



CITY COUNCIL STAFF REPORT

DATE: February 18, 2015

CONSENT AGENDA

SUBJECT: APPROVE THE FIRST AMENDMENT TO AND ASSIGNMENT AND ASSUMPTION OF A SUBDIVISION IMPROVEMENT AGREEMENT (A5393) BETWEEN LV PALM SPRINGS VILLAGE, LLC, (ASSIGNOR), FCA CA, LLC, (ASSIGNEE), AND THE CITY OF PALM SPRINGS REGARDING TRACT MAP NO. 31848-1 (AVALON), NORTH INDIAN CANYON DRIVE AND SUNRISE PARKWAY

FROM: David H. Ready, City Manager

BY: Douglas Holland, City Attorney

SUMMARY

LV Palm Springs Village, LLC, the current owner of the 300 acre development located on the east side of Indian Canyon Drive north of San Rafael Drive, approved as "Avalon", also known as the "Palm Springs Village" project, is in the process of selling the project to FCA CA, LLC. A final map has been recorded for approximately one-half of the project and a subdivision improvement agreement is still in effect. The proposed "First Amendment" would amend the existing subdivision improvement agreement to substitute the purchaser, FCA CA, LLC, as the entity obligated to comply with the obligations under the subdivision improvement agreement, authorize the substitution of new security instruments from FCA CA, LLC, and provide for revised completion dates for the improvements.

RECOMMENDATION:

1. Approve a First Amendment to and Assignment and Assumption of Subdivision Improvement Agreement for Tract Map 31848-1 ("Avalon"), A5393, between LV Palm Springs Village, LLC, as Assignor, FCA CA, LLC, as Assignee, and the City of Palm Springs, subject to the City Attorney's final review and approval; and
2. Authorize the City Manager to execute all necessary documents.

STAFF ANALYSIS:

LV Palm Springs Village, LLC, is the successor to SunCal PSV, LLC, a Delaware limited liability company ("SunCal"). SunCal and the City entered into a Subdivision Improvement Agreement ("SIA") dated December 18, 2006, (A5393), and recorded on February 16, 2007, in conjunction with recordation of Tract Map 31848-1 consisting of approximately one-half of the Palm Springs Village project, generally located at the southeast corner of North Indian Canyon and Sunrise Parkway. The City has continued to extend the effectiveness of the SIA through a series of resolutions adopted by the City Council, and the current termination date of the Original SIA is May 4, 2015.

ITEM NO. 212

As set forth in the SIA, LV Palm Springs Village, LLC, is obligated to construct and install certain improvements to accommodate the development of the Tract. The SIA also required the posting of bonds as security for the faithful performance of the work required under the SIA. In accordance with the SIA, LV Palm Springs Village, LLC, has installed substantial components of the required work; however, the work was not completed and some of the work that had been installed has deteriorated or been vandalized, and may otherwise require repair.

LV Palm Springs Village, LLC, is in the process of selling its interests in the project to FCA CA, LLC, and have opened escrow to affect the ultimate sale and transfer of the project. Pursuant to the terms of the sale, the FCA CA, LLC, has agreed to assume the all of the obligations of LV Palm Springs Village, LLC, under the SIA and to replace the existing security with the replacement bonds.

Under the terms of the proposed First Amendment, the City will permit FCA CA, LLC, a reasonable period of time in which to evaluate and repair the installed improvements and to complete the remaining work; waive and/or deem cured all defaults, if any, of LV Palm Springs Village, LLC, that may have occurred under the SIA prior to the assignment; extend the time period for performance of the SIA.

Staff recommends that the City Council approve, subject to the City Attorney's final review and approval, the proposed First Amendment to and Assignment and Assumption of Subdivision Improvement Agreement for Tract Map 31848-1 ("Avalon"), Agreement No. 5393; a copy of the draft First Amendment is included as **Attachment 1**.

