

Attachment D
Existing Subdivision
Improvement Agreements

Recording Requested By
First American Title NHS

RECORDING REQUESTED BY
CITY OF VICTORVILLE

WHEN RECORDED RETURN TO:
CITY OF VICTORVILLE
ENGINEERING DEPT.
14343 CIVIC DR.
VICTORVILLE, CA 92392

Electronically Recorded in Official Records, County of San Bernardino

7/17/2007
12:56 PM
LMJ



LARRY WALKER
Auditor/Controller - Recorder

829 First American Title Company

Doc #: **2007-0420378**



Titles:	1	Pages:	6
Fees			25.00
Taxes			.00
Other			.00
PAID			25.00

NW ¼, Sec 28
T5N, R4W, SBM
APN 3090-061-01, 02 and 3090-081-01, 02

2244286-19

SUBDIVISION AGREEMENT
TT-06-065 (TT-04-004M)

THIS AGREEMENT is made and entered into by and between the City of Victorville, hereinafter referred to as "City", and Victory Development, Inc. hereinafter referred to as "Subdivider", both of whom understand as follows:

WITNESSETH

WHEREAS, Subdivider has presented to City for approval a final subdivision or parcel map (hereinafter called "Map") entitled Tract No. 14132-1, Recorded in Map Book 329, Pages 72, through 78, inclusive records of San Bernardino County, California; and

WHEREAS, Subdivider has requested approval of the map prior to the construction and completion of the improvements required by the city Planning Commission, including all streets, highways or public ways and public utility facilities which are a part of, or appurtenant to, the subdivision (hereinafter called "Subdivision") designated in the map, all in accordance with the plans and specifications for all or any of said improvements in, appurtenant to, or outside the limits of subdivision, which plans and specifications are now on file in the office of the City Engineer of City; and

WHEREAS, this agreement is executed pursuant to the provisions of the Subdivision Map Act of the State of California and Chapter 17 of the Victorville Municipal code:

NOW THEREFORE, for and in consideration of the approval of the Map and of the acceptance of the dedications therein offered, and in order to insure satisfactory performance by Subdivider of Subdivider's obligations under said Subdivision Map Act and said Chapter 17, the parties agree as follows:

1. Performance of Work

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 of City, all of the work and improvements required by the City Planning Commission for this subdivision in accordance with the plans and specifications on file as herein specified, or with any changes required or ordered by said Engineer, which in his opinion are necessary or required to complete the work. Any sewer work or water supply work shall be subject to the approval of the respective special districts having to do with the said types of work.

2. Work: Places and Grades to be Approved by Engineer

All of said work is to be done at the places, of the materials, in the manner, and at the grades, all as shown upon the plans and specifications therefor, heretofore approved by City Engineer and which are now on file in his office, and to the satisfaction of said City Engineer. The actual work of surveying shall be performed by the Subdivider's engineer.

3. Specifications

The work embraced herein shall be done in accordance with the provisions of the Standard Specifications of the State of California, Business and Transportation Agency, Department of Transportation, current edition, insofar as they may apply, and the City of Victorville Standard Specifications for Public Improvements, hereinafter referred to as the Standard Specifications.

Whenever in the said State Standard Specifications the following terms are used, they shall be understood to mean the following:

- a) State, Department of Transportation, City or Owner: City of Victorville, California.
- b) Director: The City Engineer of the City of Victorville
- c) Engineer: Whenever not qualified, shall mean the City Engineer of the City of Victorville, California acting either directly or through his properly authorized agents, each agent acting only within the scope of the authority delegated to him.
- d) Laboratory: The laboratory to be approved by the City of Victorville to test materials and work involved in the construction provided for under this agreement.

In case of conflict between the State Standard Specifications and the Standard Specifications for Public Improvements of the City of Victorville, the Standard Specifications for Public Improvements of the City of Victorville shall prevail.

In case of conflict between the State Standard Specifications, the Standard Specifications for Public Improvements of the City of Victorville, and the plans and this agreement, the approved plans and this agreement shall take precedence over and be used in lieu of such conflicting portions of the State Standard Specifications or Standard Specifications for Public Improvements of the City of Victorville.

4. Work: Time for Completion

City hereby fixes the time for the completion of said work to be within two years after the date of approval of the final or parcel map for recordation with the County Recorder of San Bernardino County. At least two (2) calendar days prior to the commencement of work hereunder, Subdivider shall notify City Engineer of the date fixed by Subdivider for commencement thereof, so that city Engineer shall be able to provide services of inspection.

5. Time of Essence - Extension

Time is of the essence of this agreement; provided, that in the event good cause is shown therefor, the City Council may extend the time for completion of the improvements hereunder. 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 this agreement. The City Council shall be the sole and final judge as to whether or not good cause has been shown to entitle Subdivider to an extension.

