

758

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



**FROM:** Executive Office

**SUBMITTAL DATE:**  
December 3, 2013

**SUBJECT:** Development Impact Fee (DIF) Credit Agreement - Trail Development between the County of Riverside and Starfield Sycamore Investors, LCC, for Tentative Tract Maps Nos. 31908, 31908-1, 31908-2, 36316, 36317 and 36317-1 (TTMS); CEQA Findings of Nothing Further is Required, 1<sup>st</sup> District, [not to exceed \$85,478]

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Find that although the Project could have a significant effect on the environment, nothing further is required because all potentially significant effects have been fully analyzed in an earlier Environment Impact Report No. 325 (EIR) and subsequent addendums tiered off of the EIR for the implementing TTMS projects for Specific Plan No. 256 and have been avoided or mitigated to less than significant pursuant to that earlier EIR; and
2. Approve the Development Impact Fee Credit Agreement - Trail Development between the County of Riverside and Starfield Sycamore Investors, LCC, for Tract Maps Nos 31908, 31908-1, 31908-2, 36316, 36317 and 36317-1 and authorize the Chairman of the Board to execute the same on behalf of the County; and,

**BACKGROUND:**

**Summary**

Continued on page 2

*Serena Chow*

Serena Chow  
Principal Management Analyst

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
<b>COST</b>	\$ 85,478	\$ 0	\$ 85,478	\$ 0	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
<b>NET COUNTY COST</b>	\$ 0	\$ 0	\$ 0	\$ 0	

<b>SOURCE OF FUNDS:</b> DIF Western Regional Trails Fund (30533)	<b>Budget Adjustment:</b> No
	<b>For Fiscal Year:</b> FY 13-14

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

**APPROVE**

BY: *Ivan M. Chand*

Ivan M. Chand

12/10/2013

County Executive Office Signature

**MINUTES OF THE BOARD OF SUPERVISORS**

FORM-APPROVED COUNTY COUNSEL  
BY: Cynthia M. Gunzel 12-6-13  
DATE: SYNTHIA M. GUNZEL  
Departmental Concurrence

- A-30
- 4/5 Vote
- Positions Added
- Change Order

**Prev. Agn. Ref.:**      **District:**      **Agenda Number:**

3-2

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

**FORM 11: Development Impact Fee (DIF) Credit Agreement - Trail Development between the County of Riverside and Starfield Sycamore Investors, LCC, for Tract Maps Nos 31908, 31908-1, 31908-2, 36316, 36317 and 36317-1, CEQA Findings of Nothing Further is Required, 1<sup>st</sup> District, [not to exceed \$85,478]**

**DATE: December 3, 2013**

**PAGE: 2 of 2**

**RECOMMENDED MOTION:**

3. Direct the Clerk of the Board to file the Notice of Determination with the County Clerk within five (5) days of approval of the project.

**BACKGROUND:**

**Summary:**

Starfield Sycamore Investors LLC, ("Developer") presently owns certain real property, which has received development approval from the County for implementing projects under the Sycamore Creek Specific Plan No. 256 ("SP256") consisting of 541 lots collectively in Tentative Tract Map Numbers 31908, 31908-1, 31908-2, 36316, 36317 and 36317-1. Developer proposes to convey real property interests for and construct multipurpose trails for the Riverside County Regional Trail System in the Temescal Canyon unincorporated area of western Riverside County and seeks a fee credit pursuant to Riverside County Ordinance No. 659 ("Ord No 659"). The County Board of Supervisors ("Board") adopted Ord No 659 as amended establishing a development impact fees program where fees must be paid by developers at the time a certificate of occupancy is issued or upon final inspection, whichever occurs first. Section 18 of Ord No 659 provides general conditions under which a credit against all or a portion of the Developer Impact Fee may be earned.

In concurrence with Supervisor Jeffries' office and the Riverside County Regional Parks and Open Space District, the County has determined that the Developer is eligible to receive a credit for the conveyance of the real property interests and for actual construction cost of the trails in an amount up to, but not to exceed, Eighty Five Thousand Four Hundred Seventy Eight Thousand Dollars (\$85,478.00). The real property to be conveyed for the regional trails will be made in favor of the Riverside County Regional Park and Open-Space District because this is the associated County entity that is responsible for managing and controlling the Riverside County Regional Trail System. The Developer has agreed to convey land and construct 1.92 miles of the Temescal Canyon Regional Trail in exchange for a DIF Regional Multipurpose Trail fee credit of up to \$85,478 for 541 planned residential units in the SP256 located in the Temescal Valley of the First Supervisorial District. The fee credit amount is contingent on the actual number of approved residential units as well as the conformance to the County's construction standards for Regional Trails.

