted with the Parcel Map or Final Map to the Engineering Department.

47. The Final Map shall be prepared by a licensed Land Surveyor or qualified Civil Engineer and submitted to the Engineering Department for review. Submittal shall be made prior to issuance of grading or building permits.

TRAFFIC

48. The developer shall provide a minimum of 48 inches of sidewalk clearance around all street furniture, fire hydrants and other above-ground facilities for handicap accessibility. The developer shall provide same through dedication of additional right-of-way and widening of the sidewalk <u>or</u> shall be responsible for the relocation of all existing traffic signal/safety light poles, conduit, pull boxes and all appurtenances located on the PALM CANYON DRIVE SOUTH and ACANTO DRIVE frontages of the subject property.

49. Install a 4-way stop sign at the intersection of Street "A" and Street "D".

    Install a stop sign for vehicles egressing at Palm Canyon Drive South.

    Install a stop sign for vehicles entering Street "B" at Street "D".

    Install a stop sign for vehicles entering Street "A" at Street "C".

50. The developer shall replace all damaged, destroyed, or modified pavement legends and striping that is required by the City Engineer on the PALM CANYON DRIVE SOUTH AND ACANTO DRIVE frontages prior to issuance of a Certificate of Occupancy.

51. Street name signs shall be required at each intersection in accordance with City of Palm Springs Standard Drawing Nos. 620 through 625.

52. Construction signing, lighting and barricading shall be provided for on all projects as required by City Standards or as directed by the City Engineer. As a minimum, all construction signing, lighting and barricading shall be in accordance with State of California, Department of Transportation, "MANUAL OF TRAFFIC CONTROLS FOR CONSTRUCTION AND MAINTENANCE WORK ZONES" dated 1996, or subsequent additions in force at the time of construction.

53. This property is subject to the Transportation Uniform Mitigation Fee based on the RESIDENTIAL SINGLE FAMILY DETACHED ITE Code B land use.

EXHIBIT B
MITIGATION FEE SCHEDULE

All estimated payments to be made prior to issuance of building permits. Each fee is calculated on a per unit basis.

1.	Fire Station & Equipment:	$206.78 / unit
2.	Drainage:	$5,626.15 / unit
3.	Road/Bridge:	$2,704.00 / unit
4.	Affordable Housing:	$3,120.00 / unit

The above Mitigation Fee amounts apply to permits issued in the calendar year 2004. Said amounts shall be adjusted based on completion of the City's engineers assessment spread report if the amounts determined in the report vary from these estimates. If there is an increase in the amount, Subdivider shall pay the additional amount per unit within thirty (30) days notice of the increase. If there is a decrease in the amount, Subdivider shall receive a credit toward the payments on the next Mitigation Fees owed for subsequent building permits obtained for construction on the Property. In the event the permits are pulled in subsequent years, the Mitigation Fee amounts shall be further adjusted in a percentage basis by the Consumer Price Index as set forth in Section 1.2.

