

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

621A



FROM: TLMA - Transportation Department

SUBMITTAL DATE:

SUBJECT: Tract 32628, BC Christensen Ranch LLC, Third Supervisorial District

RECOMMENDED MOTION: That the Board of Supervisors approve and execute the attached Estoppel Certificate for Tract 32628, BC Christensen Ranch LLC, between the County of Riverside and the City of Menifee.

BACKGROUND: On the May 25, 2010, the County of Riverside acting through the Board of Supervisors approved the Takeover Agreement and Settlement with International Fidelity Insurance Company to complete the subdivision improvements necessary for public health and safety in place of the defaulted developer.

Juan C. Perez
Director of Transportation

HS:llr
(Continued On Attached Pages)

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	N/A
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	N/A
	Annual Net County Cost:	\$ 0	For Fiscal Year:	N/A

SOURCE OF FUNDS: There are no General Funds used in this project.	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY:
Tina Grande

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
BY:
PAMELA J. WALLS
DATE: 2/13/13

Dept't Recomm.: Consent Policy
Per Exec. Ofc.: Consent Policy

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Ashley, seconded by Supervisor Stone and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Stone, Benoit and Ashley
Nays: None
Absent: None
Date: March 12, 2013
xc: Transp.

Kecia Harper-Ihem
Clerk of the Board
By:
Deputy

Prev. Agn. Ref. 5/25/10, 3.60 | District: 3/5 | Agenda Number:

The Honorable Board of Supervisors

RE: Tract 32628, BC Christensen Ranch LLC, Third Supervisorial District

Page 2 of 2

The County initiated a bond enforcement action prior to the incorporation of the City of Menifee due to expiration of the subdivision improvement agreements and the public need. On May 25, 2010, the City of Menifee concurred with this action. A letter dated January 11, 2012, from the City of Menifee that is attached herein states that the City will be the responsible agency for requiring a future developer of the subdivision to construct the remaining on- and off-site improvements conditioned for Tract 32628. The City of Menifee, which provided all inspections for this project, notified the County Transportation Department that all improvements were completed on or about April 22, 2011. Subsequent to reimbursement of inspection costs to the City of Menifee for inspection services related to and required for Tract 32628, dated July 16, 2012, all outstanding securities have been released as of December 26, 2012. The attached Estoppel Certificate will complete the transfer of rights, governmental authority and jurisdiction with respect to the entitlements, improvement agreements, bonded improvements and the Takeover Agreement associated with Tract 32628 from the County of Riverside to the City of Menifee.



Scott A. Mann
Mayor

Wallace W. Edgerton
Deputy Mayor

John V. Denver
Councilmember

Thomas Fuhrman
Councilmember

Greg August
Councilmember

January 11, 2013

Juan Perez
Director, TLMA
County of Riverside
4080 Lemon St., 14th Floor
P.O. Box 1605
Riverside, CA 92502-1605

RE: Estoppel Certificate—Christiansen Ranch (TR 32628)

Dear Juan,

This letter is in addition to the City's signed Estoppel Certificate and attendant exhibits regarding the Christensen Ranch (TR 32628) in the City of Menifee.

To clarify, the City will be responsible for overseeing all future development activity for this project, for both off-site and on-site improvements.

With regard to infrastructure improvements, those listed on Exhibit B of the Certificate are the only improvements left to satisfy conditions of development, as originally approved by the County of Riverside for this project. As you are aware, since this project has not yet been completed, there will be other conditions of approval that will need to be met prior to occupancy of any entitled units on the site.

In addition, the City will be the responsible agency for acceptance of all improvement, both on- and off-site.

With the exception of those outstanding items in Exhibit B, the City has inspected and accepted all off-site improvements completed by the bonding company.

If you have any additional questions regarding this project, please let me know.

Sincerely,

Carmen Cave, Ph.D.
Community Development Director

ESTOPPEL CERTIFICATE
(City of Menifee – Christensen Ranch/TR 32628)

THIS ESTOPPEL CERTIFICATE (this "*Certificate*") is dated for reference purposes this 31 day of December 2012 and is given by RIVERSIDE COUNTY, a political subdivision of the State of California ("*Riverside County*"), and the CITY OF MENIFEE, a California municipal corporation ("*Menifee*"), for the benefit of AVANTI STRATEGIC LAND INVESTORS VII, L.L.L.P, a Delaware limited liability limited partnership ("*ASLI VII*"), and AVANTI ACQUISITION COMPANY, LLC, a Florida limited liability corporation ("*AAC*") (ASLI VII and AAC, collectively, "*Buyers*") and their successors, successors-in-title and assigns.