6. Repairs and Replacements

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, or 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 the City or by any public or private corporation, or by any person whomsoever, or by any combination of such owners. Any such repair or replacement shall be to the satisfaction, and subject to the approval, of the City Engineer.

7. Permits: Compliance with Law

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

8. Superintendence by Subdivider

Subdivider shall give personal superintendence to the work on said improvement, or have a competent foreman or superintendent, satisfactory to the City Engineer, on the work at all times during progress, with authority to act for Subdivider.

9. Inspection by City

Subdivider shall at all times maintain proper facilities, and provide safe access for inspection by City, to all parts of the work, and to the shops wherein the work is in preparation.

10. Contract Security

Concurrently with the execution hereof, Subdivider shall furnish a bond in an amount equal to at least one hundred percent of the approved Engineer's estimate as security for the faithful performance of this agreement.

Similarly, Subdivider shall furnish a bond in an amount equal to at least fifty percent of the said price as security for the payment of all persons performing labor and furnishing materials in the construction of this tract, including any claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the State Civil Code.

The said bonds shall be in cash, letter of credit, or bonds provided by a surety satisfactory to the City, or in such other form as may be provided for by law. The said bonds shall be worded and dated to become effective immediately upon failure of the Subdivider to complete the work subject to the bonds within the two-year period allowed or any extensions thereof allowed by the City.

11. Hold-Harmless Agreement

Subdivider hereby agrees to, and shall, hold City, its elective and appointive boards, commissions, officers, agents and employees, harmless from any liability for damage or claims for damage for 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' operations under this agreement, whether such operations be by Subdivider or by any of Subdivider's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for Subdivider or any of Subdivider's contractors, or subcontractors. Subdivider agrees to, and shall defend City and its elective and appointive boards, commission, 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 aforesaid operations; provided as follows:

- a) That the aforesaid hold-harmless agreement by Subdivider shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this paragraph, 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 of the insurance policies described herein shall have been determined to be applicable to any of such damages or claims for damages.
- b) Acceptance by the City of the subject improvements, the deposit of certain moneys made pursuant to this Agreement by Subdivider, or the existence of any of the insurance policies required by the Agreement do not and shall not waive any rights the City may have against Subdivider.

12. Subdivider's Insurance

Subdivider shall not commence work under this agreement until Subdivider shall have obtained all insurance required under this paragraph, nor shall Subdivider allow any contractor or subcontractor to commence work on his contract or subcontract until all similar insurance required of the contractor or subcontractor shall have been so obtained and approved. Subdivider shall provide the City with not less than thirty (30) days notice prior to the cancellation, reduction or termination of any insurance coverages required by this section. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.

a) Compensation Insurance

Subdivider shall maintain, during the life of this agreement, Workmen's Compensation Insurance for all Subdivider's employees employed at the site of improvement, 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. In case any class of employees engaged in work under this agreement at the site of the project is not protected under any Workmen's Compensation Law, Subdivider shall provide, and shall cause each contractor and subcontractor to provide, adequate insurance for the protection of employees not otherwise protected. 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.

b) Public Liability and Property Damage Insurance

Subdivider shall take out and maintain during the life of this agreement such public liability and property damage insurance in an amount not less than \$1,000,000 as shall insure City, its elective and appointive boards, commissions, officers, agents, and employees, Subdivider 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.

c) Contractual Liability Insurance

Subdivider shall take out and maintain during the life of the agreement an insurance policy insuring City, its elective and appointive boards, commissions, officers, agents and employees, Subdivider and any contractor or subcontractor performing work covered by this agreement against damages sustained by reason of any action or actions at law or in equity, and/or any claims or demands by reason of any breach or alleged breach of any contract, or provision thereof, or by reason of any contractual liability or alleged contractual liability on any contract, entered into by Subdivider and/or any of Subdivider's contractors, subcontractors, agents and/or employees.

In the event that any of the aforesaid insurance policies provided for herein insures any entity, person, board or commission other than those mentioned in this paragraph, such policy shall contain a standard form of cross-liability endorsement, insuring on such policy City, its elective and appointive boards, commissions, officers, agents and employees, Subdivider and any contractor or subcontractor performing work covered by this agreement.

13. Title to Improvements

Title to, and ownership of, all street improvements and sewers constructed hereunder by Subdivider shall vest absolutely in City, upon completion and acceptance of such improvements by City. Title to water works shall vest in the special district.

14. Repair or Reconstruction of Defective Work

If, within a period of 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 caused to be installed or constructed by Subdivider, 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, repair or replace or reconstruct any defective or otherwise unsatisfactory part or parts of the work or structure. Should Subdivider fail to act promptly or in accordance with this requirement, 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%).

15. Subdivider not Agent of City

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.

16. Cost of Engineering and Inspection

Subdivider shall pay to City in accordance with Chapter 17, Victorville Municipal Code, for all engineering, inspection, and other services furnished by City in connection with the subdivision.

