

RECORDING REQUESTED BY AND
WHEN RECORDED, RETURN TO:

CITY CLERK'S OFFICE
CITY OF REDLANDS
P.O. BOX 3005
REDLANDS, CA 92373

Recorded in Official Records, County of San Bernardino



LARRY WALKER
Auditor/Controller – Recorder

12/27/2005
10:47 AM
DTH

822 First American Title

Doc#: 2005 – 0976322



Titles:	1	Pages:	26
Fees			0.00
Taxes			0.00
Other			0.00
PAID			\$0.00

FEES NOT REQUIRED
PER GOVERNMENT CODE
SECTION 6103

NOVATION AGREEMENT SUBSTITUTING PARTIES

DECEMBER 20, 2005

NOVATION AGREEMENT SUBSTITUTING PARTIES

This Novation Agreement is made this 20th day of December, 2005, by and among Ronald L. Kinder, Trustee of the Kinder Family Trust ("the Trust"), Wistara Properties ("Wistara") Terracina Medical Condo Dev. LLC ("Terracina") and the City of Redlands, a municipal corporation (hereinafter "City").

RECITALS

- A. On December 6, 2005, the Trust, Wistara and City entered into a Subdivision Improvement Agreement ("SIA") that obligated the Trust and Wistara to construct certain improvements in connection with City's approval of Parcel Map No. 17833.
- B. The parties desire that the Trust and Wistara be discharged and released from the performance of the obligations under the SIA and that Terracina perform the obligations and be bound by the terms of the SIA.

AGREEMENT

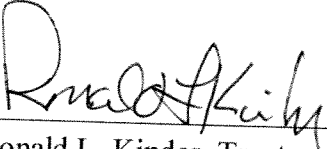
In consideration of the mutual promises contained in this Novation Agreement, the parties agree as follows:

- 1. Terracina shall perform the obligations of the Trust and Wistara that are enumerated in the SIA, and Terracina agrees to be bound by all the terms of the SIA in every way as if an original party to the Subdivision Improvement Agreement.
- 2. City releases the Trust and Wistara from all claims for any liability that has arisen or may have arisen with respect to the SIA. City accepts the liability of Terracina in lieu of the liability of the Trust and Wistara. City shall be bound by the terms of the SIA in every way as if Terracina were named in the SIA in place of the Trust and Wistara.
- 3. This Novation Agreement supersedes the SIA between the Trust, Wistara and City, and all the rights and obligations under the SIA are completely extinguished. A copy of the SIA is attached hereto and incorporated herein by reference to define the extent of Terracina's obligations under this Novation Agreement and the SIA.

4. The Trust, Wistara, Terracina and City, consent to all the provisions of this Novation Agreement.

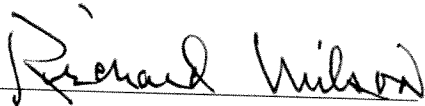
Executed at Redlands, California on the date first written above.

TRUST



Ronald L. Kinder, Trustee
of the Kinder Family Trust

WISTARA



Richard Wilson, General Partner
Wistara Properties

TERRACINA



Edward Anderson, Manager
Terracina Medical Condo Dev. LLC

CITY OF REDLANDS



Mayor, City of Redlands
Jon Harrison

ATTEST:



City Clerk, Lorrie Poyzer

ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO) SS
CITY OF REDLANDS)

By the authority granted under Chapter 4, Article 3, Section 1181, of the California Civil Code, and Chapter 2, Division 3, Section 40814, of the California Government Code, on December 20, 2005, before me, Teresa Ballinger, Assistant City Clerk, on behalf of Lorrie Poyzer, City Clerk of the City of Redlands, California, personally appeared Jon Harrison and Lorrie Poyzer { X } personally known to me - or - { } proved to me on the basis of satisfactory evidence to be the persons whose names) are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.



WITNESS my hand and official seal.

LORRIE POYZER, CITY CLERK

By: Teresa Ballinger
Teresa Ballinger, Assistant City Clerk
(909)798-7531

~~~~~  
**CAPACITY CLAIMED BY SIGNER(S)**

- ☐ **Individual(s) signing for oneself/themselves**  
☐ **Corporate Officer(s)**  
    Title(s) \_\_\_\_\_  
    Company \_\_\_\_\_  
☐ **Partner(s)**  
    Partnership \_\_\_\_\_  
☐ **Attorney-In-Fact**  
    Principal(s) \_\_\_\_\_  
☐ **Trustee(s)**  
    Trust \_\_\_\_\_  
☒ **Other**  
    Title(s):   Mayor and City Clerk  
    Entity Represented:   City of Redlands, a municipal corporation

~~~~~  
THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED BELOW:

Title or Type of Document: Novation Agreement Substituting Parties

Date of Document: December 20, 2005

Signer(s) Other Than Named Above: Kinder Family Trust, Ronald L. Kinder, Trustee; Wistara Properties, Richard Wilson, General Partner; Terracina Medical Condo Dev. LLC, Edward Anderson, Manager

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

STATE OF CALIFORNIA

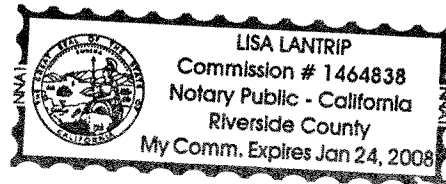
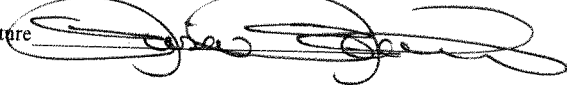
COUNTY OF RIVERSIDE

} SS

On DECEMBER 2, 2005 before me, LISA LANTRIP, NOTARY PUBLIC
personally appeared EDWARD ANDERSON
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument
and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument
the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature



This area for official notarial seal.

