

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

CITY OF YORBA LINDA
4845 Casa Loma Avenue
Yorba Linda, CA 92886
ATTN: City Clerk

(Exempt from Filing Fees - Govt Code ' 6103)

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder

 NO FEE

2007000541226 01:59pm 08/31/07

111 200 A12 22

0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SUBDIVISION IMPROVEMENT AGREEMENT
FOR COMPLETION OF PUBLIC IMPROVEMENTS
PARCEL/TRACT NO. 2005-135

between

THE CITY OF YORBA LINDA
a California municipal corporation

and

SEPULVEDA BUILDERS, INC.,

AND

GEORGE AND JOAN ADAMS

1802

WF
IT
220
66

203

SUBDIVISION IMPROVEMENT AGREEMENT
FOR COMPLETION OF PUBLIC IMPROVEMENTS

PARCEL/TRACT MAP NO. 2005-135

I. PARTIES AND DATE.

This Subdivision Improvement Agreement for the Completion of Public Improvements ("Agreement") is entered into as of this 17th day of July, 2007, by and between the City of Yorba Linda, a California municipal corporation ("City") and Sepulveda Builders, Inc., A California Corporation and George Adams and Joan Adams, with its principal office located at 3200 E. Frontera Street, Anaheim, CA 92806 ("Developer"). City and Developer are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

II. RECITALS.

A. On November 17, 2004, Developer submitted to City an application for approval of a tentative parcel/tract map for real property located within City, a legal description of which is attached hereto as Exhibit "A" ("Property"). The tentative parcel/tract map was prepared on behalf of Developer by JRV Engineering, Inc., and is identified in City records as Parcel/Tract Map No. 2005-135.

B. On the 13th day of April, 2005, the Yorba Linda Planning Commission conditionally approved Developer's application for a tentative parcel/tract map for Parcel/Tract No. 2005-135.

C. Developer is the owner of the Property, and Developer proposes to do and perform certain work of improvement thereon as set forth in this Agreement.

D. Developer has not completed all of the work or made all of the public improvements required by Title 17 of the Yorba Linda Municipal Code, the Subdivision Map Act (Government Code sections 66410, et seq.) ("Map Act"), the conditions of approval for Parcel/Tract No. 2005-135, or other ordinances, resolutions, or policies of City requiring construction of improvements in conjunction with the subdivision of land.

E. Pursuant to Title 17 of the Yorba Linda Municipal Code and the applicable provisions of the Map Act, Developer and City enter into this Agreement for the timely

construction and completion of the public improvements and the furnishing of the security therefor, acceptable to the City Engineer and City Attorney, for Parcel/Tract No. 2005-135.

F. Developer's execution of this Agreement and the provision of the security are made in consideration of City's approval of the final map for Parcel/Tract No. 2005-135.

III. TERMS.

1.0 Effectiveness. This Agreement shall not be effective unless and until all three of the following conditions are satisfied: (a) Developer provides City with security of the type and in the amounts required by this Agreement; (b) Developer executes and records this Agreement in the Recorder's Office of the County of Orange; and (c) the City Council of the City of Yorba Linda ("City Council") approves the final map for Parcel/Tract No. 2005-135 and Developer records the final map for Parcel/Tract No. 2005-135 in the Recorder's Office of the County of Orange. If any of the above described conditions are not satisfied, this Agreement shall automatically terminate without need of further action by either City or Developer, and Developer may not thereafter record the final map for Parcel/Tract No. 2005-135.

1.1 Definitions. For purposes of enforcing this Agreement, the term "City" shall include, but shall not be limited to, City Council, City Engineer, Community Development Director, Building Official, or any of their authorized representatives. City shall have the sole and absolute discretion to determine which public body, public official or public employee may act on behalf of City for any particular purpose.

2.0 Public Improvements. Developer shall construct or have constructed at its own cost, expense, and liability all improvements required by City as part of the approval of Parcel/Tract No. 2005-135, including, but not limited to, all grading, roads, paving, curbs and gutters, pathways, storm drains, sanitary sewers, utilities, drainage facilities, traffic controls, landscaping, street lights, and all other required facilities as shown in detail on the plans, profiles, and specifications which have been prepared by or on behalf of Developer for Parcel/Tract Map No. 2005-135 ("Public Improvements"). The Public Improvements are more specifically described in Exhibit "B", which is attached hereto and incorporated herein by this reference. Construction of the Public Improvements shall include any transitions and/or other incidental work deemed necessary for drainage or public safety. The Developer shall be responsible for the replacement, relocation, or removal of any component of any utility system or public improvement in conflict with the construction or installation of the Public Improvements. Such replacement, relocation, or removal shall be performed to the complete satisfaction of the City Engineer and the owner of such utility system or public improvement. Developer further promises and agrees to provide all equipment, tools, materials, labor, tests, design work, and engineering services necessary or required by City to fully and adequately complete the Public Improvements.

