



City of La Quinta

CITY / SA / HA / FA MEETING DATE: May 19, 2015

AGENDA CATEGORY:

ITEM TITLE: ADOPT RESOLUTION GRANTING
CONDITIONAL APPROVAL OF FINAL MAP AND
SUBDIVISION IMPROVEMENT AGREEMENT
ASSOCIATED WITH THE LA QUINTA SQUARE
DEVELOPMENT

BUSINESS SESSION:

CONSENT CALENDAR: 8

STUDY SESSION:

PUBLIC HEARING:

RECOMMENDED ACTION:

Adopt a resolution granting conditional approval of a Final Parcel Map and Subdivision Improvement Agreement associated with Parcel Map No. 36791, and authorize the City Manager to execute said agreement.

EXECUTIVE SUMMARY:

- ACM La Quinta IV-B, LLC, the developer of the La Quinta Square commercial project located on the southwest corner of Highway 111 and Simon Drive, has requested conditional approval of a Final Parcel Map.
- Final Parcel Map approval is a ministerial action once the conditions of development have been met or secured through agreements. The Final Parcel Map allows 30 days to execute the Subdivision Improvement Agreement.
- Since the developer has agreed to satisfy all conditions of development within the next 30 days, staff supports the recommended action.

FISCAL IMPACT:

None. Security of sufficient value will be submitted to secure any incomplete improvements prior to approval of the Final Parcel Map.

BACKGROUND/ANALYSIS:

La Quinta Square is a commercial development located on the southwest corner of Highway 111 and Simon Drive (Attachment 1). The developer has started demolition

of the existing building; however, the on-site improvements have not been constructed. The developer, under the conditions of approval, has paid for the project's fair share of the off-site improvements at Highway 111 and Simon Drive and at Washington Street and Miles Avenue, which will be constructed at a future date.

The developer requests the City Council's conditional approval of the Final Parcel Map (Attachment 2) and Subdivision Improvement Agreement (Attachment 3). This will allow the developer 30 days to submit performance and labor and materials securities. If the developer fails to submit the securities within 30 days, the map will be rescheduled for City Council consideration only after the securities have been received.

The Subdivision Map Act specifically allows subdivision of property ahead of completion of the improvements so long as they are secured by the property owner or developer (the developer will be providing said security as part of this process). Giving the developer 30 days to complete this process now expedites recordation of the final map since no further action is required by City Council.

ALTERNATIVES:

As postponing approval until after the developer has completed all conditions would unduly delay this project, staff does not recommend an alternative action.

Report prepared by: Bryan McKinney, P.E., Principal Engineer

Report approved for submission by: Timothy R. Jonasson, P.E.

Public Works Director/City Engineer

- Attachments:
1. Vicinity Map
 2. Parcel Map 36791
 3. Subdivision Improvement Agreement

RESOLUTION NO. 2015 -

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LA QUINTA, CALIFORNIA, GRANTING CONDITIONAL APPROVAL OF FINAL MAP AND SUBDIVISION IMPROVEMENT AGREEMENT ASSOCIATED WITH PARCEL MAP NO. 36791 AND AUTHORIZING A TIME EXTENSION FOR SATISFACTORY COMPLETION OF THE CONDITIONAL REQUIREMENTS TO VALIDATE THE APPROVAL

WHEREAS, the City Council conducts only two regular meetings per month and the time interval between these meetings occasionally creates an undue hardship for business enterprises and individuals seeking approval of subdivision maps; and

WHEREAS, the City Council, as a matter of policy, allows a subdivider to have City staff present a map for consideration of approval when the requisite items necessary for a final map approval are nearly, but not completely, finished thus yielding to the subdivider additional production time for preparation of those items; and

WHEREAS, the subdivider has demonstrated to City staff and the City Council that it has made sufficient progress with items required for final map approval, and it is reasonable to expect the subdivider to satisfactorily complete the items, including City staff review time, within thirty (30) days without adversely impacting other ongoing work commitments of City staff; and

WHEREAS, Section 66458(b) of the Subdivision Map Act grants the City Council broad authority to authorize time extensions regarding final map approval, or disapproval, upon receiving it for consideration; and

WHEREAS, the City Council relies on City staff to review all required items for conformance with relevant requirements, and it is therefore appropriate for the City Council to approve the final map subject to review and confirmation of the required items by City staff within a reasonable period of time.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of La Quinta, California, as follows:

SECTION 1. The Final Parcel Map 36791 is conditionally approved provided the subdivider submits all required items on or before June 18, 2015.

SECTION 2. The City Council's approval of the final map shall not be considered valid until the City Engineer has signed the map indicating that it conforms to the tentative tract map, the Subdivision Map Act, and all ordinances of the City.

SECTION 3. The City Engineer shall withhold his signature from the map until the subdivider has completed the following requirements and any other requirements not expressly described here to the City Engineer's satisfaction:

A. Provide performance and labor & materials securities

SECTION 4. The City Clerk shall withhold affixing the City Seal to the map title page, along with her attesting signature, until the City Engineer has signed the map.

SECTION 5. The time extension for satisfying the requirements of the conditional approval for this final map shall expire when City offices close for regular business on June 18, 2015. If the subdivider has not satisfied the requirements in Section 3, herein, by the expiration deadline, the final map shall be considered disapproved. Disapproval does not deny any rights the subdivider may have under the Map Act to resubmit the final map for approval, or disapproval.

PASSED, APPROVED and ADOPTED at a regular meeting of the La Quinta City Council held on this 19th day of May 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

LINDA EVANS, Mayor
City of La Quinta, California

ATTEST:

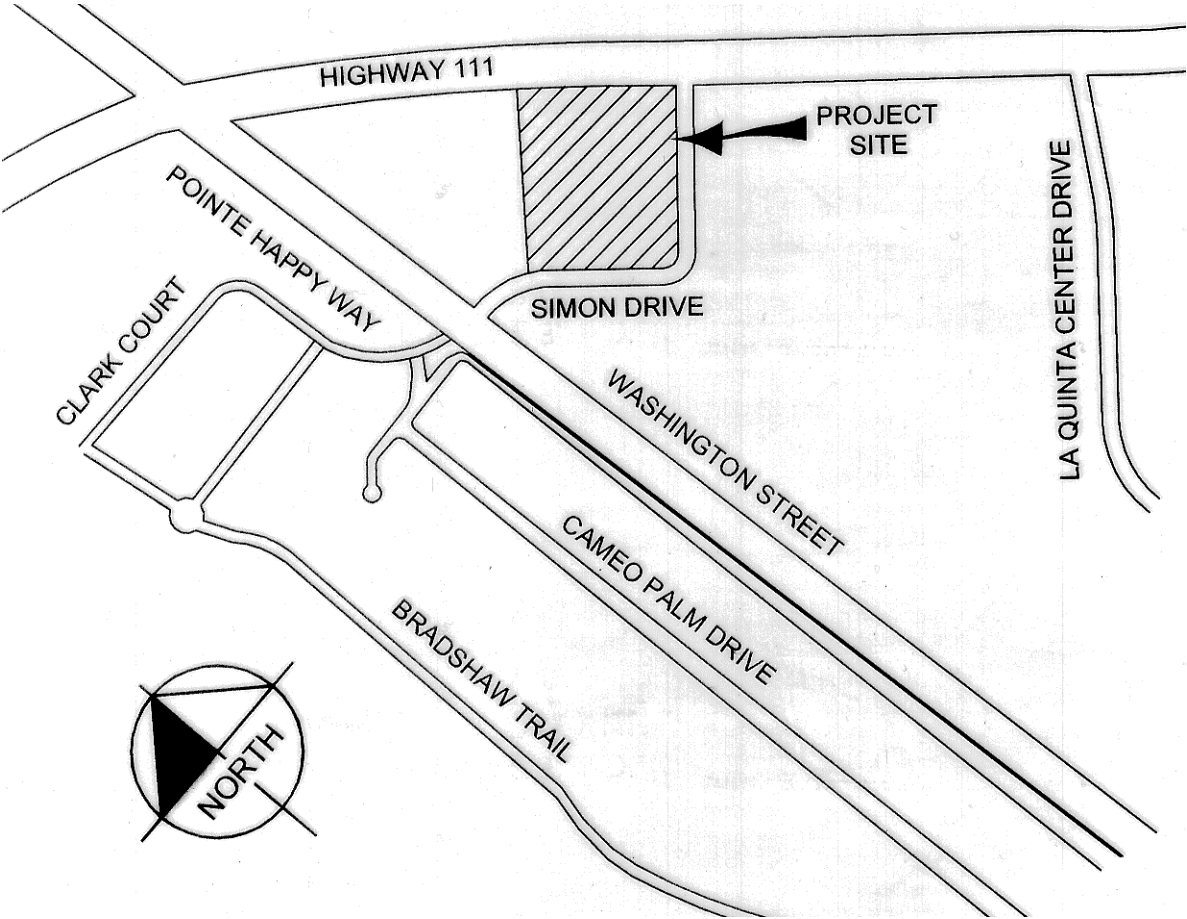
SUSAN MAYSELS, City Clerk
City of La Quinta, California

(CITY SEAL)

APPROVED AS TO FORM:

WILLIAM H. IHRKE, City Attorney
City of La Quinta, California

PARCEL MAP NO. 36791 LA QUINTA SQUARE



VICINITY MAP

NOT TO SCALE

IN THE CITY OF LA QUINTA COUNTY OF RIVERSIDE, STATE OF CALIFORNIA PARCEL MAP NO. 36791

BEING A SUBDIVISION OF PARCEL 1 OF PARCEL MAP 18418, IN THE CITY OF LA QUINTA, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 113, PAGES 49 AND 50 OF PARCEL MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

KIMLEY-HORN AND ASSOCIATES, INC. NOVEMBER 2014

OWNERS' STATEMENT:

WE HEREBY STATE THAT WE ARE THE OWNERS OF THE LAND INCLUDED WITHIN THE SUBDIVISION... WE HEREBY RELINQUISH TO THE CITY OF LA QUINTA, VEHICULAR ACCESS RIGHTS FROM PARCELS 1 AND 2 TO HIGHWAY 111 AND FROM PARCELS 1, 2 AND 3 TO SIMON DRIVE, EXCEPT AT THE APPROVED ACCESS LOCATIONS SHOWN HEREON.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES: THE PEDESTRIAN AND LANDSCAPE EASEMENTS AS SHOWN HEREON.

WE HEREBY RESERVE THE FOLLOWING: FOR THE BENEFIT OF PARCELS 1, 2 AND 3 A PERMANENT, NON-EXCLUSIVE, RECIPROCAL EASEMENT FOR PURPOSES OF INGRESS AND EGRESS AND PARKING OVER AND ACROSS PARCELS 1, 2, AND 3 AS SHOWN HEREON.

ACM LA QUINTA, IV-B-142, A DELAWARE LIMITED LIABILITY COMPANY

Signature: [Handwritten Signature]
Name: KEVIN STALEY MEMBER
Name: MARTIN SUSSER MEMBER

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.

NOTARY ACKNOWLEDGEMENT

STATE OF California, ss.
COUNTY OF LOS ANGELES

ON 2-27-15, BEFORE ME, Robin Ward, a Notary Public, Personally Appeared Kevin Staley

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/IT/HEIR 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 CA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND.

Signature: [Handwritten Signature]
Name: Robin Ward, Notary Public, Los Angeles, CA

PRINCIPAL COUNTY OF BUSINESS: LOS ANGELES

COMMISSION EXPIRES: 11-11-15

COMMISSION # OF NOTARY: 957831

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.

NOTARY ACKNOWLEDGEMENT

STATE OF California, ss.
COUNTY OF LOS ANGELES

ON 2-27-15, BEFORE ME, Robin Ward, Notary Public, a Notary Public, Personally Appeared Martin Susser

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/IT/HEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S) OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

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COMMISSION EXPIRES: 11-11-15

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SIGNATURE OMISSIONS:

PURSUANT TO SECTION 664336 OF THE SUBDIVISION MAP ACT, THE SIGNATURES OF THE FOLLOWING OWNERS OF EASEMENTS AND/OR OTHER INTERESTS HAVE BEEN OMITTED:

THE STATE OF CALIFORNIA, HOLDER OF AN EASEMENT FOR SLOPE PURPOSES AND INCIDENTAL PURPOSES, BY INSTRUMENT NO. 31462 OF OFFICIAL RECORDS, RECORDED APRIL 05, 1968.

COACHELLA VALLEY WATER DISTRICT, HOLDER OF AN EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES, BY INSTRUMENT NO. 104260 OF OFFICIAL RECORDS, RECORDED MAY 17, 1984.