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document: NOVATION AGREEMENT

Document Date: N/A Number of Pages: 2

Signer(s) other than named above RONALD L. KINDER / RICHARD WILSON

CAPACITY(IES) CLAIMED BY SIGNER(S)

☒ INDIVIDUAL

☐ CORPORATE OFFICER(S)
TITLE(S) _____

☐ PARTNER(S)- ☐ LIMITED
☐ GENERAL

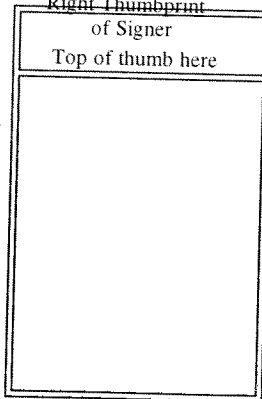
☐ ATTORNEY-IN-FACT

☐ TRUSTEE(S)

☐ GUARDIAN OR CONSERVATOR

☐ OTHER _____

Right Thumbprint
of Signer
Top of thumb here



☐ INDIVIDUAL

☐ CORPORATE OFFICER(S)
TITLE(S) _____

☐ PARTNER(S)- ☐ LIMITED
☐ GENERAL

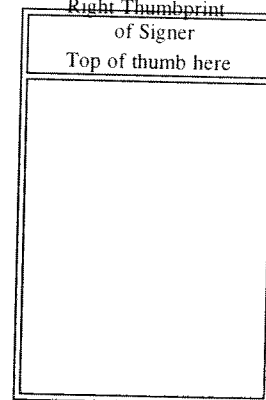
☐ ATTORNEY-IN-FACT

☐ TRUSTEE(S)

☐ GUARDIAN OR CONSERVATOR

☐ OTHER _____

Right Thumbprint
of Signer
Top of thumb here



SIGNER IS REPRESENTING:

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

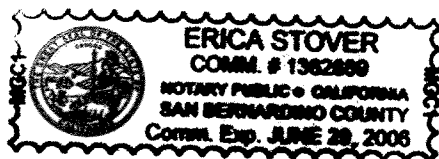
County of San Bernardino } ss.

On Dec 1st, 2005 before me, Erica Stover, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Richard Wilson

Name(s) of Signer(s)

☒ personally known to me
☐ proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Erica Stover
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Novation Agreement

Document Date: 20th of Dec., 2005

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

GOVERNMENT CODE 27361.7

I CERTIFY UNDER PENALTY THAT THE NOTARY SEAL ON THE DOCUMENT TO WHICH THIS STATEMENT IS ATTACHED READS AS FOLLOWS:

NAME OF NOTARY: ERICA STOVER
DATE COMMISSION EXPIRES: JUNE 29, 2006
COUNTY WHERE BOND IS FILED: SAN BERNARDINO COUNTY
COMMISSION NUMBER: 1362889
VENDOR NO: MGC1
PLACE OF EXECUTION: RIVERSIDE, CALIFORNIA
DATE: December 21, 2005

SIGNATURE:


FIRST AMERICAN TITLE INSURANCE COMPANY

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

STATE OF CALIFORNIA }
COUNTY OF Riverside } SS

On 12/2/05 before me, Sandi Winger, Notary Public
personally appeared Ronald L. Kinder

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Sandi Winger



This area for official notarial seal.

OPTIONAL

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DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document: Novation Agreement

Document Date: 12/20/05 Number of Pages: 2

Signer(s) other than named above _____

CAPACITY(IES) CLAIMED BY SIGNER(S)

- ☐ INDIVIDUAL
- ☐ CORPORATE OFFICER(S)
TITLE(S) _____
- ☐ PARTNER(S)- ☐ LIMITED
 ☐ GENERAL
- ☐ ATTORNEY-IN-FACT
- ☐ TRUSTEE(S)
- ☐ GUARDIAN OR CONSERVATOR
- ☐ OTHER _____

Right Thumbprint of Signer
Top of thumb here

- ☐ INDIVIDUAL
- ☐ CORPORATE OFFICER(S)
TITLE(S) _____
- ☐ PARTNER(S)- ☐ LIMITED
 ☐ GENERAL
- ☐ ATTORNEY-IN-FACT
- ☐ TRUSTEE(S)
- ☐ GUARDIAN OR CONSERVATOR
- ☐ OTHER _____

Right Thumbprint of Signer
Top of thumb here

SIGNER IS REPRESENTING:

RECORDING REQUESTED BY:
PUBLIC WORKS DEPARTMENT
CITY OF REDLANDS

WHEN RECORDED RETURN TO:
CITY CLERK'S OFFICE
CITY OF REDLANDS
P.O. BOX 3005
REDLANDS, CA 92373

FEES NOT REQUIRED
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SECTION 6103

Recorded in Official Records, County of San Bernardino



LARRY WALKER
Auditor/Controller - Recorder

822 First American Title

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10:47 AM
DTH

Doc#: 2005-0976321



Titles:	1	Pages:	18
Fee			59.00
Taxes			0.00
Other			0.00
PAID			\$59.00

(THIS SPACE FOR RECORDER'S USE ONLY)

CITY OF REDLANDS

SUBDIVISION IMPROVEMENT AGREEMENT

THIS AGREEMENT is made this 6th day of December, 2005 by and between the City of Redlands, a municipal corporation, hereinafter referred to as "City," and Wistara Properties, a general partnership and (Ronald L. Kinder and Lorelei C. Kinder), Trustees of the Kinder Family Trust, hereinafter referred to as "Subdivider" and Keeton Construction Company, hereinafter referred to as "Developer." The City, Subdivider and Developer are sometimes herein individually referred to as a "Party," and collectively, as the "Parties."

RECITALS

WHEREAS, Subdivider is the owner, and Developer is the authorized developer, of property located in the City of Redlands known as Parcel No. 17833 (the "Subdivision"), for which Subdivider is obligated to construct certain improvements (the "Improvements") as a condition of approval of the Subdivision; and

WHEREAS, City desires to ensure that the Improvements will be constructed in a good and workmanlike manner and in accordance with the laws of City; and

WHEREAS, Subdivider acknowledges that it is familiar with the provisions of the Redlands Municipal Code and the State Subdivision Map Act (Government Code sections 66410 et seq.) and agrees to comply therewith; and

WHEREAS, a final map for the Subdivision has been prepared pursuant to the Redlands Municipal Code and the State Subdivision Map Act, and has been filed by Subdivider for consideration by the City Council of City;

NOW, THEREFORE, in fulfillment of the conditions of approval for the Subdivision, and in consideration of the mutual promises contained herein, the Parties hereto agree as follows:

1. Definition and Ownership of Improvements. The Improvements include but are not limited to grading, paving, construction of curbs and gutters, storm drains and sanitary sewers, water lines, utilities, street lights and all appurtenant facilities associated with the Subdivision that are shown in the plans, profiles and specifications (the "Improvement Plans") that have been prepared by Subdivider's engineer and approved by City and which are attached hereto as Exhibit "A." All Improvements constructed or installed pursuant to this Agreement shall become the property of City, without payment therefor, upon acceptance of the Improvements by City.
2. Time for Completion. Construction of the Improvements shall be completed within twelve (12) months from the Effective Date of this Agreement. In the event Subdivider fails to complete construction of the Improvements by such date, City may require Subdivider's surety to complete the Improvements, or City may complete construction of the Improvements and recoup its expenses for such work from Subdivider, or Subdivider's surety.
3. Subdivider's Obligations to Construct Improvements. Subdivider shall:
 - a. Complete the Improvements in conformance with the Improvement Plans; provided, however, that the Improvements shall not be deemed to be completed until accepted by the City as provided in Section 17 hereof.
 - b. Furnish the materials, supplies and equipment necessary for the Improvements.
 - c. Acquire and dedicate all easements and other interests in real property necessary for construction and installation of the Improvements, or pay the cost of acquisition for such property interests incurred by City. All such easements and other interests in real property shall be free and clear of liens and encumbrances, except those liens and encumbrances acceptable to City. Subdivider's obligations with regard to any acquisition by City of off-site easements and other interests in real property shall be the subject of a separate agreement between Subdivider and City.
 - d. Install all Improvement monuments required by law prior to acceptance of the Improvements by City.
 - e. Install permanent street name signs, conforming to City standards, before acceptance of the Improvements by City.

4. Acquisition and Dedication of Property. If any of the Improvements are to be constructed or installed on property not owned by City or Subdivider, no construction or installation shall be commenced on such property before:

a. An offer of dedication to City of appropriate easements or other interests in such property is accepted by City, and appropriate authorization from the property owner to allow construction or installation of the Improvements has been received, or

b. The issuance by a court of competent jurisdiction pursuant to the State Eminent Domain Law of an order of possession of such property.

Nothing in this Section shall be construed as authorizing or granting an extension of time to construct the Improvements to Subdivider.

5. Security. Subdivider shall furnish to City good and sufficient security, as required by Government Code Sections 66499 through 66499.10 and on forms approved by City, for the purposes and in the amounts as follows:

a. To assure faithful performance of the construction and installation obligations described in this Agreement, a bond in the amount of 100% of the estimated cost of the Improvements; and

b. To secure payment to any contractor, subcontractor, person renting equipment or furnishing labor and materials for the Improvements, a bond in the amount of 100% of the estimated cost of the Improvements; and

c. To guarantee the Improvements for a period of one (1) year following acceptance thereof by City against any defective work done or materials, delivery of good and sufficient security to City in the additional amount of 10% of the estimated cost of the Improvements; and

d. Subdivider shall also furnish to City good and sufficient security in the amount of 100% of the estimated cost of setting subdivision monuments for a period of one year plus thirty (30) days from acceptance of the Improvements by City.

