



City Council Staff Report

Date: January 18, 2012

PUBLIC HEARING

Subject: RACQUET CLUB ROAD SEWER CONSTRUCTION REFUND AGREEMENT

From: David H. Ready, City Manager

Initiated by: Public Works and Engineering Department

SUMMARY

The City has an established policy for sewer refund agreements dating back to 1980, which allows for reimbursements to developers for extending public sewers. The policy requires that a reimbursement agreement be prepared to identify the total costs of the sewer line extension, the properties benefitting from the sewer line extension, and the reimbursements due from each property. Council approval of the reimbursement agreement requires consideration at a noticed Public Hearing.

RECOMMENDATION:

- 1) Open the Public Hearing and receive public testimony; and
- 2) Close the Public Hearing, and consider approval of Agreement No. _____, a Sewer Construction Refund Agreement with Tuscany Heights, LLC, a California limited liability company; and
- 3) Direct the City Clerk to record the Sewer Construction Refund Agreement with the Riverside County Recorder.

STAFF ANALYSIS:

History

On August 6, 1980, the City adopted Resolution No. 13487, a Resolution "establishing a policy for reimbursement of costs for installation of all types of off-site improvements." As cited in the Resolution, the City identified certain facts:

- There is a need for additional off-site improvements beyond the boundaries of a particular building site in many instances;
- The City in many instances for the public good installs off-site improvements across the frontage of vacant lands which are properly the financial responsibility of those vacant lands.

As a result, the City declared the following policy relative to reimbursement of costs for installation of all types of off-site improvements:

- A reimbursement agreement may be authorized in order to collect for the cost of installation of off-site improvements when installed beyond the boundaries of a project site by a private developer;
- Notice of intention to enter into such agreement shall be given to the owner of each parcel of property to be charged with the cost of such improvements, and each such owner shall be given an opportunity to be heard as to:
 - 1) The necessity of installation of such improvements prior to such owner's development of his property;
 - 2) The necessity for such installation by any party other than such owner;
 - 3) The reasonableness of the costs of such improvements; and
 - 4) Any other matters reasonably related to such reimbursement agreement and its effect upon such owner's property.
- The reimbursement agreement shall include a sufficient legal description of each parcel of real property to be charged with such costs, and shall be recorded in the Office of the County Recorder of Riverside County.

On October 15, 1986, the City adopted Resolution No. 16031, and reaffirmed its policy for reimbursement of costs associated with off-site improvements, clarifying the scope of improvements to be considered for reimbursement and the procedure for establishing a reimbursement agreement.

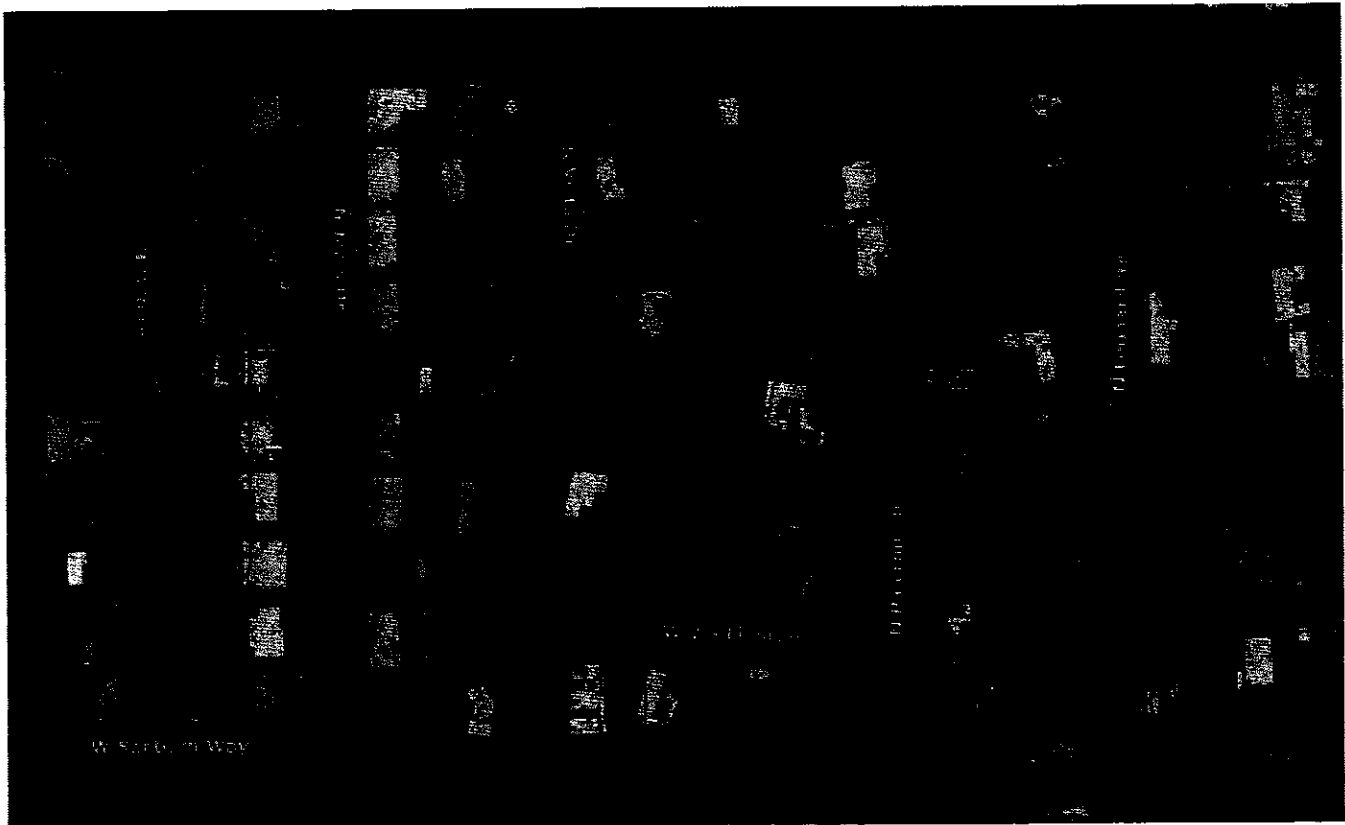
In 1984, the City was completing extension of public sewers through most of the City. Extension of sewers to all properties was a condition of state grant funds received in 1976 for expansion of the City's wastewater treatment plant. Assessment Districts were established to facilitate payment to the City for its cost to extend public sewers to all City properties. At that time, Assessment Districts No. 143 and 148 were formed for properties located on Leonard Drive, Palermo Drive, Vista Drive, Janis Drive, and Milo Drive. However, many owners petitioned the City to exempt the area from the mandatory requirement to connect to the sewer system given the higher construction cost for sewers in hillside areas.

On August 15, 1984, the City adopted Resolution No. 15188 which allowed for exemptions to the mandatory requirement to connect to the public sewer, if the costs associated with the on-site sewer connection exceeded \$3,000; or, if the costs associated with the off-site sewer extension exceeded \$5,000. On July 2, 2003, the City adopted Resolution No. 20650 which adjusted the prior exemptions to \$4,776 for on-site sewer connections, or \$7,960 for off-site sewer extensions, with annual adjustments in accordance with the Engineering News Record Construction Cost Index.

Currently, the exemptions are \$6,483 for on-site sewer connections, or \$10,805 for off-site sewer extensions.

Generally, the City's Building Codes require a property to connect to the public sewer at the time a building permit is issued for new construction, or if the existing on-site septic tank system fails or requires expansion. However, mandatory connections are exempted if the public sewer is more than 500 feet away, or if the costs for on-site connection or off-site extension exceed the amounts previously identified. As a result, the residential area commonly referred to as "Little Tuscany", located west of Via Monte Vista and south of Racquet Club Road, does not have public sewers and the existing homes operate with individual on-site private septic tanks.