The DIF Fee Credit Agreement between the County of Riverside and Starfield Sycamore Investors LLC ("Project") is associated with SP256 and permissible under Ord No 659. Although the Project could have a significant effect on the environment, nothing further is required because 1) all potentially significant effects have been fully analyzed in an earlier EIR No. 325 and subsequent addendums that tiered off of the EIR for the implementing TTMS projects for SP256, 2) have been avoided or mitigated to less than significant pursuant to that earlier EIR certified by the Board on 11/18/1994 with Resolution No. 94-329, 3) the proposed project will not result in any new significant environmental effects not identified in the earlier EIR, 4) the proposed project will not substantially increase the severity of the effects identified in the earlier EIR, 5) no considerably different mitigation measures have been identified and 6) no mitigation measures found infeasible have become feasible. SP256 Amendments No 1 in 2003 and 2 in 2013 still included the trails as conditions of development approvals and part of implementing TTMS projects. This Agreement is the intended mechanism to grant fee credits pursuant to Ord No 659. Therefore, nothing further is required and no further environmental documentation is necessary.

**Impact on Citizens and Businesses**

The approval of the fee credit agreement will facilitate the construction of trail amenities for new homebuyers in the Sycamore Creek Subdivision.

To: Office of Planning and Research
P.O. Box 3044, 1400 Tenth Street, Room 222
Sacramento, CA 95812-3044

From: Riverside County Executive Office
County Administrative Center
4080 Lemon Street, 4th Floor
Riverside, CA 92501

X County Clerk
County of Riverside
2724 Gateway Drive
Riverside, CA 92507

Subject:

Filing of Notice of Determination in Compliance with Section 21108 or 21152 of the Public Resources Code

Project Title

Development Impact Fee Credit Agreement - Trail Development between the County of Riverside and Starfield Sycamore Investors, LCC, for Tentative Tract Maps Nos. 31908, 31908-1, 31908-2, 36316, 36317 and 36317-1

N/A State Clearinghouse Number (If submitted to Clearinghouse)
Serena Chow Lead Agency Contact Person
951.955.1110 Area Code/Telephone/Extension

Project Location (include county)

The Project area is bounded generally by Campbell Ranch Road and near Indian Truck Trail on the east, Santiago Canyon Road on the west in the Temescal Canyon unincorporated area of western Riverside County, on the west side of Interstate 15

Project Description:

The Project consists of Development Impact Fee Credit Agreement - Trail Development between the County of Riverside and Starfield Sycamore Investors, LCC, ("Developer") for Tentative Tract Maps Nos. 31908, 31908-1, 31908-2, 36316, 36317 and 36317-1 whereby Developer will convey real property interests for trail purposes after it has constructed the trail improvements. After which, the fee credits will be granted to Developer in accordance with Riverside County Ordinance No. 659. The fee credits will reduce the total amount of Development Impact Fees that will need to be paid pursuant to Ordinance No. 659.

This is to advise that the County of Riverside, as lead agency, has approved the above described project on December 17, 2013 and has made the following determination regarding the above described project:

Although the Project could have a significant effect on the environment, nothing further is required and no new environmental documentation is required because (a) all potentially significant effects of the proposed project have been fully analyzed in an earlier Environment Impact Report No. 325 (EIR) and subsequent addendums tiered off of the EIR for the implementing TTMS projects for Specific Plan No. 256 pursuant to applicable legal standards, (b) all potentially significant effects of the proposed project have been avoided or mitigated to less than significant pursuant to that earlier EIR, (c) the proposed project will not result in any new significant environmental effects not identified in the earlier EIR, (d) the proposed project will not substantially increase the severity of the effects identified in the earlier EIR, (e) no considerably different mitigation measures have been identified and (f) no mitigation measures found infeasible have become feasible.

This is to certify that the final Environmental Impact Report No. 325 with comments and responses and record of Specific Plan No. 256 approval is available to the General Public at:

The Office of the Clerk to the Board, County Administrative Center, 4080 Lemon Street, Riverside, CA 92501.

Signature (Public Agency) Date Title

**DEVELOPMENT IMPACT FEE CREDIT AGREEMENT  
TRAIL IMPROVEMENTS  
(TENTATIVE TRACT MAP NUMBERS  
31908, 31908-1, 31908-2, 36316, 36317 AND 36317-1)**

**THIS DEVELOPMENT IMPACT FEE CREDIT AGREEMENT** (this "Agreement"), entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the County of Riverside, a public subdivision of the State of California (the "County") and Starfield Sycamore Investors, L.L.C, a Delaware Limited Liability Company (the "Developer"). County and Developer are sometimes hereinafter referred to individually as "Party" and collectively as "Parties".