17. Notice of Breach and Default

If subdivider refuses or fails to obtain prosecution of the work, or any severable part thereof, with such diligence as will insure its completion within the time specified, or any extensions thereof, or fails to obtain completion of said work within such time, or if the Subdivider should be adjudged a bankrupt, or Subdivider should make a general assignment for the benefit of Subdivider's insolvency or if Subdivider, or any of Subdivider's contractors, subcontractors, agents, or employees, should violate any of the provisions of this agreement, City Engineer or City Council may serve written notice upon Subdivider and Subdivider's surety of breach of this agreement, or of any portion thereof, and default of Subdivider.

18. Breach of Agreement; Performance by Surety or City

In the event of any such notice, Subdivider's surety shall have the duty to take over and complete the work and the improvement herein specified; provided, however, that if the surety, within five (5) days after the serving upon it of such notice of breach, does not give City written notice of its intention to take over the performance of the contract, and does not commence performance thereof within five (5) days after notice to City of such election, City may take over the work and prosecute the same to completion, by contract or by any other method City may deem advisable, for the account and at the expense of Subdivider, and Subdivider's surety shall be liable to City for any excess cost or damages occasioned City thereby; and, in such event, City, without liability for so doing, may take possession of, and utilize in completing the work, such materials, appliances, plant and other property belonging to Subdivider as may be on the site of the work and necessary therefor.

19. Completion

Upon completion of all the work described in the said Agreement, and upon the City Council authorizing a written Notice of Completion and Acceptance of said work, the City will release all hold and any claims to **80%** of the amount specified above, for faithful performance. The remaining **20%** shall be held by the City for a period of one (1) year after the date of the Notice of Completion as a guarantee bond to secure the performance of Section 14 of this Agreement and shall thereafter be released. The amount specified above for labor and materials shall be reduced or released pursuant to the provisions of California Government Code §66499.7(b).

20. Notices

All notices herein required shall be in writing, and delivered in person or sent by registered mail, postage prepaid. Notices required to be given to City shall be addressed as follows:

City of Victorville
Attention: City Engineer
P.O. Box 5001
14343 Civic Drive
Victorville, CA 92393-5001

Notices required to be given to Subdivider shall be addressed as follows:

Victory Development, Inc.
25 N. Santa Anita Avenue, Suite A
Arcadia, CA 91006

Provided that any party or the surety may change such address by notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

21. Binding Effect of Agreement

This agreement shall be binding on and inure to the benefit of the parties to this Agreement and their heirs, personal representatives, successors and assigns.

DATED this 28th day of March 2007

CITY OF VICTORVILLE

Terry E. Caldwell
Terry E. Caldwell Mayor
ATTEST
By Carolee Bates
Carolee Bates

SUBDIVIDER

Todd Leib
Todd Leib, President
Victory Development, Inc.
APPROVED AS TO FORM:
Andre deBortnowsky
Andre deBortnowsky City Attorney

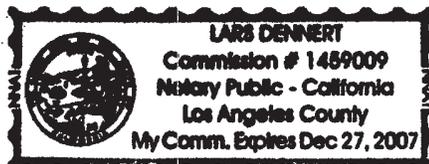
STATE OF CALIFORNIA }
COUNTY OF Los Angeles } SS

On 3/28/07 before me, Lars Dennert Notary Public
personally appeared Todd Leib

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(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.

Signature Lars Dennert



This Area for Notarial Seal

Recording Requested By

First American Title NHS

RECORDING REQUESTED BY
CITY OF VICTORVILLE

WHEN RECORDED RETURN TO:
CITY OF VICTORVILLE
ENGINEERING DEPT.
14343 CIVIC DR.
VICTORVILLE, CA 92392

NW ¼, Sec 28
T5N, R4W, SBM
APN 3090-051-02, and 3090-061-01, 02
APN 3090-071-02, 04
3090-081-01, 02

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LARRY WALKER
Auditor/Controller - Recorder

829 First American Title Company

Doc #: **2007-0420380**



Titles:	1	Pages:	6
Fees		25.00	
Taxes		.00	
Other		.00	
PAID		25.00	

SUBDIVISION AGREEMENT TT-06-065 (TT-04-004M)

2244236-19

THIS AGREEMENT is made and entered into by and between the City of Victorville, hereinafter referred to as "City", and Victory Development, Inc. hereinafter referred to as "Subdivider", both of whom understand as follows:

WITNESSETH

WHEREAS, Subdivider has presented to City for approval a final subdivision or parcel map (hereinafter called "Map") entitled Tract No. 14132-2, Recorded in Map Book 329, Pages 79, through 85, inclusive records of San Bernardino County, California; and

WHEREAS, Subdivider has requested approval of the map prior to the construction and completion of the improvements required by the city Planning Commission, including all streets, highways or public ways and public utility facilities which are a part of, or appurtenant to, the subdivision (hereinafter called "Subdivision") designated in the map, all in accordance with the plans and specifications for all or any of said improvements in, appurtenant to, or outside the limits of subdivision, which plans and specifications are now on file in the office of the City Engineer of City; and

