

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL  
TO:**

City Clerk's Office  
CITY OF DESERT HOT SPRINGS  
65-950 Pierson Blvd.  
Desert Hot Springs, CA 92240

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**SUBDIVISION IMPROVEMENT AGREEMENT**

**PARCEL MAP NO. 35583**

**PIERSON PROFESSIONAL PLAZA**

This Subdivision Improvement Agreement ("Agreement"), made on MARCH 3, 2015, by and between the City of Desert Hot Springs, a municipal of the State of California and the County of Riverside, hereinafter referred to as "City," and Pierson Professional Plaza, L.P., with its principal office located at 5150 E. Pacific Coast Highway, Ste. 605 Long Beach, California 90804 hereinafter referred to as "Subdivider," hereby acknowledge the following:

**WHEREAS**, the City of Desert Hot Springs on February 17, 2015, granted final approval to a certain subdivision as laid out and delineated on a map entitled: PARCEL MAP NO. 35583 ("Map"); and

**WHEREAS**, Subdivider in order to secure final approval of said map posted a performance security bond in the amount of One Million Eight Hundred Twenty-Eight Thousand two Hundred and Eighty-One Dollars and 00/100's cents (\$1,828,281.00) for the completion of all improvements and fees; and

**WHEREAS**, the applicant has submitted the appropriate application, fee and completed the annexation to Community Facilities District 2010-1 for landscape, lighting and drainage maintenance purposes and Public Safety Tax 2 with the City of Desert Hot Springs; and

**WHEREAS**, this Agreement is executed pursuant to Government Code Section 66462(a)(l) and applicable ordinances of the City of Desert Hot Springs.

**NOW THEREFORE**, for and in consideration of the approval of the Map, and in order to ensure satisfactory performance by Subdivider of Subdivider's obligations under the Subdivision Map Act and said ordinances of the City of Desert Hot Springs, the parties, for themselves, their successors and assigns, hereby agree as follows:

**Section 1. Incorporation by Reference.** The original development application and present development application, all maps on file, construction plans, detail maps and state laws, present City ordinances, and the other City rules, regulations and official acts with respect to this subdivision and all the terms and conditions of final approval are incorporated herein by reference as if set forth at length, except as expressly modified herein.

**Section 2. Installation/Replacement of Improvements.**

(a) Subdivider shall construct as provided for in the original subdivision, all roads, curbing, pavement and other improvements, including all catch basins and drainage facilities, monuments, street lights, and other improvements of any nature whatsoever as set forth on the improvement plans prepared by Feiro Engineering identified as Pierson Plaza Parcel Map 35583 and approved by the City Engineer on February XX, 2015. Subdivider shall replace, or have replaced, or repair, or have repaired, as the case may be, all pipes and monuments shown on the Map which have been destroyed or damaged, and Subdivider shall replace or have replaced, repair, or have repaired, as the case may be, or pay to the owner the entire cost of replacement or repairs, of, any and all property damaged or destroyed by reason of any work done hereunder, whether such property be owned by the United States or any agency thereof, or the State of California, or any agency or political subdivision thereof, or by City or by any public or private corporation, or by any person whomsoever, or by any combinations of such owners. Any such repair or replacement shall be to the satisfaction, and subject to the approval of, the City Engineer.

(b) The City maintains the right, at the City's sole discretion, to modify the plans and specifications relating to any and all improvements.

(c) Subdivider further warrants that the construction of improvements will not adversely affect any portion of adjacent properties.

**Section 3. Modification of Drainage Plan.** Subdivider agrees that if during the course of construction and installation of improvements it shall be determined by the City Engineer that revision of the drainage plan is necessary in the public interest, it will undertake such design and construction changes as may be reasonable and are indicated by the City Engineer and approved by City. Said changes, if any, shall be confined to the premises owned by Subdivider.

**Section 4. Security.**

(a) Pursuant to Government Code Section 66462(c), Subdivider shall, concurrently with the execution hereof, furnish a surety bond or deposit in an amount equal to \$1,838,200.00 for the cost of improvements as approved by the City Engineer as security for the faithful performance of this Agreement. (Government Code § 66499.3, subd. (a).)

