

**SUBMITTAL TO THE FLOOD CONTROL AND  
WATER CONSERVATION DISTRICT BOARD  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

801B



**FROM:** General Manager-Chief Engineer

**SUBMITTAL DATE:**

May 25, 2010

**SUBJECT:** Eastvale MDP Line E-1, Stage 2  
Project No. 2-0-00324-02  
Tentative Parcel Map 31645  
Agreement

**RECOMMENDED MOTION:**

Approve the Agreement between the District and SC Eastvale Development Company, LLC (Developer), and authorize the Chairman to execute the Agreement documents on behalf of the District.

**BACKGROUND:**

The Agreement sets forth the terms and conditions by which the Developer may earn Area Drainage Plan Fee credits through the construction of a segment of District's Eastvale MDP Line E-1 as a condition of development for Tentative Parcel Map 31645, and subsequently transfer any excess credit amounts so

Continued on Page 2

**WARREN D. WILLIAMS**  
General Manager-Chief Engineer

<b>FINANCIAL DATA</b>	Current F.Y. District Cost:	N/A	In Current Year Budget:	N/A
	Current F.Y. County Cost:	N/A	Budget Adjustment:	N/A
	Annual Net District Cost:	N/A	For Fiscal Year:	N/A

<b>SOURCE OF FUNDS:</b> N/A	<b>Positions To Be Deleted Per A-30</b>	<input type="checkbox"/>
	<b>Requires 4/5 Vote</b>	<input type="checkbox"/>

**C.E.O. RECOMMENDATION:**

APPROVE

BY:   
Alex Gann

**County Executive Office Signature**

FORM APPROVED COUNTY COUNSEL  
BY:   
NEAL R. KIPNIS DATE

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

Prev. Agn. Ref.:

District: 2<sup>nd</sup>

Agenda Number:

ATTACHMENTS FILED  
WITH THE CLERK OF THE BOARD

11.1

**FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD SUBMITTAL  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

**SUBJECT:** Eastvale MDP Line E-1, Stage 2  
Project No. 2-0-00324-02  
Tentative Parcel Map 31645  
Agreement

**SUBMITTAL DATE:** May 25, 2010  
**Page 2**

**BACKGROUND (continued):**

earned to other developments located with District's Eastvale Master Drainage Plan which are owned by other companies affiliated with the Developer.

County Counsel has approved the Agreement as to legal form and the Developer has executed the Agreement.

JPS:rlp

AGREEMENT  
Eastvale MDP Line E-1, Stage 2  
(Project No. 2-0-00324-02)  
(Tentative Parcel Map 31645)

The RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter called "DISTRICT", and SC EASTVALE DEVELOPMENT COMPANY, LLC a Delaware limited liability company, hereinafter called "EASTVALE LLC", hereby agree as follows:

RECITALS

A. SC EASTVALE DEVELOPMENT CORPORATION, a California corporation, hereinafter called "CORPORATION", has previously submitted for approval Tentative Parcel Map 31645 in the unincorporated Eastvale area of western Riverside County and as a condition for approval CORPORATION must construct certain flood control and drainage facilities in order to provide flood protection and drainage for CORPORATION'S planned development; and

B. CORPORATION has subsequently conveyed its ownership interest in those lands comprising Tentative Parcel Map 31645 to EASTVALE LLC by Grant Deed recorded December 22, 2008, as Instrument No. 2008-0665795 in the Official Records of Riverside County. By acquiring such interest, EASTVALE LLC has also acquired the responsibility to construct those certain flood control and drainage facilities required in order to provide flood protection and drainage for the planned development of Tentative Parcel Map 31645; and

C. Among the required flood control and drainage facilities for Tentative Parcel Map 31645 is an extension of DISTRICT'S Eastvale Master Drainage Plan (MDP) Line E-1, hereinafter called "LINE E-1", consisting of an estimated 4,000 lineal feet of underground

1 storm drain system, as shown in concept in Exhibit "A" attached hereto and made a part hereof;  
2 and