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

2.2 Permits; Notices; Utility Statements. Prior to commencing any work, Developer shall, at its sole cost, expense, and liability, obtain all necessary permits and licenses and give all necessary and incidental notices required for the lawful construction of the Public Improvements and performance of Developer's obligations under this Agreement. Developer shall conduct the work in full compliance with the regulations, rules, and other requirements contained in any permit or license issued to Developer. Prior to commencing any work, Developer shall file a written statement with the City Clerk and the City Engineer, signed by Developer and each utility which will provide utility service to the Property, attesting that Developer has made all deposits legally required by the utility for the extension and provision of utility service to the Property.

2.3 Pre-approval of Plans and Specifications. Developer is prohibited from commencing work on any Public Improvement until all plans, specifications, estimates and bonds for such Public Improvement have been submitted to and approved by the City Engineer, the City Attorney or their authorized designee. Approval by the City Engineer shall not relieve Developer from ensuring that all Public Improvements conform with all other requirements and standards set forth in this Agreement.

2.4 Quality of Work; Compliance With Laws and Codes. The construction plans and specifications for the Public Improvements shall be prepared in accordance with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements. The Public Improvements shall be completed in accordance with all approved maps, conditions, plans, specifications, standard drawings, and special amendments thereto on file with City, as well as all applicable federal, state, and local laws, ordinances, regulations, codes, standards, and other requirements applicable at the time work is actually commenced.

2.5 Standard of Performance. Developer and its contractors, if any, shall perform all work required to construct the Public Improvements under this Agreement in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Developer represents and maintains that it or its contractors shall be skilled in the professional calling necessary to perform the work. Developer warrants that all of its employees and contractors shall have sufficient skill and experience to perform the work assigned to them, and that they shall have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the work, and that such licenses, permits, qualifications and approvals shall be maintained throughout the term of this Agreement.

2.6 Alterations to Improvements. The Public Improvements in Exhibit "B" are understood to be only a general designation of the work and improvements to be done, and not a binding description thereof. All work shall be done and improvements made and completed as shown on approved plans and specifications, and any subsequent alterations thereto. If during the course of construction and installation of the Public Improvements it is determined that the public interest requires alterations in the Public Improvements, Developer shall undertake such design and construction changes as may be reasonably required by City. Any and all alterations in the plans and specifications and the Public Improvements to be completed may be accomplished without giving prior notice thereof to Developer's surety for this Agreement.

3.0 Maintenance of Public Improvements and Landscaping. City shall not be responsible or liable for the maintenance or care of the Public Improvements until City approves and accepts them. City shall exercise no control over the Public Improvements until accepted. Any use by any person of the Public Improvements, or any portion thereof, shall be at the sole and exclusive risk of the Developer at all times prior to City's acceptance of the Public Improvements. Developer shall maintain all the Public Improvements in a state of good repair until they are completed by Developer and approved and accepted by City, and until the security for the performance of this Agreement is released. Maintenance shall include, but shall not be limited to, repair of pavement, curbs, gutters, sidewalks, signals, parkways, water mains, and sewers; maintaining all landscaping in a vigorous and thriving condition reasonably acceptable to City; removal of debris from sewers and storm drains; and sweeping, repairing, and maintaining in good and safe condition all streets and street improvements. Developer shall cause the sweeping of streets to occur weekly at a minimum. Developer shall perform additional street sweeping work as necessary depending on construction activities or as required by, and at the direction of, the City Engineer. It shall be Developer's responsibility to initiate all maintenance work, but if it shall fail to do so, it shall promptly perform such maintenance work when notified to do so by City. If Developer fails to properly prosecute its maintenance obligation under this section, City may do all work necessary for such maintenance and the cost thereof shall be the responsibility of Developer and its surety under this Agreement. City shall not be responsible or liable for any damages or injury of any nature in any way related to or caused by the Public Improvements or their condition prior to acceptance.

4.0 Construction Schedule. Unless extended pursuant to Section 4.1 of this Agreement, Developer shall fully and adequately complete or have completed the Public Improvements within twelve (12) months following approval of the final map for Parcel/Tract No. 2005-135.

4.1 Extensions. City may, in its sole and absolute discretion, provide Developer with additional time within which to complete the Public Improvements. It is understood that by providing the security required under Section 13.0, et seq., of this Agreement, Developer and its surety consent in advance to any extension of time as may be given by City to Developer, and waives any and all right to notice of such extension(s). Developer's acceptance of an extension of time granted by City shall constitute a waiver by Developer and its surety of all defense of laches, estoppel, statutes of limitations, and other limitations of action in any action or proceeding filed by City following the date on which the Public Improvements were to have been completed hereunder. In addition, as consideration for granting such extension to Developer, City reserves the right to review the provisions of this Agreement, including, but not limited to, the construction standards, the cost estimates established by City, and the sufficiency of the improvement security provided by Developer, and to require adjustments thereto when warranted according to City's reasonable discretion.