The security documents shall be kept on file with the City Clerk. If any security is replaced by another approved security, the replacement shall: (1) comply with all the requirements for security in this Agreement, (2) be provided to the City Engineer to be filed with the City Clerk, and upon filing (3) be deemed to have been made a part of and incorporated into this Agreement. Upon provision of a replacement security with the City Engineer and filing of a replacement security with the City Clerk, the former security may be released.

6. Alterations to Improvement Plans.

a. Any changes, alterations or additions to the Improvement Plans, not exceeding 10% of the original estimated cost of the Improvements, which are mutually agreed to by City and Subdivider shall not relieve the surety of any obligations undertaken in any security provided for faithful performance of this Agreement. In the event such changes, alterations or additions exceed 10% of the original estimated cost of the Improvements, Subdivider shall provide additional security for faithful performance as required by Section 5 of this Agreement for 100% of the total estimated cost of the Improvements as changed, altered or amended.

b. Subdivider shall construct the Improvements in accordance with City standards in effect at the Effective Date of this Agreement; provided, however, City reserves the right to modify such standards when necessary to protect the public safety or welfare or comply with applicable Federal, State or City law. If Subdivider requests and is granted an extension of time for completion of the Improvements, City may apply the standards in effect at the time of the extension.

7. Inspection. Subdivider shall at all times maintain proper facilities and safe access for inspection of the Improvements by City inspectors. Upon completion of the Improvements, Subdivider may request final inspection by the City Engineer. If the City Engineer determines that the work has been completed in accordance with this Agreement, then the City Engineer shall certify the completion of the Improvements. No Improvements shall be accepted until the Improvements have been inspected and completed in accordance with the Improvement Plans. When applicable law requires an inspection to be made by City at a particular stage of the work of constructing and installing the Improvements, City shall be given timely notice of Subdivider's readiness for such inspection and Subdivider shall not proceed with additional work until the inspection has been made and the work approved. Subdivider shall pay all costs of City's plan checking, inspection and certification of the Improvements.

8. Release of Securities. The securities required by this Agreement shall be released as follows:

a. Security given for faithful performance of any act, obligation, work or agreement shall be released upon the completion and acceptance of Improvements, subject to the provisions of subsection b., below.

b. The City Engineer may release a portion of the security given for faithful performance of work as such work progresses upon application therefor by Subdivider; provided, however, that no such release shall be for an amount less than 25% of the total security given for faithful performance of the work and that the security shall not be reduced to an amount less than 50% of the total amount given for faithful performance until final completion and acceptance of the Improvements. In no event shall the City Engineer authorize any release of the security which would reduce the security to an amount below 125% of that required to guarantee completion of the Improvements and any other obligation imposed by this Agreement.

c. Security given to secure payment to the contractor, subcontractors and to persons furnishing labor, materials or equipment shall, at six (6) months after the completion and acceptance of the work, be reduced to an amount equal to no less than 125% of the total claimed by all claimants for whom liens have been filed and of which notice has been given to City, plus an amount reasonably determined by the City Engineer to be required to ensure the performance of any other obligations secured by the security. The balance of the security shall be released upon the settlement of all claims and obligations for which the security was given.

d. No security given for warranty of work shall be released until the expiration of the warranty period and until any claims filed during the warranty period have been settled.

e. City may retain, from any security released, an amount to sufficiently cover costs and reasonable expenses and fees, including reasonable attorneys' fees.

9. Injury to Improvements, Public Property or Public Utilities Facilities.

Subdivider shall replace or repair, or have replaced or repaired, all Improvements, public utility facilities and surveying or subdivision monuments which are destroyed or damaged as a result of any work performed pursuant to this Agreement. Subdivider shall bear the entire cost of replacement or repairs of any and all public or public utility property damaged or destroyed by reason of any work done under this Agreement, whether such property is owned by the United States or any agency thereof, or the State of California, or any agency or political subdivision thereof, or by City or any public or private utility corporation or by any combination of such owners. Any repair or replacement shall be to the satisfaction, and subject to the approval, of the City Engineer.

Until such time as the Improvements are accepted by City, Subdivider shall be responsible for, and bear the risk of loss to, the Improvements. City shall not, nor shall any elected official, officer or employee thereof, be liable to or responsible for any accident, loss or damage, regardless of cause, happening or occurring to the Improvements prior to the completion and acceptance of the Improvements. All such risks shall be the responsibility of and are hereby assumed by Subdivider.

10. Permits. Subdivider shall at Subdivider's expense, obtain all necessary permits and licenses for the construction and installation of the improvements, and give all necessary notices and pay all fees and taxes required by law.