WHEREAS, this agreement is executed pursuant to the provisions of the Subdivision Map Act of the State of California and Chapter 17 of the Victorville Municipal code:

NOW THEREFORE, for and in consideration of the approval of the Map and of the acceptance of the dedications therein offered, and in order to insure satisfactory performance by Subdivider of Subdivider's obligations under said Subdivision Map Act and said Chapter 17, the parties agree as follows:

1. Performance of Work

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 of City, all of the work and improvements required by the City Planning Commission for this subdivision in accordance with the plans and specifications on file as herein specified, or with any changes required or ordered by said Engineer, which in his opinion are necessary or required to complete the work. Any sewer work or water supply work shall be subject to the approval of the respective special districts having to do with the said types of work.

2. Work: Places and Grades to be Approved by Engineer

All of said work is to be done at the places, of the materials, in the manner, and at the grades, all as shown upon the plans and specifications therefor, heretofore approved by City Engineer and which are now on file in his office, and to the satisfaction of said City Engineer. The actual work of surveying shall be performed by the Subdivider's engineer.

3. Specifications

The work embraced herein shall be done in accordance with the provisions of the Standard Specifications of the State of California, Business and Transportation Agency, Department of Transportation, current edition, insofar as they may apply, and the City of Victorville Standard Specifications for Public Improvements, hereinafter referred to as the Standard Specifications.

Whenever in the said State Standard Specifications the following terms are used, they shall be understood to mean the following:

- a) State, Department of Transportation, City or Owner: City of Victorville, California.
- b) Director: The City Engineer of the City of Victorville
- c) Engineer: Whenever not qualified, shall mean the City Engineer of the City of Victorville, California acting either directly or through his properly authorized agents, each agent acting only within the scope of the authority delegated to him.
- d) Laboratory: The laboratory to be approved by the City of Victorville to test materials and work involved in the construction provided for under this agreement.

In case of conflict between the State Standard Specifications and the Standard Specifications for Public Improvements of the City of Victorville, the Standard Specifications for Public Improvements of the City of Victorville shall prevail.

In case of conflict between the State Standard Specifications, the Standard Specifications for Public Improvements of the City of Victorville, and the plans and this agreement, the approved plans and this agreement shall take precedence over and be used in lieu of such conflicting portions of the State Standard Specifications or Standard Specifications for Public Improvements of the City of Victorville.

4. Work: Time for Completion

City hereby fixes the time for the completion of said work to be within two years after the date of approval of the final or parcel map for recordation with the County Recorder of San Bernardino County. At least two (2) calendar days prior to the commencement of work hereunder, Subdivider shall notify City Engineer of the date fixed by Subdivider for commencement thereof, so that city Engineer shall be able to provide services of inspection.

5. Time of Essence - Extension

Time is of the essence of this agreement; provided, that in the event good cause is shown therefor, the City Council may extend the time for completion of the improvements hereunder. 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 this agreement. The City Council shall be the sole and final judge as to whether or not good cause has been shown to entitle Subdivider to an extension.

6. Repairs and Replacements

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, or 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 the City or by any public or private corporation, or by any person whomsoever, or by any combination of such owners. Any such repair or replacement shall be to the satisfaction, and subject to the approval, of the City Engineer.

7. Permits: Compliance with Law

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

8. Superintendence by Subdivider

Subdivider shall give personal superintendence to the work on said improvement, or have a competent foreman or superintendent, satisfactory to the City Engineer, on the work at all times during progress, with authority to act for Subdivider.

9. Inspection by City

Subdivider shall at all times maintain proper facilities, and provide safe access for inspection by City, to all parts of the work, and to the shops wherein the work is in preparation.

10. Contract Security

Concurrently with the execution hereof, Subdivider shall furnish a bond in an amount equal to at least one hundred percent of the approved Engineer's estimate as security for the faithful performance of this agreement.

Similarly, Subdivider shall furnish a bond in an amount equal to at least fifty percent of the said price as security for the payment of all persons performing labor and furnishing materials in the construction of this tract, including any claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the State Civil Code.

The said bonds shall be in cash, letter of credit, or bonds provided by a surety satisfactory to the City, or in such other form as may be provided for by law. The said bonds shall be worded and dated to become effective immediately upon failure of the Subdivider to complete the work subject to the bonds within the two-year period allowed or any extensions thereof allowed by the City.