TAX COLLECTOR'S CERTIFICATE:

I HEREBY CERTIFY THAT ACCORDING TO THE RECORDS OF THIS OFFICE, AS OF THIS DATE, THERE ARE NO LIENS AGAINST THE PROPERTY SHOWN ON THE WITHIN MAP FOR UNPAID STATE, COUNTY, MUNICIPAL, OR LOCAL TAXES, OR SPECIAL ASSESSMENTS COLLECTED AS TAXES, EXCEPT TAXES OR SPECIAL ASSESSMENTS COLLECTED AS TAXES NOW A LIEN BUT NOT YET PAYABLE, WHICH ARE ESTIMATED TO BE \$ _____

DATE: _____, 20 _____

DON KENT, COUNTY TREASURER/TAX COLLECTOR

BY: _____, DEPUTY

TAX BOND CERTIFICATE:

I HEREBY CERTIFY THAT A BOND IN THE SUM OF \$ _____ HAS BEEN EXECUTED AND FILED WITH THE BOARD OF SUPERVISORS OF THE COUNTY OF RIVERSIDE, CALIFORNIA, ON _____, 20 _____, IN FULL PAYMENT OF ALL SPECIAL ASSESSMENTS COLLECTED AS TAXES, WHICH AT THE TIME OF FILING OF THIS MAP WITH THE COUNTY RECORDER ARE A LIEN AGAINST SAID PROPERTY BUT NOT YET PAYABLE AND SAID BOND HAS BEEN DULY APPROVED BY SAID BOARD OF SUPERVISORS.

DATE: _____, 20 _____

KECIA HARPER-HEM, CLERK OF THE BOARD OF SUPERVISORS

BY: _____, DEPUTY

CASH TAX BOND

DON KENT, COUNTY TREASURER/TAX COLLECTOR

BY: _____, DEPUTY

CITY CLERK'S STATEMENT:

I, SUSAN MAYSELS, CITY CLERK AND EX-OFFICIO CLERK OF THE CITY COUNCIL OF THE CITY OF LA QUINTA, CALIFORNIA, DO HEREBY STATE THAT SAID CITY COUNCIL AT ITS REGULAR MEETING HELD ON THE _____ DAY OF _____, 20 _____, APPROVED THE WITHIN MAP OF PARCEL MAP NO. 36791, AND HEREBY ACCEPTS THE PEDESTRIAN AND LANDSCAPE EASEMENTS AS DEDICATED AND THE ACCESS RIGHTS AS RELINQUISHED HEREON.

THE EASEMENT FOR SLOPE PURPOSES AND INCIDENTAL PURPOSES, RECORDED APRIL 5, 1968 AS INSTRUMENT NO. 31462 OF OFFICIAL RECORDS, ARE HEREBY AGAIN RECORDED TO SECTION 66499.205 AND SECTION 66434(g) OF THE SUBDIVISION MAP ACT AND NOT SHOWN HEREON.

THE 15 FOOT DRAINAGE EASEMENT PER PARCEL MAP 9618 RECORDED IN BOOK 60, PAGE 18 OF PARCEL MAPS, AND PORTIONS OF THE RESTRICTED ACCESS AREA DEDICATED AND ACCEPTED PER PARCEL MAP 9618 RECORDED IN BOOK 60, PAGE 18 OF PARCEL MAPS, ARE HEREBY ABANDONED PURSUANT TO SECTION 66499.205 AND SECTION 66434(g) OF THE SUBDIVISION MAP ACT AND NOT SHOWN HEREON.

DATE: _____, 2015

SUSAN MAYSELS, CITY CLERK AND EX-OFFICIO CLERK OF THE CITY COUNCIL OF THE CITY OF LA QUINTA

RECORDER'S STATEMENT:

FILED THIS _____ DAY OF _____, 20 _____ AT _____ M. IN BOOK _____ OF PARCEL MAPS, AT PAGES _____, AT THE REQUEST OF THE CITY OF LA QUINTA.

NO. _____

PETER ALDANA, ASSESSOR - COUNTY CLERK - RECORDER

BY: _____, DEPUTY

SUBDIVISION GUARANTEE: _____

SURVEYOR'S STATEMENT:

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED ON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF BILLY YEUNG IN AUGUST, 2014.

I HEREBY STATE THAT ALL MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED, OR WILL BE WITHIN ONE YEAR OF MAP RECORDATION, AND THAT SAID MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED. I HEREBY STATE THAT THIS PARCEL MAP SUBSTANTIALLY CONFORMS TO THE APPROVED OR CONDITIONALLY APPROVED TENTATIVE MAP, IF ANY.

DATE: February 5th, 2015

Signature: [Handwritten Signature]

MICHAEL J. KNAPTON, L.S. 8012



CITY ENGINEER'S STATEMENT:

I HEREBY STATE THAT I HAVE EXAMINED THE WITHIN MAP OF PARCEL MAP NO. 36791 CONSISTING OF 2 SHEETS; THAT THE SUBDIVISION SHOWN THEREON IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP, IF ANY, AND APPROVED ALTERATIONS THEREOF; THAT ALL PROVISIONS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCES HAVE BEEN COMPLIED WITH.

DATE: _____, 2015

TIMOTHY R. JONASSON, RCE 45843

PUBLIC WORKS DIRECTOR / CITY ENGINEER

CITY SURVEYOR'S STATEMENT:

I HEREBY STATE THAT I HAVE EXAMINED THE WITHIN MAP OF PARCEL MAP NO. 36791 CONSISTING OF 2 SHEETS AND I AM SATISFIED THIS MAP IS TECHNICALLY CORRECT.