11. Default of Subdivider.

a. Default of Subdivider shall include, but not be limited to:

- (1) Subdivider's failure to timely commence construction of Improvements;
- (2) Subdivider's failure to timely complete construction of the Improvements;
- (3) Subdivider's failure to timely cure any defect in the Improvements;
- (4) Subdivider's insolvency, appointment of a receiver, or the filing of any petition in bankruptcy, either voluntary or involuntary, which Subdivider fails to discharge within 30 days.
- (5) The commencement of a foreclosure action against the Subdivision or a portion thereof, or any conveyance in lieu or in avoidance of foreclosure; or
- (6) Subdivider's failure to perform any other obligation under this Agreement.

b. City reserves to itself all remedies available to it at law or in equity for breach of Subdivider's obligations under this Agreement. City shall have the right, subject to this Section, to draw upon or utilize the appropriate security to mitigate City's damages in the event of default by Subdivider. The right of City to draw upon or utilize the security is additional to and not in lieu of any other remedy available to City. The Parties agree that the estimated costs and security amounts may not reflect the actual cost of construction or installation of the Improvements and, therefore, City's damages for Subdivider's default shall be measured by the cost of completing the Improvements.

In the event of Subdivider's default under this Agreement, Subdivider authorizes City to perform such obligation twenty (20) days after mailing written notice of default to Subdivider and Subdivider's surety, and agrees to pay the entire cost of such performance by City.

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 of damages occasioned City thereby. In such event, City, without liability for so doing, may take possession of, and utilize in completing the work, such materials, appliances, plants and other property belonging to Subdivider as may be on the site of the work and necessary for performance of the work.

c. Failure of Subdivider to comply with the terms of this Agreement shall constitute consent to the filing by City of a notice of violation against all lots within the Subdivision, and to rescind the approval or otherwise revert the Subdivision to acreage. The remedy provided by this subsection is in addition to, and not in lieu of, other remedies available to City. Subdivider agrees that the choice of remedy or remedies for Subdivider's breach shall be in the sole discretion of City.

d. In the event that Subdivider fails to perform any obligation hereunder, Subdivider shall pay all costs and expenses incurred by City in securing performance of such obligation, including but not limited to fees and charges of architects, engineers, attorneys other professionals and court costs.

e. The failure of City to take enforcement action with respect to a default, or to declare a breach, shall not be construed as a waiver of that default or breach or any subsequent default or breach of Subdivider.

12. Warranty. Subdivider shall guarantee the work done pursuant to this Agreement for a period of one (1) year after acceptance of Improvements by the City against any defective work or labor done or defective materials furnished. If within the warranty period any work or the Improvements, or part of any work or the Improvements, furnished, installed or constructed by Subdivider, fails to fulfill any of the requirements of the Improvement Plans, Subdivider shall without delay and without cost to City repair or replace or reconstruct any defective or otherwise unsatisfactory part or parts of the work or Improvements. If Subdivider fails to act promptly in accordance with the requirements of this Section, Subdivider hereby authorizes City, at City's option to perform the work twenty (20) days after mailing written notice of default to Subdivider and to Subdivider's surety, and Subdivider shall pay the cost of such work by City. Should the City determine that protection of the public health, safety or welfare requires repairs or replacements to be made before Subdivider can be notified, City may, in its sole discretion, make the necessary repair or replacement or perform the necessary work and Subdivider shall pay to City the cost of such repairs.

13. Subdivider Not Agent or Employee of City. Neither Subdivider nor Subdivider's agents, contractors or subcontractors are or shall be considered to be agents or employees of City in connection with the performance of Subdivider's obligations under this Agreement.

14. Environmental Warranty. Prior to the acceptance of any property dedications or the Improvements by City, Subdivider shall certify and warrant that neither the property to be dedicated nor Subdivider are in violation of any environmental law, and that neither the property to be dedicated nor the Subdivider are subject to any existing, pending or threatened investigation by any federal, state or local governmental authority under or in connection with environmental law. Neither Subdivider nor any third party shall use, generate, manufacture, produce or release, on, under or about the property to be dedicated, any hazardous substance except in compliance with all applicable environmental laws. Subdivider has not caused or permitted the release of, and has no knowledge of the release or presence of, any hazardous substance on the property to be dedicated or the migration of any hazardous substance from or to any other property adjacent to, or in the vicinity of, the property to be dedicated. Subdivider's prior and present use of the property to be dedicated has not resulted in the release of any hazardous substance on the property to be dedicated. Subdivider shall give prompt written notice to City at the address set forth herein of:

a. Any proceeding or investigation by any federal, state or local governmental authority with respect to the presence of any hazardous substance on the property to be dedicated or the migration thereof from or to any other property adjacent to, or in the vicinity of, the property to be dedicated;

b. Any claims made or threatened by any third party against City or the property to be dedicated relating to any loss or injury resulting from any hazardous substance; and

c. Subdivider's discovery of any occurrence or condition on any property adjoining in the vicinity of the property to be dedicated that could cause the property to be dedicated or any part thereof to be subject to any restrictions on its ownership, occupancy, use for the purpose for which it is intended, transferability or suit under any environmental law.

15. Other Agreements. Nothing contained in this Agreement shall preclude City from expending monies pursuant to agreements concurrently or previously executed between the Parties, or from entering into agreements with other subdividers for the apportionment of costs of water and sewer mains or other improvements pursuant to the provisions of City ordinances providing therefor, nor shall anything in this Agreement commit City to any such apportionment.