The Little Tuscany area is shown here:



On May 1, 2002, the City approved Tentative Tract Map ("TTM") 28495, a subdivision of 15 single family homes located at the west end of Racquet Club Road, immediately west of Milo Drive. The City's Municipal Code Chapter 9.06.030 requires that all new subdivisions be connected to the public sewer system. Therefore, as part of the City's conditional approval of TTM 28495, the City required the developer to extend a public sewer main in Racquet Club Road from just east of Leonard Road to the subdivision. This required an off-site sewer line extension benefitting other properties located south of Racquet Club Road between Leonard Road and Milo Drive.

Accordingly, the City included a condition of approval as part of TTM 28495, which states:

Developer shall construct an 8 inch sewer main within Racquet Club Road West, extending to the west boundary of the property, in accordance with the Master Plan of Sewers, connecting from the existing sewer system at the manhole located 238 feet west of the street centerline intersection of Girasol Avenue and Racquet Club Road West.

Developer may enter into a reimbursement agreement with the City of Palm Springs for reimbursement of construction costs for the sewer main extension, not including the project frontage, as properties connect to the extended sewer main in the future. Developer should contact the City Engineer for details relating to a sewer reimbursement agreement.

Subsequently, the developer installed the off-site sewer line extension in Racquet Club Road as required by the City. The sewer has been completed and accepted by the City Engineer as part of the City's public sewer system.

Sewer Construction Refund Agreement

On June 15, 2005, the developer submitted a formal request to the City for a reimbursement agreement for the off-site sewer line extension in Racquet Club Road. The City responded by letter dated August 1, 2005, requesting a full accounting of the reported costs of the off-site sewer line extension.

On April 15, 2008, the developer submitted a full accounting of their costs for the off-site sewer line extension, requesting reimbursement of \$578,184.68. Between 2008 and 2011, City staff reviewed the developer's accounting of costs, copies of invoices and agreements, and other related documents to determine the costs directly related to the off-site sewer line extension in Racquet Club Road, excluding any costs directly associated with the sewer line extension across the subdivision's frontage, any on-site sewer construction, or other development costs.

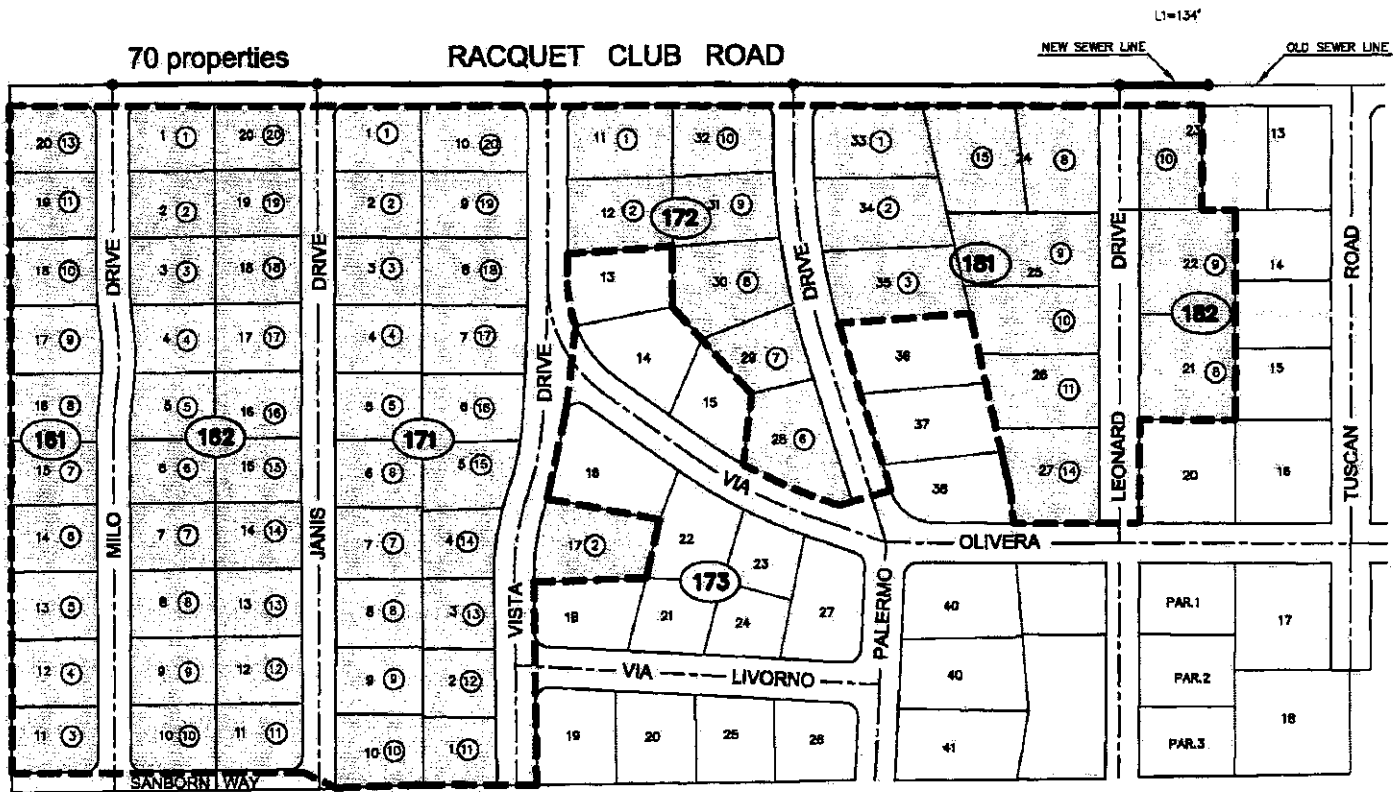
The City and developer have reached agreement on the final itemized accounting of costs of \$465,879.83 for construction of 1,630 linear feet of off-site sewer line extension, for which the developer is otherwise due reimbursement from benefitting properties.

Benefit Area Spread of Cost

The City has identified 70 properties located on Leonard Drive, Palermo Drive, Via Olivera, Vista Drive, Janis Drive, and Milo Drive that will receive future benefit of the sewer line extension in Racquet Club Road. Until such time as future sewer lines are extended from Racquet Club Road within these streets, these properties will not receive the benefit of the off-site sewer line extension in Racquet Club Road. However, at that time, the individual assessment for the off-site sewer line extension in Racquet Club Road to be charged to the benefitted properties would be collected with other applicable

building permit fees with issuance of a building permit to connect to the public sewer system. There are also four properties located adjacent to Racquet Club Road that benefit from the adjacent sewer line extension; two of these properties have connected to the sewer and paid their assessment to the developer.

The benefit area is defined as:



BOUNDARY MAP

Typically, an off-site sewer line extension in one street is equitably spread to each property on that street based on the linear footage of the sewer line extension. The off-site sewer line extension in Racquet Club Road extended 1,630 linear feet and cost \$465,879.83 which is equivalent to \$285.82 per linear foot. However, in this case, most of the properties do not have direct frontage on Racquet Club Road, and will only benefit from the off-site sewer line extension in Racquet Club Road when future sewer lines are extended in each street.

Alternatively, although it would be simple to divide the total cost of \$465,879.83 by the total number of benefitted properties (70), resulting in an "equitable" share of about \$6,655 per parcel – this calculation is inequitable to properties located closer to the original end of the Racquet Club Road sewer (near Leonard Road).

For example, a property owner on Leonard Road would only have had to extend the Racquet Club Road sewer main a total of 134 feet to facilitate a sewer line extension in Leonard Road, at a cost of \$38,299.88 (using the sewer line extension cost of \$285.82

per linear foot). Although there are 7 properties on Leonard Road (and 1 on Racquet Club Road) that would have benefitted from the sewer line extension to Leonard Road (in this example), this extension also benefits the other 62 properties located west of Leonard Road, all of whom would be responsible for a share of the cost of this incremental extension to Leonard Road. Ultimately, the cost of the incremental extension to Leonard Road is equitably shared by all 70 properties that would benefit from the off-site sewer line extension, equating to a fair share cost of \$547.14 (\$38,299.88 divided by 70) – a much lower fair share cost than the simplified equity calculation of \$6,655.

