

FORM APPROVED COUNTY COUNSEL
 11/24/15
 BY: GREGORY P. PRIAMOS
 DATE

Departmental Concurrence

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

101B



FROM: TLMA – Transportation and Planning Department

SUBMITTAL DATE:
 November 2, 2015

SUBJECT: Approval of Assignment, Assumption and Amendment Agreement to Cooperative Agreement for Winchester Hills Line 2, Stage 1 (Tract No. 30809); Project No. 4-0-00576, 3rd District; [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

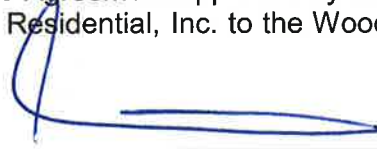
1. Approve the Assignment, Assumption and Amendment Agreement to Cooperative Agreement between the County of Riverside (County), the Riverside County Flood Control and Water Conservation District (District), Continental Residential, Inc. (Assignor) and the Woods (Riverside) Venture, L.L.L.P. (Assignee); and
2. Authorize the Chairman of the County Board of Supervisors to execute the same.

BACKGROUND:

Summary

The Assignment, Assumption and Amendment Agreement (Agreement) transfers the rights and responsibilities as established by the original Cooperative Agreement approved by the Board of Supervisors on August 1, 2006 (Agenda Item 3.35) from Continental Residential, Inc. to the Woods (Riverside) Venture, L.L.L.P.


 Patricia Romo
 Assistant Director of Transportation


 Juan C. Perez
 Director of Transportation and Land Management

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

SOURCE OF FUNDS: N/A
Budget Adjustment: No
For Fiscal Year: N/A

C.E.O. RECOMMENDATION:

APPROVE

BY: 
 Tina Grande

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

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

Prev. Agn. Ref.: 08/01/06, Item 3-35

District: 3

Agenda Number:

3-36

SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA
FORM 11: Approval of Assignment, Assumption and Amendment Agreement to Cooperative Agreement for Winchester Hills Line 2, Stage 1 (Tract No. 30809); Project No. 4-0-00576, 3rd District; [\$0]

DATE: November 2, 2015

PAGE: 2 of 2

BACKGROUND:

Summary (continued)

Once the Agreement is executed, the Woods (Riverside) Venture, L.L.L.P. will assume responsibility for the construction of the drainage facility as originally required as a condition of development for Tract No. 30809. Upon completion of the facility's construction, the District will assume ownership, operation and maintenance of the mainline storm drain facility. The County will assume ownership and responsibility for operation and maintenance of the project's associated catch basins and connector pipes located within County right of way.

County Counsel has approved the Agreement as to legal form. A companion item appears on the Riverside County Flood Control and Water Conservation District (District) Board agenda this same date.

Impact on Residents and Businesses

Residents will benefit from the new storm drain facilities by managing storm flows and helping to mitigate flooding.

