

PHASING PLAN AGREEMENT

This Phasing Plan Agreement ("Agreement") is entered into this July day of 2012, 2012 by and between City of Coachella, State of California ("City") and Pathfinder Coachella Homes, LLC, a Delaware Limited Liability Company, and Pathfinder Coachella Lots, LLC, a Delaware Limited Liability Company (collectively, "Pathfinder") with respect to the following:

RECITALS

- A. WHEREAS, on or about February 22, 2006, the City adopted Resolution Number 2006-23, approving final Tract Map Number 31698 ("Map"), which created 108 residential lots at the southeast corner of Avenue 50 and Van Buren Street; and
- B. WHEREAS, at the time of the Map's approval, the developer of the property, Van Buren Partners II, LLC ("Original Developer") entered into a Subdivision Improvement Agreement with the City wherein said original Developer agreed to make certain subdivision improvements as a condition of receipt of the final map (hereinafter referred to as "Public Improvements"); and
- C. WHEREAS, in accordance with Government Code Section 66462(c), the City required that the Original Developer to post certain security to assure performance of the obligation to install and build the Public Improvements; and
- D. WHEREAS, the Original Developer failed to complete all the Public Improvements; and
- E. WHEREAS, Pathfinder is the successor in interest in the ownership of that portion of Tract No. 31698 as described on Exhibit "A" attached hereto and incorporated herein by this reference which consists of 22 existing single family homes ("inventory homes") and 50 residential lots (collectively Pathfinder Property), however in acquiring the property, Pathfinder did not assume the Original Developer's Subdivision Improvement Agreement with the City that secured the completion of the Public Improvements; and
- F. WHEREAS, as the legal owner of the Pathfinder Property, Pathfinder is still required to install and complete the remaining Public Improvements in order to obtain building permits and certificates of occupancy for the residential lots Pathfinder owns which are located in the Pathfinder Property.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **REACTIVATION OF BUILDING PERMITS AND COMPLETION OF COVERED IMPROVEMENTS.** In reliance on and in consideration of the City's promise to reactivate building permits as described in subsection B below, and issue certificates of occupancy for the residential lots located in the Pathfinder Property as described in subsection A below, Pathfinder shall complete the following subdivision improvements ("Covered Improvements") at its sole cost and expense at the time specified below:

A. Completion of Covered <u>Improvements</u> :	<u>Time for Completion</u> :
Phase 1: Complete Landscaping of Retention Basin "A" at the main entry on Via Valencia.	Prior to issuance of the Certificate of Occupancy for the 6 th inventory home
Phase 2: Open Via Merida to Public Access and install a wind fence around the vacant lots 76-80 and 98-103 on Paseo Barcelona	Prior to issuance of the Certificate of Occupancy for the 10 th inventory home
Phase 3: Remove and replace the curb and gutter at the locations described in Exhibit "C"	Prior to issuance of the Certificate of Occupancy for the 15 th inventory home
Phase 4: Install landscaping in retention basin #2 along south perimeter of Tract 31698	Prior to issuance of 25 th Certificate of Occupancy for new homes on residential lots
Phase 5: Completion of sidewalk, electrical utility transformers, street striping, and speed bumps on streets south of Calle Segovia	As needed for final inspections of new homes, but all phase 5 improvements to be completed prior to issuance of 50 th Certificate of Occupancy for new homes on residential lots

The Covered Improvements are described in greater detail on Exhibits “B” and “C” attached hereto and incorporated herein by this reference. The Covered Improvements shall be completed in accordance with accepted City standards and in accordance with the conditions of approval applicable to Tract No. 31698 no later than one (1) year after full execution of this Agreement. The City agrees that provided the Covered Improvements are completed within the times specified above to City standards and specifications as determined by the City Engineer, in his or her sole discretion, which shall not be unreasonably withheld, and all other applicable permits and approvals have been obtained, the completed residences have passed their final inspection and all related fees have been paid, the City will not withhold certificates of occupancy for any completed residence within the Pathfinder Property based upon a lack of Public Improvements.

B. Reactivation of Building Permit Schedule:

- Reactivate six (6) building permits immediately;
- Reactivate an additional ten (10) building permits upon completion of Retention Basin “A” at the main entry on Via Valencia;
- Reactivate an additional seven (7) building permits when Pathfinder opens Via Merida to public access and a wind fence is installed around the vacant lots 76-80 and 98-103 located on Paseo Barcelona and the replacement of the curb and gutter described in Exhibit “C” is complete.

