

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

901B



FROM: General Manager-Chief Engineer

SUBMITTAL DATE: March 29, 2011

SUBJECT: Warm Springs Valley-Evening Glow Drive Storm Drain, Stage 2 Project No. 7-0-00219-02 Tract Nos. 30696-1, 30696-3, 30696-4 Assignment and Assumption Agreement

RECOMMENDED MOTION:

- 1. Approve the Assignment and Assumption Agreement between the District, the County of Riverside (County), Lennar Spencer's Crossing, LLC (Assignor) and Riverside Mitland 03, LLC, Spencer's Crossing 103, LLC, and Richmond American Homes of Maryland, Inc. (Assignee); and 2. Authorize the Chairman to execute the Agreement documents on behalf of the District.

BACKGROUND:

The Agreement transfers the rights and responsibilities as established by the original Cooperative Agreement executed on January 10, 2006 (Board Agenda Item No. 11.13), from the Assignor to the Assignee. Once the Agreement is executed, the Assignee will complete the construction of the drainage facilities necessary for Tract Nos. 30696-1, 30696-3 and 30696-4. (Continued on Page 2).

KEC:bjj

WARREN D. WILLIAMS General Manager-Chief Engineer

Table with 4 columns: FINANCIAL DATA, Current F.Y. District Cost, Current F.Y. County Cost, Annual Net District Cost, In Current Year Budget, Budget Adjustment, For Fiscal Year. Values are N/A.

Table with 2 columns: SOURCE OF FUNDS: N/A, Positions To Be Deleted Per A-30, Requires 4/5 Vote. Includes checkboxes.

C.E.O. RECOMMENDATION:

APPROVE

BY: Alex Gann Alex Gann

County Executive Office Signature

FOR APPROVAL BY COUNTY COUNSEL BY: NEAL R. KIPNIS DATE: 3/29/11

Dept's Recomm.: Per Exec. Ofc.: Policy Consent boxes

Prev. Aan. Ref.: District: 3rd Agenda Number: 11.1

ATTACHMENTS FILED WITH THE CLERK OF THE BOARD

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

SUBJECT: Warm Springs Valley-Evening Glow Drive Storm Drain, Stage 2
Project No. 7-0-00219-02
Tract Nos. 30696-1, 30696-3, 30696-4
Assignment and Assumption Agreement

SUBMITTAL DATE: March 29, 2011
Page 2

BACKGROUND:

The Agreement is necessary to provide for District construction inspection of the referenced facilities associated with Tract Nos. 30696-1, 30696-3 and 30696-4.

Upon completion of the facilities' construction, the District will assume ownership, operation and maintenance of the facilities except for catch basins, laterals and connector pipes which are to be maintained by the County.

County Counsel has approved the Agreement as to legal form. A companion item appears on the County's Agenda this same date.

The Assignee is funding all construction and construction inspection costs.

KEC:blj

ASSIGNMENT AND ASSUMPTION AGREEMENT
Warm Springs Valley – Evening Glow Drive Storm Drain, Stage 2
Project No. 7-0-00219-2
(Tract Nos. 30696-1, 30696-3 and 30696-4)

This ASSIGNMENT AND ASSUMPTION AGREEMENT, hereinafter called "ASSIGNMENT", is made by and between (i) the RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter called "DISTRICT"; (ii) the COUNTY OF RIVERSIDE, hereinafter called "COUNTY", (iii) LENNAR SPENCER'S CROSSING, LLC, a Delaware limited liability company, hereinafter called "ASSIGNOR", and (iv) RIVERSIDE MITLAND 03 LLC, a Delaware limited liability company, SPENCER'S CROSSING 103, LLC, a Delaware limited liability company, and RICHMOND AMERICAN HOMES OF MARYLAND, INC., a Maryland corporation, hereinafter together called "ASSIGNEE".

RECITALS

A. DISTRICT, COUNTY and ASSIGNOR have previously entered into that certain Agreement which was executed on January 10 2006, and recorded as Document No. 2006 – 0054189 in the Official Records of the County of Riverside and is hereinafter called "AGREEMENT", setting forth the parties' respective rights and obligations concerning ASSIGNOR'S proposed design and construction of certain flood control and drainage facilities required as a condition of approval for Tract Nos. 30696-1, 30696-3 and 30696-4 located in the County of Riverside, State of California (hereinafter, the "PROPERTY"); and

B. Subsequent to the execution of said AGREEMENT, ASSIGNEE has acquired fee title to the PROPERTY; and

C. A true copy of AGREEMENT has been provided to ASSIGNEE and said AGREEMENT describes the terms and conditions by which those certain flood control and drainage improvements that are required in connection with the development of Tract Nos. 30696-1, 30696-3 and 30696-4 are to be designed and constructed by ASSIGNOR, and inspected and accepted for operation and maintenance by DISTRICT and COUNTY; and