11. Hold-Harmless Agreement

Subdivider hereby agrees to, and shall, hold City, its elective and appointive boards, commissions, officers, agents and employees, harmless from any liability for damage or claims for damage for 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' operations under this agreement, whether such operations be by Subdivider or by any of Subdivider's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for Subdivider or any of Subdivider's contractors, or subcontractors. Subdivider agrees to, and shall defend City and its elective and appointive boards, commission, 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 aforesaid operations; provided as follows:

- a) That the aforesaid hold-harmless agreement by Subdivider shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this paragraph, 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 of the insurance policies described herein shall have been determined to be applicable to any of such damages or claims for damages.
- b) Acceptance by the City of the subject improvements, the deposit of certain moneys made pursuant to this Agreement by Subdivider, or the existence of any of the insurance policies required by the Agreement do not and shall not waive any rights the City may have against Subdivider.

12. Subdivider's Insurance

Subdivider shall not commence work under this agreement until Subdivider shall have obtained all insurance required under this paragraph, nor shall Subdivider allow any contractor or subcontractor to commence work on his contract or subcontract until all similar insurance required of the contractor or subcontractor shall have been so obtained and approved. Subdivider shall provide the City with not less than thirty (30) days notice prior to the cancellation, reduction or termination of any insurance coverages required by this section. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.

a) Compensation Insurance

Subdivider shall maintain, during the life of this agreement, Workmen's Compensation Insurance for all Subdivider's employees employed at the site of improvement, 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. In case any class of employees engaged in work under this agreement at the site of the project is not protected under any Workmen's Compensation Law, Subdivider shall provide, and shall cause each contractor and subcontractor to provide, adequate insurance for the protection of employees not otherwise protected. 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.

b) Public Liability and Property Damage Insurance

Subdivider shall take out and maintain during the life of this agreement such public liability and property damage insurance in an amount not less than \$1,000,000 as shall insure City, its elective and appointive boards, commissions, officers, agents, and employees, Subdivider 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.

c) Contractual Liability Insurance

Subdivider shall take out and maintain during the life of the agreement an insurance policy insuring City, its elective and appointive boards, commissions, officers, agents and employees, Subdivider and any contractor or subcontractor performing work covered by this agreement against damages sustained by reason of any action or actions at law or in equity, and/or any claims or demands by reason of any breach or alleged breach of any contract, or provision thereof, or by reason of any contractual liability or alleged contractual liability on any contract, entered into by Subdivider and/or any of Subdivider's contractors, subcontractors, agents and/or employees.

In the event that any of the aforesaid insurance policies provided for herein insures any entity, person, board or commission other than those mentioned in this paragraph, such policy shall contain a standard form of cross-liability endorsement, insuring on such policy City, its elective and appointive boards, commissions, officers, agents and employees, Subdivider and any contractor or subcontractor performing work covered by this agreement.

13. Title to Improvements

Title to, and ownership of, all street improvements and sewers constructed hereunder by Subdivider shall vest absolutely in City, upon completion and acceptance of such improvements by City. Title to water works shall vest in the special district.

14. Repair or Reconstruction of Defective Work

If, within a period of 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 caused to be installed or constructed by Subdivider, 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, repair or replace or reconstruct any defective or otherwise unsatisfactory part or parts of the work or structure. Should Subdivider fail to act promptly or in accordance with this requirement, 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%).

15. Subdivider not Agent of City

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.

16. Cost of Engineering and Inspection

Subdivider shall pay to City in accordance with Chapter 17, Victorville Municipal Code, for all engineering, inspection, and other services furnished by City in connection with the subdivision.

17. Notice of Breach and Default

If subdivider refuses or fails to obtain prosecution of the work, or any severable part thereof, with such diligence as will insure its completion within the time specified, or any extensions thereof, or fails to obtain completion of said work within such time, or if the Subdivider should be adjudged a bankrupt, or Subdivider should make a general assignment for the benefit of Subdivider's insolvency or if Subdivider, or any of Subdivider's contractors, subcontractors, agents, or employees, should violate any of the provisions of this agreement, City Engineer or City Council may serve written notice upon Subdivider and Subdivider's surety of breach of this agreement, or of any portion thereof, and default of Subdivider.

18. Breach of Agreement; Performance by Surety or City

In the event of any such notice, Subdivider's surety shall have the duty to take over and complete the work and the improvement herein specified; provided, however, that if the surety, within five (5) days after the serving upon it of such notice of breach, does not give City written notice of its intention to take over the performance of the contract, and does not commence performance thereof within five (5) days after notice to City of such election, City may take over the work and prosecute the same to completion, by contract or by any other method City may deem advisable, for the account and at the expense of Subdivider, and Subdivider's surety shall be liable to City for any excess cost or damages occasioned City thereby; and, in such event, City, without liability for so doing, may take possession of, and utilize in completing the work, such materials, appliances, plant and other property belonging to Subdivider as may be on the site of the work and necessary therefor.