DATE: May 11, 2015

Signature: [Handwritten Signature]

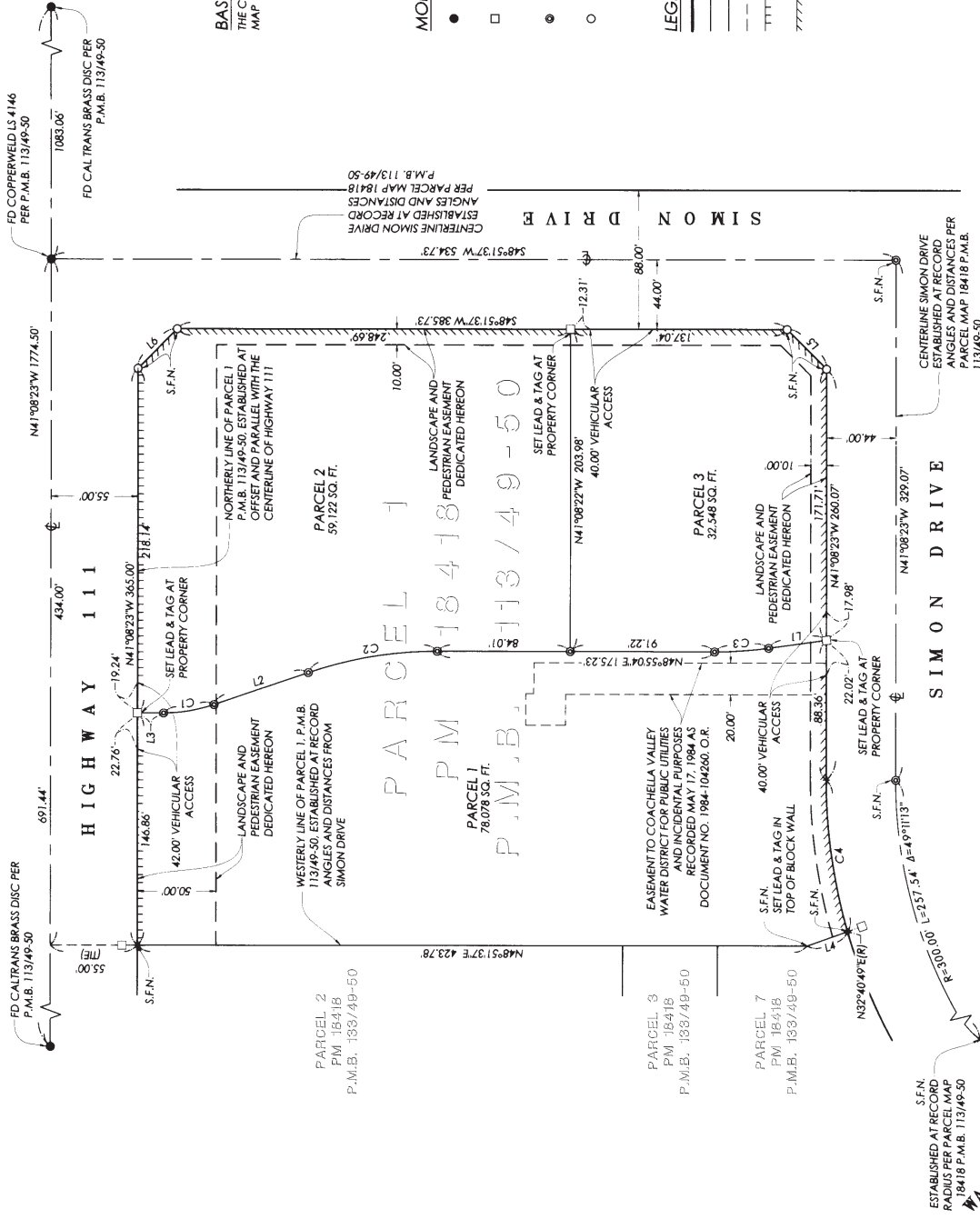
ERIC A. NELSON, L.S. 5563



IN THE CITY OF LA QUINTA
 COUNTY OF RIVERSIDE, STATE OF CALIFORNIA
PARCEL MAP NO. 36791

BEING A SUBDIVISION OF PARCEL 1 OF PARCEL MAP 18418, IN THE CITY OF LA QUINTA, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA,
 AS SHOWN BY MAP ON FILE IN BOOK 113, PAGES 49 AND 50 OF PARCEL MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

KIMLEY-HORN AND ASSOCIATES, INC. NOVEMBER 2014



BASIS OF BEARINGS

THE CENTERLINE OF HIGHWAY 111 AS SHOWN ON PARCEL MAP 18418, P.M.B. 113/49-50 SHOWN AS N41°08'23"W

CURVE DATA TABLE			
	RADIUS	LENGTH	DELTA
C1	99.00'	32.67'	Δ=18°54'24"
C2	251.00'	83.08'	Δ=18°57'51"
C3	249.00'	34.30'	Δ=7°53'33"
C4	344.00'	97.14'	Δ=16°10'48"

MONUMENT LEGEND/NOTES:

- FD MONUMENT AS DESCRIBED IN MONUMENT DESCRIPTION NOTES
- SET LEAD AND TAG MARKED 'LS 8012' SET ALONG AN EXTENSION OF THE LOT LINE IN THE TOP OF CURB, UNLESS OTHERWISE NOTED
- ⊙ SET SPIKE AND WASHER TAGGED 'LS 8012' FLUSH, UNLESS OTHERWISE NOTED
- SET 1" X 18" IRON PIPE WITH CAP MARKED 'LS 8012', FLUSH

LINE DATA TABLE		
	LENGTH	BEARING
L1	36.97'	N41°01'29"E
L2	62.82'	N28°57'13"E
L3	16.58'	N48°51'37"E
L4	27.14'	N29°20'27"E
L5	35.36'	N86°08'23"W
L6	35.36'	N3°51'37"E
L7	73.00'	N89°40'24"E

LEGEND:

- INDICATES PARCEL MAP BOUNDARY
- INDICATES PROPOSED LOT LINE
- INDICATES CENTERLINE
- INDICATES EASEMENT LINE
- INDICATES ABUTTER'S RIGHTS OF ACCESS RELINQUISHED PER PARCEL MAP NO. 9018
- INDICATES ABUTTER'S RIGHTS OF ACCESS RELINQUISHED HEREON
- ⊕ S.F.N. SEARCHED FOUND NOTHING



S.F.N. ESTABLISHED AT RECORD RADIUS PER PARCEL MAP 18418 P.M.B. 113/49-50

WASHINGTON STREET

CITY OF LA QUINTA

SUBDIVISION IMPROVEMENT AGREEMENT
PARCEL MAP NO. 36791
OFF-SITE AND ON-SITE IMPROVEMENTS

THIS SUBDIVISION IMPROVEMENT AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, 20_____, by and between ACM La Quinta IV-B, LLC, a Delaware limited liability company, hereinafter referred to as "Subdivider," and the City of La Quinta, a municipal corporation of the State of California, hereinafter referred to as "City."