(b) Concurrently with the execution hereof, Subdivider shall furnish a surety bond or deposit in an amount equal to at least fifty percent (50%) of the estimated cost of improvements as approved by the City Engineer as security of the payment of all persons performing labor and furnishing materials in connection with this Agreement. (Government Code § 66499.3, subd. (b).)

(c) To be acceptable, the surety company must be authorized to do business and have an agent for service of process in California, be on the accredited list of the United States Treasury Department, and have an "A" policyholder's rating and a financial rating of Class V, or better, in accordance with the current Best's Rating. The surety on each bond and the form thereof shall be satisfactory to the City Attorney.

(d) Subdivider agrees to furnish any bond required for the opening of any state or county roads or easements outside the jurisdiction of City.

#### **Section 5. Timing of Performance.**

(a) City hereby fixes the time for the commencement of said work to be on the the 19<sup>th</sup> day of February, 2015. At least fifteen (15) calendar days prior to the commencement of work hereunder, Subdivider shall notify the City Engineer in writing of the date fixed by Subdivider for commencement thereof, so that the City Engineer shall be able to provide services of inspection.

(b) It is agreed that the work to be performed shall be completed (24 months) from the date of this Agreement.

#### **Section 6. Time of Essence.**

(a) In the event good cause is shown, the City Engineer may extend the time for completion of the improvements. The City Engineer shall be the sole and final judge as to whether or not cause has been shown to entitle Subdivider to an extension.

(b) Any such extension may be granted without notice to the Subdivider's surety, and extensions so granted shall not relieve the surety's liability on the bond to secure the faithful performance of the Agreement.

#### **Section 7. Work Performance.**

(a) Subdivider will do and perform, or cause to be done and performed, at Subdivider's own expense, in a good and workmanlike manner, and furnish all required materials, all under the direction and to the satisfaction of the City Engineer, necessary to complete the improvements in accordance with the plans and specifications on file as hereinbefore specified, or with any changes required or ordered by the City Engineer, which in his/her

opinion are necessary or required to complete the work. Any and all increased costs associated with such changes required by the City Engineer shall be paid by Subdivider.

(b) All work shall be conducted and completed in accordance with present state codes and local laws, ordinances and regulations, and all maps, plans and specifications on file with City. Where any such construction has been partially completed prior to this Agreement, Subdivider agrees to complete them in accordance with this paragraph.

(c) Neither Subdivider nor any of Subdivider's agents or contractors are or shall be considered to be agents of City in connection with the performance of Subdivider's obligations under this Agreement.

#### **Section 8. City Held Harmless From Liability.**

(a) Subdivider hereby agrees to, and shall hold City, its elective and appointive boards, commissions, officers, agents, and employees harmless from any liability for claims for damages arising from personal injury, including death, as well as from claims for property damage which may arise from Subdivider's or Subdivider's contractors', subcontractors', agents', or employees' activities or operations conducted pursuant to this Agreement.

(b) Subdivider agrees to, and shall defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforementioned activities or operations conducted pursuant to this Agreement.

(c) City shall be held harmless by Subdivider for all claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the activities or operations arising from this Agreement, regardless of whether or not City has prepared, supplied or approved of, plans and/or specifications for the subdivision, or regardless of whether or not any insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

(d) Acceptance by City of said improvements, the deposit of certain monies made pursuant to this Agreement by Subdivider, or the existence of any of the insurance policies described in this Agreement do not and shall not waive any rights City may otherwise have against Subdivider.

(e) Subdivider shall release the City from all liability incurred by the Map and shall also pay all reasonable attorney's fees that the City may incur due to any legal action resulting from the Map.

#### **Section 9. Liability Insurance Required.**

(a) Subdivider shall take out and maintain during the life of this Agreement comprehensive general liability insurance as shall insure City, its elective and appointive boards, commissions, officers, agents, and employees, subdividers and any contractor or subcontractor performing work covered by this Agreement from claims for damages for personal injury, including death, as well as from claims for property damage which may arise from Subdivider's or any contractor's or subcontractor's operations hereunder, whether such operations be by Subdivider or any contractor or subcontractor, or by anyone directly or indirectly employed by either Subdivider or any contractor or subcontractor.

(b) Subdivider agrees to carry a comprehensive general liability policy with limits of \$1,000,000.00 for bodily injury and \$1,000,000.00 for property damage. Said policy shall include coverage for manufacturers and contractors, independent contractors, products and completed operations and personal injury. Subdivider also agrees to name City as an additional named insured.