RECITALS

A. This Certificate relates to real property currently located in incorporated Riverside County, within the City of Menifee, and commonly known as Tract 32628 (the "*Property*") and legally described on the attached **Exhibit A**.

B. The Property became located within Menifee's municipal boundaries when Menifee incorporated in 2008. Prior to Menifee's incorporation, the Property was located within unincorporated Riverside County, a political subdivision of the State of California. The Property's prior owner, BC Christensen Ranch, LLC ("*BCCR*"), sought and obtained approval from Riverside County for the following land use entitlements relative to the development of the Property as a planned residential project (the "*Project*"): (1) Tentative Tract Map No. 32628, which included a site plan, building elevations, floor plans, colors and materials board, and a landscaping plan as exhibits; and (2) Minor Change No. 1 to Tentative Tract Map No. 32628 ((1) and (2), collectively, the "*Entitlements*").

C. Upon its incorporation, Menifee assumed responsibility for administering the Entitlements and for regulating the future development of the Property, including the processing of amendments to the Entitlements and the issuance of building and other permits for the development, use and occupancy of the Property.

D. In connection with the Entitlements, on or about October 16, 2007, BCCR entered into the following agreements with Riverside County: (1) Agreement for the Construction of Road/Drainage Improvements; (2) Agreement for the Construction of Water Systems Improvements; (3) Agreement for the Construction of Sewer System Improvements; and (4) Agreement for the Placement of Survey Monuments ((1), (2), (3), and (4), collectively, the "*Improvement Agreements*").

E. In connection with the Improvement Agreements, BCCR provided Riverside County with the following faithful performance and material and labor bonds: (1) Faithful Performance Bond No. 0455242 in the penal sum of \$4,186,500 and Material and Labor Bond No. 0455242 in the penal sum of \$2,583,000; (2) Faithful Performance Bond No. 0455243 in the penal sum of \$350,000 and Material and Labor Bond No. 0455243 in the penal sum of \$175,000;

(3) Faithful Performance Bond No. 0455244 in the penal sum of \$117,000 and Material and Labor Bond No. 0455244 in the penal sum of \$58,500; and (4) Subdivision Monument Bond No. 0455245 in the penal sum of \$25,300 ((1), (2), (3), and (4), collectively, the “*Improvement Security*”). The Improvement Security was underwritten and issued by International Fidelity Insurance Company (“*IFIC*”).

F. Following its execution of the Improvement Agreements and delivery of the Improvement Security, BCCR abandoned the Project. On or about October 28, 2008, Riverside County declared BCCR in default under the Improvement Agreements. Riverside County subsequently demanded that IFIC, as the Improvement Security’s surety, complete the entirety of the improvement work required under the Improvement Agreements (the “*Bonded Improvements*”).

G. Riverside County and IFIC subsequently negotiated and executed a “*Surety’s Agreement to Take Over and Procure Completion of Agreed Scope of Work for Work of Improvement – Tract No. 32628*”, which became effective on or about May 25, 2010 (the “*Takeover Agreement*”). Under the Takeover Agreement, IFIC agreed to cause all of the Bonded Improvements to be completed, except certain improvements specifically identified as being excluded from the “Agreed Scope of Work” set out in Exhibit C to the Takeover Agreement (the “*Excluded Improvements*”). For clarity’s sake, the Excluded Improvements are restated on the attached Exhibit B.

H. Buyers are negotiating with the current Property owner for the purchase and sale of the Property. Buyers are willing to acquire the Property only if Buyers receive certain assurances from Riverside County and Menifee concerning the Entitlements, the Improvement Agreements, and the Bonded Improvements. Riverside County and Menifee are willing, on the terms set out in this Certificate, to provide the assurances requested by Buyers.

I. As a condition precedent to acquiring the Property, Buyers require that Riverside County and Menifee execute and deliver this Certificate. This Certificate will become effective upon the acquisition of the Property by either of Buyers or any affiliate of Buyers.

AGREEMENT

IN CONSIDERATION OF THE FOREGOING, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, and to induce Buyers to acquire the Property, Riverside County and Menifee agree, represent, warrant, and certify as follows:

1. Estoppel; Warranties and Representations.

1.1 By virtue of the incorporation of Menifee and the inclusion of the Property within the municipal boundaries of Menifee, Menifee is the successor to all of the rights and governmental authority and jurisdiction of Riverside County with respect to the Entitlements, under the Improvement Agreements, with respect to the Bonded Improvements, and under the Takeover Agreement, and Riverside County retains no rights or governmental authority or

jurisdiction with respect to any of the foregoing. Menifee has the sole and exclusive governmental authority and jurisdiction with respect to all matters pertaining to the Entitlements, the Improvement Agreements, the Bonded Improvements and the Takeover Agreement.