**RECITALS**

WHEREAS, Developer presently owns certain real property, which has received development approval from the County for 541 lots collectively in Tentative Tract Map Numbers 31908, 31908-1, 31908-2, 36316, 36317 and 36317-1 within the Sycamore Creek Specific Plan No. 256A2, as shown Exhibit A, attached hereto and incorporated herein (the "Property"); and

WHEREAS, as a condition of development of the Property, the Developer is required to convey real property interests for trail purposes and construct or cause to be constructed trail improvements within the Property area (the "Project"), as shown and described in Exhibit B, attached hereto and incorporated herein; and

WHEREAS, the County Board of Supervisors (the "Board") adopted Ordinance No. 659 as amended and Chapter 4.60 of the Riverside County Code establishing a development impact fees program pursuant to the Mitigation Fee Act, Government Code Section 66000 et seq. (respectively, the "Ordinance" and the "Developer Impact Fee") to be paid at the time a certificate of occupancy is issued or upon final inspection, whichever occurs first; and

WHEREAS, Section 18 of the Ordinance provides general conditions under which a credit against all or a portion of the Developer Impact Fee may be earned; and

WHEREAS, a component of the Developer Impact Fee is a stated dollar amount to be utilized for the acquisition of and construction of regional multipurpose trails within the unincorporated area of the County; and

WHEREAS, the Developer proposes to convey certain property for and construct multipurpose trails for a portion of the Riverside County Regional Trail System in the Temescal Canyon unincorporated area of western Riverside County and seeks a fee credit pursuant to Ordinance No. 659, as consideration for the conveyance of such property and construction of the trails improvements; and

WHEREAS, the Riverside County Regional Park and Open-Space District ("District"), a County associated entity, is responsible for managing and controlling the Riverside County Regional Trails Systems agrees to accept the trail property upon acceptance of the trails construction done to County and District standards; and

WHEREAS, the County has determined that the Developer is eligible to receive a credit for the conveyance of the real property interests and for actual construction cost of the Project in an amount up to, but not to exceed, Eighty Five Thousand Four Hundred Seventy Eight Thousand Dollars (\$85,478.00), as shown and described in Exhibit C, attached hereto and incorporated herein;

WHEREAS, the Developer and the County desire to enter into this Agreement to provide the conditions under which the Developer is to convey the real property interests and construct or cause to be constructed the Project, to establish the fee credit to be earned by the Developer, and the manner in which the fee credit is to be applied against the Development Impact Fee to be paid by the Developer upon the development of the Property; and

WHEREAS, this trails Project is deemed eligible for fee credit or reimbursement based on the criteria set forth in Ordinance No. 659, and the policies and practices of the County of Riverside;

**NOW, THEREFORE, for the purposes set forth herein, and for good and valuable consideration, the adequacy of which is hereby acknowledged, the Parties hereby agree as follows:**

## **TERMS**

**Section 1. Purpose of the Agreement:** Following execution of this Agreement, the Developer shall cause the Project to be designed, engineered and constructed to meet the standards for trails of the County and the District, and upon satisfaction of the Developer's obligations contained herein, the Developer will have earned a fee credit in the dollar amount determined consistent with the provisions of this Agreement that is to be applied against the Development Impact Fee to be paid for the development of the Property.

**Section 2. Definitions:** Unless otherwise specifically defined in this Agreement, all terms will have the meaning ascribed to them by the Ordinance.

**Section 3. Preparation and Approval of Plans and Specifications:** To the extent that it has not already done so, the Developer shall cause plans and specifications (collectively, the "Plans") to be prepared for the Project. The Developer shall obtain the written approval of the Plans from the District on behalf of the County. The Developer shall provide a copy of the Plans to the County Executive Office, or his/her designee, and the Senior Park Planner for District.

**Section 4. Duty of Developer to Construct:** The Developer shall construct or cause to be constructed the Project in accordance with the approved Plans approved by the Senior Park Planner. The Developer shall perform all of its obligations hereunder and shall conduct all operations with respect to the construction of the Project in a good, workmanlike and commercially reasonable manner, with the standard of diligence and care normally employed by duly qualified persons utilizing commercially reasonable efforts in the performance of comparable work and in accordance with generally accepted practices appropriate to the activities undertaken. Notwithstanding the foregoing, nothing set forth in this Agreement shall be construed to require the Developer to perform any work requiring a contractor's license, nor

shall the Developer be deemed to be performing construction services pursuant to this Agreement.