4.2 Accrual of Limitations Period. Any limitations period provided by law related to breach of this Agreement or the terms thereof shall not accrue until Developer has provided the City Engineer with written notice of Developer's intent to abandon or otherwise not complete required or agreed upon Public Improvements.

5.0 Grading. Developer agrees that any and all grading done or to be done in conjunction with construction of the Public Improvements or development of Parcel/Tract No. 2005-135 shall conform to all federal, state, and local laws, ordinances, regulations, and other requirements including, without limitation, the City's grading regulations, the National Pollutant Discharge Elimination Systems (NPDES), and stormwater regulations thereunder as administered by the State Water Resources Control Board and Regional Water Quality Control Boards. In order to prevent damage to the Public Improvements by improper drainage or other hazards, the grading shall be completed in accordance with the time schedule for completion of the Public Improvements established by this Agreement, and prior to City's approval and acceptance of the Public Improvements and release of the Security as set forth in Section 13.0, et seq., of this Agreement. Developer further agrees that the indemnification as set forth in Section 16.0 of this Agreement shall extend to and include any and all grading contemplated by this Agreement, including but not limited to, any partial or rough grading work.

6.0 Utilities. Developer shall provide utility services, including water, power, gas, and telephone service to serve each parcel, lot, or unit of land within Parcel/Tract No. 2005-135 in accordance with all applicable federal, state, and local laws, rules, and regulations, including, but not limited to, the regulations, schedules and fees of the utilities or agencies providing such services. Except for commercial or industrial properties, Developer shall also provide cable television facilities to serve each parcel, lot, or unit of land in accordance with all applicable federal, state, and local laws, rules, and regulations, including, but not limited to, the requirements of the cable company possessing a valid franchise with City to provide such service within City's jurisdictional limits. All utilities shall be installed underground, unless otherwise approved by the City Council or the Planning Commission of the City of Yorba Linda, or by any other state or federal laws or regulations.

7.0 Fees and Charges. Developer shall, at its sole cost, expense, and liability, pay all fees, charges, and taxes arising out of construction of the Public Improvements, including, but not limited to, all plan check, report review, engineering, inspection, testing, and other service fees, and any impact or connection fees established by City ordinance, resolution, regulation, or policy, or as established by City relative to Parcel/Tract No. 2005-135.

8.0 City Inspection of Public Improvements. Developer shall, at its sole cost, expense, and liability, and at all times during construction of the Public Improvements, maintain reasonable and safe facilities and provide safe access for inspection by City of the Public Improvements and areas where construction of the Public Improvements is occurring or will occur.

9.0 Default; Notice; Remedies.

9.1 Notice. If Developer neglects, refuses, or fails to fulfill or timely complete any obligation, term, or condition of this Agreement, or if City determines there is a violation of any federal, state, or local law, ordinance, regulation, code, standard, or other requirement, City may at any time thereafter declare Developer to be in default or violation of this Agreement and make written demand upon Developer or its surety, or both, to immediately remedy the default or violation ("Notice"). Developer shall substantially commence the work

required to remedy the default or violation within ten (10) days of the Notice. If the default or violation constitutes an immediate threat to the public health, safety, or welfare, City may provide the Notice verbally, and Developer shall substantially commence the required work within twenty-four (24) hours thereof. Immediately upon City's issuance of the Notice, Developer and its surety shall be liable to City for all costs of construction and installation of the Public Improvements and all other administrative costs expenses as provided for in Section 10.0 of this Agreement.

9.2 Failure to Remedy; City Action. If the work required to remedy the noticed default or violation is not diligently prosecuted to a completion acceptable to City within the time frame contained in the Notice, City may complete all remaining work, arrange for the completion of all remaining work, and/or conduct such remedial activity as in its sole and absolute discretion it believes is required to remedy the default or violation. All such work or remedial activity shall be at the sole and absolute cost, expense, and liability of Developer and its surety, without the necessity of giving any further notice to Developer or surety. City's right to take such actions shall in no way be limited by the fact that Developer or its surety may have constructed any, or none of the required or agreed upon Public Improvements at the time of City's demand for performance. In the event City elects to complete or arrange for completion of the remaining work and improvements, City may require all work by Developer or its surety to cease in order to allow adequate coordination by City. Notwithstanding the foregoing, if conditions precedent for reversion to acreage can be met and if the interests of City will not be prejudiced thereby, City may also process a reversion to acreage and thereafter recover from Developer or its surety the full cost and expense incurred.