2. **REIMBURSEMENT FOR PUBLIC IMPROVEMENTS.** Pursuant to the Reimbursement Agreement entered into between City and CDP II Van Buren, LLC, for Tract 34434 which is adjacent to the Map, City paid 50% of required landscaped median improvements on Avenue 50 and 75% of required traffic signal improvements at the intersection of Avenue 50 and Van Buren Street that the legal owner of the Map was required to build and complete pursuant to the conditions of approval for the Map, in the amount of \$99,451 and \$59,107, respectively. Pathfinder agrees to reimburse the City for landscaped median improvements and for traffic signal improvements as follows:

- Landscape Median Improvements - \$60,581.85 (The lineal footage along public street fronting the subject property (667 feet) divided by the lineal footage along the public street for all the public improvements required hereunder (1,460 feet) multiplied by \$198,902 multiplied by 66.67%, Pathfinder’s percentage ownership of Tract 31698;

- Traffic Signal Improvements - \$39,406 (\$59,107 multiplied by 66.67% or Pathfinder's percentage ownership of Tract 31698).

Pathfinder shall reimburse the City for these public improvements on a prorated basis (Landscape Median Improvement \$1,211.64/unit and Traffic Signal Improvements \$788.12/unit) at the time building permits are issued for each of the 50 (fifty) new dwelling units on the Map.

3. **TERM.** This Agreement shall remain in effect for a period of ten (10) years from the date of this Agreement.
4. **ASSIGNMENT.** Pathfinder shall have the right to assign its rights and benefits under the terms of this Agreement with the express written consent of the City, which consent shall not be unreasonably withheld, to any successors, and assigns, and all other persons or entities acquiring all or any portion of the Project, or any interest therein, provided however that such assignment must be effected via a written assignment and assumption whereby Pathfinder specifically assigns and the assignee specifically assumes all of the Pathfinder's rights and responsibilities hereunder. City hereby reserves the right to request financial and operational information from all successors and assignees which will enable the City to evaluate the financial and operational capacity of said successors and assignees to complete the residential project on the Pathfinder Property.
5. **RELATIONSHIP OF PARTIES.** It is specifically understood and agreed by and between the parties hereto that the development of the Pathfinder Property is a private development and that neither party is acting as the agent of the other in any respect hereunder. The City and Pathfinder also hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making the City and Pathfinder joint venturers or partners.
6. **NO THIRD PARTY BENEFICIARIES.** The only parties to this Agreement are Pathfinder and the City. There are no third party beneficiaries and this Agreement is not intended, and shall not be construed, to benefit, or be enforceable by any other person whatsoever.
7. **SEVERABILITY.** If any term, provision, covenant or condition of this Agreement is repealed by referendum or is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions, if any, of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.
8. **SINGULAR AND PLURAL; GENDER; AND PERSON.** Except where the context requires otherwise, the singular of any word shall include the plural and vice versa, and pronouns inferring the masculine gender shall include the

feminine gender and neuter, and vice versa, and a reference to “person” shall include, in addition to a natural person, any governmental entity and any partnership, corporation, joint venture or any other form of business entity.

9. **TIME IS OF THE ESSENCE.** Time is of the essence of this Agreement and of each and every term and condition hereof.
10. **EVENTS OF DEFAULT.** Subject to any extensions of time by mutual consent in writing, the failure or unreasonable delay by either party to perform any material term or provision of this Agreement for a period of ten (10) days after the dispatch of a written notice of default from the other party shall constitute a default under this Agreement. If the nature of the alleged default is such that it cannot reasonably be cured within such 10- day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period. Any Notice of Default given hereunder shall specify in detail the nature of the alleged Event of Default and the manner in which such Event of Default may be satisfactorily cured in accordance with the terms and conditions of this Agreement.
11. **GENERAL DEFAULT REMEDIES.** After notice and expiration of the 10- day period without cure, the non-defaulting party shall have such rights and remedies against the defaulting party as it may have at law or in equity, including, but not limited to, the right to terminate this Agreement or seek mandamus, specific performance, injunctive or declaratory relief. Any rights or remedies available to non-defaulting party under this Agreement and any other rights or remedies that such party may have at law or in equity upon a default by the other party under this Agreement shall be distinct and separate, providing the non-defaulting party with cumulative rights and remedies. None of such rights or remedies, whether or not exercised by the non-defaulting party, shall be deemed to exclude any other rights or remedies available to the non-defaulting party. The non-defaulting party may, in its discretion, exercise any and all of its rights and remedies, at once or in succession, at such time or times as the non-defaulting party considers appropriate.
12. **LEGAL ACTION; ATTORNEYS’ FEES.** Either party may, in addition to any other rights or remedies, institute legal action to cure, correct or remedy a default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation hereof, or enforce by specific performance the obligations and rights of the parties hereto. The prevailing party in any such action shall be entitled to its reasonable attorneys’ fees and costs to be paid by the losing party.
13. **WAIVER.** All waivers must be in writing to be effective or binding upon the waiving party, and no waiver shall be implied from any omission by a party to take any action with respect to an Event of Default. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party shall not constitute waiver of such party’s right to demand strict

compliance by the other party in the future. In addition, no express written waiver of any Event of Default shall affect any other Event of Default, or cover any other period of time specified in such express waiver.