**Section 5. Duty of Developer to Convey:** Prior to issuance of any fee credits, Developer shall convey by Grant Deed, in favor of the Riverside County Regional Park and Open-Space District, the real property interests described in Exhibit "A", which is attached hereto and incorporated herein by this reference, for multipurpose trails in the Regional Trail system within the Property in the Temescal Valley upon acceptance of the Project by the County and consistent with the terms provided herein. The acreage of the property to be conveyed is 1.927 miles of Regional Trails with a plan distance of 1.927 miles or a total of 10,070 linear feet. In consideration of this conveyance, County agrees to allow a fee credit as further set forth in this Agreement. Developer shall cause to be prepared, a plat and legal description in recordable condition, for the property described in Exhibit A for County's review and approval. Developer shall remove from title any special assessment lien recorded on the property as a condition of escrow. All other taxes and assessments, due as of the date of the conveyance of Exhibit A by Developer to County, shall be paid by Developer up to the date of such conveyance.

Developer shall deliver to the County duly executed Grant Deeds for trail purposes, including ingress and egress, for the access deemed necessary by the County for the construction, inspection, operation and maintenance of the Project. Developer shall deliver preliminary reports of title dated not more than thirty (30) days prior to date of submission for all property described in the Grant Deeds to the County.

**Section 6. Notice of Intent to Commence Construction:** Not less than twenty (20) Business Days prior to the date on which Developer intends to commence construction of the Project, the Developer shall provide a written "Notice of Intent" to the Senior Park Planner. The "Notice of Intent" is to include the following documents, if applicable:

- (a) Copies of all requisite Licenses and Regulatory Permits secured.
- (b) The final mylar plan sheets for the Project and assign their ownership to the District, as appropriate, prior to the start of construction of the Project.
- (c) Certificates of insurance and endorsements as required by Section 14, below.

**Section 7. Inspection; Completion of Construction:** The Senior Park Planner shall have responsibility for providing inspection of the Project construction work to insure that the construction work is accomplished in accordance with the Plans approved by the Senior Park Planner. County personnel or representatives shall have access to the construction worksite at all reasonable times for the purpose of accomplishing such inspection.

The Developer shall forthwith file with the Riverside County Recorder a Notice of Completion pursuant to the provisions of Section 3093 of the California Civil Code no later than ten business days after receiving notification from the County or the District that the Project has been constructed in accordance with the Plans. The Developer shall furnish to the County and the District a duplicate copy of each such Notice of Completion showing thereon the date of filing with said County Recorder.

The Developer shall complete the construction of the Project and file the Notice of Completion within three (3) years from the date of this Agreement, unless the Parties by mutual consent agree to extend this deadline. If the Project has not been completed within said three (3) years and an extension of time has not be requested, the Developer shall forfeit any and all fee credits and reimbursements for this Project.

**Section 8. Maintenance of Facilities:** The Developer shall maintain the Project in good and safe condition until its acceptance by the County. Prior to the acceptance of the Project, the Developer shall be responsible for maintaining the Project in proper operating condition, and shall perform such maintenance as the Senior Park Planner reasonably determines to be necessary.

**Section 9. Ownership of Trails:** Notwithstanding the fact that a portion or all of the Project may be constructed in on property that has been or will be dedicated to the County or the Riverside Regional Park and Open-Space District, the Project shall be and remain the property of the Developer until acceptable title thereto is conveyed to the County as provided herein. Acceptable title means title to land, or an easement therein, delivered free and clear of all liens, taxes assessments, leases, easements, and encumbrances, whether any such item is recorded or unrecorded, except those non-monetary items which are reasonably determined by the County not to interfere with the intended use of the land and the Project. Such ownership by the Developer shall likewise not be affected by any agreement that the Developer may have entered into or may enter into with the County pursuant to the provisions of the Subdivision Map Act, Section 66410 *et seq.* of the Code and the provisions of this Section shall control.

**Section 10. Fee Credit for Project:** The Developer acknowledges that the Property is subject to a Developer Impact Fee in the amount per dwelling unit specified in the Ordinance. The Developer accepts that this Agreement does not serve to estop the County from making adjustments to the Developer Impact Fee, by amending the Ordinance, consistent with State law. The Developer acknowledges that the Board will annually consider adjustments to the Developer Impact Fee, including the regional multipurpose trail fee component, which address at minimum, increases in the consumer price index.