FISCAL IMPACT:

None

SUBMITTED:

Prepared by:

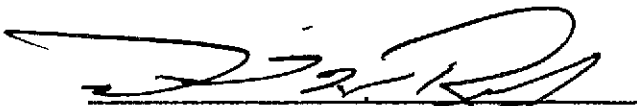


Marcus L. Fuller, MPA, P.E., P.L.S.
Assistant City Manager/City Engineer



Douglas Holland
City Attorney

Approved by:



David H. Ready, Esq., Ph.D.
City Manager

Attachment:

1. First Amendment to SIA TM 31848-1 "Avalon"

WHEN RECORDED MAIL TO:

FCA CA, LLC
c/o Freehold Capital Management LLC
500 Boylston St, Suite 1870
Boston, MA 02116
Attention: Casey Tischer and Jesse Baker

(Space above this line is for recorder's use)

**FIRST AMENDMENT TO AND
ASSIGNMENT AND ASSUMPTION OF
SUBDIVISION IMPROVEMENT AGREEMENT**

THIS FIRST AMENDMENT TO AND ASSIGNMENT AND ASSUMPTION OF SUBDIVISION IMPROVEMENT AGREEMENT ("**Assignment**") is made this _____ day of _____, 2015 ("**Assignment Effective Date**"), by and among LV PALM SPRINGS VILLAGE LLC, a Delaware limited liability company ("**Assignor**"), FCA CA, LLC, a Delaware limited liability company ("**Assignee**"), and the City of Palm Springs, California, a municipal corporation ("**City**").

RECITALS

A. Assignor, as successor-in-interest to SunCal PSV, LLC, a Delaware limited liability company ("**SunCal**"), and the City entered into that certain Subdivision Improvement Agreement dated December 18, 2006 and recorded on February 16, 2007 as Document No. 2007-0113033 in the Official Records of Riverside County, California (the "**Original SIA**"), a copy of which is attached hereto as **Exhibit A** and fully incorporated herein by this reference, relating to the development of the property described by Tract Map No. 31848-1 approved by the City and filed in 2006 (the "**Property**"). Initially capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Original SIA.

B. The City has continued to extend the effectiveness of the Original SIA through a series of resolutions adopted by the City Council, and the current termination date of the Original SIA is May 4, 2015.

C. As set forth in the Original SIA, Assignor (as successor-in-interest to SunCal), as Subdivider, has agreed to construct and install certain improvements to accommodate the development of Tract Map No. 31848-1. Pursuant to Section 4.1(a) of the Original SIA, Subdivider has provided the City with those certain bonds, a list of which is set forth on **Exhibit B** attached hereto and fully incorporated herein by this reference (collectively, the "**Existing Security Instruments**"), each as security for the Assignor's faithful performance of the work required under the Original SIA, including without limitation, construction of the Works of Improvement.

D. In accordance with the Original SIA, Subdivider installed, on the Property and on adjoining property subject to Tentative Tract Map 31848 (the "**Adjoining Property**", and together with the Property, collectively, "**Real Property**"), substantial components of the Works of Improvement that were originally inspected by the City (the "**Installed Improvements**"). Subsequent to installation of the Installed Improvements, work ceased on the Real Property and the Installed Improvements may have, in some cases, deteriorated or been vandalized, and may otherwise require repair.

E. Assignor, as seller, and Assignee, as buyer, have opened escrow with Fidelity National Title Insurance Company (“**Escrow Holder**”) to enable transfer of the Real Property and other tangible and intangible property from Assignor to Assignee, as more specifically described in an additional agreement between Assignor and Assignee (the “**Transfer Agreement**”) (the closing of the transaction described in the Transfer Agreement is referred to herein as the “**Close of Escrow**”).

F. Pursuant to the Transfer Agreement, Assignor has agreed, among other things, to assign the Original SIA to Assignee and Assignee has agreed, among other things, to assume the Original SIA and to replace the Existing Security Interests with the Approved Replacement Bonds (as defined below) upon the terms and conditions set forth in the Transfer Agreement.

G. Assignor desires to assign to Assignee, without representation or warranty, all of Assignor's rights, titles, interests, benefits, privileges, claims, duties, and obligations (collectively, the “**Interests**”) pursuant to, contained within and in accordance with the Original SIA, as amended hereby and, subject to receipt of the assurances and other agreements of the City set forth herein, Assignee desires to assume the Interests in accordance with the terms of this Assignment.

H. City and Assignee further desire to amend the Original SIA as further set forth herein in order to (1) permit Assignee, as Subdivider, a reasonable period of time in which to evaluate and repair the Installed Improvements and to complete the remaining Works of Improvement, (2) to waive and/or deem cured all defaults, if any, of Subdivider that may have occurred under the Original SIA prior to the Assignment Effective Date, and (3) to extend the time period for performance of the Original SIA pursuant to the provisions of this Assignment.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows.

