

2015-0396585

09/03/2015 02:45 PM Fee: \$ 0.00

Page 1 of 13

Recorded in Official Records
County of Riverside
Peter Aldana
Assessor-County Clerk-Recorder**NO FEE DOCUMENT**Government Code §6103RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**CITY OF MENIFEE**29714 Haun Road
Menifee, California
Attention: City Clerk

					R	A	Exam: 1075		
Page	DA	PCOR	Misc	Long	RFD	1st Pg	Adtl Pg	Cert	CC
13	1								
SIZE	NCOR	SMF	NCHG			NCHG CC			

LIEN AGREEMENT

THIS LIEN AGREEMENT ("Lien Agreement") is made and entered into this 5th day of August, 2015, by and between the CITY OF MENIFEE, a California municipal corporation ("City") and DIAMOND BROTHERS FIVE PARTNERSHIP, LP, a California limited partnership ("Owner").

RECITALS

A. Owner has submitted to the City for its approval, Tract No. 32101, a proposed development comprised of one hundred ninety-seven (197) single family residential homes, one (1) public park, and five (5) open space lots, located in the City of Menifee, County of Riverside, State of California (the "Project").

B. In connection with the Project, Owner has applied to City for approval of a Final Map pursuant to Government Code Section 66434 ("the Subdivision Code") for Final Parcel Map 32101 ("Final Map") for real property located within City, a legal description of which is attached hereto as Exhibit "A" ("Property").

C. The conditions of approval for the Tentative Tract Map for the Property require Owner to construct certain improvements that, upon completion, will be accepted by the City as public improvements ("Public Improvements"). A list of the Public Improvements and an estimate of the costs for the Public Improvements approved by the City Engineer is attached as Exhibit "B" and incorporated herein by this reference.

D. Since Owner will not complete the Public Improvements prior to the approval by City of the Final Map, Owner is required to enter into an agreement with City for the completion of the Public Improvements and the provision of improvement security ("Subdivision Improvement Agreement").

E. California Government Code Section 66499 authorizes the City and Owner to enter into this Lien Agreement in satisfaction of the security obligations contained in the Subdivision Improvement Agreement.

F. City has found and determined that it would not be in the public interest to require the installation of the Public Improvements sooner than two years after recordation of the Final Map.

G. Owner has provided a title insurance policy and current title report to the City from a title company approved by the City and issued within the 60 days prior to the execution of this Lien Agreement that documents that the Owner is the record owner of the Property and the Property is not subject to any mortgages, deeds of trust, or judgment liens.

OPERATIVE PROVISIONS

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

I. Owner Performance and Obligations

A. Owner hereby grants to City, in accordance with the terms and conditions of this Lien Agreement, a lien upon the Property as security for the following obligations of Owner (collectively, the "Obligations"):

- (1) Construction of the Public Improvements specified in Exhibit "B" attached hereto; provided, however, that Owner's obligation hereunder shall extend to the actual cost of the construction of the Public Improvements, notwithstanding that such costs may exceed the estimate set forth in Exhibit "B"; and
- (2) Payment of the balance of the fees or provision of the improvements or services described in the Subdivision Code (collectively, "Fees"), in the amount required in accordance with the Subdivision Code, as determined appropriate by the Director of Public Works.

This Lien secures the Obligations and the remedies provided herein for breach of the Obligations.

B. For so long as title to the property remains subject to this Lien Agreement, Owner shall not: (1) commence work other than grading on any portion of the Public Improvements except as necessary to correct or prevent threats to the public health, safety or general welfare with the consent of the City or (2) sell or permit the sale of any lot shown on the Final Map. Notwithstanding the above, fee title to the entire property encumbered by this Lien Agreement or not less than 50 lots designated on the Final Map per transaction may be sold in the aggregate to a single purchaser, provided that the proposed purchaser, prior to assuming title to the property, executes a new lien agreement or provides such alternative security, as may be required by the City of Menifee and executes a new Subdivision Improvement Agreement with the City.

C. Prior to commencing the installation and/or construction of any portion of the Public Improvements required by the Subdivision Improvement Agreement, Owner shall deposit fees for inspection, tests and other related purposes, and shall substitute other forms of security satisfactory to City in place of this Lien Agreement. Grading of the Property shall not be considered construction of the Public Improvements for the purposes of this Lien Agreement and Owner is not required to substitute other forms of security in place of this Lien Agreement prior to commencing grading.

E. Owner shall provide all substitute forms of security in the amounts and for the purposes set forth in the Subdivision Improvement Agreement, except that the amounts shall be calculated using the estimated cost of the Public Improvements at the time of substitution, as ascertained by City.