16. Subdivider's Obligation to Warn Public During Construction. Until acceptance of the Improvements by City, Subdivider shall give good and adequate warning to the public of each and every dangerous condition extant in the Improvements, and shall take reasonable actions to protect the public from such dangerous condition.

17. Acceptance of Improvements. Acceptance of work on behalf of City shall be made by the City after final completion and inspection of all Improvements sixty (60) days from the date the City Engineer certifies that the work has been completed. Such acceptance shall not constitute a waiver of defects by City.

18. Compliance with Laws. Subdivider and its agents, employees, contractors and subcontractors shall comply with all applicable Federal, State and local law and regulations in the performance of their obligations under this Agreement, including, but not limited to, all applicable Labor Code and prevailing wage laws. Subdivider acknowledges and agrees that City has made Subdivider aware that the construction and installation of the Improvements may constitute a "public work" for purposes of Section 1720 et seq. of the California Labor Code. Subdivider, therefore, acknowledges and agrees that it accepts full responsibility for making the determination of whether or not such construction and installation of the Improvements constitutes a "public work" pursuant to Section 1720 et seq., and Subdivider expressly waives any rights it may have, vis-a-vis City, in making such determination pursuant to Section 1781 of the California Labor Code.

19. Insurance.

a. Subdivider's Insurance to be Primary

All insurance required by this Agreement shall be maintained by Subdivider for the duration of this Agreement and shall be primary with respect to City and non-contributing to any insurance or

self-insurance maintained by City. Subdivider shall provide City with Certificates of Insurance evidencing such insurance prior to commencement of any work pursuant to this Agreement.

b. Worker's Compensation and Employer's Liability.

1. Subdivider shall secure and maintain Worker's Compensation and Employer's Liability insurance in force throughout the duration of the Agreement in an amount which meets the statutory requirement with an insurance carrier acceptable to City. Such insurance shall be primary and non-contributing to any insurance or self-insurance maintained by City. City shall be named as an additional insured and the insurance policy shall include a provision prohibiting cancellation or modification of the policy except upon thirty (30) days prior written notice to City. Certificates of Insurance shall be delivered to City prior to the commencement of any work under this Agreement.

2. Subdivider expressly waives all rights to subrogation against City, its elected officials, officers and employees for losses arising from work performed by Subdivider for City by expressly waiving Subdivider's immunity for injuries to Subdivider's employees and agrees that the obligation to indemnify, defend and hold harmless provided for in this Agreement extends to any claim brought by or on behalf of any employee of Subdivider. This waiver is mutually negotiated by the Parties. This subsection shall not apply to any damage resulting from the sole negligence of City, its agents and employees. To the extent any of the damages referenced herein were caused by or resulted from the concurrent negligence of City, its agents or employees, the obligations provided herein to indemnify, defend and hold harmless is valid and enforceable only to the extent of the negligence of Subdivider, its officers, agents and employees.

c. Comprehensive General Liability Insurance. Subdivider shall secure and maintain in force throughout the duration of the Agreement comprehensive general liability insurance covering all work under this Agreement, including work done by subcontractors, with carriers acceptable to City. Minimum coverage of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate for public liability, property damage and personal injury is required. City shall be named as an additional insured and the insurance policy shall include a provision prohibiting cancellation or modification of such policy except upon thirty (30) days prior written notice to City. Such insurance shall be primary and non-contributing to any insurance or self-insurance maintained by City. Certificates of insurance shall be delivered to City prior to commencement of any work pursuant to this Agreement.

d. Business Auto Liability Insurance. Subdivider shall secure and maintain in force throughout the duration of the Agreement business auto liability coverage, with minimum limits of one million (\$1,000,000) per occurrence, combined single limit for bodily injury liability and property damage liability. This coverage shall include all Subdivider owned vehicles used in connection with the construction and installation of the Improvements the project, hired and non-owned vehicles, and employee non-ownership vehicles. City shall be named as an additional insured and the insurance policy shall include a provision prohibiting cancellation or modification of such policy except upon thirty (30) days prior written notice to City. Such insurance shall be primary and non-contributing to any insurance or self-insurance

maintained by City. Certificates of insurance shall be delivered to City prior to commencement of any work pursuant to this Agreement.

20. Indemnity/Hold Harmless. Neither City, nor any elected official, officer or employee thereof shall be liable for any injury to persons or property occasioned by reasons of the acts or omissions of Subdivider, its agents, employees, contractors and subcontractors in the performance of this Agreement. Subdivider shall protect, defend, indemnify and hold harmless from any and all claims, demands, causes of action, liability or loss of any sort, because of, or arising out of, acts or omissions of Subdivider, its agents, employees, contractors and subcontractors in the performance of this Agreement. This indemnification and agreement to hold harmless shall extend to injuries to persons and damages or taking of property resulting from the design or construction of the Subdivision, and the Improvements as provided herein, and in addition, to adjacent property owners as a consequence of the diversion of waters from the design and construction of public drainage systems, streets and other public improvements. Acceptance by the City of the Improvements shall not constitute an assumption by the City of any responsibility for any damage or taking covered by this Section. City shall not be responsible for the design or construction of the property to be dedicated or the Improvements pursuant to the Improvement Plans, regardless of any negligent action or inaction taken by City in approving the plans or map, unless the particular Improvement design was specifically required by City over written objection by Subdivider submitted to the City Engineer before approval of the particular improvement design, which objection indicated that the particular Improvement design was dangerous or defective and suggested an alternative safe and feasible design.