1. Assignment and Assumption

1.1 Assignor hereby grants, transfers and assigns to Assignee all of Assignor’s Interests pursuant to, under, and contained within the Original SIA, as amended by this Assignment, without recourse, representation or warranty.

1.2 Assignee hereby fully accepts the foregoing assignment and unconditionally assumes and agrees to perform, in a timely manner, all of the duties and obligations of Subdivider arising pursuant to, under or contained within the Original SIA, as amended by this Assignment (the Original SIA, as so amended, the “**SIA**”), with the same force and effect as if Assignee had initially executed the Original SIA as the Subdivider. Assignee agrees and acknowledges that, upon execution of this Assignment, Assignee shall become the Subdivider under the SIA.

1.3 The assignment of the Interests of Assignor in this Assignment is in no way intended (and in no way implies) to change any of the terms or conditions of the Transfer Agreement nor is it intended to imply that Assignor is making any warranty or representation to Assignee or that any of the improvements contemplated by the Original SIA may be accomplished or are feasible. Nothing contained in this Assignment shall modify in any way any provisions of the Transfer Agreement.

2. Exoneration and Replacement of Existing Security Interests. The City hereby agrees that upon (a) delivery by Assignee to City of bonds in form and substance approved by the City and fully executed by Lexon Surety Group (the approved bonding company) and Assignee (“**Approved Replacement Bonds**”),

and (b) satisfaction of the Release Conditions (as defined in the Supplemental Escrow Instructions attached hereto as **Exhibit C** and incorporated herein by this reference), including without limitation, fulfillment of the conditions to Close of Escrow under the Transfer Agreement, City shall return the Existing Security Interests to Assignor. Notwithstanding the foregoing, the City agrees that, upon request from Assignor, it shall execute and deliver a separate letter stating that Assignor, SunCal and the applicable bonding companies and/or sureties with respect to the Existing Security Interests are released and exonerated from any and all liability with respect to the Original SIA and the Existing Security Interests, which letter shall enclose and release the originals of each of the Existing Security Interests.

3. Release.

3.1 This Assignment shall constitute the City's release and exoneration of Assignor, SunCal and their applicable bonding companies and/or sureties with respect to the Existing Security Interests and from any and all liability with respect to the Original SIA and the Existing Security Interests. After execution of this Assignment by all parties, Assignor shall have no obligation to Assignee or to the City and shall have no liability of any nature under the SIA.

3.2 In this regard, Assignee and City, each for itself and for their respective members, agents, employees, predecessors, successors, assigns, agents, and all other persons or entities who may claim through it, does hereby release and forever discharge Assignor and its respective members, managers, officers, shareholders, partners, directors, employees, agents, lenders, attorneys, successors, assigns, and related and/or affiliated parties, from any and all manner of action, suit, lien, damage, expense (including attorneys' fees), claim or demand of whatever nature heretofore or hereafter arising out of, related to, connected with the SIA.

3.3 In connection with the general release set forth herein, each of Assignee and City specifically waives the provisions of California Civil Code Section 1542, which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

Each of Assignee and City knowingly and voluntarily waives the provisions of Civil Code Section 1542 and any other comparable provisions or principles of state, federal or common law and acknowledges and agrees that this waiver is an essential and material term of this Assignment and the release provisions contained herein and that, without such waiver, this Assignment would not have been entered into. Each of Assignee and City understands and acknowledges the significance and consequences of the release set forth herein and this specific waiver of Civil Code Section 1542 and all other comparable provisions or principles of state, federal law or common law.

Assignee's Initials City's Initials

4. Effect of Assignment and Assumption. From and after the Assignment Effective Date, the City and Assignee agree that: (a) Assignee shall be deemed a party to the Original SIA and any reference therein to "Subdivider" shall be deemed to refer to Assignee; and (b) Assignee shall be entitled to exercise and enforce the Original SIA as if Subdivider had been a signatory to the Original SIA or a beneficiary thereunder as of the date of its original execution.