- 14. **AMENDMENTS.** This Agreement may be amended from time to time by mutual written consent of the original parties or their successors in interest.
- 15. **AMBIGUITIES OR UNCERTAINTIES.** The parties hereto have mutually negotiated the terms and conditions of this Agreement and each party received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions contained herein. As such, this Agreement is a product of the joint drafting efforts of both parties and neither party shall be deemed to have solely or independently prepared or framed this Agreement. Therefore, any ambiguities or uncertainties are not to be construed against or in favor of either party.
- 16. **APPLICABLE LAW.** This Agreement shall be construed and enforced in accordance with the laws of the State of California.
- 17. **VENUE.** In the event that suit is brought by either party to this Agreement, venue shall be exclusively vested in the State courts of the County of Riverside, California or where appropriate, in the United States District Court, Southern District of California, Riverside, California.
- 18. **NOTICES.** Any notice or communication required hereunder between City or Pathfinder shall be in writing, and may be given either personally or by registered mail, return-receipt requested. Notice, whether given by registered mail or personal delivery, shall be deemed to have been given and received on the actual receipt by any of the addresses designated below as the party to whom notices are to be sent. Any party hereto may at any time, upon written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

To City: City of Coachella
1515 Sixth Street
Coachella, CA 92236
Attention: City Manager

With a copy to: Carlos Campos
Best Best & Krieger
74760 Highway 111, Suite 200
Indian Wells, CA 92210

To Pathfinder:

Pathfinder Coachella Homes/
Pathfinder Coachella Lots
4350 La Jolla Village Drive, Suite 410
San Diego, CA 92122

19. **ENTIRE AGREEMENT.** This Agreement and the Exhibits attached hereto, contain all the representations and the entire agreement between the parties with respect to the subject matter hereof; any prior correspondence, memoranda, agreements, warranties or representations are superseded in total by those documents except as otherwise specified.
20. **COUNTERPARTS.** This Agreement May be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.
21. **DISCLOSURES TO BUYERS.** In the event that Pathfinder contracts to sell all or any portion of the Pathfinder Property before completion of the Covered Improvements, Pathfinder agrees that it shall provide the buyer or buyers with a written disclosure advising them that certificates of occupancy are subject to Pathfinder meeting certain contractually agreed upon performance standards for construction of public improvements, as described herein, and as such, Pathfinder and not the City is responsible for any delays in the closing of sales due to failure of Pathfinder to complete the contracted work for Covered Improvements.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first hereinabove written.

CITY OF COACHELLA

By: 
David R. Garcia, City Manager

Dated: JUL 25 2012

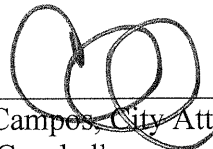
ATTEST:


City Clerk


PATHFINDER COACHELLA HOMES

By: Pathfinder Partners Realty Ventures, LLC

APPROVED AS TO FORM


Carlos Campos, City Attorney
City of Coachella

Its: Manager
By: Pathfinder Partners LLC
its manager


By: Mitchell Siegler, manager

PATHFINDER COACHELLA LOTS

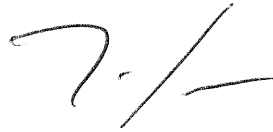
A Delaware Limited Liability Company

By: Pathfinder Partners Realty Ventures, LLC

Its: manager

Dated: July 05 2012

By: Pathfinder Partners, LLC
Its manager

A handwritten signature in black ink, appearing to read "M. Siegler". The signature is stylized with a large, sweeping initial "M" and a horizontal line extending to the right.

By: Mitchell Siegler, manager

EXHIBIT "A"

LEGAL DESCRIPTION

PATHFINDER COACHELLA HOMES, LLC

The land referred to herein is situated in the State of California County of Riverside, City of Coachella and described as follows:

Lots 2 through 5, 49 through 55, 67 through 75, 104 and 105 of Tract No. 31698, as shown by map on file in Book 398 Page(s) 47 through 52, inclusive, of Maps, Records of Riverside County, California.

PATHFINDER COACHELLA LOTS, LLC

The land referred to herein is situated in the State of California County of Riverside, City of Coachella and described as follows:

Lots 1, 6, 7, 19 through 25, 56 through 66, 76 through 103 and 108 of Tract No. 31698, as shown by map on file in Book 398 Page(s) 47 through 52, inclusive, of Maps, Records of Riverside County, California.