3 D. LINE E-1 is an eligible component of the Eastvale Area Drainage Plan  
4 (ADP) and EASTVALE LLC desires to construct LINE E-1 pursuant to a construction contract  
5 administered by EASTVALE LLC and earn ADP Fee Credits in accordance with the "Rules and  
6 Regulations for Administration of Area Drainage Plans", dated June 10, 1980, as amended, and  
7 hereinafter called "RULES". Pursuant to this Agreement, the earned ADP Fee credits may be  
8 used to satisfy the requirement to pay ADP fees for Tentative Parcel Map 31645 and certain  
9 properties as set forth herein; and  
10

11 E. DISTRICT has estimated that upon constructing LINE E-1, EASTVALE  
12 LLC would earn ADP Fee credits, hereinafter called "CREDITS", in the amount of one million  
13 two hundred sixty-five thousand nine hundred seventeen dollars and forty-three cents  
14 (\$1,265,917.43). Such CREDITS are normally granted to a Developer by DISTRICT when a  
15 Cooperative Agreement has been executed, improvement plans have been signed and bonds are  
16 in place guaranteeing the construction of the facility for which CREDITS are being granted; and  
17

18 F. On December 17, 2008, CORPORATION assigned to EASTVALE LLC, by  
19 means of a General Assignment executed between CORPORATION and EASTVALE LLC, all  
20 of CORPORATION'S right, title and interest in and to all of the personal property, including a  
21 Special Subdivision Account deposited with DISTRICT on August 23, 2006, to secure approval  
22 to grade Tentative Parcel Map 31645; and  
23

24 G. DISTRICT is willing to grant CREDITS to EASTVALE LLC, as successor  
25 in interest to CORPORATION, provided the following actions are completed on or before June  
26 1, 2012; (i) a Cooperative Agreement for Parcel Map 31645 is executed by DISTRICT, the  
27 County of Riverside and EASTVALE LLC, (ii) material and labor bonds required in association  
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1 with the construction of flood control drainage facilities for Parcel Map 31645 have been posted  
2 with and approved by the County of Riverside, and (iii) the design plans for LINE E-1 have been  
3 signed. In the event that EASTVALE LLC fails to fully complete all three (3) of the above  
4 described actions by June 1, 2012, EASTVALE LLC understands and agrees that the entire  
5 amount in the Special Subdivision Account for Tentative Parcel Map 31645 will be transferred to  
6 the DISTRICT'S Eastvale Area Drainage Plan fund; and  
7

8 H. DISTRICT is also willing to allow EASTVALE LLC to transfer portions of any  
9 earned CREDITS to WLPX EASTVALE, LLC, a Delaware limited liability company,  
10 hereinafter called "WLPX", for its planned development known as Tentative Tract No. 35400,  
11 and/or to LEWIS INVESTMENT COMPANY, LLC, a California limited liability company,  
12 hereinafter called "LEWIS", for its planned development known as Tentative Parcel Map 35933  
13 pursuant to RULES.  
14

15 NOW, THEREFORE, the parties hereto do hereby mutually agree as follows:

- 16 1. The above recitals are true and correct.
- 17 2. The locations of Tentative Parcel Map 31645, Tentative Parcel Map 35933  
18 and Tentative Tract No. 35400 in the Area Drainage Plan are shown in concept in Exhibit "B"  
19 attached hereto and made a part hereof.
- 20 3. Pursuant to this Agreement and the RULES, DISTRICT will allow  
21 EASTVALE LLC to transfer (i) to LEWIS on behalf of Tentative Parcel Map 35933, and/or (ii)  
22 to WLPX on behalf of Tentative Tract No. 35400, any available CREDITS earned in association  
23 with Parcel Map 31645 in an amount not to exceed one million two hundred sixty-five thousand  
24 nine hundred seventeen dollars and forty-three cents (\$1,265,917.43), provided the following  
25 actions are completed on or before June 1, 2012; (i) EASTVALE LLC has completed storm  
26 drain plans for Parcel Map 31645, including LINE E-1, (ii) a Cooperative Agreement has been  
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1 executed between DISTRICT, the County of Riverside and EASTVALE LLC covering the terms  
2 and conditions for the construction of storm drain facilities for Parcel Map 31645, including  
3 LINE E-1, (iii) EASTVALE LLC has posted and the County of Riverside has approved material  
4 and labor bonds for construction of Parcel Map 31645 storm drain facilities, including LINE E-1,  
5 and (iv) EASTVALE LLC has executed with LEWIS and/or WLPX, as applicable, the ADP  
6 Credits Transfer/Sale Agreement as set forth in concept in Exhibit "C", attached hereto and made  
7 a part hereof, and submitted the fully executed original(s) of said Agreement(s) to DISTRICT for  
8 approval.  
9