(a) The fee credit provided herein applies only to the development of property covered by Tentative Tract Map Nos. 31908, 31908-1, 31908-2, 36316, 36317 and 36317-1 and only to the Regional Multipurpose Trails component of Ordinance No. 659 Development Impact Fee. No transfer of credit may occur to a different development entitlement. The total number of eligible approved residential lots is 541 residential lots consisting of: 87 for Tentative Tract Map No. 31908; 115 for Tentative Tract Map No. 31908-1; 59 for Tentative Tract Map No. 31908-2; 87 for Tentative Tract Map No. 36316; 86 for Tentative Tract Map No. 36317, and 107 for Tentative Tract Map No. 36317-1. Each individual approved residential lot shall receive a total fee credit not to exceed \$158.00. The total fee credit shall be \$85,478.00 and shall not exceed this amount. Should the Developer construct fewer dwelling units than the number indicated in this Agreement, the Fee Credit will be adjusted to meet the number of actual built units. Any excess Ordinance No. 659 fees required to be paid that exceed \$85,478.00 shall remain the responsibility of the Developer or its successor in interest. In the event that the Parties cannot agree upon the condition of title to be transferred, this Agreement shall be deemed void and of no further force or effect.

(b) Upon recordation of a Notice of Completion for the Project and acceptance of the Project by the Senior Park Planner, the Developer shall submit a billing to the County Executive Office requesting determination of the actual cost of the Project and the regional multipurpose trail fee credit. The dollar amount of the earned fee credit cannot exceed the dollar amount stated in Exhibit C. The Developer shall supply all documentation requested by the County Executive Office in determining the actual construction cost of the Project. The County Executive Office will use his best efforts to determine the amount of the earned fee credit within thirty (30) calendar days of receipt of the bill submitted by the Developer.

(c) The County Executive Office will provide the Developer written notice, in the form of Exhibit D attached hereto (the "Credit Notice"), of the dollar amount of the earned credit. The dollar amount of the earned fee credit shall not exceed the dollar amount of specified in this Section 10. Once completed, the Credit Notice is to be executed and dated by the County Executive Office and the Developer subject to Section. A copy of the Credit Notice will be retained in the County Executive Office which has responsibility for the administration of the Ordinance.

(d) If the dollar amount of the earned fee credit is less than the dollar amount of provided in this Section 10 that would be eligible for credit to the Developer, the Credit Notice will so note and the amount of credit to be applied with each Development Impact Fee payment on a per unit basis will be identified.

(e) If the Developer is issued one or more certificates of occupancy prior to date the Senior Park Planner accepts the Project and prepares the Notice of Credit, then the Developer will have to pay the full Developer Impact Fee for each certificate issued, and upon acceptance of the Project by the Senior Park Planner, the County Executive Office will note on the Notice of Credit the full Regional Multipurpose Trails fee component paid to date of acceptance and make the appropriate adjustment for the application of the earned fee credit consistent with subsection (b) above.

(f) No Fee Credits shall be given upon the expiration of Tentative Tract Map Nos. 31908, 31908-1, 31908 -2, 36316, 36317, and 36317-1, or if any revision to said Tentative Tract Maps is submitted and approved which affects the number of lots for either tract as described in this Agreement and this Agreement shall expire and be deemed rescinded and of no further force or effect.

**Section 11. Representations, Warranties and Covenants of the Developer:** The Developer makes the following representations, warranties and covenants for the benefit of the County, as of the date hereof and as of the date of the Payment Request is delivered to the County hereunder:

(a) Organization. The Developer represents and warrants that the Developer is a legal business entity duly organized and validly existing under the laws of the State of Delaware, is in good standing under the laws of the State of California, and has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated.



(b) Authority. The Developer represents and warrants that the Developer has the power and authority to enter into this Agreement, and has taken all action necessary to cause this Agreement to be executed and delivered, and this Agreement has been duly and validly executed and delivered on behalf of the Developer.

(c) Binding Obligation. The Developer represents and warrants that this Agreement is a valid and binding obligation of the Developer and is enforceable against the Developer in accordance with its terms, subject to bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights in general and by general equity principles.

(d) Completion of Project. The Developer covenants that it will use its reasonable and diligent efforts to do all things that may be lawfully required of it in order to cause the Project to be completed in accordance with this Agreement.

(e) Compliance with Laws. The Developer covenants that, while the Project is owned by the Developer or required pursuant to this Agreement to be maintained by the Developer, it will not commit, suffer or permit any of its agents, employees or contractors to commit any act to be done in, upon or to the Project in violation in any material respect of any law, ordinance, rule, regulation or order of any governmental authority or any covenant, condition or restriction now or hereafter affecting the Property or the Project.