EXHIBIT B

**Valencia
Site Improvement Plan
October 28, 2010**

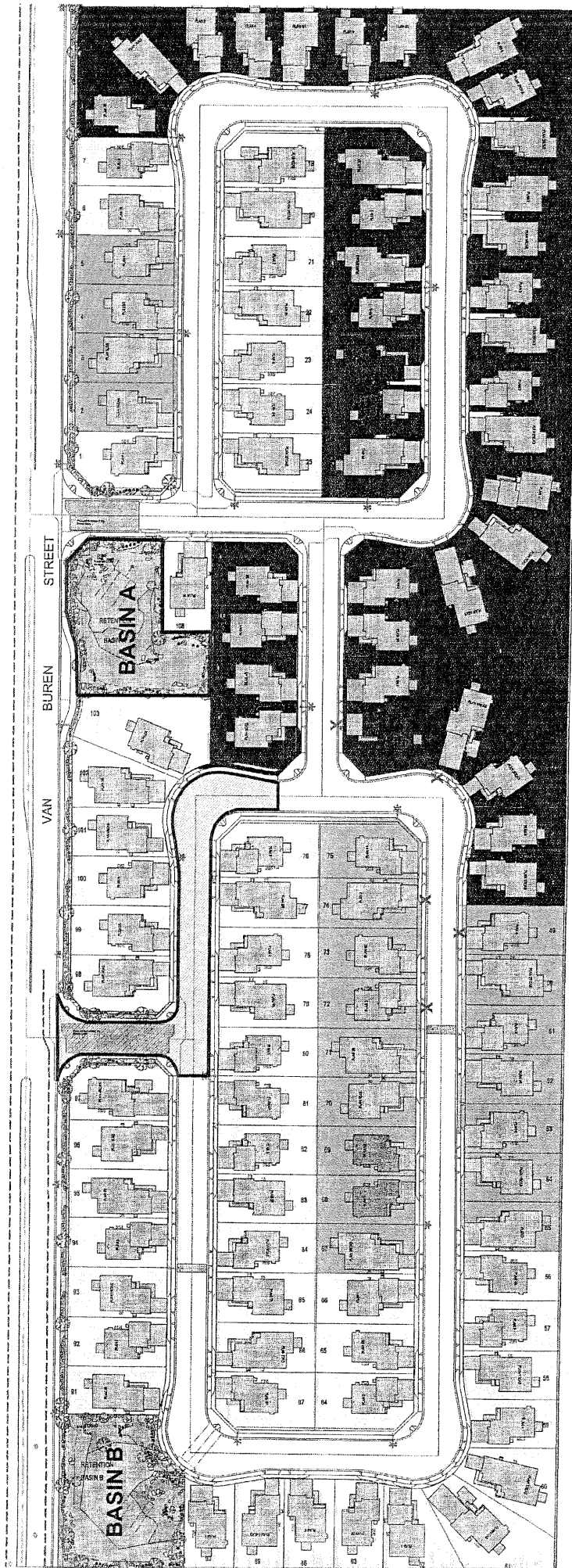


Exhibit "B"

X Phase 3

Phase 2

Phase 1

FUTURE CONSTRUCTION

CURRENT CONSTRUCTION

COMPLETE CONSTRUCTION

EXHIBIT C

Description of Work to be Completed for the 22 Inventory Homes

Phase 1 – Landscaping at Retention Basin “A”

- Complete landscaping of retention basin “A” at the main entry on Via Valencia.
 - Install irrigation, plant material and ground cover, per revised landscape plan prepared by Ray Martin Design dated October 29, 2010.
 - Install pilasters and tubular steel fencing per approved landscape plan dated September 29, 2006.
- This item shall be completed prior to the issuance of Certificate of Occupancy for the 6th inventory home.
 - Prior to completion of this item the City shall reactivate 6 building permits for the inventory homes.
 - Upon completion of this item the City shall reactivate an additional 10 building permits for the inventory homes.

Phase 2 – Open Via Merida to Public Access

- Open Via Merida to public access
 - Remove entry barricade at Via Merida.
 - Install wind fence around lots 76-80 and 98-103 on Paseo Barcelona.
 - Barricaded entry to Paseo Barcelona between lots 81 and 97.
- This item shall be completed prior to the issuance of a Certificate of Occupancy for the 10th inventory home.

Phase 3 – Remove Replace Concrete

- Remove and replace curb and gutter at the following locations.
 - Lot 44, Calle Marabella (4 lineal feet)
 - Lot 45, Calle Segovia (4 lineal feet)
 - Lot 49, Paseo Cadiz (4 lineal feet)
 - Lot 72, Paseo Cadiz (5 lineal feet)
 - Lot 44, Paseo Cadiz (4 lineal feet)
- This item shall be completed prior to issuance of a Certificate of Occupancy for the 15th inventory home.
 - Upon completion of this item the City shall reactivate the final 6 building permits for the inventory homes.