

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

106 A



FROM: TLMA - Transportation Department

SUBMITTAL DATE:
February 9, 2010

SUBJECT: Assignment and Assumption of Fee Credits and Reimbursement Rights by and between the County, Lennar Spencer's Crossing LLC and Riverside Mitland 03, LLC.

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Assignment and Assumption Agreement by and between the County, Lennar Spencer's Crossing LLC and Riverside Mitland 03, LLC; and
2. Authorize the Chairman to execute the same.

BACKGROUND: Riverside Mitland 03, LLC acquired 255 lots from Lennar Spencer's Crossing LLC (Lennar) in the Spencer's Crossing Project, which is part of the Clinton Keith Road Community Facilities District (CFD) No. 07-2. Lennar desires to convey to Riverside Mitland

Juan C. Perez
Director of Transportation

JCP:gh
(Continued On Attached Page)

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

SOURCE OF FUNDS: N/A	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: DALE A. GARDNER
DATE: 2/11/10
Departmental Concurrence

Policy
 Policy

Consent
 Consent

Dept's Recomm.:
Per Exec. Ofc.:

Prev. Agn. Ref. 6/12/07, Item 3.36;
5/08/07, Item 3.5;
11/2/04, Item 3.29 | District: 3 | Agenda Number:

The Honorable Board of Supervisors

RE: Assignment and Assumption of Fee Credits and Reimbursement Rights by and between the County, Lennar Spencer's Crossing LLC and Riverside Mitland 03, LLC.

February 9, 2010

Page 2 of 2

certain fee credits and reimbursement rights for these lots in connection with CFD 07-2.

Lennar unconditionally conveys to Riverside Mitland all rights, title and interest of Lennar for fee credits consisting of Transportation Uniform Mitigation Fee (TUMF) and Southwest Road and Bridge Benefit District (RBBD) fees in the aggregate amount of \$647,921 for said lots.

Riverside Mitland hereby assumes and agrees to perform any and all remaining duties, liabilities, obligations and responsibilities of Lennar pertaining to said lots as provided in the applicable CFD 07-2 documents, accruing from the effective date of this Assignment and Assumption Agreement.

**ASSIGNMENT AND ASSUMPTION OF COUNTY DOCUMENTS AND TRANSFER OF
REMAINING FEE CREDITS AND REIMBURSEMENT RIGHTS**

THIS ASSIGNMENT AND ASSUMPTION OF COUNTY DOCUMENTS AND TRANSFER OF REMAINING FEE CREDITS AND REIMBURSEMENT RIGHTS (this "Assignment") dated as of May 21, 2009, is executed by and between LENNAR SPENCER'S CROSSING LLC, a Delaware limited liability company ("Transferor"), and RIVERSIDE MITLAND 03, LLC, a Delaware limited liability company ("Transferee").

RECITALS

A. This Assignment is entered into by and among Transferor and Transferee in connection with the acquisition by Transferee, via a foreclosure sale, of the real property (the "Property") previously owned by Transferor in the Spencer's Crossing project (the "Project"). The date on which such foreclosure sale is consummated and Transferee is the successful bidder and acquirer of the Property shall be the "Effective Date".

B. Transferor desires to convey to Transferee its current interest in the County Documents, the Remaining Fee Credits and the Reimbursement Rights (each as defined below). In connection therewith, Transferee has agreed to assume all of Transferor's obligations pursuant to the County Documents.

C. Transferor previously advanced to the County funds in the amount of \$3,680,000 pursuant to the County Documents. In connection with the prior sale by Transferor to Lennar Homes of California, Inc., a California corporation ("Lennar Homes"), of 255 lots within the Project, Transferor has or will have assigned to Lennar Homes future credits against the Southwest Road and Bridge Benefit District ("RBBB") fees and/or the Transportation Uniform Mitigation Fees ("TUMF") in the aggregate amount of \$3,032,079.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Transferor and Transferee agree as follows:

1. As of the Effective Date, Transferor hereby unconditionally grants, sells, transfers, conveys and delivers to Transferee all right, title and interest of Transferor in and to, and all benefits accruing to Transferee under, that certain: (i) Development Fee Credit Agreement by and between the County of Riverside (the "County") and NNP-Spencer's Crossing, LLC, a Delaware limited liability company and predecessor-in-interest to Transferor, dated November 2, 2004, (ii) Amendment No. 1 to Development Fee Credit Agreement by and between the County and Transferor dated April 16, 2007, and (iii) Joint Funding, Credit and Reimbursement Agreement by and among the County, Transferor and other parties dated June 12, 2007 (collectively, the "County Documents").