10           4. It is mutually understood and agreed that excess CREDITS earned by  
11 EASTVALE LLC in association with Parcel Map 31645 may only be transferred to Parcel Map  
12 35933 and/or Tract 35400. The foregoing notwithstanding, no transfer of ADP Fee Credits shall  
13 become effective until an original copy of the fully executed Transfer/Sales Agreement is  
14 provided to DISTRICT and countersigned by DISTRICT'S Chief of the Planning Division.  
15

16           5. Any waiver by DISTRICT of any breach of any one or more of the terms of  
17 this Agreement shall not be construed to be a waiver of any subsequent or other breach of the  
18 same or of any other term hereof. Failure on the part of DISTRICT to require exact, full and  
19 complete compliance with any terms of this Agreement shall not be construed as in any manner  
20 changing the terms hereof, or estopping DISTRICT from enforcement hereof.  
21

22           6. This Agreement is to be construed in accordance with the laws of the State  
23 of California.

24           7. Any and all notices sent or required to be sent to the parties of this  
25 Agreement will be mailed by first class mail, postage prepaid, to the following addresses:  
26  
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1 RIVERSIDE COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT  
2 1995 Market Street  
Riverside, CA 92501

SC EASTVALE DEVELOPMENT  
COMPANY, LLC  
c/o Lewis Operating Corporation  
Post Office Box 670  
1156 N. Mountain Avenue  
Upland, CA 91785-0670  
Attn: Bryan Goodman

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5 8. Any action at law or in equity brought by any of the parties hereto for the  
6 purpose of enforcing a right or rights provided for by the Agreement, shall be tried in a court of  
7 competent jurisdiction in the County of Riverside, State of California, and the parties hereto  
8 waive all provisions of law providing for a change of venue in such proceedings to any other  
9 county.

10 9. This Agreement is the result of negotiations between the parties hereto, and  
11 the advice and assistance of their respective counsel. The fact that this Agreement was prepared  
12 as a matter of convenience by DISTRICT shall have no import or significance. Any uncertainty  
13 or ambiguity in this Agreement shall not be construed against DISTRICT because DISTRICT  
14 prepared this Agreement in its final form.

15  
16 10. The rights and obligations of EASTVALE LLC shall inure to and be  
17 binding upon all heirs, successors and assignees.

18  
19 11. EASTVALE LLC shall not assign or otherwise transfer any of its respective  
20 rights, duties or obligations hereunder to any person or entity without the written consent of the  
21 other parties hereto being first obtained. In the event of any such transfer or assignment,  
22 EASTVALE LLC expressly understands and agrees that it shall remain liable with respect to any  
23 and all of the obligations and duties contained in this Agreement.

24 12. The individual(s) executing this Agreement on behalf of EASTVALE LLC  
25 hereby certify that they have the authority within their respective company(ies) to enter into and  
26 execute this Agreement, and have been authorized to do so by any and all boards of directors,  
27  
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1 legal counsel, and or any other board, committee or other entity within their respective  
2 company(ies) which have the authority to authorize or deny entering this Agreement.

3           13. This Agreement is intended by the parties hereto as a final expression of  
4 their understanding with respect to the subject matter hereof and as a complete and exclusive  
5 statement of the terms and conditions thereof and supersedes any and all prior and  
6 contemporaneous agreements and understandings, oral or written, in connection therewith. This  
7 Agreement may be changed or modified only upon the written consent of the parties hereto.  
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on

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(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

By   
WARREN D. WILLIAMS  
General Manager-Chief Engineer

**RIVERSIDE COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT**

By \_\_\_\_\_  
MARION ASHLEY, Chairman  
Riverside County Flood Control and Water  
Conservation District Board of Supervisors

APPROVED AS TO FORM:

PAMELA J. WALLS  
County Counsel

By   
NEAL KIPNIS  
Deputy County Counsel

ATTEST:

KECIA HARPER-IHEM  
Clerk of the Board

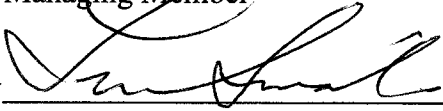
By \_\_\_\_\_  
Deputy

(SEAL)

Cooperative Agreement: TPM 31654  
JPS  
8/12/09

SC EASTVALE DEVELOPMENT COMPANY, LLC,  
a Delaware limited liability company

By: LEWIS OPERATING CORP.,  
a California corporation,  
Its Managing Member

By 

Name Leon Swartz

Its Authorized Agent  
Chief Operating Officer

(ATTACH NOTARY WITH  
CAPACITY STATEMENT)

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Cooperative Agreement: TPM 31654  
JPS:seb  
8/12/09

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of San Bernardino

On May 11, 2010 before me, Diane M. Simmons, Notary Public  
Date Here Insert Name and Title of the Officer

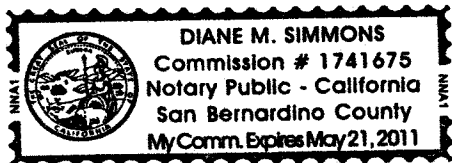
personally appeared LEON SWAILS  
Name(s) of Signer(s)

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 Diane M. Simmons  
Signature of Notary Public



Place Notary Seal Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: Agreement - Eastvale MDP Line E-1, Stage 2 (Project No. 2-0-00324-02) (Tentative Parcel Map 31645)

Document Date: to be filled in by Clerk of the Board Number of Pages: 8+Exhibits A,B,C

Signer(s) Other Than Named Above: Riverside County Flood Control and Water Conservation District

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: LEON SWAILS

- Individual
- Corporate Officer — Title(s): Authorized Agent / Chief Operating Officer
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

**RIGHT THUMBPRINT OF SIGNER**  
 Top of thumb here

Signer Is Representing: Lewis Operating Corp., managing member for SC EASTVALE DEVELOPMENT COMPANY, LLC

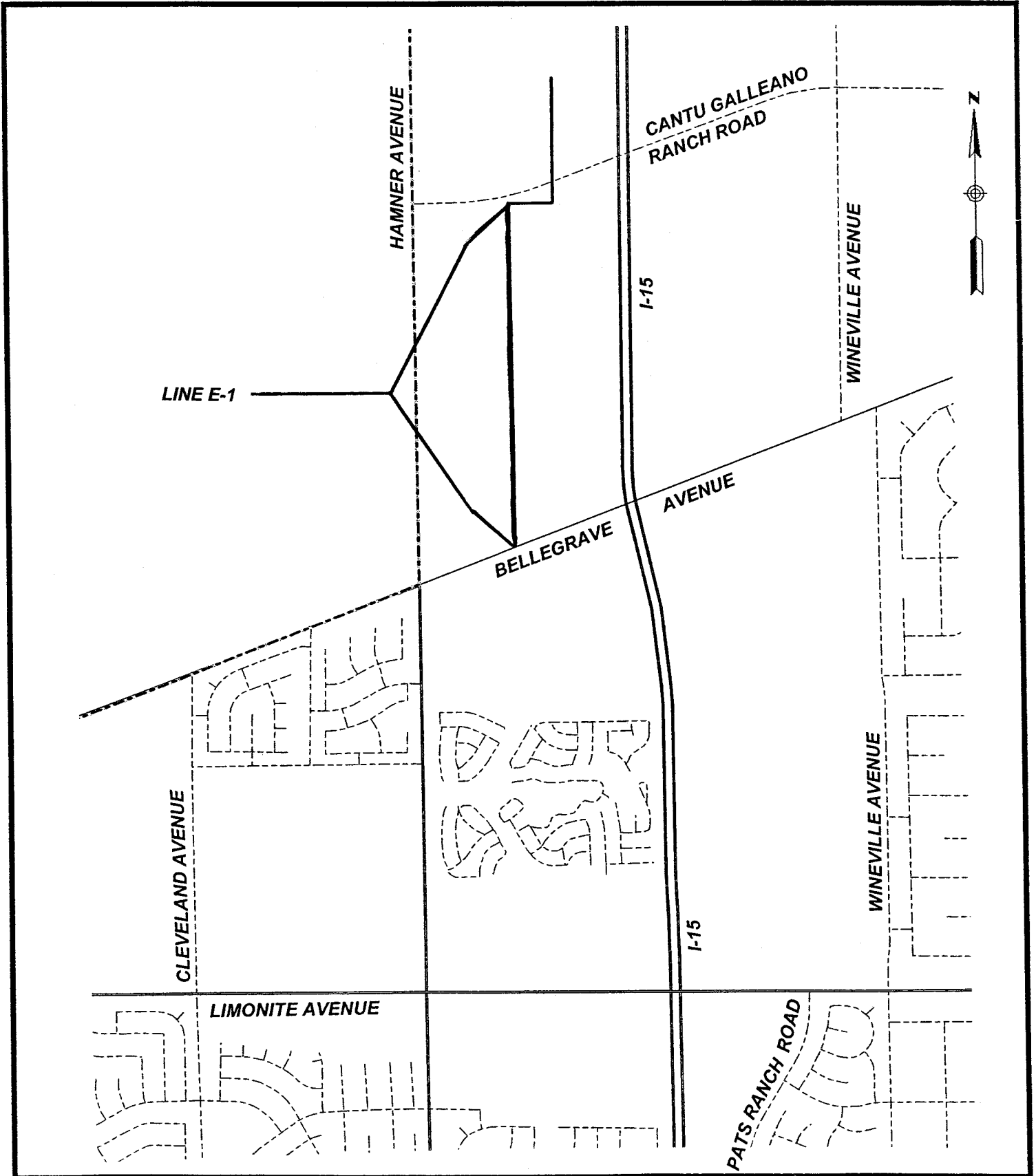
Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

