

DATE SUBMITTED 9/25/2019  
 SUBMITTED BY COMMUNITY DEVELOPMENT DIRECTOR  
 DATE ACTION REQUIRED 10/2/2019

COUNCIL ACTION (x)  
 PUBLIC HEARING REQUIRED ( )  
 RESOLUTION ( )  
 ORDINANCE 1<sup>ST</sup> READING ( )  
 ORDINANCE 2<sup>ND</sup> READING ( )  
 CITY CLERK'S INITIALS (Signature)

**IMPERIAL CITY COUNCIL  
 AGENDA ITEM**

SUBJECT: <b>DISCUSSION/ACTION: MONTERREY PARK UNIT 4B FINAL MAP</b>  1. APPROVE FINAL MAP AND SUBDIVISION AGREEMENT FOR MONTERREY PARK UNIT 4B  2. AUTHORIZE CITY CLERK TO RECORD FINAL MAPS AND RELATED DOCUMENTS	
DEPARTMENT INVOLVED: <b>COMMUNITY DEVELOPMENT</b>	
BACKGROUND/SUMMARY:  Staff completed its review of the Final Map for Monterrey Park Unit 4B and finds all items acceptable. The approved cost estimate for required off-site improvements for Unit 4B is \$1,454,479.94 which is included in the Subdivision Agreement. Security for the off-site improvements will be in the form of a First Lien position in specified real estate property, similar to those approved in other subdivisions. There is sufficient value in the property involved to secure the required amount.	
FISCAL IMPACT: NO FISCAL IMPACT	ADMIN SERVICES SIGN INITIALS <u>(Signature)</u>
STAFF RECOMMENDATION:  Staff recommends approval of the Final Map for Monterrey Park Unit 4B	DEPT. INITIALS <u>DM</u>
MANAGER'S RECOMMENDATION:	CITY MANAGER'S INITIALS <u>(Signature)</u>
MOTION:  SECONDED: APPROVED ( ) REJECTED ( ) AYES: DISAPPROVED ( ) DEFERRED ( ) NAYES: ABSENT: REFERRED TO:	

**SUBDIVISION AGREEMENT AND IMPROVEMENT SECURITY  
(CITY OF IMPERIAL)**

(Government Code Section 66462 and Section 66463)

(S1) Subdivision: Monterrey Park Unit 4B  
(S2) Effective Date: October 2, 2019  
(S3) Completion Period: October 2, 2019– October 2, 2020

THESE PARTIES ATTEST TO THE PARTIES' AGREEMENT HERETO:

CITY COUNCIL

SUBDIVIDER

By: \_\_\_\_\_  
Robert Amparano, Mayor

By: \_\_\_\_\_  
Jupiter Ventures I, LP

APPROVAL RECOMMENDED:

FORM APPROVED - CITY ATTORNEY:

By: \_\_\_\_\_  
Community Development Director

By: \_\_\_\_\_  
Dennis Morita, City Attorney

(NOTE: All signatures to be acknowledged.  
If Subdivider is incorporated, signatures  
must conform with the designated  
representative groups pursuant to  
Corporations Code §313).

.....  
1. PARTIES, DATE AND LEGAL DESCRIPTION

Effective on the above date, the City of Imperial, California, hereinafter called ("City"), and the above named Subdivider, mutually promise and agree as follows concerning this Subdivision. The legal description for this Subdivision is attached hereto as *Exhibit A*.

2. IMPROVEMENTS

Subdivider agrees to install certain improvements (both public and private), including the following: road, drainage, signs, (including appurtenant equipment), water, sewer and such other improvements as required by City ordinance or regulation, conditions of approval for the Subdivision, mitigation measures set forth in environmental documentation, engineer's estimates and as shown on improvement plans for this Subdivision as reviewed and on file with the City of Imperial, Public Services Department (including future amendments thereto).

Subdivider shall complete all of said Work and improvements (hereinafter called "Work")

within the above completion period as required by the California Subdivision Map Act (Government Code Section 66410 and following), in a good workmanlike manner, in accordance with accepted construction practices and in a manner equal or superior to the requirements of the City Code and rulings made thereunder; and where there is a conflict between the improvement plans, City Code or conditions of approval, the stricter requirements shall govern.

3. IMPROVEMENT SECURITY:

Upon executing this Agreement, the Subdivider shall, pursuant to Government Code Section 66499, and the City Code, provide as security to the City:

- A. For Performance and Guarantee of the Work: First Lien position on real property described in *Exhibit A* ("Property") in the sum of one million, four-hundred fifty four thousand, four hundred seventy nine dollars and two cents (\$1,454,479.94), which represents the estimated cost of the Work.