Therefore, we have identified separate sub-areas of benefit to more equitably spread the costs. Each sub-area is defined by the individual segment of off-site sewer line extension, its associated cost (based on the overall unit cost of \$285.82 per linear foot), and the total number of benefitted parcels, as follows:

Street Segment (Extension)	Length (Ft)	Cost	# of Benefitted Parcels	Cost per Parcel
Old end to Leonard Road	134	\$38,299.88	70	\$547.14
Leonard Road to Palermo Drive	465	\$132,906.30	62	\$2,143.65
Palermo Drive to Vista Drive	371	\$106,039.22	53	\$2,000.74
Vista Drive to Janis Drive	343	\$98,036.26	40	\$2,450.91
Janis Drive to Milo Drive	317	\$90,604.94	20	\$4,530.25
Rounding Adjustment	n/a	(\$6.77)	70	(\$0.10)

Total = 1,630 \$465,879.83

Accordingly, individual parcels located on each street have a different cost per parcel, with total costs for each sub-area being the cumulative total of those sub-areas located east of it.

- Sub-Area 1 (Leonard Road): \$547.14 - \$0.10 = \$547.04
- Sub-Area 2 (Palermo Drive): \$547.14 + \$2,143.65 - \$0.10 = \$2,690.69
- Sub-Area 3 (Vista Drive): \$547.14 + \$2,143.65 + \$2,000.74 - \$0.10 = \$4,691.43
- Sub-Area 4 (Janis Drive): \$547.14 + \$2,143.65 + \$2,000.74 + \$2,450.91 - \$0.10 = \$7,142.34
- Sub-Area 5 (Milo Drive): \$547.14 + \$2,143.65 + \$2,000.74 + \$2,450.91 + \$4,530.25 - \$0.10 = \$11,672.59

On August 24, 2011, the City mailed a draft copy of the reimbursement agreement to all benefitted properties, and scheduled a property owners meeting for September 29, 2011. At the meeting, 17 property owners attended, and staff discussed the issues related to the proposed sewer construction refund agreement.

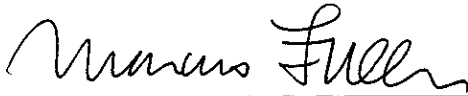
On November 21, 2011, a follow-up letter was mailed to all benefitted properties, clarifying issues raised at the property owners meeting, and including the final draft of the proposed sewer construction refund agreement. The letter notified the property owners of the Public Hearing scheduled for January 18, 2012.

FISCAL IMPACT:

Approval of the sewer construction refund agreement establishes terms for payment of the individual assessments, which are paid by the benefitted property owners to the City, and then reimbursed to the developer. Payment of the individual assessment by benefitted property owners is required at the time a permit is applied for connection to the public sewer system. The assessment is not paid, nor is any requirement to pay the assessment imposed until such time that a request is made for a sewer connection permit. As there is no guarantee that future sewer extensions within Leonard Drive, Palermo Drive, Vista Drive, Janis Drive, and Milo Drive will ever occur, it is possible that no assessments identified in the agreement will ever be paid to the City. The agreement stipulates that there is no guarantee by the City that assessments will be collected during the term of the agreement. The City reimburses the developer only if, and when, the City collects payments from the benefitted property owners at the time a sewer connection permit is issued. The agreement does not impose any obligation on the City to pay in advance, with any of its own funds, the reimbursement amount.

Prepared by:

Recommended by:

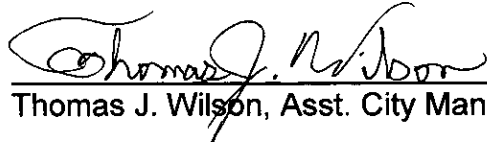


Marcus L. Fuller
Assistant Director of Public Works



David J. Barakian
Director of Public Works/City Engineer

Approved by:



Thomas J. Wilson, Asst. City Manager



David H. Ready, City Manager

ATTACHMENTS:

1. Notice of Public Hearing
2. Agreement

**CITY OF PALM SPRINGS
PUBLIC HEARING NOTIFICATION**



City Council

Meeting Date: January 18, 2011

Subject: Racquet Club Road Sewer Construction Refund Agreement

AFFIDAVIT OF MAILING

I, Kathie Hart, Chief Deputy City Clerk, of the City of Palm Springs, California, do hereby certify that a copy of the attached Notice of Public Hearing was mailed to each and every person on the attached list on January 5, 2012, in a sealed envelope, with postage prepaid, and depositing same in the U.S. Mail at Palm Springs, California. (70 notices)

I declare under penalty of perjury that the foregoing is true and correct.



Kathie Hart, CMC
Chief Deputy City Clerk

AFFIDAVIT OF PUBLICATION

I, Kathie Hart, Chief Deputy City Clerk, of the City of Palm Springs, California, do hereby certify that a copy of the attached Notice of Public Hearing was published in the Desert Sun on January 6 and January 12, 2012.

I declare under penalty of perjury that the foregoing is true and correct.



Kathie Hart, CMC
Chief Deputy City Clerk

AFFIDAVIT OF POSTING

I, Kathie Hart, Chief Deputy City Clerk, of the City of Palm Springs, California, do hereby certify that a copy of the attached Notice of Public Hearing was posted at City Hall, 3200 E. Tahquitz Canyon Drive, on the exterior legal notice posting board and in the Office of the City Clerk on January 4, 2012.

I declare under penalty of perjury that the foregoing is true and correct.



Kathie Hart, CMC
Chief Deputy City Clerk

CITY OF PALM SPRINGS,
NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the City Council of the City of Palm Springs, California, will hold a public hearing at its meeting of January 18, 2012. The City Council meeting begins at 6:00 p.m., in the Council Chamber at City Hall, 3200 East Tahquitz Canyon Way, Palm Springs.

The purpose of this meeting is to consider a Sewer Construction Refund Agreement between the City of Palm Springs, California, and Tuscany Heights, LLC, the terms of which provide for the reimbursement to Tuscany Heights, LLC for costs associated with an off-site public sewer extension in Racquet Club Road, which benefits adjacent properties on Racquet Club Road and properties on Leonard Road, Palermo Drive, Via Olivera, Vista Drive, Janis Drive, and Milo Drive. The total cost of off-site public sewer extension in Racquet Club Road is \$465,879.83. The properties subject to the terms of the Agreement and the proposed assessments are:

<u>ASSESSOR PARCEL NO.</u>	<u>ASSESSMENT</u>	<u>STREET ADDRESS</u>
1. 504-182-008	\$547.04	2360 Leonard Road
2. 504-182-009	\$547.04	2380 Leonard Road
3. 504-182-010	\$547.04	2480 Leonard Road
4. 504-181-008	\$547.04	2481 Leonard Road
5. 504-181-009	\$547.04	2379 Leonard Road
6. 504-181-010	\$547.04	2369 Leonard Road
7. 504-181-011	\$547.04	2359 Leonard Road
8. 504-181-014	\$547.04	820 W. Via Olivera
9. 504-181-001	\$2,690.69	2480 Palermo Drive
10. 504-181-002	\$2,690.69	2430 Palermo Drive
11. 504-181-003	\$2,690.69	2468 Palermo Drive
12. 504-181-015	\$2,690.69	775 W. Racquet Club Rd.
13. 504-172-006	\$2,690.69	954 W. Via Olivera
14. 504-172-007	\$2,690.69	2365 Palermo Drive
15. 504-172-008	\$2,690.69	2391 Palermo Drive
16. 504-172-009	\$2,690.69	2431 Palermo Drive
17. 504-172-010	\$2,690.69	2495 Palermo Drive
18. 504-173-002	\$4,691.43	2270 Vista Drive
19. 504-172-001	\$4,691.43	2494 Vista Drive
20. 504-172-002	\$4,691.43	2424 Vista Drive
21. 504-171-011	\$4,691.43	2211 Vista Drive
22. 504-171-012	\$4,691.43	2233 Vista Drive
23. 504-171-013	\$4,691.43	2255 Vista Drive
24. 504-171-014	\$4,691.43	2275 Vista Drive
25. 504-171-015	\$4,691.43	2301 Vista Drive
26. 504-171-016	\$4,691.43	2333 Vista Drive
27. 504-171-017	\$4,691.43	2355 Vista Drive
28. 504-171-018	\$4,691.43	2395 Vista Drive
29. 504-171-019	\$4,691.43	2425 Vista Drive
30. 504-171-020	\$4,691.43	911 Racquet Club Rd.
31. 504-171-001	\$7,142.34	2490 Janis Drive
32. 504-171-002	\$7,142.34	2444 Janis Drive
33. 504-171-003	\$7,142.34	2390 Janis Drive
34. 504-171-004	\$7,142.34	2360 Janis Drive
35. 504-171-005	\$7,142.34	2330 Janis Drive
36. 504-171-006	\$7,142.34	2300 Janis Drive
37. 504-171-007	\$7,142.34	2280 Janis Drive
38. 504-171-008	\$7,142.34	2260 Janis Drive
39. 504-171-009	\$7,142.34	2222 Janis Drive
40. 504-171-010	\$7,142.34	2200 Janis Drive
41. 504-162-011	\$7,142.34	2221 Janis Drive
42. 504-162-012	\$7,142.34	2233 Janis Drive

43	504-162-013	\$7,142.34	2267 Janis Drive
44	504-162-014	\$7,142.34	2285 Janis Drive
45	504-162-015	\$7,142.34	2313 Janis Drive
46	504-162-016	\$7,142.34	2323 Janis Drive
47	504-162-017	\$7,142.34	2363 Janis Drive
48	504-162-018	\$7,142.34	2405 Janis Drive
49	504-162-019	\$7,142.34	2445 Janis Drive
50	504-162-020	\$0 (Paid)	2493 Janis Drive
51	504-162-001	\$11,672.59	2498 Milo Drive
52	504-162-002	\$11,672.59	2460 Milo Drive
53	504-162-003	\$11,672.59	2400 Milo Drive
54	504-162-004	\$11,672.59	2366 Milo Drive
55	504-162-005	\$11,672.59	2350 Milo Drive
56	504-162-006	\$11,672.59	2304 Milo Drive
57	504-162-007	\$11,672.59	2270 Milo Drive
58	504-162-008	\$11,672.59	2250 Milo Drive
59	504-162-009	\$11,672.59	2222 Milo Drive
60	504-162-010	\$11,672.59	2210 Milo Drive
61	504-161-003	\$11,672.59	2223 Milo Drive
62	504-161-004	\$11,672.59	2233 Milo Drive
63	504-161-005	\$11,672.59	2255 Milo Drive
64	504-161-006	\$11,672.59	2277 Milo Drive
65	504-161-007	\$11,672.59	2303 Milo Drive
66	504-161-008	\$11,672.59	2355 Milo Drive
67	504-161-009	\$11,672.59	2365 Milo Drive
68	504-161-010	\$11,672.59	2401 Milo Drive
69	504-161-011	\$11,672.59	2425 Milo Drive
70	504-161-013	\$0 (Paid)	1011 Racquet Club Rd.

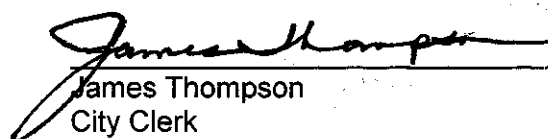
REVIEW OF INFORMATION: The staff report and other supporting documents regarding this are available for public review at City Hall between the hours of 8:00 a.m. to 11:00 a.m. and 2:00 p.m. to 6:00 p.m., Monday through Thursday. Please contact the Office of the City Clerk at (760) 323-8204 if you would like to schedule an appointment to review these documents.

COMMENTS: Response to this notice may be made verbally at the Public Hearing and/or in writing before the meeting. Written comments may be made to the City Council by letter (for mail or hand delivery) to:

James Thompson, City Clerk
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92262

Any challenge of the proposed project in court may be limited to raising only those issues raised at the public hearing described in this notice, or in written correspondence delivered to the City Clerk at, or prior, to the public hearing. (Government Code Section 65009(b)(2)). An opportunity will be given at said hearing for all interested persons to be heard. Questions regarding this may be directed to Marcus Fuller, Assistant Director of Public Works, at (760) 323-8744. Pursuant to California Government Code Section 66016 and 66018, this Notice shall be published twice, at least ten days prior to the public hearing.

Si necesita ayuda con esta carta, por favor llame a la Ciudad de Palm Springs y puede hablar con Nadine Fieger telefono (760) 323-8245.


James Thompson
City Clerk

PLEASE COMPLETE THIS INFORMATION
RECORDING REQUESTED BY:

CITY OF PALM SPRINGS

AND WHEN RECORDED MAIL TO:

CITY OF PALM SPRINGS
OFFICE OF THE CITY CLERK
3200 E. TAHQUITZ CANYON WAY
PALM SPRINGS, CA 92262

SPACE ABOVE FOR RECORDER'S USE ONLY

SEWER CONSTRUCTION REFUND AGREEMENT

Title of Document

**THIS AREA FOR
RECORDER'S
USE ONLY**

SEWER CONSTRUCTION REFUND AGREEMENT

BETWEEN

THE CITY OF PALM SPRINGS, CALIFORNIA AND TUSCANY HEIGHTS, LLC.

SEWER AGREEMENT NO. _____

This Sewer Construction Refund Agreement, hereinafter referred to as "Agreement", made and entered into this ___ day of _____, 2012, between the City of Palm Springs, California, a municipal corporation, hereinafter referred to as "City", and Tuscany Heights, LLC, a California Limited Liability Company, hereinafter referred to as "Developer".

Whereas, the City has established a policy for sewer refund agreements by City Council Resolution No. 13487 dated August 6, 1980, and Resolution No. 16031 dated October 15, 1986, which are attached hereto, marked as Exhibit "A", and hereby made a part of this Agreement; and

Whereas, the Developer was, prior to this Agreement, owner of the residential subdivision identified as "Tuscany Heights", also identified as Assessor Parcel Numbers 504-161-015 to 504-161-031 inclusive, hereinafter referred to as "Property", which is an approved subdivision for residential purposes (Tentative Tract Map 28495). The subdivision was approved subject to conditions, among which required construction of an off-site sewer extension in Racquet Club Road necessary to provide sewer service to the Property; and

Whereas, the Developer performed his required obligation to construct the off-site sewer extension, and subsequently submitted Tract Map 28495 for approval, which was duly approved by the City Council on July 14, 2005, and recorded by Riverside County in Book 385, Pages 97-100, No. 2005-0580540, records of Riverside County; and

Whereas, the off-site sewer extension that is the subject of this Agreement has been dedicated to public use by the Developer, and has been accepted by the City; and

Whereas, the City has determined that benefit from the construction of the off-site sewer extension in Racquet Club Road will accrue to properties connecting to the off-site sewer extension, as delineated on the exhibit identified as "Boundary Map" attached hereto, marked Exhibit "B", and hereby made a part of this Agreement; and

Whereas, the City has determined that said benefit will be in direct proportion to the properties identified by Assessor Parcel Numbers shown on the Exhibits C1, C2 and C3; and

Whereas, the Developer, in accordance with Council Resolution No. 13487 and Resolution No. 16031 has requested that the City and the Developer enter into this Agreement to reimburse the Developer costs associated with the off-site sewer extension which benefits other properties; and

Whereas, the Developer has submitted a financial statement of construction costs totaling \$465,879.83 as shown on the Summary of Expenses which is attached hereto marked Exhibit "D", and made a part of this Agreement; and

Whereas, the Developer received prior payments from the owners of the properties located at 1011 Racquet Club Road (Assessor Parcel Number 504-161-013) and at 2493 Janis Drive (Assessor Parcel Number 504-162-020) at the time these properties were connected to the off-site sewer line on Racquet Club Road, and therefore, these properties are excluded from this Sewer Construction Refund Agreement; and

Whereas, it is in the best interests of the Developer and the City to establish this Agreement to provide for an equitable apportionment of costs associated with the construction of the off-site sewer extension to properties benefiting from the off-site sewer extension.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the mutual covenants indicated between the City and the Developer, it is hereby agreed that:

SECTION 1. Assessments. Developers, owners, or lessees of lots shown on Exhibit "B" directly benefitting from the off-site sewer extension on Racquet Club Road shall pay to the City the amount shown herein, plus the sewer connection fee in effect at such time prior to a permit being issued for connection to the public sewer system via the off-site sewer extension in Racquet Club Road. Upon receipt of such payment, City shall pay the Developer the assessments shown herein.