9.3 Other Remedies. No action by City pursuant to Section 9.0, et seq., of this Agreement shall prohibit City from exercising any other right or pursuing any other legal or equitable remedy available under this Agreement or any federal, state, or local law. City may exercise its rights and remedies independently or cumulatively, and City may pursue inconsistent remedies. City may institute an action for damages, injunctive relief, or specific performance.

10.0 Administrative Costs. If Developer fails to construct and install all or any part of the Public Improvements within the time required by this Agreement, or if Developer fails to comply with any other obligation contained herein, Developer and its surety shall be jointly and severally liable to City for all administrative expenses, fees, and costs, including reasonable attorney's fees and costs, incurred in obtaining compliance with this Agreement or in processing any legal action or for any other remedies permitted by law.

11.0 Acceptance of Improvements; As-Built or Record Drawings. If the Public Improvements are properly completed by Developer and approved by the City Engineer, and if they comply with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements, the City Council shall be authorized to accept the Public Improvements. The City Council may, in its sole and absolute discretion, accept fully completed portions of the Public Improvements prior to such time as all of the Public Improvements are complete, which shall not release or modify Developer's obligation to complete the remainder of the Public Improvements within the time required by this Agreement. Upon the total or partial acceptance of the Public Improvements by City, Developer shall file with the Recorder's Office

of the County of Orange a notice of completion for the accepted Public Improvements in accordance with California Civil Code section 3093, at which time the accepted Public Improvements shall become the sole and exclusive property of City without payment therefor.

If Parcel/Tract No. 2005-135 was approved and recorded as a single phase map, City shall not accept any one or more of the improvements until all of the Public Improvements are completed by Developer and approved by City.

Issuance by City of occupancy permits for any buildings or structures located on the Property shall not be construed in any manner to constitute City's acceptance or approval of any Public Improvements. Notwithstanding the foregoing, City may not accept any Public Improvements unless and until Developer provides one (1) set of "as-built" or record drawings or plans to the City Engineer for all such Public Improvements. The drawings shall be certified and shall reflect the condition of the Public Improvements as constructed, with all changes incorporated therein.

12.0 Warranty and Guarantee. Developer hereby warrants and guarantees all Public Improvements against any defective work or labor done, or defective materials furnished in the performance of this Agreement, including the maintenance of all landscaping within the Property in a vigorous and thriving condition reasonably acceptable to City, for a period of one (1) year following completion of the work and acceptance by City ("Warranty"). During the Warranty, Developer shall repair, replace, or reconstruct any defective or otherwise unsatisfactory portion of the Public Improvements, in accordance with the current ordinances, resolutions, regulations, codes, standards, or other requirements of City, and to the approval of the City Engineer. All repairs, replacements, or reconstruction during the Warranty shall be at the sole cost, expense, and liability of Developer and its surety. As to any Public Improvements which have been repaired, replaced, or reconstructed during the Warranty, Developer and its surety hereby agree to extend the Warranty for an additional one (1) year period following City's acceptance of the repaired, replaced, or reconstructed Public Improvements. Nothing herein shall relieve Developer from any other liability it may have under federal, state, or local law to repair, replace, or reconstruct any Public Improvement following expiration of the Warranty or any extension thereof. Developer's warranty obligation under this section shall survive the expiration or termination of this Agreement.

13.0 Security; Surety Bonds. Prior to execution of this Agreement, Developer shall provide City with surety bonds in the amounts and under the terms set forth below ("Security"). Nothing in this Section 13.0 is intended to prevent City, in its sole discretion, from requiring Developer to submit, or prevent Developer from submitting, security in a form other than bonds which may be allowed under California Government Code Section 66499, et seq. and Title 17 of the Yorba Linda Municipal Code, and acceptable to the City. The amount of the Security shall be based on the City Engineer's approximation of the actual cost to construct the Public Improvements, including the replacement cost for all landscaping ("Estimated Costs"). If City determines, in its sole and absolute discretion, that the Estimated Costs have changed, Developer shall adjust the Security in the amount requested by City. Developer's compliance with this provision (Section 13.0, et seq.) shall in no way limit or modify Developer's indemnification obligation provided in Section 16.0 of this Agreement.

13.1 Performance Bond. To guarantee the faithful performance of the Public Improvements and all the provisions of this Agreement, to protect City if Developer is in default as set forth in Section 9.0, et seq., of this Agreement, and to secure Developer's one-year guarantee and warranty of the Public Improvements, including the maintenance of all landscaping in a vigorous and thriving condition, Developer shall provide City a faithful performance bond in the amount of Seventy Thousand Two Hundred and Thirteen Dollars and no/100 Dollars (\$70,213.00), which sum shall be not less than one hundred percent (100%) of the Estimated Costs. The City Council may, in its sole and absolute discretion and upon recommendation of the City Engineer, partially release a portion or portions of the security provided under this section as the Public Improvements are accepted by City, as provided under Section 13.0 herein, provided that Developer is not in default on any provision of this Agreement or condition of approval for Parcel/Tract No. 2005-135, and the total remaining security is not less than twenty-five percent (25%) of the Estimated Costs. All security provided under this section shall be released at the end of the Warranty period, or any extension thereof as provided in Section 12.0 of this Agreement, provided that Developer is not in default on any provision of this Agreement or condition of approval for Parcel/Tract No. 2005-135.