F. Owner shall substitute acceptable security for this Lien Agreement and commence construction of the Public Improvements required by the Subdivision Improvement Agreement within three (3) years following the date of recordation of the Final Map. At its sole discretion, the City may grant up to three extensions of time for one year each. For each extension of time, Owner shall provide a title insurance policy and current title report from a title company approved by the City, and issued within 60 days prior to the request for an extension of time, that documents that Owner is the record owner of the real property to be divided as identified on the Final Map and the real property to be divided is not subject to any mortgages, deeds of trust, or judgment liens.

G. Owner shall pay the Fees related to the work required by the Subdivision Improvement Agreement for which the Fees are required prior to issuance of any building permit or, if permitted by the City, prior to occupancy.

H. Owner agrees that if suit is brought upon this Lien Agreement, all costs and reasonable expenses and fees incurred by the City in successfully enforcing Owner's obligations shall be paid by Owner, including attorneys' fees, and that, upon entry of judgment, all such costs, expenses and fees shall be taxed as costs and included in any judgment rendered.

I. Owner agrees to indemnify, and hold harmless, the City, its officers, employees and agents from any liability whatsoever based or asserted upon: (i) any act or omission of Owner, its employees and agents relating to or in any way connected with the accomplishment of work, obligations, or performance of service under this Lien Agreement; or (ii) the approval of this Lien Agreement. As part of the foregoing indemnity, Owner agrees to protect and defend, with counsel selected by City, at Owner's own expense, including attorneys' fees, the City, its officers, employees and agents in any legal action based upon such alleged acts or omissions.

II. City's Performance and Obligations

A. Following (1) City's approval of the substitute forms of security submitted by Owner, (2) deposit by Owner of fees for inspections, tests and other specific purposes and (3) Owner's payment or other performance of the obligations encompassed by the Subdivision Improvement Agreement, performance of which are secured by this Lien Agreement, City shall release the Property from the provisions of this Lien Agreement, and shall execute any necessary release to enable Owner or its transferee to clear the record of title of the Property so released of the lien herein imposed.

B. In no instances shall this Lien Agreement compel the City to construct the required Public Improvements.

III. Owner's Representations and Warranties

Owner represents and warrants that no lots within the Property have been sold, no construction permits (including but not limited to grading permits and building permits) have been issued and are active for all or part of the Property, and no construction of any of the Public Improvements has commenced.

IV. Effect of Lien Agreement

A. From the date of recordation of this Lien Agreement, a lien shall attach to the Property which shall have the priority of a judgment lien in an amount necessary to discharge all obligations contained in the Subdivision Improvement Agreement and any Fees. Under no circumstances shall the City agree to subordinate the lien.

B. Owner shall have the right to convey or sell fee title to the entire property, or a portion thereof, encumbered by this Lien Agreement, so long as the purchaser agrees in writing to accept and be bound by the terms and provisions of this Lien Agreement, the applicable Subdivision Improvement Agreement, and the Fees, or has provided alternative security acceptable to the City. Any new lien agreement entered into by a purchaser of the Property must provide for completion of the Public Improvements by the same date as is specified herein.

C. This Lien Agreement shall expire upon release of the Property by the City, except that Owner's obligation to commence the Public Improvements within three (3) years from the date of recordation of this Lien Agreement (or such date as may have been extended in accordance with the Subdivision Code), as described in Section I (F) above, shall not expire but shall remain in full force and effect until satisfactory completion of the Public Improvements in full compliance with the Subdivision Improvement Agreement.

D. Notwithstanding any provisions of the Subdivision Code to the contrary, so long as this Lien Agreement is utilized for security as described herein, the City is not obligated to accept offers of dedication for street or drainage purposes on the property.

V. Events of Default

Upon the occurrence of any one of the following events, Owner shall be deemed in default hereunder:

A. Filing of any proceedings or action by or against Owner to declare Owner bankrupt or to appoint a receiver or trustee for Owner or to make an assignment for the benefit of creditors or to do anything else of a similar nature or purpose under any state or federal bankruptcy or insolvency laws, if such proceedings or actions are not discharged within (60) days.

B. Levy of any attachment or writ of execution against Owner and the Property whereby the Property is taken or occupied or attempted to be taken or occupied by someone other than Owner and such attachment or execution is not released within 60 days.

C. Sale of any lot shown on the Final Map prior to release of the lien created by this Lien Agreement, except as provided in subparagraph IV (B).

D. Request by Owner of issuance by the Department of Real Estate of the Final Subdivision Public Report for the Property.

E. Breach by Owner of any other term or condition of this Lien Agreement or the Subdivision Improvement Agreement or Owner's failure to fully and faithfully discharge its obligations hereunder within the time specified in Section VI below.