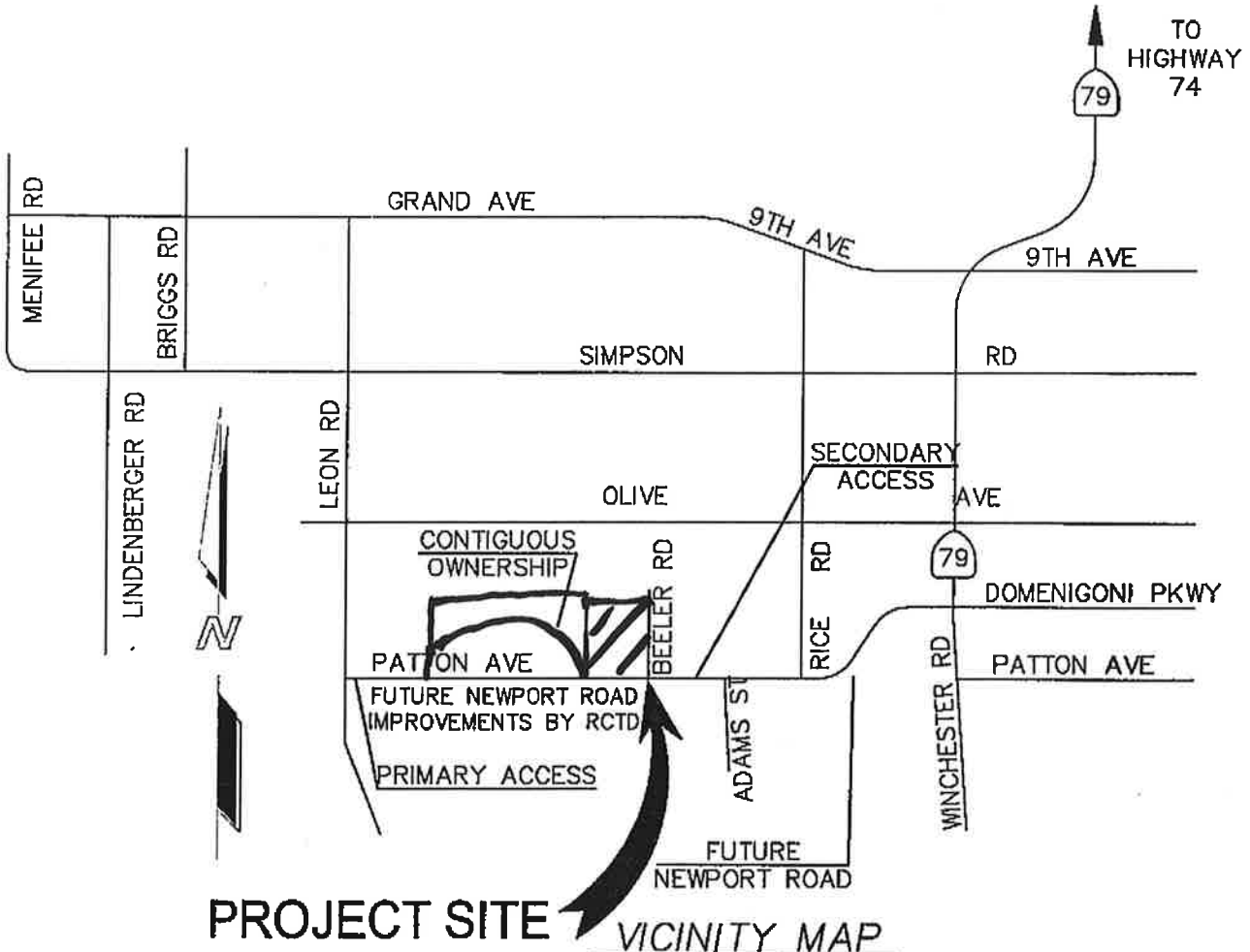
SUPPLEMENTAL:

Additional Fiscal Information

The Woods (Riverside) Venture, L.L.L.P. is funding all construction and construction inspection costs. Future operations and maintenance costs associated with said storm drain facility within Transportation right of way will accrue to the County.

ATTACHMENTS:

Vicinity Map
Cooperative Agreement



NTS
 NORTH HALF OF SECTION 32, T5S, R2W

1 ASSIGNMENT, ASSUMPTION AND AMENDMENT AGREEMENT
2 TO COOPERATIVE AGREEMENT
3 Winchester Hills Line 2, Stage 1
4 Project No. 4-0-00576
5 (Tract No. 30809)

6 This Assignment, Assumption and Amendment Agreement, hereinafter called
7 "ASSIGNMENT", is made by and between the (i) Riverside County Flood Control and Water
8 Conservation District, hereinafter called "DISTRICT"; (ii) County of Riverside, hereinafter called
9 "COUNTY"; (iii) Continental Residential, Inc., a California corporation, hereinafter called
10 "ASSIGNOR"; and (iv) The Woods (Riverside) Venture, L.L.P., a Delaware limited liability
11 limited partnership, hereinafter called "ASSIGNEE".

12 RECITALS

13 A. DISTRICT, COUNTY and ASSIGNOR have previously entered into that certain
14 Agreement which was executed on August 1, 2006, and recorded as Document No. 2006 – 0593184
15 in the Official Records of the County of Riverside and is hereinafter called "AGREEMENT",
16 setting forth the parties' respective rights and obligations concerning ASSIGNOR'S proposed
17 design and construction of certain flood control and drainage facilities required as a condition of
18 approval for Tract No. 30809 located in the unincorporated western area of Riverside County, State
19 of California (hereinafter the "PROPERTY"); and

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

22 C. A true copy of AGREEMENT has been provided to ASSIGNEE and said
23 AGREEMENT describes the terms and conditions by which those certain flood control and
24 drainage improvements that are required in connection with the development of Tract No. 30809
25 are to be designed and constructed by ASSIGNOR, and inspected and accepted for operation and
26 maintenance by DISTRICT and COUNTY; and

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

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

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

G. ASSIGNOR, ASSIGNEE, COUNTY, and DISTRICT intend that, by execution of this ASSIGNMENT, ASSIGNEE shall assume all of ASSIGNOR'S RIGHTS AND OBLIGATIONS; and

H. Concurrently with the assignment and assumption of AGREEMENT, DISTRICT desires to make certain amendments to the AGREEMENT in its entirety.