13.2 Labor and Material Bond. To secure payment to the contractors, subcontractors, laborers, material men, and other persons furnishing labor, materials, or equipment for performance of the Public Improvements and this Agreement, Developer shall provide City a labor and materials bond in the amount of Seventy Thousand Two Hundred and Thirteen Dollars and no/100 Dollars (\$70,213.00), which sum shall not be less than one hundred percent (100%) of the Estimated Costs. The security provided under this section may be released by written authorization of the City Engineer after one (1) year or within the time limits established in California Government Code section 66499.7 from the date City accepts the final Public Improvements at the discretion of the City. The amount of such security shall be reduced by the total of all stop notice or mechanic's lien claims of which City is aware, plus an amount equal to twenty percent (20%) of such claims for reimbursement of City's anticipated administrative and legal expenses arising out of such claims.

13.3 Additional Requirements. The surety for any surety bonds provided as Security shall have a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law, and shall be satisfactory to City. As part of the obligation secured by the Security and in addition to the face amount of the Security, the Developer or its surety shall secure the costs and reasonable expenses and fees, including reasonable attorney's fees and costs, incurred by City in enforcing the obligations of this Agreement. The Developer and its surety stipulate and agree that no change, extension of time, alteration, or addition to the terms of this Agreement, the Public Improvements, or the plans and specifications for the Public Improvements shall in any way affect its obligation on the Security.

13.4 Evidence and Incorporation of Security. Evidence of the Security shall be provided on the forms set forth in Exhibit "C", unless other forms are deemed acceptable by the City Engineer and the City Attorney, and when such forms are completed to the satisfaction of City, the forms and evidence of the Security shall be attached hereto as Exhibit "C" and incorporated herein by this reference.

14.0 Monument Security. Prior to City's execution of this Agreement, to guarantee payment to the engineer or surveyor for the setting of all subdivision boundaries, lot corners, and street centerline monuments for Parcel/Tract No. 2005-135 in compliance with the applicable provisions of City's Municipal and/or Development Code ("Subdivision Monuments"), Developer shall furnish to City a bond in the amount of Two Thousand Five Hundred Dollar Dollars (\$2,500.00), which sum shall not be less than one hundred percent (100%) of the costs of setting the Subdivision Monuments as determined by the City Engineer. Said bond may be released by written authorization of the City Engineer after all required Subdivision Monuments are accepted by the City Engineer, City has received written acknowledgment of payment in full from the engineer or surveyor who set the Subdivision Monuments, and provided Developer is not in default of any provision of this Agreement or condition of approval for Parcel/Tract No. 2005-135.

15.0 Lien. To secure the timely performance of Developer's obligations under this Agreement, including those obligations for which security has been provided pursuant to Sections 13.0, et seq., and 14.0 of this Agreement, Developer hereby creates in favor of City a lien against all portions of the Property not dedicated to City or some other governmental agency for a public purpose. As to Developer's default on those obligations for which security has been provided pursuant to Sections 13.0, et seq., and 14.0 of this Agreement, City shall first attempt to collect against such security prior to exercising its rights as a contract lienholder under this section.

16.0 Indemnification. Developer shall defend, indemnify, and hold harmless City, its elected officials, officers, employees, agents and volunteers from any and all actual or alleged claims, demands, causes of action, liability, loss, damage, or injury, to property or persons, including wrongful death, whether imposed by a court of law or by administrative action of any federal, state, or local governmental body or agency, arising out of or incident to any acts, omissions, negligence, or willful misconduct of Developer, its personnel, employees, agents, or contractors in connection with or arising out of construction or maintenance of the Public Improvements, or performance of this Agreement. This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys fees, and related costs or expenses, and the reimbursement of City, its elected officials, officers, employees, and/or agents for all legal expenses and costs incurred by each of them. This indemnification excludes only such portion of any claim, demand, cause of action, liability, loss, damage, penalty, fine, or injury, to property or persons, including wrongful death, which is caused solely and exclusively by the negligence or willful misconduct of City as determined by a court or administrative body of competent jurisdiction. Developer's obligation to indemnify shall survive the expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by Agency, its elected officials, officers, employees, agents or volunteers.