After acceptance of the Improvements, Subdivider shall remain obligated to eliminate any defect in design or dangerous condition caused by the design or construction defect; however, Subdivider shall not be responsible for routine maintenance. The provisions of this Section shall remain in full force and effect for ten (10) years following the acceptance by the City of the Improvements. It is the intent of this Section that Subdivider shall be responsible for all liability for design and construction of the Improvements installed or work done pursuant to this Agreement and that City shall not be liable for any negligence, nonfeasance, misfeasance or malfeasance in approving, reviewing, checking or inspecting any work or construction.

Subdivider shall reimburse the City for all costs and expenses (including but not limited to fees and charges of architects, engineers, attorneys and other professionals, and court costs) incurred by City in enforcing the provisions of this Section.

21. Personal Nature of Subdivider's Obligations. All of Subdivider's obligations under this Agreement are, and shall remain, the personal obligations of Subdivider notwithstanding any transfer of all or part of the property comprising the Subdivision, and Subdivider shall not be entitled to assign its obligations under this Agreement to any transferee of all or part of the property comprising the Subdivision or any other third party without the express written consent of City.

22. Sale or Disposition of Subdivision. Subdivider may request a novation of this Agreement and a substitution of security. Upon approval of the novation and substitution of securities, Subdivider may request a release or reduction of the securities required by this Agreement. Nothing in the novation shall relieve Subdivider of the obligations under Section 21 for the work or improvement done by Subdivider.

23. Time is of the Essence. Time is of the essence in the performance of this Agreement.

24. Time for Commencement of Work; Time Extensions. Subdivider shall commence construction of the Improvements not later than three (3) months after the Effective Date of this Agreement. In the event good cause exists as determined by the City Engineer, the time for commencement of construction or completion of the Improvements hereunder may be extended for a period or periods not exceeding a total of two additional years. The extension shall be approved in writing by the City Engineer. Any such extension may be granted without notice to Subdivider's surety and shall not affect the validity of this Agreement or release the surety or sureties on any security given for this Agreement. The City Engineer shall be the sole and final judge as to whether or not good cause has been shown to entitle Subdivider to an extension. Delay, other than delay in the commencement of work, resulting from an act of City, act of God, by storm or inclement weather, strikes, boycotts or similar political actions which prevent the conducting of work, which Subdivider could not have reasonably foreseen, and furthermore was not caused by or contributed to by Subdivider, shall constitute good cause for and extension of the time for completion. As a condition of such extension, the City Engineer may require Subdivider to furnish new security guaranteeing performance of this Agreement, as extended, in an increased amount to compensate for any increase in construction costs as determined by the City Engineer.

25. No Vesting of Rights. Performance by Subdivider of this Agreement shall not be construed to vest Subdivider's rights with respect to any change in any zoning or building law.

26. Notices. All notices required under this Agreement shall be in writing and delivered in person or sent by mail, postage prepaid and addressed as provided in this Section. Notice shall be effective on the date it is delivered in person, or, if mailed, on the date of deposit in the United States Mail. Notices shall be addressed as follows unless a written change is filed with City:

Notice to City:	Public Works Director/City Engineer City of Redlands PO Box 3005 Redlands, CA 92373
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Notice to Subdivider:	Wistara Properties c/o Dr. Richard Wilson
-----------------------	--

1730 Canyon Road
Redlands, CA 92373

Ron and Lorelei Kinder
2825 Vista Del Rio
Fallbrook, CA 92028

Notice to Developer: Bruce Keeton
Keeton Construction Company
41635 Enterprise Circle North, Suite A
Temecula, CA 92590

Notice to Surety: Jim Bruner - Private Banking
Bank of America
73-525 El Paseo #2504
Palm Desert, CA 92260

27. Severability. The provisions of this Agreement are severable. If any provision of this Agreement is held invalid by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect unless amended by written agreement of the Parties.

28. Captions. The captions of this Agreement are for convenience and reference only and shall not define, explain, modify, limit, exemplify or aid in the interpretation, construction or meaning of any provision of this Agreement.

29. Attorneys' Fees and Costs. In the event any action is commenced to enforce the terms of this Agreement, the prevailing Party shall, in addition to any costs and other relief, be entitled to recovery of its reasonable attorney's fees, including fees for in-house counsel of the Parties at rates prevailing in San Bernardino County, California.

30. Incorporation of Recitals. The recitals of this Agreement are incorporated herein.

31. Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof. Any amendment of this Agreement shall be in writing and signed by the Parties.

32. Interpretation. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

33. Jurisdiction. Jurisdiction of all disputes relating to this Agreement shall be in the County of San Bernardino, State of California.