RECITALS:

- A. Subdivider has prepared and submitted to City for final approval and recordation a final map or Tract map (the "Map") of a unit of land in the City of La Quinta, County of Riverside, which unit of land is known as Parcel Map No. 36791 (the "Tract") pursuant to the provisions of Section 66410, et seq. of the California Government Code (the "Subdivision Map Act"). The Subdivision Map Act and City ordinances and regulations relating to the filing, approval and recordation of subdivision maps are sometimes collectively referred to in this Agreement as the "Subdivision Laws."
- B. A tentative map of the Tract has been approved subject to the Subdivision Laws and to the requirements and conditions contained in Planning Commission Resolution No. 2014-034 (the "Resolution of Approval"). The Resolution of Approval is on file in the office of the City Clerk and is incorporated into this Agreement by reference.
- C. Prior to approval of the Map, Subdivider is required to install or agree to install certain public and private improvements (the "Improvements").
- D. The Improvements have not been installed and accepted at this time.
- E. It is therefore necessary that Subdivider and City enter into an agreement for the installation of the Improvements as provided in Section 66462 of the Subdivision Map Act. In consideration of approval of a final map for the Tract by the City Council, Subdivider desires to enter into this Agreement, whereby Subdivider promises to install and complete, at Subdivider's own expense, all the public improvement work required by City in connection with the proposed Tract. Subdivider has secured this Agreement by improvement security required by the Subdivision Laws and approved by the City.

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. Improvement Plans. Prior to submittal of the Map for approval by the City Council, Subdivider shall furnish complete original improvement plans for the construction, installation and completion of the Improvements meeting the requirements of the City Engineer. The Improvement Plans for the Tract shall be maintained on file in the office of the City Engineer and shall be incorporated into this Agreement by reference. All references in this Agreement to the Improvement Plans shall include reference to any specifications for the Improvements as approved by the City Engineer.
2. Improvements. Subdivider shall construct the Improvements required to be constructed on the Improvement Plans or agreed to be constructed under the Resolution of Approval and this Agreement as more specifically described in Exhibit "A." attached hereto and expressly made a part hereof by this reference, and shall bear the full cost thereof. The methods, standards, specifications, sequence, and scheduling of construction shall be as approved by the City Engineer.
3. Improvement Security. Subdivider shall at all times guarantee Subdivider's performance of this Agreement by furnishing to City, and maintaining, good and sufficient security as required by the Subdivision Laws on forms and in the amounts approved by City for the purposes as follows:
 - A. One class of security to be provided by Subdivider, hereinafter referred to as "performance security," shall assure the faithful performance of this Agreement including construction of the Improvements, payment of Subdivider's fair share of Improvements which have been or will be constructed by others ("Participatory Improvements"), and payment of plan check and permit

fees. The performance security shall also include good and sufficient security in the amount of one hundred percent (100%) of the estimated cost of setting subdivision monuments as stated hereafter in this Agreement ("Monumentation Security"). A second class of security to be provided by Subdivider, hereinafter referred to as "payment security," shall assure the payment of the cost of labor, equipment and materials supplied to construct the Improvements. A third class of security to be provided by Subdivider, hereinafter referred to as "warranty security," shall serve as a guarantee and warranty of the Improvements for a period of one year following the completion and acceptance of the Improvements. Subdivider shall furnish performance and payment security prior to and as a condition precedent to City Council approval of the Map. Subdivider shall provide warranty security after Improvements are complete and prior to acceptance of the Improvements by the City Council. Warranty security shall not be required for Monumentation or Participatory Improvements. However, the City may utilize Monumentation Security for performance of or payment for the work in accordance with the Subdivision Map Act.

As part of the obligation secured by each of the performance security, payment security and warranty security, and in addition to the face amount of each such security, each such security shall include and assure the payment of costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing the obligations thereby secured.

- B. Improvement security shall conform with Section 66499 of the California Government Code and may be one or more of the following:
- 1) A cash deposit with City or a responsible escrow agent or trust company, at City's option.
 - 2) Surety bonds, of the form specified in subsection 66499.2 of the California Government Code, issued by a surety or sureties listed in the U.S. Department of Treasury Circular 570 (latest version).
 - 3) Certificates of deposit, in City's name, from one or more financial institutions subject to regulation by the state or federal government and having a financial quality rating of "A" or better and a commitment reliability rating of "R-2" or better on the Investment Data Exchange (of the Los Angeles County Treasurer's office).
 - 4) Irrevocable letters of credit, in a form acceptable to and approved by the City Attorney, issued by one or more financial institutions meeting the requirements of Paragraph (3), pledging that the funds necessary to carry out the completion of the Improvements are on deposit, guaranteed for payment, and constitute a trust fund which is not subject to levy or attachment by any creditor of the depositor until released by City. Letters of credit shall guarantee that all or any portion of the funds available pursuant to the letters of credit will be paid upon the written demand of City and that such written demand need not present documentation of any type as a condition of payment, including proof of loss. The duration of any such letter of credit shall be for a period of not less than one year from the execution of the agreement with which it is provided and shall state, on its face, that the letter of credit will be automatically renewed until such time that City authorizes its expiration or until sixty (60) days after City receives notice from the financial institution of intent to allow expiration of the letter of credit.
 - 5) A lien upon the subdivided property, if City finds that it would not be in the public interest to require the installation of the Improvements sooner than two (2) years after recordation of the final map or Tract map for which the Improvements are required. The lien shall provide a collateral value of three (3) times the estimated cost of the Improvements and shall include the power of sale of the real property, all buildings and improvements thereon, or that may be erected upon or made thereto, together with all hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reservations, remainders, rents, issues, and profits thereof. The collateral value of the property shall be established at Subdivider's expense through an appraisal approved by City.
 - 6) An instrument of credit from an agency of the state, federal or local government, when any agency of the state, federal, or local government provides at least twenty percent (20%) of the financing for the Improvements.