5. Amendments to Original SIA; Extensions of Time Periods for Performance. The Original SIA contains various dates for performance and the obligation for continuous performance by Subdivider following the commencement of construction of the Works of Improvement (as required by Section 2.4 of the Original SIA) that have not been met and which, due to the passage of time, are not susceptible of cure and that will not be capable of cure until such time as final development plans have been approved for the Property. To address this and to extend the time period for performance of obligations under the SIA, City and Assignee hereby agree to amend the Original SIA as set forth below.

5.1 Notwithstanding any other provision of the SIA to the contrary, the City hereby fully waives and releases Subdivider (as that term is used prior to, on and after the Assignment Effective Date) with respect to each and every default, if any, occurring prior to the Assignment Effective Date and hereby agrees that, except with respect to its duty to deliver the Approved Replacement Bonds, Subdivider shall have no obligation to perform the Works of Improvement or to carry out any other obligation under the SIA until the Revised Commencement Date.

5.2 Commencement and Completion. Notwithstanding any other provision of the SIA to the contrary:

5.2.1 The definition of "Commencement Date" as that term is used in Section 2.1 of the Original SIA shall be the date that is six (6) months following the later of (a) the Assignment Effective Date or (b) the City's approval of completed final development plans for the open space/golf course (the "**Revised Commencement Date**").

5.2.2 The "**Completion Date**" as that term is used in the Original SIA shall be the date that is two (2) years following the Revised Commencement Date, provided that if the Works of Improvement are not completed by the Completion Date, the City and Subdivider shall work in good faith to achieve completion within a reasonable time period. The foregoing shall supersede any earlier termination date approved by the City Council pursuant to one or more generally applicable resolution(s) extending the dates of subdivision improvement agreements in the City.

5.3 Extension of Deferred or Assigned Obligations. City and Assignee hereby agree with respect to the provisions of Section 1.2(a) of the Original SIA:

5.3.1 The time period for performance by Subdivider of the Obligation pursuant to Section 1.2(a) of the Original SIA has passed, and accordingly, as further described therein, City hereby: (a) agrees that City has or hereby does assume the Obligation, which is hereby deemed to be transferred to the City, (b) releases Subdivider from any requirement to construct the Obligation, to enter into negotiations and coordinate with RCFC in connection therewith or to have made a payment of the Deposit prior to the Assignment Effective Date.

5.3.2 Notwithstanding any other provision of Section 1.2(a) to the contrary: (a) the Deposit to be paid by Subdivider to the City shall be due and payable upon issuance by the City of the first residential building permit upon a lot within Tract Map No. 31848-1 (and as a condition thereto) or upon such earlier date as physical construction of the CV Link by RCFC or the City commences.

5.3.3 The City's right to construct the assigned Obligation shall be extended to the date that is ten (10) years from the date of the payment of the Deposit by Subdivider to City, or to any agreed extension of time thereof (the "**Obligation Date**"), and if not completed by the Obligation Date, shall be returned to the Home Owners Association or other non-profit mutual benefit corporation established for the residents within Tract Map No. 31848-1.

5.4 Community Facilities District for Public Safety Services. Prior to issuance of a certificate of occupancy for any residential unit within the Property, Assignee agrees to support formation of or annexation into a Community Facilities District (CFD) to include the Property, the proceeds of which shall be used by the City to fund a portion of City public safety services, including police and fire protection. Assignee further agrees to waive any right of protest or contest of such formation or annexation, provided that the amount of any assessment for any single family dwelling unit (or the equivalency thereof when applied to multiple family, commercial or industrial) as established through appropriate study shall not exceed \$500 annually per dwelling unit or dwelling unit equivalency unit, subject to an annual consumer price index escalator. Prior to sale of any lots, or prior to the issuance of any certificate of occupancy, or prior to any approval of the Building Official that will allow the premises to be occupied, the CFD shall be formed, the annexation thereto shall occur, or at the option of the City Manager and Building Official, a covenant agreement may be recorded against any affected parcel(s) within the Property, evidencing the Owner's binding consent, approval, and waiver of rights as provided herein.