(f) Financial Records. Until the final acceptance of the Project, the Developer covenants to maintain proper books of record and account for the Project and all costs related thereto. The Developer covenants that such accounting books will be maintained in accordance with generally accepted accounting principles, and will be available for inspection by the County and the Senior Park Planner, at any reasonable time during regular business hours on two business days' prior written notice, subject to mutually acceptable arrangements regarding the confidentiality of proprietary data.

(g) Permits. The Developer covenants that it will obtain all governmental or other permits required to proceed with the construction of the Project and that it will pay all fees relating thereto. The Developer and the County mutually represent and warrant to each other that to their actual knowledge, as of the date hereof, there is no material legal impediment to the Developer's proceeding with and completing the construction of the Project.

**Section 12. Representations, Warranties and Covenants of County:** County makes the following representations, warranties and covenants for the benefit of the Developer:

(a) Authority. County represents and warrants that County has the power and authority to enter into this Agreement, and has taken all action necessary to cause this Agreement to be executed and delivered, and this Agreement has been duly and validly executed and delivered on behalf of County.

(b) Binding Obligation. County represents and warrants that this Agreement is a valid and binding obligation of County and is enforceable against County in accordance with its terms, subject to bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights in general and by general equity principles.

(c) Completion of the Improvements. The County covenants that it will use its reasonable and diligent efforts to take expeditiously all actions that may be lawfully required for the Project including issuing permits, processing and approving plans and specifications and inspecting the Project in accordance with this Agreement.

**Section 13. Indemnification:** The Developer agrees to protect, indemnify, defend and hold the County, and its respective officers, employees and agents, and each of them, harmless from and against any and all claims, losses, expenses, suits, actions, decrees, judgments, awards, attorney's fees, and court costs which the County, or its respective officers, employees and agents, or any combination thereof, may suffer or which may be sought against or recovered or obtained from the County, or its respective officers, employees or agents, or any combination thereof, as a result of or by reason of or arising out of or in consequence of (a) the acquisition, construction, or installation of the Project, (b) the untruth or inaccuracy of any representation or warranty made by the Developer in this Agreement or in any certifications delivered by the Developer hereunder, or (c) any act or omission of the Developer or any of its subcontractors, or their respective officers, employees or agents, in connection with the Project. If the Developer fails to do so, the County shall have the right, but not the obligation, to defend the same and charge all of the direct or incidental costs of such defense, including any attorney's fees or court costs, to and recover the same from the Developer. The Parties acknowledge and agree that the Developer shall be released from the indemnity obligation set forth herein upon the expiration of all applicable statute of limitations periods.

**Section 14. Insurance Requirements:** Without limiting or diminishing the Developer's obligation to indemnify or hold the County harmless, the Developer shall procure and maintain or cause to be maintained, at its sole cost and expense the following insurance coverages during the term of this Agreement.

(a) *Commercial General Liability:* Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations, explosion, collapses, use of cranes, and other heavy equipment and underground hazards, personal and advertising injury covering claims which may arise from or out of Developer's performance of its obligations hereunder. Policy shall name by endorsement the County and its special districts, respective directors, officers, Board of Supervisors, elected officials, employees, agents or representatives as Additional Insureds. Policy's limit of liability shall not be less than \$2,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit.

(b) *Vehicle Liability:* Developer shall maintain liability insurance for all owned, non-owned or hired vehicles in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit. Policy shall name by endorsement the County, its special districts, their respective directors, officers, Board of Supervisors, elected officials, employees, agents or representatives as Additional Insureds.

(c) *Worker's Compensation Insurance:* Developer shall maintain Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupation Disease with limits

not less than \$1,000,000 per person per accident. Policy shall be endorsed to waive subrogation in favor of the County, and if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.

General Insurance Provisions - all lines:

(d) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A.M. Best rating of not less than an A:VIII (A:8) unless such requirements are waived, in writing, by the County Risk Manager.

(e) The Developer's insurance carrier(s) must declare its insurance deductibles or self-insured retentions. If such deductibles or self-insured retentions exceed \$500,000 per occurrence such deductibles and/or retentions shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of deductibles or self-insured retentions which are deemed unacceptable to the County, at the election of the County's Risk Manager, the Developer's carriers shall either: (i) reduce or eliminate such deductibles or self-insured retentions as respects this Agreement with the County, or (ii) procure a bond which guarantees payment of losses and related investigations, claims administration, defense costs and expenses.