1 D. AGREEMENT stipulates that ASSIGNOR may assign its rights and
2 responsibilities as set forth therein subject to the written consent of the parties thereto; and

3 E. The totality of ASSIGNOR's rights, title, interests, benefits and privileges pursuant
4 to AGREEMENT are hereinafter collectively called "ASSIGNOR RIGHTS" and the totality of
5 ASSIGNOR's obligations pursuant to AGREEMENT are hereinafter collectively called
6 "ASSIGNOR OBLIGATIONS"; and

7 F. ASSIGNOR RIGHTS and ASSIGNOR OBLIGATIONS are hereinafter altogether
8 called "RIGHTS AND OBLIGATIONS"; and

9 G. ASSIGNOR, ASSIGNEE, COUNTY and DISTRICT intend that, by execution of
10 this ASSIGNMENT, ASSIGNEE shall assume all of ASSIGNOR RIGHTS AND
11 OBLIGATIONS.

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

13 1. The above Recitals are true and correct.

14 2. By execution of this ASSIGNMENT, ASSIGNOR hereby assigns all of their
15 RIGHTS AND OBLIGATIONS to ASSIGNEE.

16 3. For the benefit of COUNTY and DISTRICT, ASSIGNEE hereby ratifies and
17 agrees to be bound by the assignment of RIGHTS AND OBLIGATIONS set forth in Paragraph 2
18 above.

19 4. ASSIGNEE agrees to complete construction of PROJECT and
20 APPURTENANCES as detailed in AGREEMENT within twelve (12) consecutive months after
21 execution of this Agreement and within one hundred eighty (180) consecutive calendar days after
22 commencing work on PROJECT and APPURTENANCES.

23 5. In regard to the assignment of RIGHTS AND OBLIGATIONS set forth herein,
24 COUNTY and DISTRICT hereby consent to and hereby agree to be bound by (i) the assignment
25 of RIGHTS AND OBLIGATIONS in favor of ASSIGNEE, and (ii) the assumption by
26 ASSIGNEE of said RIGHTS AND OBLIGATIONS. In further clarification of the intent of the
27 parties, ASSIGNEE and ASSIGNOR specifically agree with DISTRICT that access and/or grant
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1 of real property interests required by DISTRICT pursuant to AGREEMENT, if any, shall be
 2 satisfied by ASSIGNEE, and in regard to all financial obligations, DISTRICT shall invoice
 3 ASSIGNEE for all charges incurred pursuant to AGREEMENT.

4 6. The assignment and assumption of RIGHTS AND OBLIGATIONS pursuant to
 5 this Assignment shall be binding upon and inure to the benefit of the successors, assigns, personal
 6 representatives, heirs and legatees of the respective parties hereto.

7 7. In the event that any action or suit by the party hereto is brought against another
 8 party hereunder by reason of any breach of any of the covenants, conditions, agreements or
 9 provisions on the part of the other party arising out of this ASSIGNMENT, the prevailing party
 10 shall be entitled to have and recover of and from the other party all costs and expenses of the
 11 action or suit, including reasonable attorneys' fees.

12 8. This ASSIGNMENT shall be governed by, interpreted under and construed in
 13 accordance with the laws of the State of California.

14 9. Any and all notices sent or required to be sent to ASSIGNOR or ASSIGNEE
 15 arising from either this ASSIGNMENT, or the obligations contained in AGREEMENT will be
 16 mailed by first class mail, postage prepaid, to the following addresses:

17 RIVERSIDE COUNTY FLOOD CONTROL
 18 AND WATER CONSERVATION DISTRICT
 19 1995 Market Street
 20 Riverside, CA 92501
 Attn: Administrative Services Section

COUNTY OF RIVERSIDE
 Post Office Box 1090
 Riverside, CA 92502-1090
 Attn: Transportation Department

21 SPENCER'S CROSSING 103 LLC
 22 2900 Adams Street, No. C-25
 23 Riverside, CA 92504
 Attn: Myles D. Weinstein

RICHMOND AMERICAN
 HOMES OF MARYLAND INC
 5171 California Street, Suite 120
 Irvine, CA 92617
 Attn: Vladimir I. Kytlica

24 RIVERSIDE MITLAND 03 LLC
 25 12865 Pointe Del Mar Way,
 Suite 209
 26 Del Mar, CA 92014
 Attn: Dennis Chapman

LENNAR SPENCER'S CROSSING, LLC
 391 N. Main Street
 Corona, CA 92880
 Attn: Jeff Clemens

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

11. The individuals executing this ASSIGNMENT on behalf of ASSIGNOR and ASSIGNEE hereby certify that they have the authority within their respective companies to enter into and execute this ASSIGNMENT, and have been authorized to do so by any and all boards of directors, legal counsel and/or any other board, committee or other entity within their respective companies which have the authority to authorize or deny entering into this ASSIGNMENT.