Payment of assessments for parcels not abutting the off-site sewer on Racquet Club Road require future sewer line extensions on Leonard Drive, Palermo Drive, Vista Drive, Janis Drive, and Milo Drive.

The assessment for each parcel is hereby established at a calculated benefit for 70 properties equitably spread (within their direct area of benefit), over a total cost of \$465,879.83 as follows:

<u>ASSESSOR PARCEL NO.</u>		<u>ASSESSMENT</u>	<u>STREET ADDRESS</u>
1.	504-182-008	\$ 547.04	2360 Leonard Road
2.	504-182-009	\$ 547.04	2380 Leonard Road
3.	504-182-010	\$ 547.04	2480 Leonard Road
4.	504-181-008	\$ 547.04	2481 Leonard Road
5.	504-181-009 ⁽¹⁾	\$ 547.04	2379 Leonard Road
6.	504-181-010	\$ 547.04	2369 Leonard Road
7.	504-181-011	\$ 547.04	2359 Leonard Road
8.	504-181-014	\$ 547.04	820 W. Via Olivera
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9.	504-181-001	\$ 2,690.69	2480 Palermo Drive
10.	504-181-002	\$ 2,690.69	2430 Palermo Drive
11.	504-181-003	\$ 2,690.69	2368 Palermo Drive
12.	504-181-015	\$ 2,690.69	775 W. Racquet Club Rd.
13.	504-172-006	\$ 2,690.69	954 W. Via Olivera
14.	504-172-007	\$ 2,690.69	2365 Palermo Drive
15.	504-172-008	\$ 2,690.69	2391 Palermo Drive
16.	504-172-009	\$ 2,690.69	2431 Palermo Drive
17.	504-172-010	\$ 2,690.69	2495 Palermo Drive
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18.	504-173-002	\$ 4,691.43	2270 Vista Drive
19.	504-172-001	\$ 4,691.43	2494 Vista Drive
20.	504-172-002	\$ 4,691.43	2424 Vista Drive
21.	504-171-011	\$ 4,691.43	2211 Vista Drive
22.	504-171-012 ⁽¹⁾	\$ 4,691.43	2233 Vista Drive
23.	504-171-013 ⁽¹⁾	\$ 4,691.43	2255 Vista Drive
24.	504-171-014	\$ 4,691.43	2275 Vista Drive
25.	504-171-015	\$ 4,691.43	2301 Vista Drive
26.	504-171-016	\$ 4,691.43	2333 Vista Drive
27.	504-171-017	\$ 4,691.43	2355 Vista Drive
28.	504-171-018	\$ 4,691.43	2395 Vista Drive
29.	504-171-019	\$ 4,691.43	2425 Vista Drive
30.	504-171-020	\$ 4,691.43	911 Racquet Club Rd.
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31.	504-171-001	\$ 7,142.34	2490 Janis Drive
32.	504-171-002	\$ 7,142.34	2444 Janis Drive
33.	504-171-003	\$ 7,142.34	2390 Janis Drive
34.	504-171-004	\$ 7,142.34	2360 Janis Drive

35	504-171-005		\$ 7,142.34	2330 Janis Drive
36	504-171-006		\$ 7,142.34	2300 Janis Drive
37	504-171-007		\$ 7,142.34	2280 Janis Drive
38	504-171-008		\$ 7,142.34	2260 Janis Drive
39	504-171-009		\$ 7,142.34	2222 Janis Drive
40	504-171-010	20 PARCES	\$ 7,142.34	2200 Janis Drive
41	504-162-011		\$ 7,142.34	2221 Janis Drive
42	504-162-012		\$ 7,142.34	2233 Janis Drive
43	504-162-013		\$ 7,142.34	2267 Janis Drive
44	504-162-014		\$ 7,142.34	2285 Janis Drive
45	504-162-015		\$ 7,142.34	2313 Janis Drive
46	504-162-016		\$ 7,142.34	2323 Janis Drive
47	504-162-017		\$ 7,142.34	2363 Janis Drive
48	504-162-018		\$ 7,142.34	2405 Janis Drive
49	504-162-019		\$ 7,142.34	2445 Janis Drive
50	504-162-020 ⁽²⁾		\$ 0 ⁽²⁾ Paid	2493 Janis Drive
51	504-162-001		\$11,672.59	2498 Milo Drive
52	504-162-002		\$11,672.59	2460 Milo Drive
53	504-162-003		\$11,672.59	2400 Milo Drive
54	504-162-004		\$11,672.59	2366 Milo Drive
55	504-162-005		\$11,672.59	2350 Milo Drive
56	504-162-006		\$11,672.59	2304 Milo Drive
57	504-162-007 ⁽¹⁾		\$11,672.59	2270 Milo Drive
58	504-162-008 ⁽¹⁾		\$11,672.59	2250 Milo Drive
59	504-162-009 ⁽¹⁾		\$11,672.59	2222 Milo Drive
60	504-162-010	20 PARCES	\$11,672.59	2210 Milo Drive
61	504-161-003		\$11,672.59	2223 Milo Drive
62	504-161-004		\$11,672.59	2233 Milo Drive
63	504-161-005		\$11,672.59	2255 Milo Drive
64	504-161-006		\$11,672.59	2277 Milo Drive
65	504-161-007		\$11,672.59	2303 Milo Drive
66	504-161-008 ⁽¹⁾		\$11,672.59	2355 Milo Drive
67	504-161-009		\$11,672.59	2365 Milo Drive
68	504-161-010		\$11,672.59	2401 Milo Drive
69	504-161-011		\$11,672.59	2425 Milo Drive
70	504-161-013 ⁽²⁾		\$ 0 ⁽²⁾ Paid	1011 Racquet Club Rd.
TOTAL PAYMENTS:			\$447,065.02⁽³⁾	

The above payments represent a proportionate distribution of the cost of the construction of the off-site sewer main extension.

Notes:

- (1) These parcels are vacant properties as of the date of this Agreement.
- (2) Payment previously paid by separate agreement.
- (3) The total payment is \$18,814.81 less than the total cost due to Developer because the payments for parcels marked above were previously paid.

SECTION 2. Payment. Developer's current address is: Wesley D. Oliphant, 77-900 Ave. of the States, Palm Desert, CA 92211. Developer shall immediately inform the City Manager if Developer's address changes. Any payment shall be sent to the Developer at the written address on file with City. If Developer does not have a written address on file with City, City shall retain the assessment. Following receipt of any payments under the Agreement, City will remit such payment to Developer within thirty (30) days of receipt. No interest shall accrue on late payment.

SECTION 3. Successors. The right of Developer to receive payment as stated herein shall be transferable to successors and assigns. Developer shall immediately notify City of any transfer or assignment of its right to receive payment under this Agreement.