19. Completion

Upon completion of all the work described in the said Agreement, and upon the City Council authorizing a written Notice of Completion and Acceptance of said work, the City will release all hold and any claims to **80%** of the amount specified above, for faithful performance. The remaining **20%** shall be held by the City for a period of one (1) year after the date of the Notice of Completion as a guarantee bond to secure the performance of Section 14 of this Agreement and shall thereafter be released. The amount specified above for labor and materials shall be reduced or released pursuant to the provisions of California Government Code §66499.7(b).

20. Notices

All notices herein required shall be in writing, and delivered in person or sent by registered mail, postage prepaid. Notices required to be given to City shall be addressed as follows:

City of Victorville
Attention: City Engineer
P.O. Box 5001
14343 Civic Drive
Victorville, CA 92393-5001

Notices required to be given to Subdivider shall be addressed as follows:

Victory Development, Inc.
25 N. Santa Anita Avenue, Suite A
Arcadia, CA 91006

Provided that any party or the surety may change such address by notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

21. Binding Effect of Agreement

This agreement shall be binding on and inure to the benefit of the parties to this Agreement and their heirs, personal representatives, successors and assigns.

DATED this 28th day of March 2007

CITY OF VICTORVILLE

SUBDIVIDER

Terry E. Caldwell
Terry E. Caldwell Mayor

Todd Leibl
Todd Leibl, President
Victory Development, Inc.

ATTEST
By Carolee Bates
Carolee Bates

APPROVED AS TO FORM:
Andre deBortnowski
Andre deBortnowski City Attorney

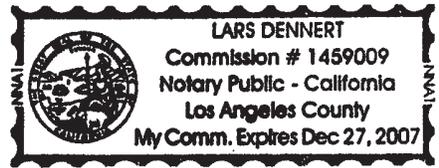
STATE OF CALIFORNIA
COUNTY OF Los Angeles } ss

On 3/30/07 before me, Lars Dennert Notary Public
personally appeared Todd Leibl

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(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.

Signature [Signature]



This Area for Notarial Seal

Recording Requested By First American Title NHS

RECORDING REQUESTED BY
CITY OF VICTORVILLE

WHEN RECORDED RETURN TO:
CITY OF VICTORVILLE
ENGINEERING DEPT.
14343 CIVIC DR.
VICTORVILLE, CA 92392

Electronically Recorded in Official Records, County of San Bernardino

7/17/2007
12:56 PM
LMJ



LARRY WALKER
Auditor/Controller - Recorder

829 First American Title Company

Doc #: 2007-0420382



Titles:	1	Pages:	6
Fees			25.00
Taxes			.00
Other			.00
PAID			25.00

NW ¼, Sec 28
T5N, R4W, SBM
APN 3090-051-02 and 3090-061-01

SUBDIVISION AGREEMENT TT-06-065 (TT-04-004M)

2244286-19

THIS AGREEMENT is made and entered into by and between the City of Victorville, hereinafter referred to as "City", and Victory Development, Inc., hereinafter referred to as "Subdivider", both of whom understand as follows:

WITNESSETH

WHEREAS, Subdivider has presented to City for approval a final subdivision or parcel map (hereinafter called "Map") entitled Tract No. 14132-3, Recorded in Map Book 329, Pages 86, through 92, inclusive records of San Bernardino County, California; and

WHEREAS, Subdivider has requested approval of the map prior to the construction and completion of the improvements required by the city Planning Commission, including all streets, highways or public ways and public utility facilities which are a part of, or appurtenant to, the subdivision (hereinafter called "Subdivision") designated in the map, all in accordance with the plans and specifications for all or any of said improvements in, appurtenant to, or outside the limits of subdivision, which plans and specifications are now on file in the office of the City Engineer of City; and

WHEREAS, this agreement is executed pursuant to the provisions of the Subdivision Map Act of the State of California and Chapter 17 of the Victorville Municipal code:

NOW THEREFORE, for and in consideration of the approval of the Map and of the acceptance of the dedications therein offered, and in order to insure satisfactory performance by Subdivider of Subdivider's obligations under said Subdivision Map Act and said Chapter 17, the parties agree as follows:

1. Performance of Work

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 of City, all of the work and improvements required by the City Planning Commission for this subdivision in accordance with the plans and specifications on file as herein specified, or with any changes required or ordered by said Engineer, which in his opinion are necessary or required to complete the work. Any sewer work or water supply work shall be subject to the approval of the respective special districts having to do with the said types of work.

2. Work: Places and Grades to be Approved by Engineer

All of said work is to be done at the places, of the materials, in the manner, and at the grades, all as shown upon the plans and specifications therefor, heretofore approved by City Engineer and which are now on file in his office, and to the satisfaction of said City Engineer. The actual work of surveying shall be performed by the Subdivider's engineer.

3. Specifications

The work embraced herein shall be done in accordance with the provisions of the Standard Specifications of the State of California, Business and Transportation Agency, Department of Transportation, current edition, insofar as they may apply, and the City of Victorville Standard Specifications for Public Improvements, hereinafter referred to as the Standard Specifications.