- 7) When Subdivider is a non-profit organization, security may be negotiable bonds, of the kind approved for securing deposits of public moneys with City or in favor of City, as specified in Section 16430 of the California Government Code, deposited, at City's option, with City or a responsible escrow agent or trust company.
- C. All securities shall be furnished in accordance with the provisions of Exhibit A. The amount of the performance security shall equal one hundred percent (100%) of the estimated cost of constructing the Improvements, including payment of plan check and permit fees, as estimated by the City Engineer or a duly authorized representative of the City Engineer. The amount of Payment security shall equal the amount of the amount of performance security, except as otherwise set forth in Exhibit A, and shall be furnished as a separate security. Warranty security shall equal Ten Percent (10%) of the amount of performance security except as otherwise set forth in Exhibit A. The securities required by this Agreement shall be kept on file with the City Clerk. The terms of the security documents specified in this Agreement are incorporated into this Agreement by this reference. If any security is replaced by another approved security, the replacement shall be filed with the City Clerk and, upon filing, shall be deemed to have been made a part of and incorporated into this Agreement. Upon filing of a replacement security with the City Clerk, the former security may be released. The City Engineer shall approve replacement of security.
 - D. At the time of submittal of security, Subdivider shall pay to City administrative fees applicable to the form of security provided. Administrative fees shall apply to the subdivision (final map, Tract map or waiver of Tract map) rather than to individual security instruments. The fees shall be paid separately for each different form and/or source (surety or financial institution) of security initially submitted and for substitution of securities but shall not be required for submittal of warranty security if the warranty security is of the same form and from the same source as the performance security it replaces. Administrative fees for security shall be as follows:
 - 1) For certificates of deposit, bonds and letters of credit as described in Paragraphs 2), 3) and 4) of SECTION 3.B., which require the establishment of evidence of the reliability of the surety or financial institution, the administrative fee shall be One Hundred Fifty Dollars (\$150.00).
 - 2) For liens on real property as described in Paragraph 5) of SECTION 3.B., for which City will prepare lien agreements and subordination agreements, administer valuation of the real property and administer the agreements over the life of the lien, all of which require legal assistance and financial advice, Subdivider shall pay to City an administration fee of One Half of One Percent (0.5%) of the estimated cost of the improvements secured but not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00).
 - 3) For other forms of security listed in Section 3 B, above, there will be no administrative fee.
 - E. Participatory Improvements, if any, are identified in Exhibit A. Security for Participatory Improvements shall remain in place until the Participatory Improvements are constructed and actual costs are known and paid by Subdivider, or until Subdivider pays to City the estimated cost of the Participatory Improvements, and shall guarantee the reimbursement by Subdivider of Subdivider's share of the cost of the Participatory Improvements. Payment security and warranty security shall not be required for Participatory Improvements.

Upon written demand from City, Subdivider shall deposit cash with City in lieu of or in replacement of security guaranteeing Participatory Improvements. If Subdivider fails to deposit said cash within 30 days of the date of the written demand from City, City may present a written demand to Subdivider's Surety for payment of said cash and Subdivider's Surety shall pay to City the lesser of: 1) the amount demanded, or 2) the amount of the security.
 - F. Security shall not expire, be reduced or become wholly or partially invalid for any reason, including non-payment of premiums, modifications of this Agreement and/or expiration of the time for performance stated in this Agreement.
 - G. Security shall be released in the following manner:

- 1) Performance security shall be released upon the final completion and acceptance or approval, by the City Council of the Improvements subject to the provisions of Section 10 of this Agreement.
 - 2) The City Engineer may authorize partial reduction of performance security as work progresses, upon application by Subdivider. However, no such reduction shall be for an amount less than Ten Percent (10%) of the total performance security provided for the faithful performance of the act or work. In no event shall security be reduced below that required to guarantee the completion of the act or work or obligation secured, plus Ten Percent (10%). The City Engineer shall not allow more than two partial reductions of security furnished for any improvement agreement.
 - 3) Participatory Improvement security shall be released upon payment by Subdivider of Subdivider's share of the cost or estimated cost of the Participatory Improvements.
 - 4) If City receives no notice of recorded claims of lien, labor and materials security shall be released in full 90 days after final acceptance and/or approval by the City Council, of the Improvements. If City receives notice of any recorded lien, the provisions of the Subdivision Map Act shall apply.
 - 5) No security given for the guarantee or 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. As provided in paragraph 13 of this Agreement, the warranty period shall not commence until final acceptance of all the work and improvements by the City pursuant to Paragraph 10. Warranty security not utilized during the warranty period shall be released one year after final acceptance or approval by the City Council of all Improvements. However, if at the end of the one-year warranty period, there are one or more outstanding requests by City for performance of work or provision of materials under the terms of the warranty, warranty security shall be retained until the outstanding requests are satisfied or until Subdivider has made other arrangements satisfactory to the City Engineer.
 - 6) City may retain from any security released an amount sufficient to cover costs and reasonable expenses and fees, including reasonable attorneys' fees.
4. Permits Required. Prior to commencing any phase of work, Subdivider shall obtain all permits required for that phase of work and pay all required fees. Work performed under a permit or permits shall comply with all provisions of the required permits.
 5. Off-site Improvements. When the construction of one or more of the Improvements requires or necessitates the acquisition of real property not owned by Subdivider or City, Subdivider shall use its best efforts purchase such real property at a reasonable price. In the event that Subdivider is unsuccessful, despite its best efforts, to acquire such real property at a reasonable price, Subdivider may request in writing that City attempt to acquire such real property. City may, but is not required to, agree to attempt to acquire such real property on behalf of Subdivider. If City so agrees, City and Subdivider shall enter a separate written agreement in a form acceptable to the City Attorney. Said separate agreement shall provide that Subdivider advance to City One Hundred Fifty Percent (150%) of the appraised fair market value of the real property. Any unexpended portion of said advance shall be refunded to Subdivider. Any additional funds required for acquisition of the real property shall be paid by Subdivider to City upon the conveyance of said real property to Subdivider. In no event shall the failure of Subdivider or City to acquire such real property excuse, waive, or otherwise terminate Subdivider's obligation to construct the applicable improvement pursuant to this Agreement or the Conditions of Approval.
 6. Completion of Improvements; Inspection.
 - 6.1 Construction of Improvements. Subdivider shall begin construction of the Improvements within ninety (90) days and shall complete construction within twelve (12) months after the approval of this Agreement. Portions of the Improvements may be completed at a later date, as determined by the City Engineer or as set forth in Exhibit A. Failure by Subdivider to begin or complete construction of the Improvements within the specified time periods shall constitute cause for City, in its sole discretion and when it deems necessary, to declare Subdivider in default of this agreement, to revise

improvement security requirements as necessary to ensure completion of the improvements, and/or to require modifications in the standards or sequencing of the Improvements in response to changes in standards or conditions affecting or affected by the Improvements. Said failure shall not otherwise affect the validity of this agreement or Subdivider's obligations hereunder.