SECTION 4. Collection. Developer shall be liable for all costs, expenses, attorneys' fees and other fees incurred by City in collecting any payment from an assessee. Before pursuing any legal action to collect payment from an assessee, the City may demand that the Developer deposit the reasonable estimated cost of collection and the Developer shall make said deposit prior to City taking legal action to collect said payment. The City shall have complete and absolute discretion in determining whether to pursue legal action to collect a payment from an assessee. In the event the City elects not to pursue legal action to collect a payment from an assessee, Developer may pursue available legal remedies to enforce payment of the assessments identified in Section 1 of this Agreement. The City will cooperate with Developer in any effort to recover Developer's costs incurred by any action taken pursuant to this Section 4.

SECTION 5. No Representations or Liability. City makes no representation as to: (a) when, if ever, it will receive the above costs assessed on the Parcels, (b) its legal liability to enforce the collection of the fees assessed, (c) changes in the law affecting the City's ability to charge fees and assessments. Due to these factors, the City shall have no liability whatsoever to any of the developers, owners or lessees for the collection of the assessments stated in Section 1 above, or for the payment of such sums to Developer.

SECTION 6. Term. This agreement shall terminate fifty (50) years from the date of the agreement first above written, unless extended by mutual agreement of the parties. Following termination, City shall have no obligation hereunder.

SECTION 7. Amendment. The parties hereto mutually agree that this agreement may be amended at any time by the mutual consent of the Developer and City and by recordation of an instrument in writing.

SECTION 8. Integration. It is understood that there are no oral agreements between the parties hereto affecting this agreement and this agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this agreement. Any resolutions or actions of the Council inconsistent with the foregoing are hereby rescinded to the extent of their inconsistency. This agreement incorporates all the understandings of the parties.

SECTION 9. Authority. The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

SECTION 10. Recordation. The City Clerk shall record this Agreement in the Recorder's Office of the County of Riverside, California.

* * * *

[SIGNATURES ON FOLLOWING PAGE]

In witness whereof, the City and Developer have hereunto caused this Agreement to be executed the day and year first above mentioned.

DEVELOPER:
Tuscany Heights, LLC, a California Limited Liability Company

(Notarized Signature)

Printed Name and Title

ATTEST:

CITY OF PALM SPRINGS, CALIFORNIA

By _____
City Clerk

City Manager

Reviewed and Approved By: _____
City Attorney

Attachments:

1. Exhibit "A": Resolution Numbers 13487 and 16031.
2. Exhibit "B": Boundary Map.
3. Exhibit "C": Assessor's Parcel Maps: Book 504, Pages 16-18.
4. Exhibit "D": Summary of Expenses.

EXHIBIT "A"

Amended b
16031

RESOLUTION NO. 13487

OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, ESTABLISHING A POLICY FOR REIMBURSEMENT OF COSTS FOR INSTALLATION OF ALL TYPES OF OFF-SITE IMPROVEMENTS.

- - - - -

WHEREAS the developer of vacant land has the responsibility for providing off-site improvements to the centerline of adjacent rights-of-way; and

WHEREAS there is a need for additional off-site improvements beyond the boundaries of a particular building site in many instances; and

WHEREAS the City in many instances for the public good installs off-site improvements across the frontage of vacant lands which are properly the financial responsibility of said vacant land,

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Palm Springs, does hereby declare the following to be its policy relative to reimbursement of costs for installation of all types of off-site improvements:

That a reimbursement agreement may be authorized in order to collect for the cost of installation of off-site improvements when installed beyond the boundaries of a project site by a private developer or when improvements have been installed by the City which are properly the responsibility of an adjacent property to provide at the time said property is developed.

That as a condition precedent to the effectiveness of any such reimbursement agreement, notice of intention to enter into such agreement shall be given to the owner of each parcel of property to be charged with the cost of such improvements, and each such owner shall be given an opportunity to be heard as to:

1. The necessity of installation of such improvements prior to such owner's development of his property,
2. The necessity for such installation by any party other than such owner,
3. The reasonableness of the costs of such improvements,
4. Any other matters reasonably related to such reimbursement agreement and its effect upon such owner's property.

Any such reimbursement agreement shall include a sufficient legal description of each parcel of real property to be charged with such costs. Such agreement shall be recorded in the Office of the County Recorder of Riverside County, and a copy thereof shall be mailed to the owner of each parcel to be charged with such costs.

278

8 3 2

RES. NO. 13487
Page 2

Nothing in this policy shall be deemed to preclude the formation of assessment districts, local improvement districts, or any other alternative method of effecting the installation of and payment for such improvements.

ADOPTED this 6th day of August, 1980.

AYES: Councilmembers Beirich, Field, Ortner, Rose and Mayor Doyle
NOES: None
ABSENT: None

ATTEST: CITY OF PALM SPRINGS, CALIFORNIA

By [Signature] Deputy City Clerk [Signature] City Manager

REVIEWED & APPROVED [Signature]

RESOLUTION NO. 16031

OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS
CALIFORNIA, AMENDING AND ESTABLISHING PROCEDURE FOR
IMPLEMENTING POLICY FOR REIMBURSEMENT OF COSTS FOR
INSTALLATION OF ALL TYPES OF OFF-SITE IMPROVEMENTS.

- - - - -

WHEREAS the developer of vacant land has the responsibility for providing off-site improvements to the centerline of adjacent rights-of-way; and

WHEREAS there is a need for additional off-site improvements beyond the boundaries of a particular building site in many instances; and

WHEREAS the City in many instances for the public convenience and necessity installs off-site improvements across the frontage of vacant lands which are properly the financial responsibility of said vacant land; and

WHEREAS by Resolution No. 13487, adopted August 6, 1980, the City Council established its policy relative to reimbursement of costs for all types of off-site improvements, and now desires to refine and augment the procedures for implementing that policy;

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Palm Springs, does hereby reaffirm its policy relative to reimbursement of costs for installation of all types of off-site improvements and restates said policy as follows:

As used in this Resolution, the term "off-site improvements" shall include, without limitation thereby, the half street, concrete curb, gutter, sidewalk, and bicycle path and landscape strip, all in accordance with adopted standards.

Off-site improvements the provision of which would be the responsibility of the developer of adjacent property at the time of development of said property, may be installed in advance of development of said property, subject to reimbursement at the time of development of said adjacent property, in the following manner:

1. Notice of necessity to install off-site improvements shall be given by the Director of Community Development or his designee to the owner of each parcel of property to be charged with the cost of such improvements, or in the case of leased tax-exempt land, to the owner of a taxable possessory interest. Such notice shall be given by personal service or by certified mail. In the event of service by certified mail, the notice shall be sent to the address shown on the latest equalized assessment roll, and to such other address as is known to be the correct address of the person to be notified.
2. Within 20 days of the date of mailing said notice, the owner or lessee of said property may request a hearing by the Director of Community Development or his designee, and if requested shall be given an opportunity to be heard as to:
 - a. The necessity for installation of such improvements prior to such owner's development of his property,
 - b. The necessity for such installation by any party other than such owner,
 - c. The reasonableness of the costs of such