**RIGHT THUMBPRINT OF SIGNER**  
 Top of thumb here

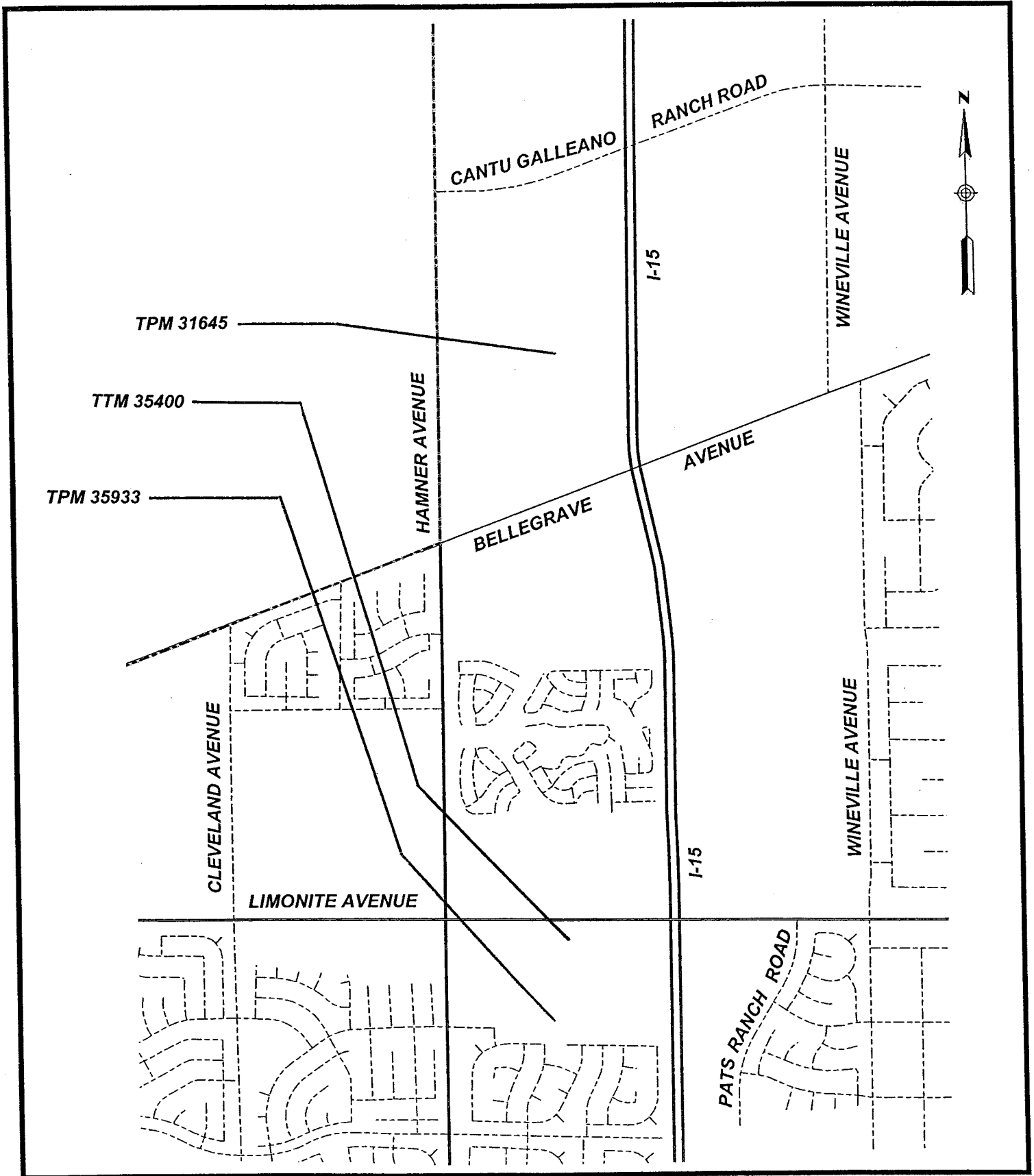
Signer Is Representing: \_\_\_\_\_