(f) The Developer shall cause their insurance carrier(s) to furnish the County with (i) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein; or (ii) if requested to do so orally or in writing by the County Risk Manager, provide original certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect.

(g) Further, said Certificate(s) and Endorsements to policies of insurance shall contain the covenant of the insurance carrier(s) that it shall provide no less than thirty (30) days written notice be given to the County prior to any material modification or cancellation of such insurance. In the event of a material modification or cancellation of coverage, this Agreement shall terminate forthwith, unless the County receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of Endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverages and the insurance required herein are in full force and effect. Individual(s) authorized by the insurance carrier to do so, on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance.

***(h) The Developer shall not commence construction of the Improvements until the County has been furnished original Certificate(s) of Insurance and certified original copies of Endorsements or policies of insurance including all endorsements and any and all other attachments as required in this Section.***

(i) It is understood and agreed by the Parties hereto and the Developer's insurance company(s) that the Certificate(s) of Insurance and policies shall so covenant and shall be construed as primary insurance, and the County's insurance and/or deductibles and/or self-insured retentions or self-insured retention programs shall not be construed as contributory.

(j) The Developer and contractors shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement and will require all such subcontractors to name on their insurance policies by endorsement the County, its special districts, their respective directors, officers, Board of Supervisors, elected officials employees, agents or representatives as Additional Insureds. Copies of such certificates and endorsements shall be provided to the County. The minimum limits of liability required of all tiers of subcontractors are \$1,000,000 Combined Single Limit for Commercial General Liability and \$1,000,000 Combined Single Limit for Vehicle Liability Insurance

**Section 15. Developer as a Private Developer:** In performing under this Agreement, it is mutually understood that the Developer is acting as a private developer, and not as an agent of the County. The County shall have no responsibility for payment to any contractor, subcontractor or supplier of the Developer.

**Section 16. Other Agreements:** Nothing contained herein shall be construed as affecting the County's or the Developer's respective duty to perform its respective obligations under other agreements, land use regulations or subdivision requirements relating to the development of the Property, which obligations are and shall remain independent of the Developer's rights and obligations, and the County's rights and obligations, under this Agreement; provided, however, that the Developer shall use its reasonable and diligent efforts to perform each and every covenant to be performed by it under any lien or encumbrance, instrument, declaration, covenant, condition, restriction, license, order, or other agreement, the nonperformance of which could reasonably be expected to materially and adversely affect the acquisition, construction and installation of the Project.

**Section 17. Entire Agreement:** This Agreement contains the entire agreement between the Parties with respect to the matters herein provided for.

**Section 18. Binding on Successors and Assigns:** Neither this Agreement nor the duties and obligations of the Developer hereunder may be assigned to any person or legal entity other than an affiliate of the Developer without the written consent of the County, which consent shall not be unreasonably withheld or delayed. Neither this Agreement nor the duties and obligations of the County hereunder may be assigned to any person or legal entity, without the written consent of the Developer, which consent shall not be unreasonably withheld or delayed. The agreements and covenants included herein shall be binding on and inure to the benefit of any partners, permitted assigns, and successors-in-interest of the Parties hereto.

**Section 19. Amendments:** This Agreement can only be amended by an instrument in writing executed and delivered by the County and the Developer.

**Section 20. Waivers:** No waiver of, or consent with respect to, any provision of this Agreement by a Party hereto shall in any event be effective unless the same shall be in writing and signed by such Party, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

**Section 21. No Third Party Beneficiaries:** No person or entity, other than the County, shall be deemed to be a third party beneficiary hereof, and nothing in this Agreement (either express or implied) is intended to confer upon any person or entity, other than the County and the

Developer (and their respective successors and assigns), any rights, remedies, obligations or liabilities under or by reason of this Agreement.

**Section 22. Notices:** Any written notice, statement, demand, consent, approval, authorization, offer, designation, request or other communication to be given hereunder shall be given to the Party entitled thereto at its address set forth below, or at such other address as such Party may provide to the other Party in writing from time to time, namely:

COUNTY: County Executive Office  
DIF Program Administrator  
4080 Lemon Street, 4<sup>th</sup> Floor  
Riverside, CA 92501  
Phone: (951) 955-1110  
Fax: (951) 955-1105

Marc Brewer  
Senior Park Planner  
Riverside County Regional Park & Open-Space District  
4600 Crestmore Road  
Jurupa Valley, CA 92509  
Phone: (951) 955-4398  
Fax: (951) 955-4305