With this security, the Subdivider guarantees performance of all of the Work under this Agreement and maintenance of the Work for one (1) year after its completion and acceptance against any defective workmanship or materials or any unsatisfactory performance. Engineer's estimates are for the purpose of estimating the cost of the Work for establishing the dollar value of the security and shall not define or limit the scope of the Subdivider's obligation to perform all of the Work under this Agreement. The warranty period begins to run only upon completion of all of the Work called for by this agreement and acceptance of such Work as complete by the City.

City agrees to subordinate its first position in the Property to a second position on portions of the Property in favor of a construction lender as Subdivider develops and constructs improvements required by the Agreement as depicted on the attached Exhibit B; provided that a fund control is in place to assure payment directly to contractors for installation of such improvements for performance, labor and materials and monumentation related to the subordinated amounts, and provided further that the City determines, in its sole discretion, that the City's remaining first lien position on the Property is sufficient to secure Subdivider's performance called for by this Agreement.

- B. For Payment: First Lien position on real property described in *Exhibit A* in the sum of one million, four-hundred fifty four thousand, four hundred seventy nine dollars and two cents (\$1,454,479.94), which represents one hundred percent (100%) of the estimated cost of the Work.

With this security, the Subdivider guarantees payment to the contractor, to his

subcontractors, and to persons renting equipment or furnishing labor or materials to them or to the Subdivider.

City agrees to subordinate its first position in the Property to a second position on portions of the Property in favor of a construction lender as Subdivider develops and constructs improvements required by the Agreements as depicted on the attached Exhibit B; provided that a fund control is in place to assure payment directly to contractors for installation of such improvements for performance, labor and materials and monumentation related to the subordinated amounts and provided further that the City determines, in its sole discretion, that the City's remaining first lien position on the Property is sufficient to secure Subdivider's performance called for by this Agreement.

- C. Reduction of Security: Upon acceptance of the Work as complete by the City Council and upon request of the Subdivider, the amount of the securities may be reduced in accordance with Government Code Sections 66497, et. seq. "Acceptance," as used in this subparagraph is solely for the purpose of considering whether security can be reduced. The improvement security required herein for faithful performance of this Agreement may be reduced in amount, but not more often than once per month, as the Work of improvement is completed. Further, the market value of the First Lien position must not be less than 100% of the estimated cost (including payment of prevailing wage) associated with completion of the Work remaining to be completed. In no event shall this security be reduced until progress reports are submitted to the City, and the City determines the Work in fact has been completed and the amount by which the security shall be reduced. The determination by the City as to the completion of Work or improvement and the amount by which the security shall be reduced shall be conclusive. The performance security shall not be reduced to an amount less than ten percent (10%) until the liability established by all parts and subsections of this Agreement is satisfied. Payment security may be reduced only in accordance with Government Code §66499.7.

4. GUARANTEE AND WARRANTY OF WORK

Subdivider guarantees that said Work shall be free from defects in material or workmanship and shall perform satisfactorily for a period of one (1) year from and after the City Council accepts the Work as complete in accordance with Government Code Section 66499.7. Subdivider agrees to correct, repair, or replace, at his expense, any defects in said Work.

5. PLANT ESTABLISHMENT WORK

Subdivider agrees to perform plant establishment work for landscaping installed under this Agreement. Said plant establishment work shall consist of adequately watering plants, replacing unsuitable plants, doing weed, rodent and other pest control, and other work determined by the Public Services Department to be necessary to ensure establishment of

plants. Said plant establishment work shall be performed for a period of one (1) year from and after the City Council accepts the work as completed.

6. IMPROVEMENT PLAN WARRANTY

Subdivider warrants the improvement plans for the Work are adequate to accomplish the Work as promised in Section 2. If, at any time before the City Council accepts the Work as complete or during the one year guarantee period, said improvement plans prove to be inadequate in any respect, Subdivider shall make whatever changes are necessary to accomplish the Work as promised.

7. NO WAIVER BY CITY

Inspection of the Work and/or materials, or approval of Work and/or materials or statement by any officer, agent or employee of the City indicating the Work or any part thereof complies with the requirements of this Agreement, or acceptance of the whole or any part of said Work and/or materials, or payments therefor, or any combination or all of these acts, shall not relieve the Subdivider of his obligation to fulfill this Agreement as prescribed; nor shall the City thereby be estopped from bringing any action for damages arising from the failure to comply with any of the terms and conditions hereof.