Exhibit A



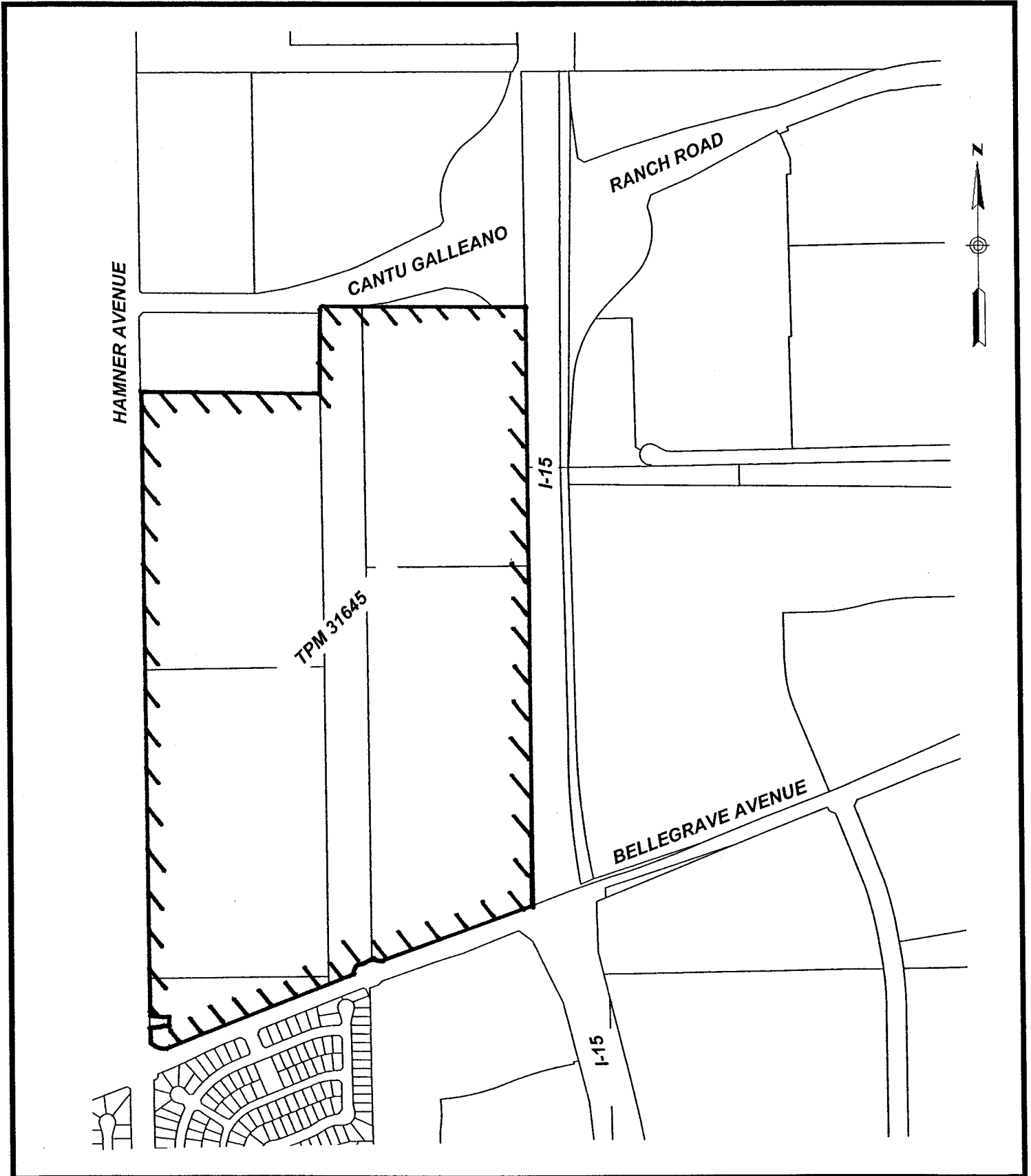
Cooperative Agreement  
Tentative Parcel Map 31645