Improvements,

- d. Any other matters reasonably related to reimbursement for such improvements and the effect upon such owner's property.
3. Following such hearing, or if no such hearing is requested, then at any time at least 21 days after the date of mailing of said notice, if the Director of Community Development or his designee finds that the public convenience and necessity requires (1) installation of such improvements prior to development of said property, and (2) installation other than by the owner or lessee, then the Director of Community Development or his designee shall direct that said improvements be installed forthwith subject to reimbursement of the cost thereof at the time of issuance of building permit for development of said property.
4. Such installation may be made by the City, or may be required to be made as a condition of any discretionary approval of development of other property which would be served by or would otherwise benefit, directly or indirectly, from the installation of said improvements.
5. If such improvements are installed as a condition of approval of development of other property, the City shall offer to the developer of such other property to enter into a reimbursement agreement which shall provide that the City shall use its best efforts to collect the cost of such installation from the owner or lessee of the property adjacent to such improvements at the time of development of such adjacent property, and to reimburse such costs if, as and when collected, to the person who incurred such costs. Any such reimbursement agreement shall include a sufficient legal description of each parcel of real property to be charged with such costs. Such agreement shall be recorded in the Office of the County Recorder of Riverside County, and a copy thereof shall be mailed to the owner of each parcel or interest to be charged with such costs.
6. The Director of Community Development shall cause to be recorded in the Office of the County Recorder of Riverside County a Notice of Obligation to Reimburse Cost of Off-Site Improvements in each instance where such reimbursible costs are incurred by the City or by another developer. Such notice shall contain a brief description of the improvements installed, the cost thereof sought to be reimbursed, the person to whom such reimbursement is to be made, a sufficient legal description of each parcel of real property to be charged with such costs, the amount to be charged to each such parcel, and a statement that such cost is deemed to be a charge upon said parcel, to be paid at the time of issuance of building permit or other entitlement for development of each such parcel.
7. Upon application for issuance of building permit for development of any parcel subject to such Notice of Obligation to Reimburse Cost of Off-Site Improvements, the cost of such improvements charged to such parcel shall be collected as a part of and in addition to any other fees or charges to be collected, and shall thereupon be paid over to the person entitled thereto.
8. Nothing herein shall be deemed to require payment by the City to any person of the cost of installation of any off-site improvements except to the extent that the City shall have actually received payment for that

RESOLUTION NO. 16031

purpose.

9. Nothing in this policy shall be deemed to preclude the formation of assessment districts, local improvement districts, or any other alternative method of effecting the installation of and payment for such improvements.

ADOPTED this 15th day of October, 1986.

AYES: Councilmembers Birer, Foster, and Mayor Bogert

NOES: None

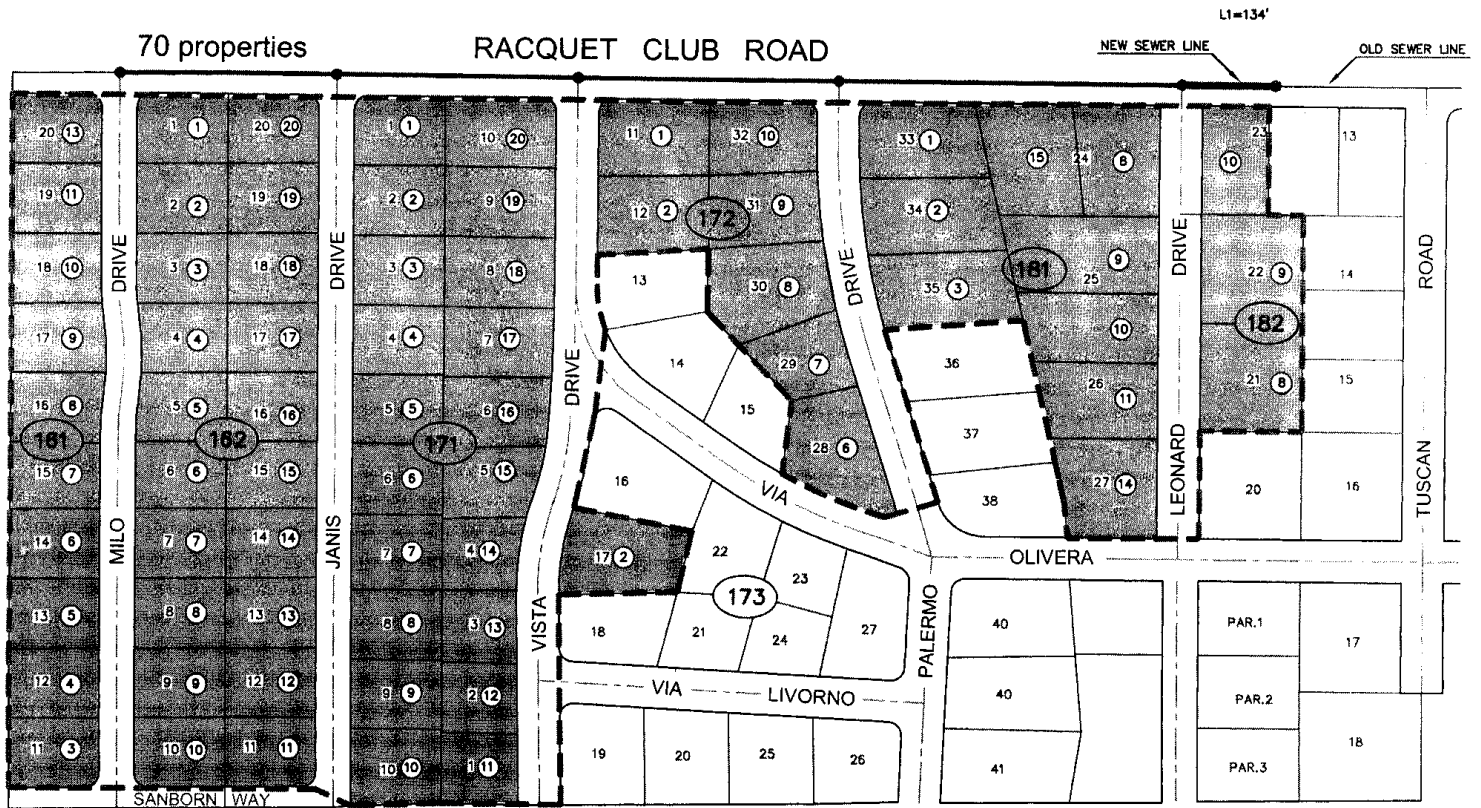
ABSENT: Councilmembers Apfelbaum and Smith

ATTEST: CITY OF PALM SPRINGS, CALIFORNIA

By: [Signature] City Clerk [Signature] City Manager

REVIEWED & APPROVED, _____

EXHIBIT "B"



BOUNDARY MAP

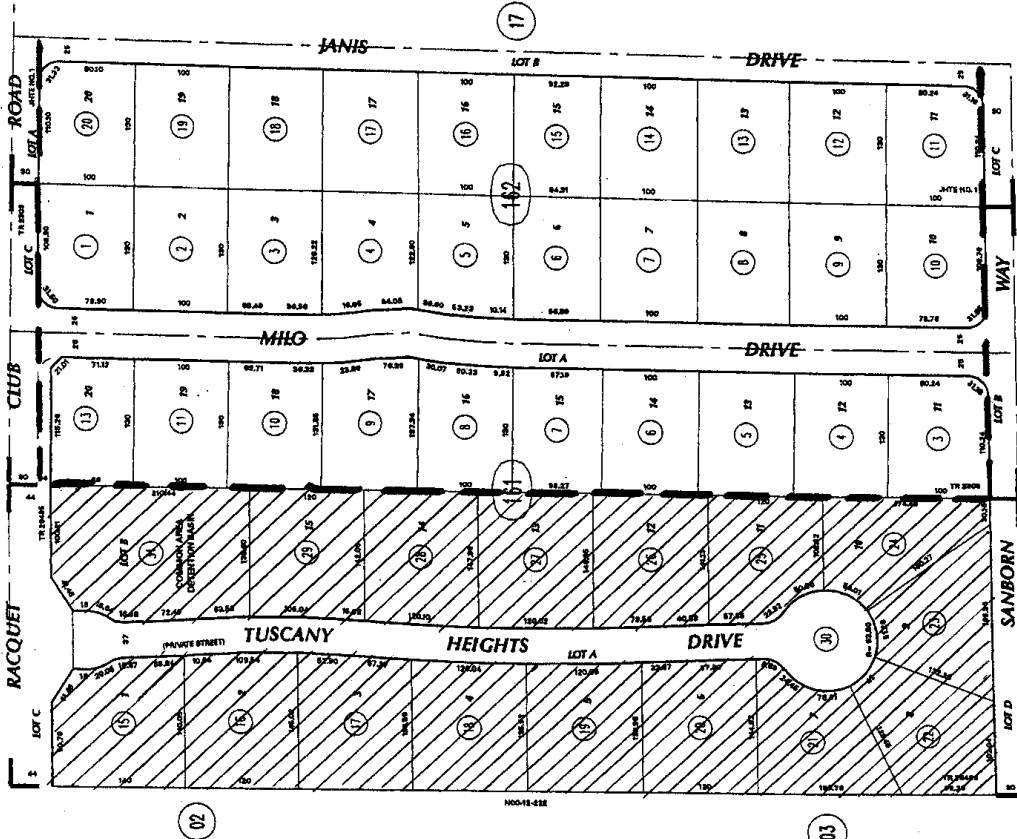
EXHIBIT "C"