17.0 Insurance.

17.1 Types; Amounts. Developer shall procure and maintain, and shall require its contractors and subcontractors to procure and maintain, during construction of any Public Improvement pursuant to this Agreement, insurance of the types and in the amounts described

below ("Required Insurance") and without limiting the indemnity provisions of this Agreement. If any of the Required Insurance contains a general aggregate limit, such insurance shall apply separately to this Agreement or be no less than three times the specified occurrence limit. For purposes of this Section 17.0, et seq., the "indemnified parties" shall mean the City, its elected officials, officers, employees, agents and volunteers, as described in Section 16.0 of this Agreement. The Required Insurance shall contain standard separation of insureds provisions, and shall contain no special limitations on the scope of its protection to City, its elected officials, officers, employees, agents and volunteers.

17.1.1 Commercial General Liability. Developer, its contractors and subcontractors shall procure and maintain Commercial General Liability Insurance which affords coverage at least as broad as the latest version of Insurance Services Office "occurrence" form CG 0001, with minimum limits of at least \$5,000,000 per occurrence, and if written with an aggregate, the aggregate shall be double the per occurrence limit. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions limiting coverage for (1) products and completed operations; (2) contractual liability; (3) third party action over claims; (4) cross liability exclusion for claims or suits by one insured against another; or (5) explosion, collapse or underground hazard (XCU).

17.1.2 Automobile Liability. Developer, its contractors and subcontractors shall procure and maintain automobile liability insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1) with minimum limits of \$1,000,000 each accident. Such insurance shall include coverage for the ownership, operation, maintenance, use, loading, or unloading of any vehicle owned, leased, hired, or borrowed by the insured or for which the insured is responsible. If Developer does not own any company vehicles and if requested by City, this requirement may be satisfied by providing a non-owned auto endorsement to the Commercial General Liability policy.

17.1.3 Workers' Compensation. Developer, its contractors and subcontractors shall procure and maintain workers' compensation insurance with limits as required by the Labor Code of the State of California and Employers' Liability Insurance of not less than \$1,000,000 per accident for bodily injury and disease.

17.1.4 Professional Liability. If applicable to this Agreement and required by City, for any consultant or other professional who will engineer or design the Public Improvements, professional liability insurance for errors and omissions with limits not less than \$1,000,000 per occurrence, shall be procured and maintained for a period of three (3) years following completion of the Public Improvements and shall specifically include all work to be performed under the Agreement. If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination of this Agreement.

17.1.5 Contractors Pollution Liability. If applicable to this Agreement and required by City, Contractors Pollution Liability Insurance covering all of Developer's operations to include onsite and offsite coverage for bodily injury (including death and mental anguish), property damage, defense costs and cleanup costs with minimum limits of \$5,000,000

per loss and \$10,000,000 total all losses. The policy shall contain no endorsements or provisions limiting contractual liability or coverage for cross liability of claims or suits by one insured against another. Non-owned disposal site coverage shall be provided if handling, storing or generating hazardous materials or any material/substance otherwise regulated under environmental laws/regulations.

For projects involving transportation of hazardous waste/materials, include coverage for loading/unloading from the project site to final disposal locations, and all disposal locations shall be scheduled as non-owned disposal sites.

If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination or expiration of this Agreement.

17.2 Deductibles. Any deductibles or self-insured retentions must be approved by City in writing and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

17.3 Certificates; Verification. Developer, its contractors and subcontractors shall furnish City with original certificates of insurance and endorsements effecting coverage for the Required Insurance. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by City prior to the execution of this Agreement and before work pursuant to this Agreement can begin. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

17.4 Insurer Rating. Unless approved in writing by City, all Required Insurance shall be placed with insurers with a current A.M. Best rating of at least A:VII and authorized to do business in the State of California or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law, and shall be satisfactory to City.

17.5 Endorsements.

17.5.1 The policy or policies of insurance required by Section 17.1.1 (Commercial General Liability), Section 17.1.2 (Automobile Liability) and Section 17.1.5 (Contractors Pollution Liability), if the latter is required by City, shall be endorsed as follows:

Additional Insured: The indemnified parties shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of this Agreement. The "Additional Insured Endorsement" shall be on a form similar to Insurance Services Office's Endorsement form CG 2010 and contain no other modifications to the policy.

Primary Insurance: This insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the indemnified parties shall not contribute with this primary insurance.

Severability: In the event of one insured, whether named or additional, incurs liability to any other of the insureds, whether named or additional, the policy shall cover the insured against whom claim is or may be in the same manner as if separate policies had been issued to each insured, except that the limits of insurance shall not be increased thereby.

Cancellation: The policy shall not be canceled or the coverage suspended, voided, reduced or allowed to expire until a thirty (30) day prior written notice of cancellation has been served upon the City except ten (10) days prior written notice shall be allowed for non-payment of premium.

Duties: Any failure by the named insured to comply with report provisions of the policy or breaches or violations of warranties shall not affect coverage provided to the indemnified parties.