IN WITNESS WHEREOF this agreement is executed by the Parties as of the date herein above first written.

SUBDIVIDER

Wistana Properties

By: Richard Wilson
RICHARD WILSON

Title: General Partner
KINDER FAMILY TRUST

BY: Ronald Wilson
RON WILSON

BY: Lorelei Kinder
LORELEI KINDER

DEVELOPER: Keeton Construction

B G Keeton
By: Bruce G. Keeton
Title President

CITY OF REDLANDS

By: Jon Harrison

Mayor Jon Harrison

Attest: Lorrie Poyzer
City Clerk
Lorrie Poyzer

(Notary attachment and proof of authorization
for Subdivider's signatures
required and must be attached)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

STATE OF CALIFORNIA
COUNTY OF

Riverside

} ss

On

11/8/05

before me,

Sandi Winger Notary Public

personally appeared Ronald L. Kinder + Lorelei C. Kinder
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

[Signature]



This area for official notarial seal.

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) other than named above _____

CAPACITY(IES) CLAIMED BY SIGNER(S)

☐ INDIVIDUAL

☐ CORPORATE OFFICER(S)
TITLE(S) _____

☐ PARTNER(S)- ☐ LIMITED
☐ GENERAL

☐ ATTORNEY-IN-FACT

☐ TRUSTEE(S)

☐ GUARDIAN OR CONSERVATOR

☐ OTHER _____

Right Thumbprint
of Signer

Top of thumb here

☐ INDIVIDUAL

☐ CORPORATE OFFICER(S)
TITLE(S) _____

☐ PARTNER(S)- ☐ LIMITED
☐ GENERAL

☐ ATTORNEY-IN-FACT

☐ TRUSTEE(S)

☐ GUARDIAN OR CONSERVATOR

☐ OTHER _____

Right Thumbprint
of Signer

Top of thumb here

SIGNER IS REPRESENTING:

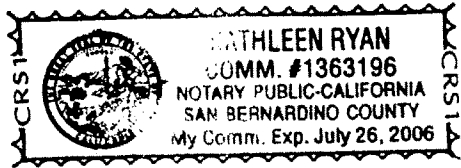
CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

State of California

County of San Bernardino

On Feb 9, 2005 before me Kathleen Ryan, Notary Public
Personally appeared Richard J. Wilson

☐ personally known to me - OR - ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Kathleen Ryan
OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

☒ INDIVIDUAL
☐ CORPORATE OFFICER

Title(s)

☐ PARTNERS ☐ LIMITED
☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

DESCRIPTION OF ATTACHED DOCUMENT

Subdivision Approval Agreement
Title or Type of Document

14
Number of Pages

N/A
Date of Document

SIGNER IS REPRESENTING:

Signer(s) other than Named Above

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Riverside } ss.

On 11-8-05, before me, Linda J. Steed, Notary Public,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Bruce G. Keeton,
Name(s) of Signer(s)

☒ personally known to me

☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

WITNESS my hand and official seal.

Linda J. Steed
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Subdivision Improvement Agreement

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer Is Representing: _____

Signer's Name: _____

- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer Is Representing: _____

ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO) SS
CITY OF REDLANDS)

By the authority granted under Chapter 4, Article 3, Section 1181, of the California Civil Code, and Chapter 2, Division 3, Section 40814, of the California Government Code, on December 6, 2005, before me, Teresa Ballinger, Assistant City Clerk, on behalf of Lorrie Poyzer, City Clerk of the City of Redlands, California, personally appeared Jon Harrison and Lorrie Poyzer { X } personally known to me - or - { } proved to me on the basis of satisfactory evidence to be the persons whose names) are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.



WITNESS my hand and official seal.

LORRIE POYZER, CITY CLERK

By: Teresa Ballinger
Teresa Ballinger, Assistant City Clerk
(909)798-7531

CAPACITY CLAIMED BY SIGNER(S)

☐ Individual(s) signing for oneself/themselves

☐ Corporate Officer(s)

Title(s) _____
Company _____

☐ Partner(s)

Partnership _____

☐ Attorney-In-Fact

Principal(s) _____

☐ Trustee(s)

Trust _____

☒ Other

Title(s): Mayor and City Clerk

Entity Represented: City of Redlands, a municipal corporation

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED BELOW:

Title or Type of Document: Subdivision Improvement Agreement

Date of Document: December 6, 2005

Signer(s) Other Than Named Above: Wistara Properties; Richard Wilson, General Partner
and Keeton Construction; Bruce G. Keeton, President

CITY OF REDLANDS
SUBDIVISION IMPROVEMENT AGREEMENT
EXHIBIT "A"

PARCEL MAP NO. 17833
MINOR SUBDIVISION. 282

The following plans are on file in the office of the Public Works Director (PWD), Municipal Utilities Director (MUD), and Community Development Director (CDD):

<u>Description</u>	<u>Drawing No.</u>	<u>Approval Date</u>	<u>No. of Sheets</u>
Precise Grading Plans	1824-PG	11/29/05	4
Street Improvement Plans (PWD)	1824-ST	11/29/05	1
Street Tree Plan (PWD)	1824-TR	11/29/05	2