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE DATA SHOWN. ASSESSOR'S PARCEL MAY NOT COMPLY WITH LOCAL LOT-SPLIT OR BUILDING SITE ORDINANCES.
MAY 17 2006

POR. SEC 3 T. 4S., R. 4E
CITY OF PALM SPRINGS

T.R.A. 011-003

504-16
29-10



92 ASSESSOR'S MAP BKS04 PG. 16
Riverside County, Calif.

005



NOT SUBJECT TO THIS AGREEMENT

MB 34/67 JANIS HILL TOP ESTATES NO. 1
MB 43/83 TRACT MAP NO. 2303
MB 385/97-100 TRACT MAP NO. 28495

May 2006

EXHIBIT C-1

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE DATA SHOWN. ASSESSOR'S PARCEL MAY NOT COMPLY WITH LOCAL LOT-SPLIT OR BUILDING SITE ORDINANCES.

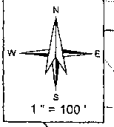
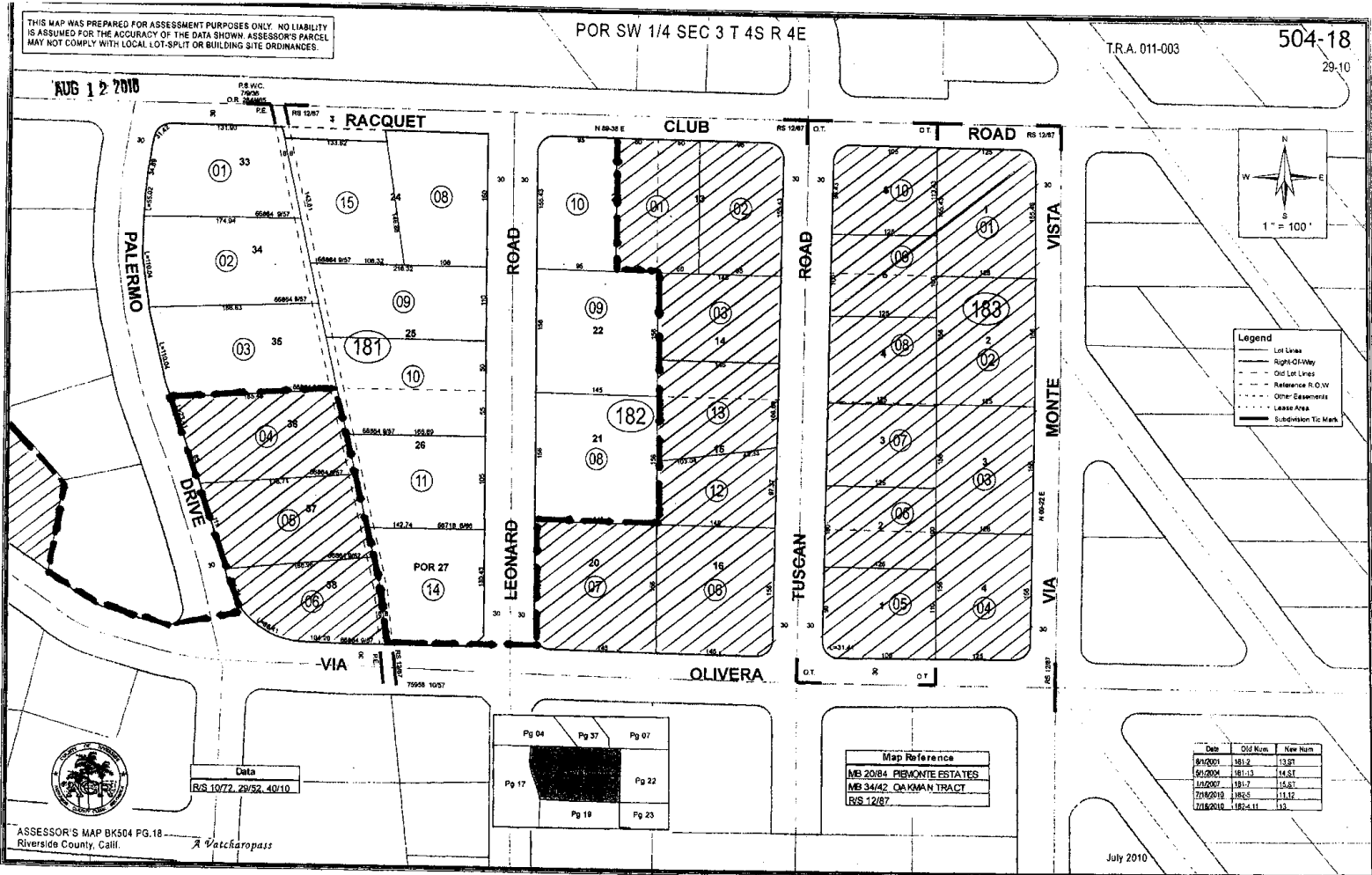
POR SW 1/4 SEC 3 T 4S R 4E

T.R.A. 011-003

504-18

29-10

AUG 12 2010

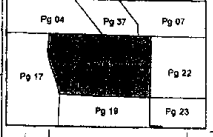


Legend

- Lot Lines
- Right-Of-Way
- Old Lot Lines
- Reference R.O.W.
- Other Easements
- Lease Area
- Subdivision To Mark



Data
R/S 10/72, 29/52, 40/10



Map Reference

MS 20/84	PIEMONTE ESTATES
MS 34/42	OAKMAN TRACT
R/S 12/87	

Date	Old Num.	New Num.
8/1/2001	181.2	13.01
6/1/2002	181.13	14.01
1/1/2007	181.7	15.01
7/8/2010	182.5	11.02
7/8/2010	182.4.11	13

29

NOT SUBJECT TO THIS AGREEMENT

EXHIBIT C-3

July 2010

ASSESSOR'S MAP BK504 PG.18
Riverside County, Calif. *A Vatcharopass*

EXHIBIT "D"

SUMMARY OF EXPENSES

TUSCANY HEIGHTS

FOR SEWER CONSTRUCTION REFUND AGREEMENT

1. DESIGN: Warner Engineering	\$10,924.35
2. STAKING: Warner Engineering	\$12,095.73
3. TESTING: Sladen Engineering	\$2,856.00
4. CITY FEES (3 sheets x \$500)	\$1,500.00
5. ASPHALT REMOVAL: Palm Canyon Contracors, Inc. (Trench sawcut)	\$10,993.28
6. CONSTRUCTION: Tri-Star	
Off Sewer	\$171,773.67
Pre-water, Cust Control	\$3,500.00
Demolition and Grading	\$55,000.00
Boulder Removal	\$20,000.00
Boulder Trucking	\$17,693.45
Boulder Demo (3 boulders at sewer line)	\$14,690.00
Dump Truck - Rock hauling	\$7,742.50
Import Fill	\$7,399.48
7. BACKFILL/COMPACTION: Palm Canyon Contracors, Inc.	
On Racquet Club Road:	\$61,100.11
8. STRIPING & COLD PATCH at Leonard Dr.: Tri-Star	\$2,530.00
9. SUPERVISION:	\$16,165.56
10. CONSTRUCTION ADMINISTRATION	\$49,915.70
TOTAL =	\$465,879.83

EXHIBIT D