(c) A certificate of insurance, as described in Section 11, covering the above items shall be filed with the City Clerk. Such insurance shall have been approved by the City Attorney as to form and carrier.

#### **Section 10. Workmen's Compensation Insurance.**

(a) Subdivider shall maintain, during the life of this Agreement, Workmen's Compensation Insurance for all Subdivider's employees employed at the work site(s), and in case any work is sublet, Subdivider shall require any contractor or subcontractor similarly to provide Workmen's Compensation Insurance for all contractor's or subcontractor's employees, unless such employees are covered by the protection afforded by Subdivider.

(b) In case any class of employees engaged in work under this Agreement at the work site(s) is not protected under any Workmen's Compensation law, Subdivider shall provide and shall cause each contractor or subcontractor to provide, adequate insurance for the protection of employees not otherwise protected.

(c) Subdivider hereby indemnifies City for any damage resulting to it from failure of either Subdivider or any contractor or subcontractor to take out or maintain such Insurance.

#### **Section 11. Certificate of Insurance.**

(a) Subdivider shall furnish City concurrently with the execution hereof, with satisfactory evidence of insurance required and evidence that each carrier is required to give City at least thirty (30) days prior notice of the cancellation or reduction in coverage of any policy during the effective period of this Agreement.

(b) Subdivider shall not commence work under this Agreement until Subdivider shall have obtained all insurance required pursuant to this Section, and such insurance has been approved by City.

(c) Subdivider shall not allow any contractor or subcontractor to commence work on his/her contract or subcontract until all similar insurance required of the contractor or subcontractor has been obtained and approved by City.

#### **Section 12. Necessary Permits and Requisite Fees**

(a) Prior to proceeding with the work, Subdivider shall, at Subdivider's expense, obtain all necessary permits and licenses for the construction of such improvements, give all necessary notices, and pay all fees and taxes required by law.

(b) Subdivider agrees to procure, at its expense, any necessary permits required for the opening of any state or county roads or easements outside the jurisdiction of City.

#### **Section 13. Payment of Fees.**

(a) Subdivider shall pay the City's fees listed in Schedule "A," attached hereto and incorporated herein by this reference.

(a) Subdivider agrees to pay in-lieu fees for undergrounding of utilities on peripheral streets as well as payment of in-lieu fees for parkland dedication as may be required or unless other arrangements are made with the City.

(b) Subdivider shall pay for area of benefit fees, if applicable.

(c) Subdivider shall pay all other deposits and fees and shall otherwise comply with all requirements imposed by the City Engineer.

#### **Section 14. Utility Deposits Statement.**

Subdivider shall file with the City Clerk, prior to the commencement of any work to be performed within the area delineated on the Map, a written statement signed by Subdivider, and each public utility corporation involved, to the effect that Subdivider has made all deposits legally required by such public utility corporation for the connection of any and all public utilities to be supplied by such public utility corporation within the subdivision.

#### **Section 15. On-Site Supervision.**

(a) Subdivider shall provide an on-site supervisor, satisfactory to the City Engineer, on

the work site(s) at all times during the construction of said improvements, with the authority to act for Subdivider.

(b) Subdivider shall maintain improvements until acceptance by City. Prior to acceptance, City shall not be responsible for road or other improvements, maintenance or care until the same shall be accepted, nor shall City exercise any control over the improvements.

(c) In the event of Subdivider's failure to abide by these obligations, City without notice to the Subdivider, may do the same at Subdivider's expense.

#### **Section 16. City Inspections.**

Subdivider shall at all times maintain proper facilities, and provide safe access for inspection by the City, to all parts of the work site(s) including any workshops or plants where work related to the subdivision project is being conducted.

#### **Section 17. Acceptance of Improvements by City.**

(a) Upon the proper completion of these improvements and their approval by the City Engineer, and if these improvements then comply with all present state laws, present City ordinances and other City rules, regulations and requirements, City will then accept the improvements.

(b) Title to, and ownership of, all improvements constructed hereunder by Subdivider or City shall vest absolutely in City, upon completion and acceptance of such improvements by City.

