



# CITY COUNCIL STAFF REPORT

DATE: March 16, 2011

CONSENT \_\_\_\_\_

SUBJECT: ASSIGNMENT AGREEMENT/LAS PALMAS HEIGHTS  
SUBDIVISION TRACT 27680

FROM: David H. Ready, City Manager

BY: Douglas Holland, City Attorney

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## SUMMARY:

The proposed assignment agreement between the City of Palm Springs and the Las Palmas Homeowners Association assigns to the Las Palmas Heights Homeowner's Association to make a claim on a security instruments held by the City to address certain unfinished street work located within this gated community.

## RECOMMENDATION:

1. Approve the assignment agreement between the City of Palm Springs and the Las Palmas Homeowners Association.
2. Authorize the City Manager to execute all necessary documents.

## STAFF ANALYSIS:

The original developer, Las Palmas Heights LLC, of the Las Palmas Heights subdivision tract (Tract # 27680) failed to complete street and related work both within this gated community and adjacent to the project. Staff has estimated that the remaining work totals approximately \$85,000. The performance bond with American Contractors Indemnity Surety Company has not been released by the City. The amount of the bond should cover the uncompleted improvements. The homeowners association has requested that the City assign its rights under the subdivision improvement agreement and as holder of the surety bond and related security to the HOA so that the HOA can work directly with the surety company in obtaining the completion of street and related improvements within this gated community.

The City Attorney has worked with legal counsel representing the homeowners association to provide an appropriate assignment agreement to accomplish this purpose. The Agreement in essence assigns all city rights to the subdivision improvement agreement and the surety bond to the association, and in return, the City would be relieved of its obligations under the subdivision improvement agreement and association agrees to release the City from any further obligations under the bonds.

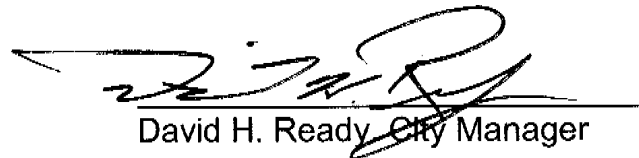
FISCAL IMPACT:

There is no direct fiscal impact associated with the adoption of this resolution.



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Douglas Holland, City Attorney



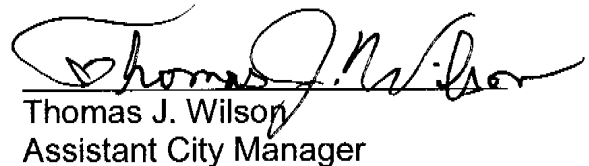
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David H. Ready, City Manager



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David J. Barakian  
City Engineer & Director of Public Works



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Thomas J. Wilson  
Assistant City Manager

Attachment:  
Assignment Agreement

# ASSIGNMENT AGREEMENT

## *Las Palmas Heights*

This ASSIGNMENT AGREEMENT, hereinafter "Agreement" made this day \_\_\_\_\_ of \_\_\_\_\_, by and between **THE CITY OF PALM SPRINGS**, hereinafter "Assignor," having its principal office at 3200 E. Taquitz Canyon Way, Palm Springs, CA and **LAS PALMAS HEIGHTS OWNERS ASSOCIATION**, hereinafter "Assignee," having its principal office at P.O. Box 2242, Palm Springs CA, 92263-2242, collectively referred to as "Parties," in consideration of the mutual covenants herein contained and other good and valuable consideration, the sufficiency of which is hereby acknowledge, witnesseth:

### **Recitals:**

A. Assignor entered into a subdivision improvement agreement with Las Palmas Heights, LLC ("Developer") for the Las Palmas Heights subdivision, Tract No. 27680.