6. Effect of Assignment on Interpretation of SIA.

6.1 Interpretation of SIA. The City and Assignee hereby acknowledge and agree that, from and after the Assignment Effective Date, certain rights, duties and obligations under the SIA shall be interpreted as follows:

6.1.1 Assignee shall be responsible only for the accuracy and satisfaction of those obligations, representations and warranties of the Subdivider arising from and after the Assignment Effective Date; and

6.1.2 Components of the Installed Improvements may have deteriorated, been vandalized, or otherwise require repair (such components, "**Damaged Components**"). City agrees to cooperate with Assignee and to permit repair and replacement of Damaged Components of the Works of Improvement rather than complete removal and reinstallation thereof where feasible, provided that Assignee acknowledges and agrees that City shall have all the rights of inspection and acceptance of improvements set forth in the SIA.

6.1.3 City acknowledges that (a) Assignee is entering into this Assignment in reliance upon the agreements of City contained in Section 5 of this Assignment to waive defaults and extend the time period for performance by Assignee, and (b) City hereby waives and hereafter shall be estopped from pursuing any rights or remedies against Subdivider (as that term is used prior to, on and after the Assignment Effective Date) in connection with any alleged breach of the SIA prior to the Assignment Effective Date.

6.1.4 Notices, Demands and Communications to Subdivider from and after the Assignment Effective Date shall go to Assignee as indicated below:

FCA CA, LLC

c/o Freehold Capital Management LLC
500 Boylston St, Suite 1870
Boston, MA 02116
Attention: Casey Tischer and Jesse Baker
Phone: (617) 221-8405
E-mail: ct@freeholdcm.com, jrb@freeholdcm.com

With a copy to:

Lubin Olson & Niewiadomski LLP
600 Montgomery Street, 14th Floor
San Francisco, CA 94111
Attention: Mark Lubin
Phone: (415) 981-0550
Email: mlubin@lubinolson.com

and with a copy to:

Armbruster Goldsmith & Delvac LLLP
11611 San Vicente Blvd., Suite 900
Los Angeles, CA 90049
Attention: Amy Freilich
Phone: (310) 209-8800
Email: amy@agd-landuse.com

6.1.5 Terms; No Other Changes. Unless otherwise expressly indicated herein, all references in Original SIA and in this Assignment to “this Agreement” or the “SIA” shall mean and refer to the Original SIA as modified by this Assignment and other than the amendments and changes herein, all provisions of the Original SIA remain unmodified and in full force and effect. In the event of any conflict or inconsistency between the terms of the Original SIA and this Assignment, the terms of this Assignment shall control.

7. Miscellaneous Provisions.

7.1 Effectiveness. Notwithstanding anything to the contrary contained in this Assignment, this Assignment shall be null and void, *ab initio*, if the Close of Escrow for the sale of the Real Property to Assignor pursuant to the terms and conditions of the Transfer Agreement fails to occur on or before the Outside Closing Date (as defined in the Transfer Agreement).

7.2 Entire Agreement. This Assignment, together with the Original SIA, constitutes the entire agreement between the parties in regards to the subject matter contained herein.

7.3 Recitals. The Recitals above are incorporated herein by reference.

7.4 Governing Law. This Assignment shall be governed by, interpreted under, and construed and enforceable in accordance with the laws of the State of California.

7.5 Interpretation. All of the parties hereto have been represented by legal counsel of their choice are not relying on any statement of the other party in entering herein. Each party has cooperated and

participated in the drafting and the preparation of this Assignment. Hence, in any construction to be made of this Assignment, no ambiguity shall be resolved against any party by virtue of that party's participation in the drafting of this Assignment.

7.6 Severability. If any provision, section, paragraph, clause or sentence in this Assignment is declared to be illegal, void, invalid, or unenforceable by a court or other authority with jurisdiction thereof, the remaining provisions, paragraphs, clauses, and sentences shall be severable and shall remain in full force and effect. The parties agree that a void or invalid paragraph, clause or provision shall not affect the validity or enforceability of the remaining provisions of this Assignment.

7.7 Counterparts. This Assignment may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

7.8 Survival. All representations, warranties, covenants and agreements made by the parties hereunder shall be considered to have been relied upon by the parties and shall survive the execution, delivery and performance of this Assignment and all other documents contemplated herein.

7.9 Successors and Assigns. This Assignment shall be binding upon and inure to the benefit of the successors, assignees, personal representatives, heirs and legatees of Assignor and the City and shall be binding upon and inure to the benefit of all successors and assigns to Assignee's right, title and interest in and to the Property.