8. INDEMNITY

Subdivider shall defend, hold harmless and indemnify the indemnitees from the liabilities as defined in this section:

- A. The indemnitees benefited and protected by this promise are the City and its elective and appointive boards, commissions, officers, agents and employees.
- B. The liabilities protected against are any liability or claim for damage of any kind allegedly suffered, incurred or threatened because of actions defined below, and including personal injury, death, property damage, inverse condemnation, or any combination of these, and regardless of whether or not such liability, claim or damage was unforeseeable at any time before the City reviewed said improvement plans or accepted the Work as complete, and including the defense of any suit(s), action(s) or other proceeding(s) concerning said liabilities and claims, excepting only those claims arising from the sole negligence of City.
- C. The actions causing liability are any act or omission (negligent or non-negligent) in connection with the matters covered by this Agreement and attributable to the Subdivider, contractor, subcontractor or any officer, agent or employee of one or more of these.
- D. Non-Conditions. The promise and Agreement in this section are not conditioned or dependent on whether or not any indemnitee has prepared, supplied or reviewed any

plans or specifications in connection with this Work or Subdivision, or has insurance or other indemnification covering any of these matters, or that the alleged damage resulted partly from any negligent or willful misconduct of any indemnitee.

9. COSTS

Subdivider shall pay when due all the costs of the Work including inspections thereof and relocating existing utilities required thereby.

10. SURVEYS

Subdivider shall set and establish survey monuments in accordance with the filed map and to the satisfaction of the City Engineer before acceptance of any Work as complete by the City Council.

11. NON-PERFORMANCE AND COSTS

If Subdivider fails to complete the Work within the time specified in this Agreement and subsequent extensions, or fails to maintain the Work, the City may proceed to complete and/or maintain the Work by contract or otherwise, and Subdivider agrees to pay all costs and charges incurred by the City (including, but not limited to: engineering, inspection, surveys, contract, overhead, etc.) immediately upon demand.

Subdivider hereby consents to entry on the Subdivision property by the City and its forces, including contractors, in the event the City proceeds to complete and/or maintain the Work.

Once action is taken by City to complete or maintain the Work, Subdivider agrees to pay all costs incurred by the City, even if Subdivider subsequently completes the Work. Should City sue to compel performance under this Agreement or to recover costs incurred in completing or maintaining the Work, Subdivider agrees to pay all attorney's fees, and all other expenses of litigation incurred by City in connection therewith, even if Subdivider subsequently proceeds to complete the Work.

12. RECORD MAP

In consideration hereof, City shall allow Subdivider to file and record the Final Map for said Subdivision.

13. MONUMENTATION SECURITY

Subdivider shall file or deposit with the City a monument bond or security as applicable in an amount specified by the City Engineer pursuant to Sections 66496 and 66499 of the Government Code of the State of California.

City agrees to subordinate its first position in the Property to a second position on portions of the Property in favor of a construction lender as Subdivider develops and constructs improvements required by the Agreements as depicted on the attached Exhibit B; provided that a fund control is in place to assure payment directly to

contractors for installation of such improvements for performance, labor and materials and monumentation related to the subordinated amounts and provided further that the City determines, in its sole discretion, that the City's remaining first lien position on the Property is sufficient to secure Subdivider's performance called for by this Agreement.

14. ENGINEERING FEES

Subdivider shall pay such fees as have been duly established by City.

15. DATE OF COMPLETION

The completion of improvements required hereunder and the date of completion shall be determined and certified by the City Engineer.

16. FEES

Subdivider shall pay such fees as have been duly established by City.

EXHIBIT "A"

BEING A SUBDIVISION OF A PORTION OF REMINDER PARCEL "A" OF MONTERREY PARK SUBDIVISION NO. 2 - UNIT 4A IN THE CITY OF IMPERIAL, AS PER MAP RECORDED IN BOOK 27, PAGE(S) 54 OF FINAL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF IMPERIAL COUNTY, CALIFORNIA.





**MONTERREY PARK SUB.UNIT No. 4B  
ENGINEER'S COST ESTIMATE  
FOR ON-SITE IMPROVEMENTS  
5/31/19**



ITEM	UNIT	QUANTITY	UNIT PRICE	TOTAL
<b><u>Water</u></b>				
8" DIA. PVC PIPE	L.F.	2319.00	\$30.00	\$69,570.00
12" DIA. PVC PIPE	L.F.	475.00	\$50.00	\$23,750.00
8" VALVE	EA.	2.00	\$1,500.00	\$3,000.00
12" VALVE	EA.	2.00	\$2,700.00	\$5,400.00
12" X 12" ELBOW	EA.	0.00	\$1,500.00	\$0.00
12" X 8" TEE	EA.	2.00	\$1,500.00	\$3,000.00
FIRE HYDRANT ASSEMBLY	EA.	10.00	\$5,200.00	\$52,000.00
WATER SERVICE	EA.	84.00	\$800.00	\$67,200.00
				<b>\$223,920.00</b>
<b><u>Sewer</u></b>				
8" DIA. PVC SDR 35 PIPE	L.F.	2816.00	\$35.00	\$98,560.00
SEWER MANHOLE	EA.	8.00	\$4,200.00	\$33,600.00
SEWER SERVICE	EA.	84.00	\$800.00	\$67,200.00
				<b>\$199,360.00</b>
<b><u>Storm Drain</u></b>				
24" DIA. PVC STORM DRAIN	L.F.	1551.00	\$85.00	\$131,835.00
18" DIA. PVC STORM DRAIN	L.F.	0.00	\$65.00	\$0.00
SD MANHOLE	EA.	6.00	\$4,200.00	\$25,200.00
SD CATCH BASIN	EA.	4.00	\$4,000.00	\$16,000.00
				<b>\$173,035.00</b>
<b><u>Curb &amp; Sidewalk</u></b>				
6" CURB & GUTTER	L.F.	5800.00	\$16.00	\$92,800.00
24' DRIVEWAY	SQ.FT.	9072.00	\$6.00	\$54,432.00
HANDICAP CURB RETURNS	SQ.FT.	456.00	\$5.50	\$2,508.00
SIDEWALK	SQ.FT.	23200.00	\$4.50	\$104,400.00
				<b>\$254,140.00</b>