B. Assignor is the Beneficiary of the following bonds (hereinafter referred to as "the Surety Bonds") securing Developer's performance of its obligations under the subdivision improvement agreement:

- Labor and Materials Bond #177599, dated May 20, 2004, issued by American Contractors Indemnity Company with Las Palmas Heights as its stated principal to be held firmly bound unto the City of Palm Springs and all contractors, subcontractors, laborers, materialmen and other persons employed in the performance of the Subdivision Improvement Agreement.
- Bond for Maintenance and Warranty of Improvements #215876, dated May 20, 2004, issued by American Contractors Indemnity Company with Las Palmas Heights as its stated Principal to guarantee the costs or repair and/or replacement of defective materials or defective workmanship in improvements under the Subdivision Improvement Agreement.
- Bond for Faithful Performance, Labor, and Materials for Setting of Monuments #177600, dated May 20, 2004, issued by American Contractors Indemnity Company with Las Palmas Heights as its stated Principal to guarantee the faithful performance of the Subdivision Improvement Agreement as related to the setting of certain survey monuments and the payment of the engineer or surveyor for the setting of monuments.

C. Developer has failed to complete all of the improvements required to be installed pursuant to the subdivision improvement agreement.

D. Assignee has requested Assignor to assign Assignor's rights and obligations under the subdivision agreement and the Surety Bonds to Assignee. Surety Bonds to Assignee,

NOW THEREFORE, Assignor and Assignee agree as follows:

# ASSIGNMENT AGREEMENT

*Las Palmas Heights*

## ASSIGNMENT AND RELEASE

1. Assignor and Assignee hereby agree that the Assignor shall assign all of its rights, obligations, duties, and liabilities arising under, contained within or in respect to the subdivision improvement agreement and the Surety Bonds.
2. Assignee hereby fully accepts the foregoing assignment and unconditionally agrees to assume all of the rights and obligations of Assignor with respect to the subdivision improvement agreement and the Surety Bonds with the same force and effect as if Assignee had initially become Beneficiary under the Bonds at the time of its execution.
3. As of the date of execution of this Agreement, Assignor shall have no further rights, obligations, and liabilities of any kind whatsoever under the subdivision improvement agreement and the Surety Bonds and the terms, conditions covenants, and agreements contained therein, shall be binding on Assignee.
4. Assignee shall complete all work, or cause the completion of all work, required under the terms of the subdivision improvement agreement and secured by the Surety Bonds within one (1) year of the date of Council approval of this Agreement.
5. In addition, Assignee agrees that it will file no actions, petitions, or complaints against Assignor with regard to any facts or actions arising out of the subdivision improvement agreement or the Surety Bonds prior to or after the execution of this Assignment Agreement. It is specifically agreed that the agreement contained herein is a full and final release from or related to the subdivision improvement agreement and the Surety Bonds.

## INDEMNIFICATION

1. Assignee shall indemnify and hold harmless Assignor against any and all loss, liability, damage or expenses which may be incurred by Assignor due to any claims of a third party in connection with the breach, default or non-performance of the subdivision improvement agreement and the Surety Bonds by Assignee on or after the date of execution of this Agreement.

## GENERAL

1. **Entire Agreement.** This Agreement contains the entire understanding among the Parties hereto with respect to the matters covered herein and supersedes and cancels any prior understanding with respect to the matters covered herein.

ASSIGNMENT AGREEMENT

Las Palmas Heights

- 2. Modification or Amendment. No changes, alterations or modifications hereto shall be effective unless made in writing and signed by all the Parties.
3. Severability. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable.
4. Waiver of Contractual Rights. The failure of Parties to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.
5. Integration. The Parties expressly acknowledge and agree that this Agreement constitutes a single, integrated written agreement expressing the intentions of the Parties concerning the subject matter hereof.
6. Governing Law. This Agreement shall be interpreted in accordance with and governed in all respects by the laws of the State of California.
7. Effective Date. The Parties deem this Agreement to be effective as of the date of execution by each of the Parties.

THIS AGREEMENT IS EXECUTED ON BEHALF OF ASSIGNOR AND BY ASSIGNEE ON THE DATES SET FORTH BELOW:

DATED: \_\_\_\_\_, 2011

ASSIGNOR, THE CITY OF PALM SPRINGS

By: \_\_\_\_\_ (Signature)

\_\_\_\_\_  
(Print Name)

Title: \_\_\_\_\_

DATED: \_\_\_\_\_, 2011

ASSIGNEE, LAS PALMAS HEIGHTS OWNERS ASSOCIATION

By: \_\_\_\_\_ (Signature)

\_\_\_\_\_  
(Print Name)

Title: \_\_\_\_\_