1.2 As of the date of this Certificate:

- A. There are no events of default under the Takeover Agreement, nor has any event occurred which is continuing and which would, with the giving of notice or the passage of time, or both, constitute an event of default or constitute a breach by any party to the Takeover Agreement of its obligations thereunder.
- B. All terms, covenants and conditions of the Takeover Agreement have been fully performed in accordance with its provisions.
- C. There have been no written or oral amendments, modifications or supplements of any nature to the Takeover Agreement.
- D. Other than the Excluded Improvements, all of the Bonded Improvements have been completed and accepted by Riverside County and Menifee or the applicable public agency with jurisdiction.
- E. The Entitlements are in full force and effect.
- F. The only remaining public improvements which must be constructed to satisfy any condition of approval for the Entitlements or any requirement arising under Menifee's municipal code for the issuance of any grading or building permit or certificate of occupancy, or which are required as mitigation measures under the California Environmental Quality Act (Public Resources Code section 21000, et seq.), are the Excluded Improvements described on the attached **Exhibit B**.
- G. The Improvement Agreements have been terminated and the Improvement Security has been fully exonerated.

2. No Limitation of Takeover Agreement. This Certificate does not alter, modify, or otherwise limit any term of the Takeover Agreement.

3. Buyers' Reliance Upon Assurances. Riverside County and Menifee acknowledge that Buyers will be acquiring the Property and undertaking significant obligations in reliance on the representations and assurances made by Riverside County and Menifee in this Certificate, that Buyers would not acquire the Property or undertake those obligations if any assurance or statement made by Riverside County or Menifee in this Certificate is materially false or incomplete, regardless of whether the falseness or incompleteness was accidental or intentional.

**EXHIBIT A TO
ESTOPPEL CERTIFICATE
(City of Menifee – Christensen Ranch/TR 32628)**

Legal Description of Property

[to be attached]

Exhibit A

**EXHIBIT B TO
ESTOPPEL CERTIFICATE
(City of Menifee – Christensen Ranch/TR 32628)**

Excluded Improvements

[to be attached]



EXHIBIT "B"
CITY OF MENIFEE

Memorandum

DATE: 12/27/12

TO: Carmen Cave, Planner Director

CC: Jim Howell, Public Work / Habib Motlagh, Acting City Engineer

FROM: David Ross, Associate Engineer

SUBJECT: Field Review of Tract 32628, (Christensen Ranch)

A field inspection was conducted on 12/27/2012, for Tract 32628, located at the northeast corner of Antelope Road and Craig Avenue. The finding view is as follows:

1. **Craig Avenue:** Sidewalk is missing along the south side as shown per Street Improvement plan
Street Lights are missing along the south side as shown per Street Improvement plan
Fire Hydrant Blue Dots are missing
Street Signs are missing
Install barrier wall or fence along the south R/W line, between "A" Street and EMWD property.
Install asphalt tapper on east side of EMWD property to existing AC.
Fog Seal is missing
Landscape is missing
Striping need to be re-done

2. **Antelope Road:** Meandering Sidewalk is missing along the east side as shown per street improvement plan
One Street Light is missing
Fire Hydrant Blue Dots is missing
Landscape is missing
Street Signs are missing
Fog Seal is missing
Striping need to be redone
Remove and Replace AC around water valves
Erosion Control measure is needed at storm drain outlet

Striping needs to be re-done to show a strip median as shown on street Plan

3. **Interior Improvement:** Storm Drain Improvement, Sewer, Water Lines and Dry Utilities are in Monuments have been set.
Rough Graded Pad and Retaining Walls have been constructed
No Street Improvement, Sidewalk, Street Lights, Fire Hydrants and Landscape has been constructed at this time.

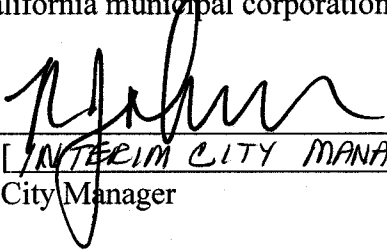
Please feel free to contract me to answer any question you may have.

**SIGNATURE PAGE TO
ESTOPPEL CERTIFICATE
(City of Menifee – Christensen Ranch/TR 32628)**

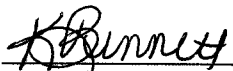
MENIFEE:

**THE CITY OF MENIFEE,
a California municipal corporation**

Date: 12/31, 2012

By: 
INTERIM CITY MANAGER
City Manager

ATTEST:



City Clerk

APPROVED AS TO LEGAL FORM:

By: 

City Attorney