Applicability: That the coverage provided therein shall apply to the obligations assumed by Developer, its contractors or subcontractors under the indemnity provisions of this Agreement, unless the policy or policies contain a blanket form of contractual liability coverage.

17.5.2 The policy or policies of insurance required by Section 17.1.3 (Workers' Compensation) shall be endorsed as follows:

Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.

Cancellation: The policy shall not be canceled or the coverage suspended, voided, reduced or allowed to expire until a thirty (30) day prior written notice of cancellation has been served upon the City except ten (10) days prior written notice shall be allowed for non-payment of premium.

17.5.3 The policy or policies of insurance required by Section 17.1.4 (Professional Liability), if required by City, shall be endorsed as follows:

Cancellation: The policy shall not be canceled or the coverage suspended, voided, reduced or allowed to expire until a thirty (30) day prior written notice of cancellation has been served upon the City except ten (10) days prior written notice shall be allowed for non-payment of premium.

18.0 Signs and Advertising. Developer understands and agrees to City's ordinances, regulations, and requirements governing signs and advertising structures. Developer hereby agrees with and consents to the removal by City of all signs or other advertising structures erected, placed, or situated in violation of any City ordinance, regulation, or other requirement. Removal shall be at the expense of Developer and its surety. Developer and its surety shall indemnify and hold City free and harmless from any claim or demand arising out of or incident to signs, advertising structures, or their removal.

19.0 Relationship Between the Parties. The Parties hereby mutually agree that neither this Agreement, any map related to Parcel/Tract No. 2005-135, nor any other related entitlement, permit, or approval issued by City for the Property shall operate to create the relationship of partnership, joint venture, or agency between City and Developer. Developer's contractors and subcontractors are exclusively and solely under the control and dominion of Developer. Nothing herein shall be deemed to make Developer, its contractors or subcontractors an agent, contractor or subcontractor of City.

20.0 General Provisions.

20.1 Authority to Enter Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority make this Agreement and bind each respective Party.

20.2 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Agreement.

20.3 Construction; References; Captions. It being agreed the Parties or their agents have participated in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days, or period for performance shall be deemed calendar days and not work days. All references to Developer include all personnel, employees, agents, and subcontractors of Developer, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

20.4 Notices. All notices, demands, invoices, and written communications shall be in writing and delivered to the following addresses or such other addresses as the Parties may designate by written notice:

CITY:

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

DEVELOPER:

Sepulveda Builders, Inc
By: _____
Brent Sepulveda, President

George Adams

Joan Adams

Depending upon the method of transmittal, notice shall be deemed received as follows: by facsimile, as of the date and time sent; by messenger, as of the date delivered; and by U.S. Mail first class postage prepaid, as of 72 hours after deposit in the U.S. Mail.

20.5 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

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

20.7 Assignment or Transfer of Agreement. Developer shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without prior written consent of City. Any attempt to do so shall be null and void, and any assignee, hypothecatee, or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation, or transfer. Unless specifically stated to the contrary in City's written consent, any assignment, hypothecation, or transfer shall not release or discharge Developer from any duty or responsibility under this Agreement. In the event that the City consents in writing to such an assignment, any assignee, hypothecatee or transferee shall expressly assume Developer's obligations hereunder by a written agreement in a form, and containing such security, as is reasonably acceptable to the City.

The agreement shall be to the satisfaction of the City Attorney and shall include provisions requiring the assignee to post bonds or submit another form of financial security, satisfactory to the City and approved by the City Attorney, to guarantee construction of the Public Improvements. The agreement shall survive the recordation of the Final Map and shall be recorded against each of the proposed lots to inform successors and assigns of the required Public Improvements to be constructed and their time frame for construction.

Following any permitted assignment of the Public Improvements as set forth in this Section 20.7, the City shall release the Developer from its obligations so assigned and shall release to the Developer any bonds or other security posted to secure the Public Improvements so assigned; provided, however, that the City shall not release any security or undertakings given to secure the performance of any of the Public Improvements not assigned.

20.8 Binding Effect. Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns. This section shall not be construed as an authorization for any Party to assign any right or obligation.

20.9 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

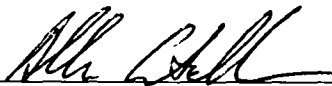
20.10 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

20.11 Consent to Jurisdiction and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this Agreement, or which in any way arises out of the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the appropriate California State Court in the County of Orange, California. Each Party waives the benefit of any provision of state or federal law providing for a change of venue to any other court or jurisdiction including, without limitation, a change of venue based on the fact that a governmental entity is a party to the action or proceeding, or that a federal right or question is involved or alleged to be involved in the action or proceeding. Without limiting the generality of the foregoing waiver, Developer expressly waives any right to have venue transferred pursuant to California Code of Civil Procedure Section 394.