NOW, THEREFORE, in consideration of the preceding recitals and the mutual covenants hereinafter contained, the parties hereto do hereby mutually agree as follows:

- 1. The above Recitals are true and correct.
- 2. By execution of this ASSIGNMENT, ASSIGNOR hereby assigns all of their RIGHTS AND OBLIGATIONS to ASSIGNEE.
- 3. For the benefit of COUNTY and DISTRICT, ASSIGNEE hereby agrees to be bound by the assignment of RIGHTS AND OBLIGATIONS set forth in Paragraph 2 above.
- 4. AGREEMENT is hereby amended as follows:
 - I. RECITAL 'C' is omitted in its entirety.
 - II. RECITAL 'D' is omitted in its entirety.
 - III. RECITAL 'E' is omitted in its entirety.
 - IV. RECITAL 'J' is revised to read:

"DISTRICT is willing to (i) review and approve DEVELOPER'S plans and specifications for PROJECT, (ii) inspect the construction of DISTRICT DRAINAGE FACILITIES, provided DEVELOPER (i) complies with this Agreement, (ii) pays DISTRICT the amounts specified herein to cover

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DISTRICT'S plan review and construction inspection costs, (iii) constructs PROJECT in accordance with plans and specifications approved by DISTRICT and COUNTY, (iv) obtains all necessary permits, regulatory permits, licenses and rights of entry as set forth herein, (v) accepts ownership and responsibility for the operation and maintenance of PROJECT following completion of PROJECT construction until such time as DISTRICT accepts ownership and responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITIES and COUNTY accepts ownership and responsibility for the operation and maintenance of APPURTENANCES, and (vi) obtains and conveys to DISTRICT the necessary rights of way for the inspection, operation and maintenance of DISTRICT DRAINAGE FACILITIES as set forth herein."

V. RECITAL "L" is revised to read:

"Additionally, COUNTY is willing to (i) review and approve DEVELOPER'S bid documents prior to DEVELOPER'S award of a construction contract for PROJECT and (ii) monitor DEVELOPER'S bidding and contracting procedures for conformance with the applicable provisions of the Public Contract Code."

VI. Section I.5 is revised to read:

"Prior to commencing PROJECT construction, furnish DISTRICT with copies of all permits, approvals or agreements required by any federal, state or local resource and/or regulatory agency for the construction, operation and maintenance of DISTRICT DRAINAGE FACILITIES. Such documents include but are not limited to those issued by the U.S. Army Corps of Engineers, California Regional Water Quality Control Board, California State Department of Fish and Wildlife, State Water Resources Control Board, and Western Riverside County Regional Conservation Authority."

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VII. Section I. 14 is revised to read:

"Furnish DISTRICT with final mylar plans for DISTRICT DRAINAGE FACILITIES, and assign their ownership to DISTRICT prior to the start on any portion of PROJECT construction."

VIII. Section I. 18 is revised to read:

"DEVELOPER shall not commence operations until DISTRICT has been furnished with original certificate(s) of insurance and original certified copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section.

Without limiting or diminishing DEVELOPER'S obligation to indemnify or hold DISTRICT harmless, DEVELOPER shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement:

A. Workers' Compensation:

If DEVELOPER has employees as defined by the State of California, DEVELOPER shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. Policy shall be endorsed to waive subrogation in favor of DISTRICT and COUNTY and, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.

B. Commercial General Liability:

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising

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injury, and cross liability coverage, covering claims which may arise from or out of DEVELOPER'S performance of its obligations hereunder. Policy shall name the Riverside County Flood Control and Water Conservation District and COUNTY, its agencies, districts, special districts, and departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, 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.

C. Vehicle Liability:

If DEVELOPER'S vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then DEVELOPER shall maintain liability insurance for all owned, non-owned or hired vehicles so used 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 the Riverside County Flood Control and Water Conservation District and COUNTY, its agencies, districts, special districts, and departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as additional insureds.