7.10 Amendment.

7.10.1 Any amendment to Section 1 of this Assignment shall not be binding unless in writing and executed by Assignor and Assignee but shall not require execution by the City.

7.10.2 Any amendment to Sections 4, 5 and/or 6 of this Assignment shall be effective if executed by the City and Assignee, as Subdivider under the SIA, or any subsequent Subdivider, but shall not require execution by Assignor.

7.10.3 Any amendment to Sections 2, 3 and/or Section 6 of this Assignment shall require execution of (1) Assignor, (2) Assignee, as Subdivider under the SIA, or any subsequent Subdivider, and (3) the City.

7.11 Additional Documents. Each of the parties shall each execute and deliver to the other parties, upon demand, such further documents, and shall take such further actions as are necessary or desirable to effectuate the intent and purposes of this Assignment.

7.12 Authority. The persons signing below represent that they have the authority to bind their respective party, and that all necessary board of directors', shareholders', partners', agency's or other approvals have been obtained.

Signatures on following pages

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the day and year first written above.

“ASSIGNOR”

LV PALM SPRINGS VILLAGE LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

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 [_____]]
County of [_____]]

On _____ before me, _____ (here insert name and title of officer), personally appeared _____, 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 _____

(Seal)

[Signature Continues on Following Page]

“ASSIGNEE”

FCA CA, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

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 [_____]]
County of [_____]]

On _____ before me, _____ (here insert name and title of officer), personally appeared _____, 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 _____

(Seal)

ATTEST:

CITY OF PALM SPRINGS, CALIFORNIA,
a municipal corporation

BY: _____

Name:
City Clerk

By: _____

Name:
Title:

APPROVED AS TO FORM:

BY: _____

Doug Holland
City Attorney

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 [_____]
County of [_____]

On _____ before me, _____ (here insert name and title of officer), personally appeared _____, 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 _____

(Seal)

Exhibit A

Original Subdivision Improvement Agreement

[attached]

Exhibit B

Security Instruments

[attached]

Exhibit C

Form of Supplemental Escrow Instructions

[date]

Fidelity National Title Insurance Company
Attention: Valerie Rapp (“**Escrow Agent**”)
1300 Dove Street, Suite 310
Newport Beach, CA 92660

Re: Supplemental Escrow Instructions—Palm Springs Village Avalon
Escrow No. _____ (“**Supplemental Escrow Instructions**”)
real property described by Tract Map No. 31848-1 and Tract Map 31848 (collectively, the “**Real Property**”)

Dear Ms. Rapp:

The undersigned LV PALM SPRINGS VILLAGE LLC, a Delaware limited liability company (“**Assignor**”), and FCA CA, LLC, a Delaware limited liability company (“**Assignee**”), are parties to that certain _____ dated _____ (“**Transfer Agreement**”) describing the terms and conditions for sale by Assignor to Assignee of the Real Property and certain other tangible and intangible property as more specifically described therein, and in accordance with the provisions of the Transfer Agreement have opened the above referenced Escrow with you for purposes of consummating the “Close of Escrow” as defined and described in the Transfer Agreement.

Assignor and Assignee, together with the City of Palm Springs, California (the “**City**”), hereby submit the following joint Supplemental Escrow Instructions in order to cause Escrow Agent to undertake the actions described below upon the occurrence of the Release Conditions (as defined below).

1. Assignor and Assignee Deliveries. In addition to those items to be delivered by each of Assignor and Assignee under the Transfer Agreement, Assignor and Assignee each hereby agree to execute and deliver the First Amendment to and Assignment and Assumption of Subdivision Improvement Agreement (“**Assignment**”), a copy of which is attached hereto for your reference, and to make the further deliveries described below. Initially capitalized terms used and not otherwise defined herein have the meanings set forth in the Assignment.
2. City Deliveries. Upon approval of the Assignment by the City Council of the City, the City hereby agrees to deliver the documents and instruments described below required to be delivered by the City.
3. Release Conditions. Close of Escrow under the Transfer Agreement shall not take place and the documents described below delivered by Assignor, Assignee and/or the City to Escrow Agent and shall be held by Escrow Agent until each of the “Release Conditions” set forth below is satisfied. The following constitute the “Release Conditions:”

(a) Escrow Agent shall have received written notice from Assignor and Assignee that all conditions precedent to Close of Escrow under the Transfer Agreement have been satisfied or have been waived by the party for whose benefit such condition arose, and authorizing the Close of Escrow to take place.