All References to Owner in this section shall be deemed to include Owner's successors, assignees, and transferees.

VI. City's Remedies

Upon the occurrence of any of the events described in Section V, above, City may declare a breach of this Lien Agreement by if Owner does not cure such violation within 90 days after Owner's receipt of written notice from the City (or, if not curable within 90 days, within such period of time as is reasonably necessary, but in no event more than 180 days, provided Developer diligently commences and pursues such cure and indemnifies the City for all related costs, of whatever kind) and City may exercise any one or more of the following remedies:

A. Pursue any or all if the remedies provided in the Subdivision Improvement Agreement;

B. Enforce this lien by appropriate action in court or as provided by law and in the event of enforcement is by action in court, the Owner agrees that the amount of said lien shall include reasonable attorneys' fees which shall be taxed as a cost in any suit for such enforcement;

C. Estimate the cost of the work required to complete the Public Improvements, and all fees, and foreclose said lien in said amount;

D. Initiate proceedings for reversion of the Property within the land division to acreage, at the expense of the Owner, in accordance with the provisions of the Subdivision Map Act;

E. Pursue any other remedy, legal or equitable, for the foreclosure of a lien. Owner, its heirs and assigns, shall pay reasonable attorneys' fees to be taxed as cost in said proceedings.

VII. General Provisions

A. Recordation. This Lien Agreement shall be recorded by City with the County Recorder immediately following execution of this Lien Agreement indexed by (1) all parties hereto, and (2) all parties having any record title interest in the subject real property, pursuant to Government Code Section 66436, acknowledge subordination of their interest of this Lien Agreement.

B. Contingency. This Lien Agreement shall not take effect until it has been approved by the City Council of the City of Menifee.

C. Entire Agreement. This Lien Agreement together with all exhibits and other agreements expressly referred to herein, constitutes the entire agreement between the parties with respect to the subject manner contained herein. All prior or contemporaneous agreements, understandings, representations, warranties, and statements, oral or written are superseded.

D. Further Assurances. The parties agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Lien Agreement and the intentions of the parties.

E. Governing Law. This Lien Agreement shall be governed, interpreted, construed, and enforced in accordance with laws of the State of California.

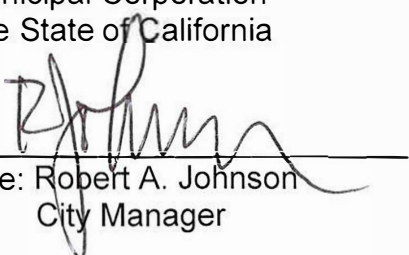
F. Headings. The captions and section headings used in this Lien Agreement are inserted for convenience of reference only and are not intended to define, limit or effect construction or interpretation of any term or provision hereof.

G. Modification, Waiver. No modification, waiver, amendment or discharge of this Lien Agreement shall be valid unless the same is in writing and signed by all parties.


H. No Other Inducement. The making, execution and delivery of this Lien Agreement by the parties hereto have been induced by no representations, statements, warranties, or agreements other than those expressed herein.

I. Severability. If any term, provision, covenant, or condition of this Lien Agreement is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Lien Agreement shall not be effected thereby, and each term, provision, covenant, or condition of this Lien Agreement shall be valid and enforceable to the fullest extent permitted by law.


CITY OF MENIFEE,
a Municipal Corporation
of the State of California

By: 
Name: Robert A. Johnson
Its: City Manager

DIAMOND BROTHERS FIVE PARTNERSHIP, LP
a California limited partnership

By: 
Name: George Chiao-Tung Chang
Its: General Partner

ATTEST:


City Clerk

APPROVED AS TO FORM:

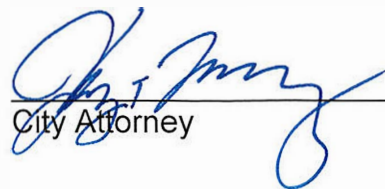

City Attorney

EXHIBIT "A"

PROPERTY LEGAL DESCRIPTION

**LEGAL DESCRIPTION
FOR
TRACT NO. 32101
ANNEXATION
IN THE CITY OF MENIFEE, COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

THAT PORTION OF THE EAST HALF OF SECTION 36, TOWNSHIP 5 SOUTH, RANGE 3 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF MENIFEE, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, SAID PORTION BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 36;