#### **Section 18. Defective Construction.**

(a) If within one year after final acceptance of the work performed under this Agreement, any structure or part of any structure furnished and/or installed or constructed, or any of the work done under this Agreement, fails to fulfill any of the requirements of this Agreement or the specifications referred to herein, Subdivider shall, without delay and without any cost to City, maintain, repair, replace and/or reconstruct any defective or otherwise unsatisfactory part or parts of the work or structure.

(b) If Subdivider fails to act promptly or in accordance with the requirements set forth in this Section, or should the exigencies of the case require repairs or replacements to be made before Subdivider can be notified, City may, at its option, make the necessary repairs or replacements or perform the necessary work and Subdivider shall pay to City the actual cost of such repairs plus fifteen percent (15%).

**Section 19. Notice.**

- (a) All notices shall be sent to the City at:

City of Desert Hot Springs  
Development Department  
65-950 Pierson Blvd.  
Desert Hot Springs, CA 92240

- (b) All notices shall be sent to the Developer at:

Pierson Professional Plaza, L.P.  
5150 E. Pacific Coast Highway, Suite 605  
Long Beach, CA 90804

- (c) All notices herein required shall be in writing and delivered in person or sent by registered mail, postage prepaid.

- (d) If one party provides written notice to the other party of a change of address, all further notices shall be addressed and transmitted to the new address.

**Section 20. Noncompliance.**

If City determines that there is a violation of present state laws, City ordinances, other City rules, regulations and requirements, and/or the terms and provisions of this Agreement, it may issue a cease and desist order.

**Section 21. Default.**

- (a) Subdivider shall be in default of this Agreement if: Subdivider refuses or fails to prosecute the work or any separable part thereof with such diligence as will ensure its completion within the time specified herein, or any written extension thereof, or fails to complete such work within such time, or if Subdivider should be adjudged a bankrupt, make a general assignment for the benefit of creditors, or if a receiver should be appointed on account of Subdivider's insolvency, or if Subdivider or any of their subcontractors violate any of the provisions of this Agreement, or if Subdivider fails to make prompt payment for materials or labor, or if Subdivider disregards laws, ordinances, or instructions of City. City may thereafter serve written notice upon the Subdivider and Subdivider's surety of its intention to declare this Agreement in default. Said notice shall contain the reasons for such intention to declare a default. Unless, within ten (10) days after the service of such notice, such violations shall cease and satisfactory arrangements for the corrections thereof be made, this Agreement shall upon the expiration of said time be in default.



(b) Upon such default, the City shall serve written notice thereof upon the surety and Subdivider, and the surety shall have the right to take over and perform this Agreement. If the surety does not, within fifteen (15) days after the serving upon it of a notice of a default, give City written notice of its intention to take over and perform this Agreement or does not commence performance thereof within thirty (30) days from the date of City's notice, the City may take over the work and prosecute the same to the extent of completion it deems necessary by contract or by any other method it may deem advisable for the account and at the expense of Subdivider, and the surety shall be liable to the City for any cost or other damage occasioned City thereby. In such event City may, without liability for so doing, take possession of, and utilize in completing such work, such materials, appliances, plants, and other property belonging to Subdivider that may be on the site of the work and be necessary there for. Should surety fail to take over and diligently perform the Agreement upon Subdivider's default, surety agrees to promptly on demand deposit with City such amount as City may reasonably estimate as the cost of completing all of Subdivider's obligations. For any such work the City elects to complete by furnishing its own employees, materials, tools, and equipment, City shall receive reasonable compensation therefor, including costs of supervision and overhead.

(c) City may, at its option, elect not to complete any or all of the work and may elect not to accept any of the work already completed. If City elects not to accept any of the work, then all City's obligations to Subdivider and the lands to be served shall terminate. City's obligations to Subdivider and the lands to be served shall continue to the extent of any acceptance, subject to City's right to offset any sums due the City.

(d) The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to City.

## **Section 22. Successors in Interest.**


This Agreement shall run with the land, as shall also the covenants herein contained, and shall be to the benefit of City and its successor and assigns.

(THIS AREA LEFT INTENTIONALLY BLANK)

IN WITNESS WHEREAS, the undersigned have affixed their signatures at Desert Hot Springs, California the day and year first above written.