D. Professional Liability:

DEVELOPER shall maintain Professional Liability Insurance providing coverage for DEVELOPER'S performance of work

1 included within this Agreement, with a limit of liability of not less
2 than \$2,000,000 per occurrence and \$4,000,000 annual aggregate. If
3 DEVELOPER'S Professional Liability Insurance is written on a
4 claims made basis rather than an occurrence basis, such insurance
5 shall continue through the term of this Agreement and DEVELOPER
6 shall purchase at his sole expense either 1) an Extended Reporting
7 Endorsement (also known as Tail Coverage); or 2) Prior Dates
8 Coverage from a new insurer with a retroactive date back to the date
9 of, or prior to, the inception of this Agreement; or 3) demonstrate
10 through Certificates of Insurance that DEVELOPER has maintained
11 continuous coverage with the same or original insurer. Coverage
12 provided under items: 1), 2) or 3) will continue as long as the law
13 allows.

14 E. General Insurance Provisions – All Lines:

- 15 a. Any insurance carrier providing insurance coverage hereunder
16 shall be admitted to the State of California and have an A.M.
17 BEST rating of not less than an A: VIII (A: 8) unless such
18 requirements are waived, in writing, by the County Risk
19 Manager. If the County Risk Manager waives a requirement
20 for a particular insurer such waiver is only valid for that
21 specific insurer and only for one policy term.
- 22 b. The DEVELOPER must declare its insurance self-insured
23 retention for each coverage required herein. If any such self-
24 insured retention exceeds \$500,000 per occurrence each such
25 retention shall have the prior written consent of the County
26 Risk Manager before the commencement of operations under
27 this Agreement. Upon notification of self-insured retention
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1 deemed unacceptable to the DISTRICT, and at the election of
2 the County Risk Manager, DEVELOPER'S carriers shall
3 either: 1) reduce or eliminate such self-insured retention with
4 respect to this Agreement with DISTRICT, or 2) procure a
5 bond which guarantees payment of losses and related
6 investigations, claims administration, and defense costs and
7 expenses.

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9 c. DEVELOPER shall cause their insurance carrier(s) to furnish
10 DISTRICT with 1) a properly executed original certificate(s)
11 of insurance and certified original copies of endorsements
12 effecting coverage as required herein; and 2) if requested to do
13 so orally or in writing by the County Risk Manager, provide
14 original certified copies of policies including all endorsements
15 and all attachments thereto, showing such insurance is in full
16 force and effect. Further, said certificate(s) and policies of
17 insurance shall contain the covenant of the insurance carrier(s)
18 that a minimum of sixty (60) days written notice shall be given
19 to the DISTRICT prior to any material modification,
20 cancellation, expiration or reduction in coverage of such
21 insurance. If DEVELOPER insurance carrier(s) policies does
22 not meet the minimum notice requirement found herein,
23 DEVELOPER shall cause DEVELOPER'S insurance carrier(s)
24 to furnish a 60 day Notice of Cancellation Endorsement. In the
25 event of a material modification, cancellation, expiration or
26 reduction in coverage, this Agreement shall terminate
27 forthwith, unless DISTRICT receives, prior to such effective
28 date, another properly executed original certificate of insurance

1 and original copies of endorsements or certified original
2 policies, including all endorsements and attachments thereto,
3 evidencing coverages set forth herein and the insurance
4 required herein is in full force and effect. An individual
5 authorized by the insurance carrier to do so on its behalf shall
6 sign the original endorsements for each policy and the
7 certificate of insurance.

8 d. It is understood and agreed by the parties hereto that
9 DEVELOPER'S insurance shall be construed as primary
10 insurance, and DISTRICT'S insurance and/or deductibles
11 and/or self-insured retentions or self-insured programs shall
12 not be construed as contributory.

13 e. If, during the term of this Agreement or any extension thereof,
14 there is a material change in the scope of services or there is a
15 material change in the equipment to be used in the performance
16 of the scope of work which will add additional exposures (such
17 as the use of aircraft, watercraft, cranes, etc.); or the term of
18 this Agreement, including any extensions thereof, exceeds five
19 (5) years, DISTRICT reserves the right to adjust the types of
20 insurance required under this Agreement and the monetary
21 limits of liability for the insurance coverages currently required
22 herein, if, in the County Risk Manager's reasonable judgment,
23 the amount or type of insurance carried by DEVELOPER has
24 become inadequate.