12. This ASSIGNMENT may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

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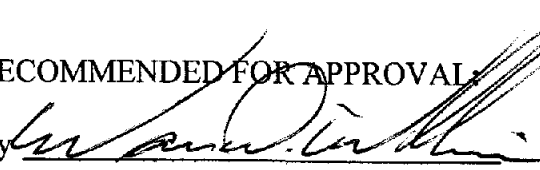
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IN WITNESS WHEREOF, the parties hereto have executed this ASSIGNMENT

on _____
(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

By 
WARREN D. WILLIAMS
General Manager-Chief Engineer

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

APPROVED AS TO FORM:

ATTEST:

PAMELA J. WALLS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board


By 
NEAL KIPNIS
Deputy County Counsel

By _____
Deputy

(SEAL)

RECOMMENDED FOR APPROVAL:

COUNTY OF RIVERSIDE

By 
JUAN C. PEREZ
Director of Transportation
Patricia Romo
Deputy Director of Transportation

By _____
BOB BUSTER, Chairman
County of Riverside Board of Supervisors

ATTEST:

KECIA HARPER-IHEM
Clerk of the Board

By _____
Deputy

FORM APPROVED COUNTY COUNSEL

BY:  3/9/11 DATE
MARSHAL VICTOR

(SEAL)

Assignment & Assumption Agreement
Tract Nos. 30696-1, 30696-3 and 30696-4
KEC:blj
9/29/10

ASSIGNOR

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

By: **LENNAR HOMES OF CALIFORNIA, INC.**
a California corporation
Its Administrative Member

By 

JEFFREY T. CLEMENS
Vice President

(ATTACH NOTARY ACKNOWLEDGEMENT
WITH CAPACITY STATEMENT)

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Assignment & Assumption Agreement
Tract Nos. 30696-1, 30696-3 and 30696-4
KEC:blj
9/29/10

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)
COUNTY OF RIVERSIDE)

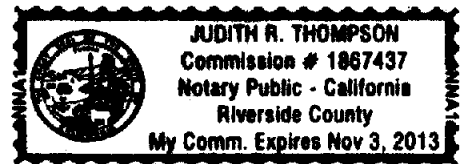
ON JANUARY 12, 2011, BEFORE ME, JUDITH R. THOMPSON, NOTARY PUBLIC, PERSONALLY APPEARED JEFFREY M. HACK, WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME IN HIS AUTHORIZED CAPACITY, AND THAT BY HIS SIGNATURE ON THE INSTRUMENT THE PERSON(S), 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.

Judith R. Thompson

JUDITH R. THOMPSON

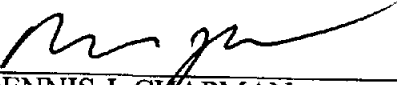


ASSIGNEE

SPENCER'S CROSSING 103, LLC
a Delaware limited liability company


By 
JEFFREY M. HACK
Executive Committee Representative

Date: 1-12-11

By 
DENNIS J. CHAPMAN
Executive Committee Representative


Date: 11-17-10

RIVERSIDE MITLAND 03, LLC
a Delaware limited liability company

By 
DENNIS J. CHAPMAN
Vice President

Date: 11-17-10

**RICHMOND AMERICAN HOMES
OF MARYLAND, INC**

By 
VLADIMIR I. KYTLICA
Vice President-Construction
California Division

Date: 12/29/10

(ATTACH NOTARY WITH
CAPACITY STATEMENTS)

Assignment & Assumption Agreement
Tract Nos. 30696-1, 30696-3 and 30696-4
KEC:blj
9/28/10

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

STATE OF CALIFORNIA) SS

COUNTY OF **ORANGE**

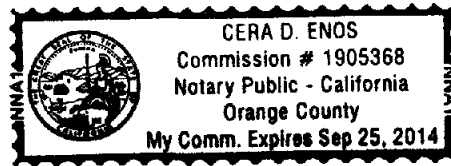
On December 27, 2010 before me, Cera D. Enos, Notary Public, personally appeared Vladimir I. Kytlica, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their 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

Cera D. Enos



This area for official notarial seal.

My Commission Expires: September 25, 2014

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

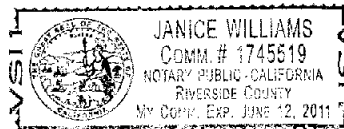
On November 2, 2010, before me *Janice Williams, Notary Public* personally appeared *Jeffrey T. Clemens*, ho proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, 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 M. Williams



(This area for official notarial seal)

ACKNOWLEDGMENT

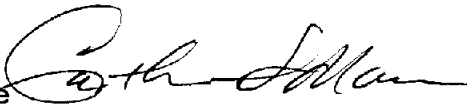
State of California
County of Orange)

On November 17, 2010 before me, Catherine L. Marsh, Notary Public
(insert name and title of the officer)

personally appeared Dennis J. Chapman
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)