**PIERSON PROFESSIONAL PLAZA, L.P.**


**By: Terra Partners Builders, Inc., Its  
General Partner**

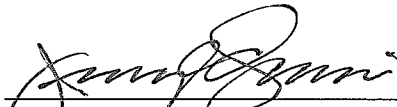
By:   
Aleksandra Lyons, Pres. of  
General Partner

Dated: March 3, 2015


**CITY OF DESERT HOT SPRINGS, a Municipal Corporation**

approved by the City Council on MARCH 3, 2015

  
ADAM SANCHEZ Sr., Mayor  
City of Desert Hot Springs, CA  
ATTEST: 03/03/15  
DATE

  
JERRYL SORIANO, CMC, City Clerk  
City of Desert Hot Springs, CA  
3/3/15  
DATE

**APPROVED AS TO FORM:**

  
STEVE QUINTANILLA, City Attorney  
City of Desert Hot Springs, CA  
03/03/15  
DATE

**SCHEDULE A  
SUBDIVISION IMPROVEMENT AGREEMENT**

This schedule is attached to and made a part of the Subdivision Improvement Agreement between CITY and DEVELOPER for the above-referenced property.

1. Completion Date: March 17, 2017

2. General Liability

\$2,000,000	Each Occurrence (Includes Bodily Injury and Property
Damage)	
\$1,000	Medical Expense
\$1,000,000	Personal & Advertising Injury
\$2,000,000	General Aggregate
\$2,000,000	Products-Completed/Operations Aggregate

Automobile Liability

Combined Single Limit	\$1,000,000 each accident, \$2,000,000
Aggregate Workers Compensation	Statutory

**SECURITY CALCULATIONS**

**PM NO. 35583**

**Estimates for Bonding Purposes**

**IMPROVEMENTS**

Grading and Block Wall	\$ 424,500
Storm Drain Improvements	\$ 364,750
Street (remove and replace AC pavement, inlet and catch basin; access ramp, curb ramp, spandrel/cross gutter)	\$ 385,500
Water and Sewer	\$ 106,331
Landscaping and Irrigation	\$42,000
Monumentation Bond	\$10,000
1 <sup>st</sup> year street light energy costs	\$ 21,000

<b>INSPECTION FEES</b>	
Onsite/Offsite Inspection Fees Due	\$ 50,000
<b>OTHER</b>	
Contingencies/Inflation(20% +/-)	\$ 282,800
Warranty (10% +/-)	\$141,400
<b>Total Performance Bond Amount= 100%</b>	<b>\$1,828,281</b>
<b>Payment Bond = 50% of Performance Bond</b>	<b>\$914,140</b>

# California All-Purpose Certificate of Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Riverside

S.S.

On March 3, 2015 before me, William Whitten, Notary Public,  
Name of Notary Public Title

personally appeared Aleksandra Lyons  
Name of Signer (1)

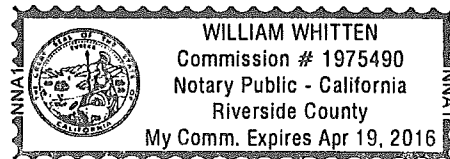
Name of Signer (2)

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 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.

William Whitten  
Signature of Notary Public



Seal

## OPTIONAL INFORMATION

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

## Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled/for the purpose of Subdivision

Improvement Agreement  
containing 11 pages, and dated March 3, 2015

The signer(s) capacity or authority is/are as:

- ☐ Individual(s)  
☐ Attorney-in-fact

☒ Corporate Officer(s) President  
Title

- ☐ Guardian/Conservator  
☐ Partner - Limited/General  
☐ Trustee(s)  
☐ Other:

representing: Terra Partners  
Builders, Inc.  
Name(s) of Person(s) Entity/est. Signer is Representing

OPTIONAL INFORMATION	
Method of Signer Identification	
Proved to me on the basis of satisfactory evidence: <input checked="" type="checkbox"/> form(s) of identification <input type="checkbox"/> credible witness(es)	
Notarial event is detailed in notary journal on: Page # <u>39</u> Entry # <u>8</u>	
Notary contact: <u>760-373-4905</u>	
Other	
<input type="checkbox"/> Additional Signer <input checked="" type="checkbox"/> Signer(s) Thumbprints(s)	
<input checked="" type="checkbox"/> Parcel Map No.: <u>35583</u>	
<u>Pierson Professional Plaza</u>	