THENCE NORTH 00°35'59" EAST ALONG THE EAST LINE OF SAID NORTHEAST QUARTER OF SECTION 36, A DISTANCE OF 845.10 FEET TO A POINT ON THE SOUTHEASTERLY RIGHT OF WAY LINE OF DOMENIGONI PARKWAY (152.00 FEET IN FULL WIDTH), AS SET FORTH AS PARCEL 0785-002B IN THAT CERTAIN GRANT DEED TO COUNTY OF RIVERSIDE RECORDED APRIL 15, 2004 AS INSTRUMENT NO. 2004-0274331, OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, SAID POINT ALSO BEING ON A NON-TANGENT CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 1924.19 FEET, THE RADIAL LINE TO SAID POINT BEARS NORTH 12°41'38" WEST;

THENCE SOUTHWESTERLY ALONG SAID RIGHT OF WAY LINE AND ALONG SAID CURVE, TO THE LEFT, THROUGH A CENTRAL ANGLE OF 17°56'19", AN ARC DISTANCE OF 602.44 FEET;

THENCE LEAVING SAID SOUTHEASTERLY RIGHT OF WAY LINE NORTH 5°50'08" WEST, A DISTANCE OF 83.38 FEET TO A POINT ON THE CENTERLINE OF SAID DOMENIGONI PARKWAY, SAID POINT BEING ON A NON-TANGENT CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 2000.19 FEET, THE RADIAL LINE TO SAID POINT BEARS NORTH 29°37'50" WEST;

THENCE SOUTHWESTERLY ALONG SAID CENTERLINE AND ALONG SAID CURVE, TO THE LEFT, THROUGH A CENTRAL ANGLE OF 3°10'15", AN ARC DISTANCE OF 110.70 FEET;

THENCE LEAVING SAID CENTERLINE SOUTH 5°50'08" EAST, A DISTANCE OF 76.59 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 2250.00 FEET;

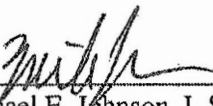
THENCE SOUTHERLY ALONG SAID CURVE, TO THE LEFT, THROUGH A CENTRAL ANGLE OF 0°13'55", AN ARC DISTANCE OF 9.11 FEET TO A POINT ON SAID SOUTHEASTERLY RIGHT OF WAY LINE OF DOMENIGONI PARKWAY, SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 1924.19 FEET, THE RADIAL LINE TO SAID POINT BEARS NORTH 33°57'30" WEST;

THENCE SOUTHWESTERLY ALONG SAID SOUTHEASTERLY RIGHT OF WAY LINE AND ALONG SAID CURVE, TO THE LEFT, THROUGH A CENTRAL ANGLE OF $21^{\circ}39'59''$, AN ARC DISTANCE OF 727.63 FEET;

THENCE ALONG SAID SOUTHEASTERLY RIGHT OF WAY LINE SOUTH $34^{\circ}22'31''$ WEST, A DISTANCE OF 1632.83 FEET TO AN ANGLE POINT ON THE BOUNDARY LINE OF SAID PARCEL 0785-002B;

THENCE LEAVING SAID SOUTHEASTERLY RIGHT OF WAY LINE SOUTH $89^{\circ}18'47''$ EAST, A DISTANCE OF 2064.74 FEET TO A POINT ON THE EASTERLY LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 36;

THENCE NORTH $0^{\circ}35'59''$ EAST ALONG SAID EASTERLY LINE, A DISTANCE OF 1318.18 FEET TO THE POINT OF BEGINNING.


Michael E. Johnson, L.S. 7673

4/30/15
Date



Prepared By: LP
Checked By: me

EXHIBIT "B"

PUBLIC IMPROVEMENTS & COSTS

Storm Drain	549,329.00
Grading/Drainage	406,808.16
Erosion Control	510,513.60
WQMP	169,920.00
Street/Drainage	6,389,964.43
Flood Control	807,477.60
Domestic Water	760,399.20
Reclaimed Water	57,168.00
Sewer	1,160,436.96
Survey Monumentation	200,160.00
<hr/>	
Total	11,012,176.95

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

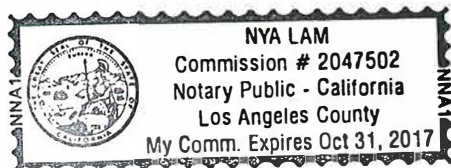
State of California)

County of Los Angeles)

On July 22, 2015 before me, Nya Lam, Notary
Date Here Insert Name and Title of the Officer

personally appeared George Chiao-TUNG CHANG
Name(s) of Signer(s)

who 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.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended 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)

Signer's Name: _____

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

Signer Is Representing: _____

Signer's Name: _____

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

Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of Riverside)On August 6, 2015 before me, Jennifer Allen, Notary Public
Date Here Insert Name and Title of the Officerpersonally appeared Robert A. Johnson
Name(s) of Signer(s)

who 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.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached DocumentTitle or Type of Document: Lien Agreement Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

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

Signer Is Representing: _____

Signer's Name: _____

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

Signer Is Representing: _____