2. As of the Effective Date, Transferor hereby unconditionally grants, sells, transfers, conveys and delivers to Transferee all right, title and interest of Transferor in and to, and all benefits accruing to, the remaining balance of TUMF and RBBB fee credits in the aggregate amount of \$647,921 (the "Remaining Fee Credits"), together with all future rights to reimbursement from the County in the amount of \$3,680,000 upon the availability of sufficient

funds from (i) County Contribution Amount; (ii) Special Taxes levied on the Developed Property within the Community Facilities District ("CFD") prior to the issuance of Bonds received by the CFD and not required to fund Administrative Expenses; (iii) Net Bond Proceeds, and (iv) Funding Advances, as defined in the County Documents (the "Reimbursement Rights").

3. Transferee hereby assumes and agrees to perform any and all remaining duties, liabilities, obligations or responsibilities of Transferor as provided in the County Documents, accruing from and after the Effective Date.

4. Transferor agrees to indemnify, protect, defend and hold Transferee harmless from and against any and all claims, liabilities, losses, costs, damages or expenses (including, without limitation, reasonable attorneys' fees and costs) arising out of or resulting from any breach or default by Transferor under the terms of the County Documents occurring prior to the Effective Date.

5. Transferee agrees to indemnify, protect, defend and hold Transferor harmless from and against any and all claims, liabilities, losses, costs, damages or expenses (including, without limitation, reasonable attorneys' fees and costs) arising out of or resulting from any breach or default by Transferee under the terms of the County Documents occurring on or after the Effective Date.

6. In the event that any party hereof shall bring any action or suit against the other by reason of any breach of any of the covenants, conditions, representations, warranties, agreements or provisions contained in this Assignment, the party in whose favor final judgment shall be entered shall be entitled to recover from the other party all costs and expenses of suit, including reasonable attorneys' fees, as awarded by a court of competent jurisdiction.

7. This Assignment may be executed in any number of counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute one and the same instrument.

8. The provisions of this Assignment shall be binding upon and inure to the benefit of the successors and assigns of Transferor, and shall inure to the benefit of the successors and assigns of Transferee.

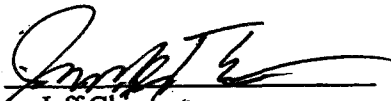
[Signatures on following page]

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first above written.

"TRANSFEROR"



LENNAR SPENCER'S CROSSING, LLC,
a Delaware limited liability company

By: Lennar Homes of California, Inc.
a California corporation,
its Administrative Member

By: 
Name: Jeff Clemens
Its: Vice President


"TRANSFeree"

RIVERSIDE MITLAND 03, LLC
a Delaware limited liability company

By: 
Its: Vice President
Dennis J. Chapman
By: 
Its: Secretary
William B. Seith

Acknowledged by and agreed to.

COUNTY OF RIVERSIDE

By: 
Name: Juan C. Perez
Its: Director of Transportation

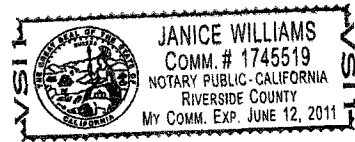
STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

On November 24, 2009, before me *Janice Williams, Notary Public* personally appeared *Jeffrey T. Clemens*, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person or the entity upon behalf of which the person 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 *Janice Williams*



(This area for official notarial seal)

ACKNOWLEDGMENT

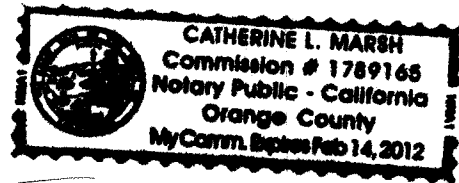
State of California
County of ORANGE

On JANUARY 4, 2010 before me, Catherine L. Marsh, Notary Public
(insert name and title of the officer)

personally appeared DENNIS J. CHAPMAN AND WILLIAM B. SEICH,
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 Catherine L. Marsh (Seal)

IN WITNESS WHEREOF the parties hereto have executed this agreement as of the date set forth below.

COUNTY OF RIVERSIDE

BY _____
Chairman, Board of Supervisors


Dated _____

ATTEST:

Kecia Harper-Ihem, Clerk of the Board

BY _____
Deputy

BY _____
"County"
(Seal)

APPROVED BY 
Dale A. Gardner

Pam Walls
County Counsel