DEVELOPER: Brian Woods, Vice President of Land Development  
Starfield Sycamore Investors, L.L.C  
2151 Michelson Drive  
Irvine, CA 92612  
Phone: (949) 748-6714  
Fax: (949) 748-8488

Each such notice, statement, demand, consent, approval, authorization, offer, designation, request or other communication hereunder shall be deemed delivered to the Party to whom it is addressed (a) if personally served or delivered, upon delivery, (b) if given by electronic communication, whether by telex, telegram or telecopy, upon the sender's receipt of an appropriate answerback or other written acknowledgment, (c) if given by registered or certified mail, return receipt requested, deposited with the United States mail postage prepaid, 72 hours after such notice is deposited with the United States mail, (d) if given by overnight courier, with courier charges prepaid, 24 hours after delivery to said overnight courier, or (e) if given by any other means, upon delivery at the address specified in this Section.

**Section 23. Jurisdiction and Venue:** Each of the Parties (a) agrees that any suit action or other legal proceeding arising out of or relating to this Agreement shall be brought in the Courts of the United States of America in the district in which said County is located, (b) consents to the jurisdiction of each such court in any suit, action or proceeding, and (c) waives any objection that it may have to the laying of venue or any suit, action or proceeding in any of such courts and any claim that any such suit, action or proceeding has been brought in an inconvenient forum. Each of the Parties agrees that a final and non-appealable judgment in any such action or proceeding

shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

**Section 24. Counterparts:** This Agreement may be executed in counterparts, each of which shall be deemed an original.

**Section 25. Governing Law:** This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California.

**Section 26. Usage of Words:** As used herein, the singular of any word includes the plural, and terms in the masculine gender shall include the feminine.

**Section 27. Interpretation:** The Parties to this Agreement and their counsel have reviewed and revised this Agreement, and the normal rule of construction to the effect that any ambiguities in an agreement are to be resolved against the drafting Parties shall not be employed in the interpretation of this Agreement.

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**[SIGNATURES ON NEXT PAGE]**

**IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.**

**COUNTY OF RIVERSIDE**

APPROVAL BY THE COUNTY BOARD OF SUPERVISORS:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
John J. Benoit  
Chairman, Board of Supervisors

ATTEST:  
Kecia Harper-Ihem  
Clerk of the Board

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

(Seal)

APPROVED AS TO FORM:  
County Counsel  
Pamela J. Walls

By: Synthia M. Gunzel Date: 12-6-13  
Deputy County Counsel

**SYNTHIA M. GUNZEL**

**DEVELOPER**

Starfield Sycamore Investors, L.L.C.

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

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

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

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

**EXHIBIT A**  
**DESCRIPTION OF PROPERTY**



**EXHIBIT B**  
**DESCRIPTION OF IMPROVEMENTS**

**EXHIBIT C**

**REGIONAL MULTIPURPOSE TRAIL FEE OBLIGATION**

**For Tentative Tract Map Numbers 31908, 31908-1, 31908-2,  
36316, 36317 and 36317-1**

Number of Residential Units: 541

Developer Signal Fee Obligation Amount: \$ \_\_\_\_\_

Fee Breakdown

Paid Lots \$ \_\_\_\_\_

Unpaid Lots \$ \_\_\_\_\_

Senior Park Planner's Cost Estimate: \$ \_\_\_\_\_

Estimate Breakdown

Real Property Interests \$ \_\_\_\_\_

Design/Engineering \$ \_\_\_\_\_

Construction costs \$ \_\_\_\_\_

**County will credit actual eligible costs up to a maximum of \$85,478.00, once the project is complete and actual costs are verified.**

**EXHIBIT D**

**NOTICE OF CREDIT**

Tract/Parcel Map No. \_\_\_\_\_ Date: \_\_\_\_\_, 20\_\_

Units/Acres that have not paid Development Impact  
Fees as of the date of this Notice: \_\_\_\_\_/units/acres

Earned Fee Credit Amount: \$ \_\_\_\_\_

Subtract Amount of Development Impact Fee regional multipurpose trail fee component  
still due as of the date of this Notice:

\$ \_\_\_\_\_ / unit/acre x \_\_\_\_\_ units/acres = \$ \_\_\_\_\_

Fee Credit - \$ \_\_\_\_\_

A fee credit of **\$ 158.00 unit** \* will apply to Tract/Parcel Map No. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\* The regional multipurpose trail component of the Development Impact Fees collected for the above specified Tract/Parcel Maps shall be reduced by the rates shown in bold face type at the time of payment.