Whenever in the said State Standard Specifications the following terms are used, they shall be understood to mean the following:

- a) State, Department of Transportation, City or Owner: City of Victorville, California.
- b) Director: The City Engineer of the City of Victorville
- c) Engineer: Whenever not qualified, shall mean the City Engineer of the City of Victorville, California acting either directly or through his properly authorized agents, each agent acting only within the scope of the authority delegated to him.
- d) Laboratory: The laboratory to be approved by the City of Victorville to test materials and work involved in the construction provided for under this agreement.

In case of conflict between the State Standard Specifications and the Standard Specifications for Public Improvements of the City of Victorville, the Standard Specifications for Public Improvements of the City of Victorville shall prevail.

In case of conflict between the State Standard Specifications, the Standard Specifications for Public Improvements of the City of Victorville, and the plans and this agreement, the approved plans and this agreement shall take precedence over and be used in lieu or such conflicting portions of the State Standard Specifications or Standard Specifications for Public Improvements of the City of Victorville.

4. Work: Time for Completion

City hereby fixes the time for the completion of said work to be within two years after the date of approval of the final or parcel map for recordation with the County Recorder of San Bernardino County. At least two (2) calendar days prior to the commencement of work hereunder, Subdivider shall notify City Engineer of the date fixed by Subdivider for commencement thereof, so that city Engineer shall be able to provide services of inspection.

5. Time of Essence - Extension

Time is of the essence of this agreement; provided, that in the event good cause is shown therefor, the City Council may extend the time for completion of the improvements hereunder. 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 this agreement. The City Council shall be the sole and final judge as to whether or not good cause has been shown to entitle Subdivider to an extension.

6. Repairs and Replacements

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, or 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 the City or by any public or private corporation, or by any person whomsoever, or by any combination of such owners. Any such repair or replacement shall be to the satisfaction, and subject to the approval, of the City Engineer.

7. Permits: Compliance with Law

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

8. Superintendence by Subdivider

Subdivider shall give personal superintendence to the work on said improvement, or have a competent foreman or superintendent, satisfactory to the City Engineer, on the work at all times during progress, with authority to act for Subdivider.

9. Inspection by City

Subdivider shall at all times maintain proper facilities, and provide safe access for inspection by City, to all parts of the work, and to the shops wherein the work is in preparation.

10. Contract Security

Concurrently with the execution hereof, Subdivider shall furnish a bond in an amount equal to at least one hundred percent of the approved Engineer's estimate as security for the faithful performance of this agreement.

Similarly, Subdivider shall furnish a bond in an amount equal to at least fifty percent of the said price as security for the payment of all persons performing labor and furnishing materials in the construction of this tract, including any claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the State Civil Code.

The said bonds shall be in cash, letter of credit, or bonds provided by a surety satisfactory to the City, or in such other form as may be provided for by law. The said bonds shall be worded and dated to become effective immediately upon failure of the Subdivider to complete the work subject to the bonds within the two-year period allowed or any extensions thereof allowed by the City.

11. Hold-Harmless Agreement

Subdivider hereby agrees to, and shall, hold City, its elective and appointive boards, commissions, officers, agents and employees, harmless from any liability for damage or claims for damage for 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' operations under this agreement, whether such operations be by Subdivider or by any of Subdivider's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for Subdivider or any of Subdivider's contractors, or subcontractors. Subdivider agrees to, and shall defend City and its elective and appointive boards, commission, 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 aforesaid operations; provided as follows:

- a) That the aforesaid hold-harmless agreement by Subdivider shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this paragraph, 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 of the insurance policies described herein shall have been determined to be applicable to any of such damages or claims for damages.
- b) Acceptance by the City of the subject improvements, the deposit of certain moneys made pursuant to this Agreement by Subdivider, or the existence of any of the insurance policies required by the Agreement do not and shall not waive any rights the City may have against Subdivider.

12. Subdivider's Insurance

Subdivider shall not commence work under this agreement until Subdivider shall have obtained all insurance required under this paragraph, nor shall Subdivider allow any contractor or subcontractor to commence work on his contract or subcontract until all similar insurance required of the contractor or subcontractor shall have been so obtained and approved. Subdivider shall provide the City with not less than thirty (30) days notice prior to the cancellation, reduction or termination of any insurance coverages required by this section. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.

a) Compensation Insurance

Subdivider shall maintain, during the life of this agreement, Workmen's Compensation Insurance for all Subdivider's employees employed at the site of improvement, 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. In case any class of employees engaged in work under this agreement at the site of the project is not protected under any Workmen's Compensation Law, Subdivider shall provide, and shall cause each contractor and subcontractor to provide, adequate insurance for the protection of employees not otherwise protected. 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.

b) Public Liability and Property Damage Insurance

Subdivider shall take out and maintain during the life of this agreement such public liability and property damage insurance in an amount not less than \$1,000,000 as shall insure City, its elective and appointive boards, commissions, officers, agents, and employees, Subdivider 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.

c) Contractual Liability Insurance

Subdivider shall take out and maintain during the life of the agreement an insurance policy insuring City, its elective and appointive boards, commissions, officers, agents and employees, Subdivider and any contractor or subcontractor performing work covered by this agreement against damages sustained by reason of any action or actions at law or in equity, and/or any claims or demands by reason of any breach or alleged breach of any contract, or provision thereof, or by reason of any contractual liability or alleged contractual liability on any contract, entered into by Subdivider and/or any of Subdivider's contractors, subcontractors, agents and/or employees.