6.2 Inspection. Subdivider shall at all times maintain proper facilities and safe access for inspection of the public improvements by City and to the shops wherein any work is in preparation. Upon completion of the work, the Subdivider may request a final inspection by the City Engineer or the City Engineer's authorized representative. If the City Engineer or the designated representative determines that the work has been completed in accordance with this Agreement, then the City Engineer shall certify the completion of the public improvements to the City Council. No improvements shall be finally accepted unless all aspects of the work have been inspected and determined to have been completed in accordance with the Improvement Plans and City standards and accepted by the City as described in Paragraph 10 of this Agreement. Subdivider shall bear all costs of plan check, inspection and certification.

7. Force Majeure. In the event that Subdivider is unable to perform within the time limits herein due to strikes, act of God, or other events beyond Subdivider's control, the time limits for obligations affected by such events will be extended by the period of such events.
8. Time Extension. Subdivider may make application in writing to the City Council for an extension of time for completion of the Improvements. The City Council, in its sole and absolute discretion, may approve or deny the request or conditionally approve the extension with additions or revisions to the terms and conditions of this Agreement.

As a condition of the time extension, Subdivider shall furnish securities, similar in form and substance to those required in SECTION 3 hereinabove, to cover the period of extension. The value of the securities shall be sufficient to ensure the performance of and payment for Improvements that remain incomplete at the time of the extension, and to provide warranty security on completed Improvements.

9. Survey Monuments. Before final approval of street improvements, Subdivider shall place survey monuments in accordance with the provisions of Sections 66495, et sec. of the Subdivision Map Act and of the La Quinta Municipal Code. Subdivider shall provide the City Engineer written proof that the monuments have been set, evidence of payment and receipt thereof by the engineer or surveyor setting the monuments, and intersection monument tie-outs for monuments set in public streets.
10. Final Acceptance of Improvements. At the completion of construction and prior to acceptance of the Improvements by City, Subdivider shall submit a request for final approval by City. The request shall be accompanied by any required certifications from Subdivider's engineers or surveyors, approval letters from other agencies having jurisdiction over and approval authority for improvements required by this Agreement or the Conditions of Approval, and any required construction quality documentation not previously submitted.

Upon receipt of said request, the City Engineer or a duly-authorized representative will review the required documentation and will inspect the Improvements. If the Improvements are determined to be in accordance with applicable City standards and specifications, and as provided herein, obligations required by the Conditions set forth in the Resolution of Approval and this Agreement have been satisfied, and Subdivider has provided revised plans as required in Paragraph 12, hereinafter, the City Engineer shall recommend acceptance of the Improvements by the City Council.

11. Injury to Improvements. Until such time as the Improvements are accepted by City in accordance with Paragraph 10, Subdivider shall be responsible for and bear the risk of loss to any of the improvements constructed or installed. Until such time as all Improvements required by this Agreement are fully completed and accepted by City, Subdivider will be responsible for the care, maintenance of, and any damage to such improvements. City shall not, nor shall any officer or employee thereof, be liable or responsible for any accident, loss or damage, regardless of cause, happening or occurring to the work or improvements specified in this Agreement prior to the completion and acceptance of the work or improvements. All such risks shall be the responsibility of and are hereby assumed by Subdivider.

12. Revisions to Plans. When the Improvements have been inspected and approved by the City Engineer, Subdivider shall make any necessary revisions to the original plans held by City so the plans depict the actual Improvements constructed. When necessary revisions have been made, each separate sheet of the plans shall be clearly marked with the words "As-Built," "As-Constructed," or "Record Drawing," the marking shall be stamped by an engineer or surveyor, as appropriate for the improvements thereon, who is licensed to practice in California, and the plans shall be resubmitted to the City Engineer.
13. Improvement Warranty. Subdivider hereby guarantees the Improvements to City for a period of one (1) year, beginning on the date of final acceptance of the Improvements by the City Council, against any defective work or labor done, or defective materials furnished, and shall repair or replace such defective work or materials. If within the warranty period any work or improvement or part of any work or improvement done, furnished, installed, constructed or caused to be done, furnished, installed or constructed by Subdivider fails to fulfill any of the requirements of this Agreement or the improvement plans and specifications referred to herein, Subdivider shall without delay and without any cost to City, repair or replace or reconstruct any defective or otherwise unsatisfactory part or parts of the work or structure. Should Subdivider fail to act promptly or in accordance with this requirement, Subdivider hereby authorizes City, at City's sole option, to perform the work twenty (20) days after mailing written notice of default to Subdivider and to Subdivider's Surety, and agrees to pay the cost of such work by City. Should City determine that an urgency requires repairs or replacements to be made before Subdivider can be notified, City may, in its sole discretion, make the necessary repairs or replacement or perform the necessary work and Subdivider shall pay to City the cost of such repairs
14. Release of Security. City shall retain and release securities in accordance with the provisions of Section 3 of this agreement. Prior to the release of payment security, the City Engineer may require Subdivider to provide a title report or other evidence sufficient to show claims of lien, if any, that may affect the amount of payment security released.
15. City Right to Cure. If Subdivider fails to perform any obligation hereunder and such obligation has not been performed, or commenced and diligently pursued, within sixty (60) days after written notice of default from City, then City may perform the obligation, and Subdivider shall pay the entire cost of such performance by City including costs of suit and reasonable attorney's fees incurred by City in enforcing such obligation. In cases of emergency or compelling public interest, as determined by the City Engineer, the requirement for written notice of default and/or the passage of sixty (60) days shall be deemed waived and all other provisions of this Article shall remain in effect.
16. Injury to Public Improvements, Public Property or Public Utility Facilities. Subdivider shall replace or have replaced, or repair or have repaired, as the case may be, all public improvements, public utilities facilities and surveying or subdivision monuments which are destroyed or damaged as a result of any work performed under 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.
17. Indemnification.
 - a. Neither City nor any and all of its officials, employees and agents ("Indemnified Parties") shall be liable for any injury to persons or property occasioned by reason of the acts or omissions of Subdivider, its agents or employees in the performance of this Agreement. Subdivider further agrees to protect and hold harmless Indemnified Parties from any and all claims, demands, causes of action, liability or loss of any sort, including, but not limited to, attorney fees and litigation expenses, because of, or arising out of, acts or omissions of Subdivider, its agents or employees in the performance of this Agreement, including all claims, demands, causes of action, liability, or loss because of, or arising out of, in whole or in part, the design of construction of the Improvements. 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 said subdivision, and the public improvements as provided herein, and in addition, to adjacent property owners as a consequence of the diversion of waters from the design or construction of public drainage systems, streets and other public improvements.