(b) Escrow Agent shall have received fully executed originals, acknowledged where required, of all documents required by the Transfer Agreement to effect the Close of Escrow and Escrow Agent shall have received from each of Assignor, Assignee and the City, fully executed and acknowledged counterpart originals of the Assignment.

(c) Escrow Agent shall have received from the City one original of each of the Existing Security Interests listed on Exhibit "B" to the Assignment and Escrow Agent shall have received Assignor's written confirmation that such instruments comprise a full and complete set of the Existing Security Interests.

(d) Escrow Agent shall have received from Assignee or its surety, fully executed Approved Replacement Bonds for each of the required bonds listed on Exhibit "B" to the Assignment and Escrow Agent shall have received City's and Assignee's written confirmation that such instruments comprise a full and complete set of the Approved Replacement Bonds.

(e) Escrow Agent shall have submitted for recording the Grant Deed (as defined in the Transfer Agreement) in accordance with the requirements of the Transfer Agreement.

4. Additional Closing Instructions. In order to effectuate the replacement of the Existing Security Interests with the Approved Replacement Bonds, as required by the Assignment Agreement, Escrow Agent are hereby instructed to carry out the following upon the satisfaction of each and every one of the Release Conditions:

(a) Create a single original (by combining counterparts) of the Assignment, date the Assignment as of the date of the Close of Escrow and cause the Assignment to be recorded in the Official Records of Riverside County, immediately following the recording of the Grant Deed, or as otherwise instructed by Assignor, Assignee and City.

(b) Deliver the originals of each of the Existing Security Interests to Assignor.

(c) Deliver the fully executed Approved Replacement Bonds to the City.

(d) Upon recording of the Assignment in the Official Records, provide a conformed copy of the Assignment Agreement to each of Assignor, Assignee and the City.

5. Return of Documents. Notwithstanding any other provision of the Transfer Agreement, the Assignment Agreement or these Supplemental Instructions, in the event that each and every one of the Release Conditions has not occurred (or been waived in writing by the parties) by February 27, 2015, Escrow Agent shall, unless otherwise instructed in writing by the City, Assignor and Assignee:

(a) return the Existing Security Interests to the City;

(b) return the Approved Replacement Bonds to Assignee; and

(c) return the original counterparts of the Assignment Agreement signed by each of the City, Assignor and Assignee to the signatory party, without recording.

Thereafter, your obligations under these Supplemental Escrow Instructions shall terminate.

By executing this letter below, you agree that you have read and understand these Supplemental Escrow Instructions, and that you will be bound by the terms of these instructions that pertain to you as the Escrow Holder (as such term is defined in the Transfer Agreement). If you are unable to comply with these Supplemental Escrow Instructions or if there are to be any changes herein, you are not to proceed without further written authorization from all of the Assignee, Assignor and the City. These Supplemental Escrow Instructions may be modified or rescinded by the Assignee, Assignor and/or the City prior to the satisfaction of the Release Conditions. Following the satisfaction of the Release Conditions, these Supplemental Escrow Instructions shall become irrevocable and may only be modified or rescinded with the written consent of all of the Assignee, the Assignor and the City. The recordation of the Grant Deed or other communication of the Close of Escrow having taken place shall be deemed your irrevocable acceptance of these Supplemental Escrow Instructions and your agreement to act strictly in accordance herewith irrespective of whether or not you executed or delivered these Supplemental Escrow Instructions. However, we would appreciate your acknowledgment that you have received these Supplemental Escrow Instructions and agreed to proceed in accordance herewith by signing the enclosed copy of these Supplemental Escrow Instructions and returning one signed copy to the undersigned as soon as possible.

Thank you for your assistance.

Very truly yours,

FCA CA, LLC, a Delaware
limited liability company

ADD NOTICE PROVISION AND SIGNATURE BLOCKS FOR CITY, ASSIGNOR,
ASSIGNEE

JOINDER BY ESCROW HOLDER

Accepted and Agreed by Escrow Holder

Dated: _____

Fidelity National Title Insurance Company

By: _____
Authorized Signer