In the event that any of the aforesaid insurance policies provided for herein insures any entity, person, board or commission other than those mentioned in this paragraph, such policy shall contain a standard form of cross-liability endorsement, insuring on such policy City, its elective and appointive boards, commissions, officers, agents and employees, Subdivider and any contractor or subcontractor performing work covered by this agreement.

13. Title to Improvements

Title to, and ownership of, all street improvements and sewers constructed hereunder by Subdivider shall vest absolutely in City, upon completion and acceptance of such improvements by City. Title to water works shall vest in the special district.

14. Repair or Reconstruction of Defective Work

If, within a period of 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 caused to be installed or constructed by Subdivider, 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, repair or replace or reconstruct any defective or otherwise unsatisfactory part or parts of the work or structure. Should Subdivider fail to act promptly or in accordance with this requirement, 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%).

15. Subdivider not Agent of City

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.

16. Cost of Engineering and Inspection

Subdivider shall pay to City in accordance with Chapter 17, Victorville Municipal Code, for all engineering, inspection, and other services furnished by City in connection with the subdivision.

17. Notice of Breach and Default

If subdivider refuses or fails to obtain prosecution of the work, or any severable part thereof, with such diligence as will insure its completion within the time specified, or any extensions thereof, or fails to obtain completion of said work within such time, or if the Subdivider should be adjudged a bankrupt, or Subdivider should make a general assignment for the benefit of Subdivider's insolvency or if Subdivider, or any of Subdivider's contractors, subcontractors, agents, or employees, should violate any of the provisions of this agreement, City Engineer or City Council may serve written notice upon Subdivider and Subdivider's surety of breach of this agreement, or of any portion thereof, and default of Subdivider.

18. Breach of Agreement; Performance by Surety or City

In the event of any such notice, Subdivider's surety shall have the duty to take over and complete the work and the improvement herein specified; provided, however, that if the surety, within five (5) days after the serving upon it of such notice of breach, does not give City written notice of its intention to take over the performance of the contract, and does not commence performance thereof within five (5) days after notice to City of such election, City may take over the work and prosecute the same to completion, by contract or by any other method City may deem advisable, for the account and at the expense of Subdivider, and Subdivider's surety shall be liable to City for any excess cost or damages occasioned City thereby; and, in such event, City, without liability for so doing, may take possession of, and utilize in completing the work, such materials, appliances, plant and other property belonging to Subdivider as may be on the site of the work and necessary therefor.

19. Completion

Upon completion of all the work described in the said Agreement, and upon the City Council authorizing a written Notice of Completion and Acceptance of said work, the City will release all hold and any claims to 80% of the amount specified above, for faithful performance. The remaining 20% shall be held by the City for a period of one (1) year after the date of the Notice of Completion as a guarantee bond to secure the performance of Section 14 of this Agreement and shall thereafter be released. The amount specified above for labor and materials shall be reduced or released pursuant to the provisions of California Government Code §66499.7(b).

20. Notices

All notices herein required shall be in writing, and delivered in person or sent by registered mail, postage prepaid. Notices required to be given to City shall be addressed as follows:

City of Victorville
Attention: City Engineer
P.O. Box 5001
14343 Civic Drive
Victorville, CA 92393-5001

Notices required to be given to Subdivider shall be addressed as follows:

Victory Development, Inc.
25 N. Santa Anita Avenue, Suite A
Arcadia, CA 91006

Provided that any party or the surety may change such address by notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

21. Binding Effect of Agreement

This agreement shall be binding on and inure to the benefit of the parties to this Agreement and their heirs, personal representatives, successors and assigns.

DATED this 28th day of March 2007

CITY OF VICTORVILLE

SUBDIVIDER

Terry E. Caldwell
Terry E. Caldwell Mayor
ATTEST
By Carolee Bates
Carolee Bates

Todd Leibl
Todd Leibl, President
Victory Development, Inc.
APPROVED AS TO FORM:
Andre' deBortnowsky
Andre' deBortnowsky City Attorney

STATE OF CALIFORNIA
COUNTY OF Los Angeles } SS

On 3/30/07 before me, Lars Dennert Notary Public
personally appeared Todd Leibl

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(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.

Signature [Signature]

This Area for Notarial Seal