**Electrical**

STREET LIGHTS	EA.	10.00	\$3,500.00	\$35,000.00
UNDERGROUND ELECTRIC	EA.	84.00	\$550.00	\$46,200.00
				<u>\$81,200.00</u>

**Earthwork (Include overexcavation)**

CUT	CYD	0.00	\$2.00	\$0.00
FILL	CYD	0.00	\$2.00	\$0.00
IMPORT	CYD	0.00	\$2.00	\$0.00
				<u>\$0.00</u>

**A.C. Pavement**

12" SUBGRADE PREP.	CYD	4550.93	\$1.30	\$5,916.21
9" CLASS II AG. BASE	TON	6450.13	\$22.50	\$145,127.93
3" ASPHALT CONCRETE	TON	2304.05	\$79.02	\$182,066.03
				<u>\$333,110.17</u>

<b>SUB-TOTAL</b>	<b>\$1,264,765.17</b>
<b>15% CONTINGENCY</b>	<b>\$189,714.77</b>
<b>TOTAL</b>	<b><u>\$1,454,479.94</u></b>

**NOTES:**

Since the engineer has no control over the cost of labor, materials, or equipment, or over the contractor's methods of determining prices, or over competitive bidding or market conditions, our opinions of probable project cost or construction cost provided for herein are to be made on the basis of our experience and qualifications and represent our best judgment as design professionals familiar with the construction industry, but the engineer cannot, and does not, guarantee that proposals, bids, or the construction cost will not vary from opinions of probable cost prepared by the firm.

### **SUBDIVISION GUARANTEE**

Fee: \$150.00

No.:

Subdivision: Monterrey Park Subdivision No. 2 - Unit 4B

First American Title Insurance Company  
a corporation

### **GUARANTEES**

The County of Imperial and any City within which said subdivision is located in a sum not exceeding \$1,000.00.

That, according to those public records which, under the recording laws, impart constructive notice of matters affecting the title to the land included within the exterior boundary shown on the map of the above referenced subdivision, the only parties having any record title interest in said land whose signatures are necessary, under the requirements of the Subdivision Map Act, on the certificates consenting to the recordation of said map and offering for dedication any streets, roads, avenues and other easements offered for dedication by said map are:

JUPITER VENTURES I, LP, A CALIFORNIA LIMITED PARTNERSHIP, as Owner

The signature of the following has been omitted under the provision of Section 66436, Subsection (a) (3) (i) of the Subdivision Map Act. Their interest is such that it cannot ripen into fee title and said signature is not required by the Governing body:

Imperial Land Company, as holder of an easement recorded August 25, 1909, in Book 27 Page 307, of Deeds.

Imperial Land Company, as holder of an easement recorded August 25, 1909, in Book 27 Page 308, of Deeds.

Imperial Irrigation District, as holder of an easement recorded January 28, 1938, in Book 478 Page 547, of Official Records.

City of Imperial, as holder of an easement for public street known as Monterrey Park Lane as dedicated on map in Book 24 Page 63 of Final Maps.

County of Imperial, as holder of an overflight easement as dedicated on map in Book 24 Page 63 of Final Maps.

County of Imperial, as holder of an easement recorded May 5, 2006, as Instrument No. 2006-022403, of Official Records.

The map hereinbefore referred to is a subdivision of:

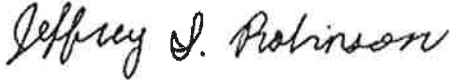
A PORTION OF PARCEL A OF MONTERREY PARK SUBDIVISION NO. 2 - UNIT 4A IN THE CITY OF IMPERIAL, AS PER MAP RECORDED IN BOOK 27, PAGE(S) 54 OF FINAL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF IMPERIAL COUNTY, CALIFORNIA.

Dated: 08/01/2019

**First American Title Insurance Company**



Dennis J. Gilmore  
President



Jeffrey S. Robinson  
Secretary



*Title officer*