Exhibit B



Cooperative Agreement  
Tentative Parcel Map 31645

Exhibit B



Cooperative Agreement  
Tentative Parcel Map 31645

**Exhibit B**

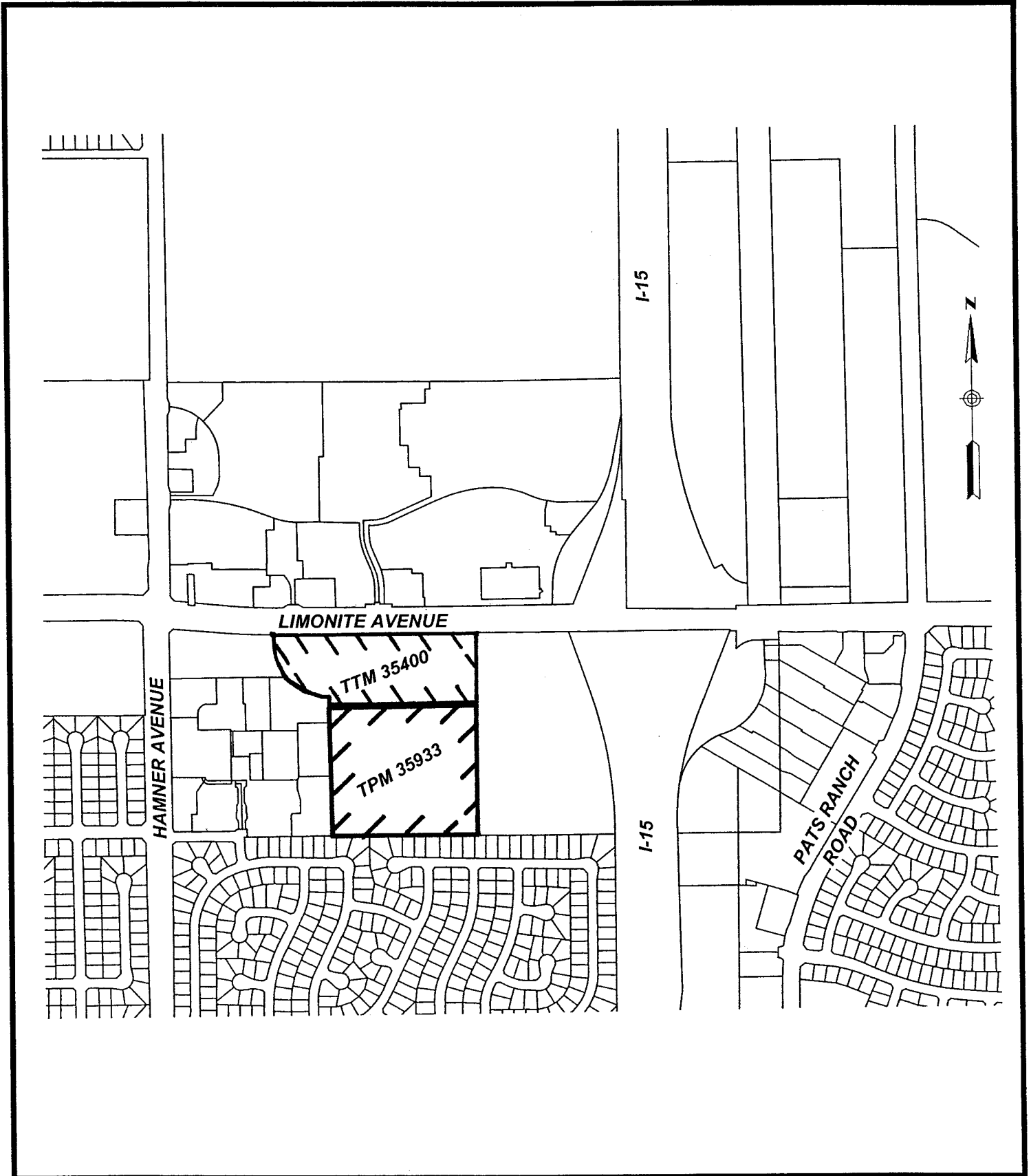


EXHIBIT "C"

**SAMPLE:**  
**ADP CREDITS Transfer/Sale Agreement**

Pursuant to an Agreement dated \_\_\_\_\_, 20\_\_\_\_, between the RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter called "DISTRICT", the COUNTY OF RIVERSIDE, hereinafter called "COUNTY", and SC EASTVALE DEVELOPMENT COMPANY, LLC, hereinafter called "EASTVALE LLC", which is hereby incorporated herein by this reference and hereinafter called "AGREEMENT", and for good and valuable consideration, receipt of which is hereby acknowledged, the undersigned agree as follows:

1. EASTVALE LLC, hereinafter called "ASSIGNOR", currently owns \$\_\_\_\_\_ of Eastvale Area Drainage Plan Credits, hereinafter called "CREDITS", originally earned on \_\_\_\_\_ as evidenced by the attached CREDIT STATEMENT.

2. ASSIGNOR hereby transfers, sells, grants and conveys \$\_\_\_\_\_ of said CREDITS and all of the rights, title, interest, benefits and privileges of said CREDITS to \_\_\_\_\_, hereinafter called "ASSIGNEE", to satisfy the requirement to pay drainage fees for APN [List all applicable: \_\_\_\_\_] located within the Eastvale Area Drainage Plan.

3. ASSIGNEE hereby accepts the foregoing transfer of CREDITS and certifies that the foregoing is correct and is aware of and understands the terms of AGREEMENT.