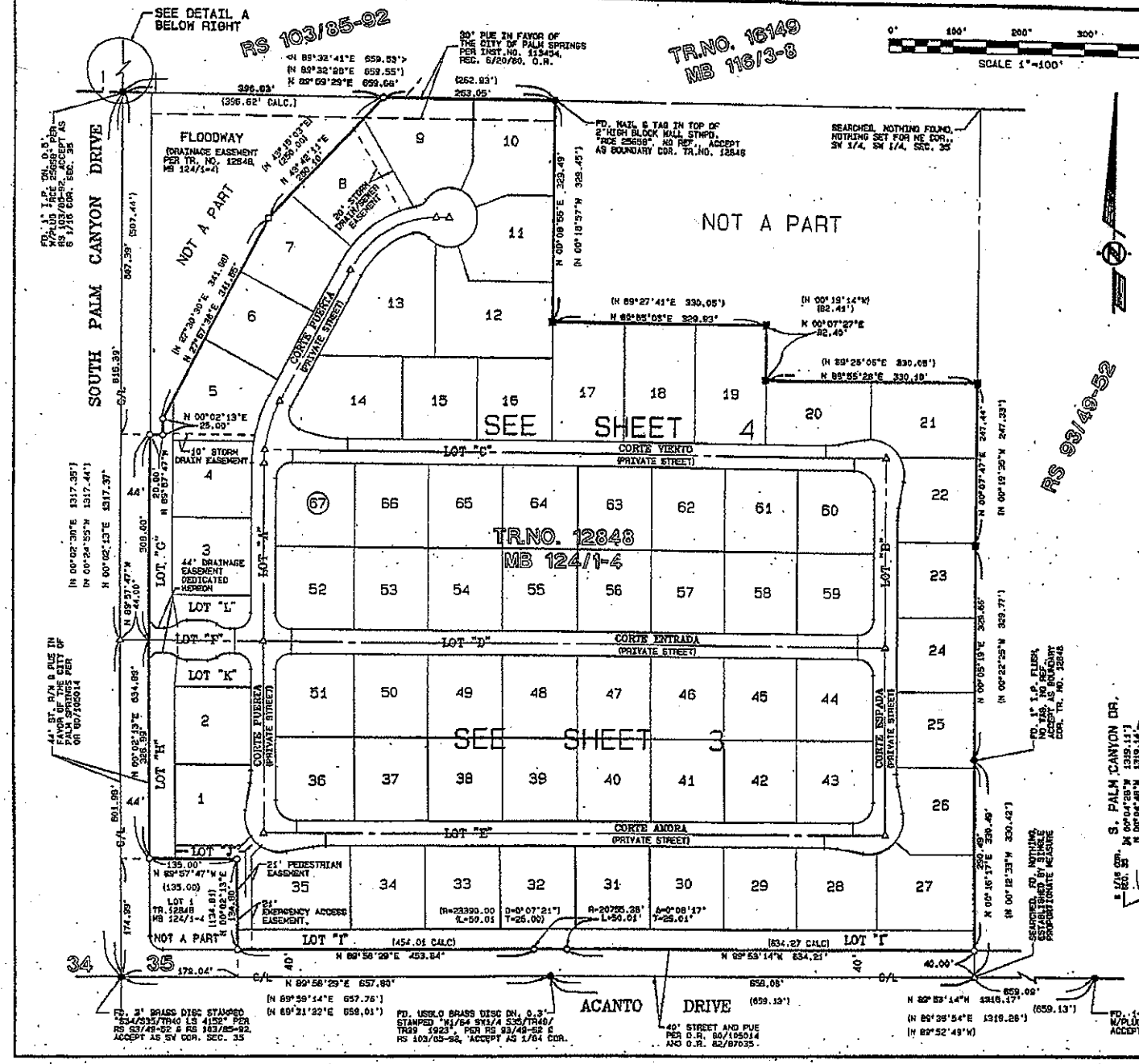
EXHIBIT C
FINAL MAP

IN THE CITY OF PALM SPRINGS,
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

TRACT MAP NO. 30050

BEING A RESUBDIVISION OF A PORTION OF TRACT NO. 12848, ON FILE IN BOOK 124 AT PAGES 1-4 OF MAPS, RIVERSIDE COUNTY RECORDS, IN THE SW 1/4 OF THE SW 1/4 OF SECTION 35, T.4 S., R.4 E., S.B.M.

MAINIERO, SMITH AND ASSOCIATES, INC.
FEBRUARY 2004



ENGINEER'S NOTES

THE BASIS OF BEARINGS FOR THIS MAP IS THE NORTH LINE OF THE SW 1/4 OF SECTION 35, T.4 S., R.4 E., S.B.M., AS SHOWN ON RS 103/85-92, TAKEN AS N 89°50'32"E

- ● INDICATES FOUND MONUMENT AS NOTED.
- ■ INDICATES FOUND 1" I.P. FLUSH W/TAG "RCE 26662", NO REF., ACCEPT AS BOUNDARY COR. TR. NO. 12848.
- ○ INDICATES SET 1" I.P. DOWN 6", TAGGED RCE 26401.
- △ INDICATES SET 1-1/2" COPPERWELD MONUMENT STAMPED RCE 26401, FLUSH, COUNTY STD. TYPE "B" MONUMENT.
- (-) INDICATES RECORD DATA PER TR. NO. 12848, MB 124/1-4.
- [-] INDICATES RECORD DATA PER RS 103/85-92.
- <-> INDICATES RECORD DATA PER TR. NO. 16149, MB 116/3-8.

SET NAIL AND TAG IN CURB AT THE PROLONGATION OF SIDE LOT LINES IN LIEU OF FRONT LOT CORNERS, STAMPED RCE 26401.

AT ALL REAR LOT CORNERS, SET 1" I.P. DOWN 6" W/TAG, OR NAIL & TAG IN CONC. FOOTING OR FENCING MATERIAL, ALL STAMPED RCE 26401, AS APPROPRIATE.

PUE INDICATES PUBLIC UTILITY EASEMENT

TOTAL GROSS AREA WITHIN DISTINCTIVE BORDER = 29.546 ACRES
TOTAL NET AREA = 23.715 ACRES

THIS TRACT CONTAINS 67 NUMBERED LOTS PLUS 12 LETTERED LOTS.

J.N. 1386

EXHIBIT D

FORM OF RELEASE OF COVENANT TO USE AS ONE

RECORDING REQUESTED BY
AND
WHEN RECORDED MAIL TO:

City of Palm Springs
Attention: CITY CLERK
3200 E. Tahquitz Canyon Way
P.O. Box 2743
Palm Springs, CA 92263-2743

DOCUMENTARY TRANSFER TAX $ Exempt (Revenue & Taxation Code § 11922)
RECORDING FEE: Exempt (Government Code § 27383)

SPACE ABOVE THIS LINE FOR RECORDER'S USE

RELEASE OF COVENANT TO USE AS ONE

CITY OF PALM SPRINGS, a municipal corporation, and COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF PALM SPRINGS, a public body, corporate and politic, do hereby RELEASE the COVENANT TO USE AS ONE, pursuant to Section 3 thereof, recorded on October 22, 2004, as Document No. 2004-0839118, in the Office of the County Recorder, County of Riverside as to the property owned by IRP EL PORTAL ASSOCIATES, LLC, a Delaware limited liability company, which real property in the City of Palm Springs, County of Riverside, State of California, is described as Tract Map 30050 and more particularly described on Exhibit "A" attached hereto and incorporated herein.

Dated _____, 20___

CITY OF PALM SPRINGS, a municipal corporation,

_____

David H. Ready, City Manager

COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF PALM SPRINGS, a public body, corporate and politic

_____

Steve Pougnet, Chairman

ATTEST

_____

James Thompson, City Clerk

STATE OF CALIFORNIA)
)
COUNTY OF RIVERSIDE)

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

I declare 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.

_____
Notary Public

EXHIBIT "A"

REAL PROPERTY IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, TRACT 30050, DESCRIBED AS:

Tract Map 30050 recorded October 1, 2004, in Book 364 of Maps at Pages 97 – 100, as Document No. 2004-0781835.