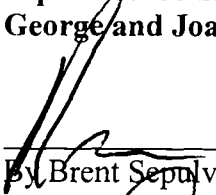
20.12 Attorneys' Fees and Costs. If any arbitration, lawsuit, or other legal action or proceeding is brought by one Party against the other Party in connection with this Agreement or the Property, the prevailing party, whether by final judgment or arbitration award, shall be entitled to and recover from the other party all costs and expenses incurred by the prevailing party, including actual attorneys' fees ("Costs"). Any judgment, order, or award entered in such legal action or proceeding shall contain a specific provision providing for the recovery of Costs, which shall include, without limitation, attorneys' and experts' fees, costs and expenses incurred in the following: (a) post judgment motions and appeals, (b) contempt proceedings, (c) garnishment, levy, and debtor and third party examination, (d) discovery, and (e) bankruptcy litigation. This section shall survive the termination or expiration of this Agreement.

20.13 Counterparts. This Agreement may be executed in counterpart originals, which taken together, shall constitute one and the same instrument.

CITY OF YORBA LINDA

By: 
Allen M. Castellano, Mayor

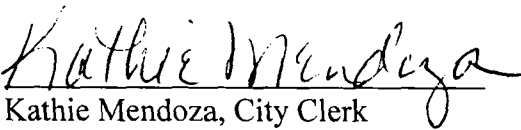
**Sepulveda Builders, Inc. &
George and Joan Adams**

By: 
Brent Sepulveda, President
Sepulveda Builders, Inc.


George Adams


Joan Adams

ATTEST:

By: 
Kathie Mendoza, City Clerk


(Seal)

By: _____
Signature

Print Name

Title

APPROVED AS TO FORM:

By: 
Best Best & Krieger LLP
City Attorney

**NOTE: DEVELOPER'S AND SURETY'S SIGNATURES SHALL BE DULY
NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE
INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF
INCORPORATION, OR OTHER RULES OR REGULATIONS
APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.**

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

Orange

} ss.

On June 21, 2007, before me, KATHIE M. MENDOZA,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Allen M. Castellano,
Name(s) of Signer(s)

☒ personally known to me
☐ 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.



Place Notary Seal Above

WITNESS my hand and official seal.

Kathie M. Mendoza
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

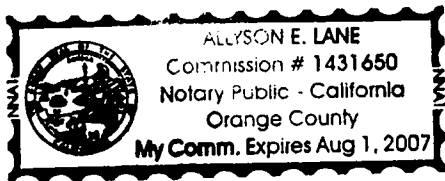
ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF Orange)

On Oct. 25th, 2006, before me, Allyson E. Lane, the undersigned notary public, personally appeared Brent Sepulveda, George & Jean Adams ~ personally known to me ~~OR~~ 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.

WITNESS my hand and official seal.

Allyson E. Lane
Signature of Notary



CAPACITY CLAIMED BY SIGNER:

- ☒ ~ Individual(s)
- ☐ ~ Corporate Officer(s)
- ☐ ~ Partner(s)
- ☐ ~ Attorney-in-Fact
- ☐ ~ Trustee(s)
- ☐ ~ Subscribing Witness
- ☐ ~ Guardian/Conservator
- ☐ ~ Other _____

SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

PARCEL/TRACT NO. 2005-135

BEING A SUBDIVISION OF A PORTION OF LOT 4 IN BLOCK 8 OF YORBA LINDA TRACT, IN THE CITY OF YORBA LINDA, AS PER MAP RECORDED IN BOOK 5, PAGES 17 AND 18 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXHIBIT "B"

LIST OF PUBLIC IMPROVEMENTS

PARCEL/TRACT NO. 2005-135

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

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

REMOVALS

SIDEWALK

CONCRETE CURB AND GUTTER

STREET TREES

A.C. PAVEMENT

CONSTRUCT

DRIVEWAY APPROACH WITH 6" TO 8" CONCRETE CURB AND GUTTER

ACCESS RAMPS

CONCRETE CROSS GUTTER

8" THICK A.C. PAVEMENT

EXHIBIT "C"

SURETY BONDS AND OTHER SECURITY

PARCEL/TRACT NO. 2005-135

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

PERFORMANCE BOND PRINCIPAL AMOUNT: \$ 70,213.00

Surety: Developers Surety & Indemnity
Attorney-in-fact: Joseph W. Mallozy
Address: PO Box 19725
Irvine CA 92623
(949) 263-3300

MATERIAL AND LABOR BOND PRINCIPAL AMOUNT: \$ 70,213.00

Surety: Developers Surety & Indemnity
Attorney-in-fact: Joseph W. Mallozy
Address: PO Box 19725
Irvine CA 92623
(949) 263-3300

MONUMENT SECURITY BOND: \$ 2,500.00

Surety: Developers Surety & Indemnity
Attorney-in-fact: Joseph W. Mallozy
Address: PO Box 19725
Irvine CA 92623
(949) 263-3300