4. The transfer or sale of CREDITS provided for under this Transfer/Sale Agreement may be the subject of additional agreements between ASSIGNOR and ASSIGNEE. Notwithstanding any term, condition or provision of such additional agreements, the rights of DISTRICT arising under or from AGREEMENT, and this Transfer/Sale Agreement shall not be affected, diminished or defeated in any way, except upon the express written agreement of DISTRICT.

5. The transfer or sale of CREDITS provided for under this Transfer/Sale Agreement shall not be deemed effective until a fully executed original copy of this document is provided to DISTRICT and countersigned by DISTRICT'S Chief of Planning Division.

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EXHIBIT "C"

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**"ASSIGNOR"**

**SC EASTVALE DEVELOPMENT COMPANY, LLC**

a Delaware limited liability company

By: LEWIS OPERATING CORP.,  
a California corporation,  
Its Managing member

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

(ATTACH NOTARY WITH  
CAPACITY STATEMENT)

**"ASSIGNEE"**

**COMPANY NAME**

By \_\_\_\_\_

Title \_\_\_\_\_

Dated \_\_\_\_\_

(ATTACH NOTARY WITH  
CAPACITY STATEMENT)

**RIVERSIDE COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT**

By \_\_\_\_\_

CHIEF OF PLANNING DIVISION

Date: \_\_\_\_\_