b. Acceptance by City of the Improvements shall not constitute an assumption by City of any responsibility for any damage or taking covered by this paragraph. City shall not be responsible for the design or construction of the subdivision or the improvements pursuant to the approved Improvement Plans or map, 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. Except as may be provided above, City shall not be liable for any negligence, nonfeasance, misfeasance or malfeasance in approving, reviewing, checking, or correcting any plans or specifications or in approving, reviewing or inspecting any work or construction. Nothing contained in this paragraph is intended to or shall be deemed to limit or waive any protections or immunities afforded by law to City or any and all of its officials, employees and agents ("Indemnified Parties"), by virtue of city's approval of the plan or design of the Improvements, including without limitation the protections and immunities afforded by Government Code Section 830.6. 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. Provisions of this paragraph shall remain in full force and effect for ten (10) years following the acceptance by City of the Improvements. It is the intent of this paragraph 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 correcting any plans or specifications or in approving, reviewing or inspecting any work or construction. The Improvement Security shall not be required to cover the provisions of this paragraph.

18. No Modification of Conditions. This Agreement shall in no respect act to modify or amend any provision of the Conditions of Approval. In the event that any requirement or condition of this Agreement is inconsistent with or fails to include one or more provisions of the Conditions of Approval, which document(s) is (are) incorporated herein by reference, the provisions in the Conditions of Approval shall remain in effect and shall control.
19. Severability. In the event that a court of competent jurisdiction determines that any provision or provisions of this Agreement are unenforceable, all provisions not so held shall remain in full force and effect.
20. Subdivider No Agent of City. Neither Subdivider nor any of Subdivider's agents, employees, or contractors are or shall be considered to be agents of City in connection with the performance of Subdivider's obligations under this Agreement.
21. General Provisions.
 - A. All notices pursuant to this Agreement shall be in writing and shall be personally delivered or sent by registered or certified mail, return receipt requested, to the parties at their respective addresses indicated hereon. Notices personally delivered shall be effective upon delivery. Notices mailed as provided herein and sent postage prepaid shall be effective upon the date of delivery or refusal indicated on the return receipt. Either party may change its address for notices hereunder by notice to the other given in the manner provided in this subparagraph.
 - B. The terms, conditions, covenants, and agreements set forth herein shall apply to and bind the heirs, executors, administrators, assigns, and successors of the parties hereto.
 - C. Neither party to this Agreement relies upon any warranty or representation not contained in this Agreement.
 - D. This Agreement shall be governed by and interpreted with respect to the laws of the State of California.
 - E. In the event of any dispute between the parties with respect to this Agreement, the prevailing party shall be entitled to prompt payment of its reasonable attorneys' fees from the non-prevailing party.

- F. Any failure or delay by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies provided for hereunder.
- G. Time is of the essence in the performance of each and every provision of this Agreement.
- H. The Recitals to this Agreement are hereby incorporated into and expressly made a part of the terms of this Agreement.
- I. This Agreement constitutes the entire agreement of the parties with respect to the subject matter. All modifications, amendments, or waivers of the terms of this Agreement must be in writing and signed by the appropriate representatives of the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

CITY: City of La Quinta
 78-495 Calle Tampico
 La Quinta, CA 92253
 760/777-7075

 Frank J. Spevacek, City Manager

 Date

ATTEST:

 Susan Maysels, City Clerk

ACM La Quinta IV-B, LLC, a Delaware limited liability company
 1800 Avenue of the Stars, Suite 105
 Los Angeles, CA 90067

By: 
 Kevin Staley

2/20/15
 Date

Title Managing Member

By: _____

 Date

Title: _____

Reviewed and Approved:

 Timothy R. Jonasson, P.E., City Engineer

 Date

Approved as to Form:

 William H. Ihrke, City Attorney

 Date

Exhibit A
SECURITY – PARCEL MAP NO. 36791
OFF-SITE AND ON-SITE IMPROVEMENTS

Improvements designated as "Participatory" have been or will be constructed by others. Security for Participatory Improvements shall remain in place indefinitely until called upon or released by City.

Monumentation security shall guarantee performance of or payment for the work and shall be utilized or released as specified in Chapter 4, Article 9 of the Subdivision Map Act.

As elements of the work are completed, Subdivider may request a maximum of two partial releases of performance security. Partial releases shall be for not less than ten percent (10%) of the total performance security for the Tract and shall not reduce total performance security below the amount necessary to complete the Improvements plus ten percent (10%) of the original amount. Partial releases of performance security will be evaluated and may be granted, in whole or in part, by the City Engineer. Requests for partial releases, setting forth in detail the amount of work completed and the value thereof, shall be made in writing to the City Engineer.

Labor & materials security shall remain in place until 90 days after all required Tract improvements are complete and accepted by the City Council.

Improvement Description	Performance	Labor & Materials
<u>ON-SITE IMPROVEMENTS</u>		
Demolition	\$ 10,000	\$ -
Site Improvements	\$ 215,461	\$ -
Grading	\$ 12,015	
Erosion Control	\$ 60,470	
Drainage and Storm Drain	\$ 252,647	
Domestic Water	\$ 84,936	\$ -
Sanitary Sewer	\$ 12,434	
Dry Utilities	\$ 132,260	\$ -
Landscaping	\$ 121,416	\$ -
Monumentation	\$ 5,250	\$ -
<u>OFF-SITE IMPROVEMENTS</u>		
Striping at Hwy 111 Access	\$ 2,500	\$ 2,500
Totals	\$ 909,389	\$ 2,500
Standard 10% Contingency	\$ 90,939	\$ 250
Total Construction Cost	\$ 1,000,328	\$ 2,750
Professional Fees, Design 10%	\$ 100,033	\$ 275
Professional Fees, Const 10%	\$ 100,033	\$ 275
Bond Amount	\$ 1,200,394	\$ 3,300

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 2-20-15 before me, Robin Ward, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Kevin Staley
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 Robin Ward
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: _____