25 f. DEVELOPER shall pass down the insurance obligations
26 contained herein to all tiers of subcontractors working under
27 this Agreement.
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g. The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to DISTRICT.

h. DEVELOPER agrees to notify DISTRICT of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

Failure to maintain the insurance required by this paragraph shall be deemed a material breach of this Agreement and shall authorize and constitute authority for DISTRICT, at its sole discretion, to provide written notice to DEVELOPER that DISTRICT is unable to perform its obligations hereunder, nor to accept responsibility for ownership, operation and maintenance of DISTRICT DRAINAGE FACILITIES due, either in whole or in part, to said breach of this Agreement."

IX. Section I.20 is revised to read:

"Within two (2) weeks of completing PROJECT construction, provide DISTRICT (Attention: Development Review Section) and COUNTY with written notice that PROJECT construction is substantially complete and request that DISTRICT conduct a final inspection of DISTRICT DRAINAGE FACILITIES and COUNTY conduct a final inspection of PROJECT."

X. Section I. 25 is revised to read:

"Upon completion of construction of PROJECT, but prior to DISTRICT acceptance of DISTRICT DRAINAGE FACILITIES for ownership, operation and maintenance, DEVELOPER'S civil engineer of record or construction civil engineer of record, duly registered in the State of California, shall provide DISTRICT a redlined "record drawings" copy of IMPROVEMENT PLANS. After DISTRICT approval of the redlined

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"record drawings", DEVELOPER'S engineer shall schedule with DISTRICT a time to transfer the redlined changes onto DISTRICT'S original mylars at DISTRICT'S office, after which the engineer shall review, stamp and sign the IMPROVEMENT PLANS "record drawings."

XI. Section II.9 is revised to read:

"Accept ownership and sole responsibility for the operation and maintenance of DISTRICT DRAINAGE FACILITIES upon (i) DISTRICT inspection of DISTRICT DRAINAGE FACILITIES in accordance with Section I.20., (ii) DISTRICT acceptance of PROJECT construction as being complete, (iii) DISTRICT receipt of stamped and signed "record drawings" of PROJECT plans, as set forth in Section I.25., (iv) recordation of all conveyance documents described in Section I.21., (v) COUNTY acceptance of APPURTENANCES for ownership, operation, and maintenance, and (vi) DISTRICT'S sole determination that DISTRICT FACILITIES are in a satisfactorily maintained condition."

XII. Section II.10 is revised to read:

"Provide COUNTY with reproducible duplicate copies of "record drawings" IMPROVEMENT PLANS upon DISTRICT acceptance of DISTRICT DRAINAGE FACILITIES as being complete."

5. ASSIGNEE agrees to complete construction of DISTRICT DRAINAGE FACILITIES as detailed in AGREEMENT within twelve (12) consecutive months after execution of this ASSIGNMENT and within one hundred twenty (120) consecutive calendar days after commencing work on DISTRICT DRAINAGE FACILITIES.

6. In regard to the assignment of RIGHTS AND OBLIGATIONS set forth herein, COUNTY, and DISTRICT hereby consent to and hereby agree to be bound by (i) the assignment of RIGHTS AND OBLIGATIONS in favor of ASSIGNEE, and (ii) the assumption by ASSIGNEE of said RIGHTS AND OBLIGATIONS. In further clarification of the intent of the parties,

1 ASSIGNEE and ASSIGNOR specifically agree with DISTRICT that access and/or grant of real
2 property interests required by DISTRICT pursuant to AGREEMENT, if any, shall be satisfied by
3 ASSIGNEE, and in regard to all financial obligations DISTRICT shall invoice ASSIGNEE for all
4 charges incurred pursuant to AGREEMENT.

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

8 8. This ASSIGNMENT is to be construed in accordance with the laws of the State of
9 California.

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

14 RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT	COUNTY OF RIVERSIDE
15 1995 Market Street	4080 Lemon St., 8th Floor
Riverside, CA 92501	Riverside, CA 92502-1090
16 Attn: Administrative Services	Attn: Transportation Department
	Plan Check Section
	Alan French

17 CONTINENTAL RESIDENTIAL, INC.	THE WOODS (RIVERSIDE)
18 2280 Wardlow Circle, Suite 100	VENTURE, L.L.L.P.
Corona, CA 92880	41391 Kalmia Street, Suite 200
19 Attn: Barbara Murakami	Murrieta, CA 92562
	Attn: Jim Lytle

20
21 10. Any action at law or in equity brought by any of the parties hereto for the purpose
22 of enforcing a right or rights provided for by this ASSIGNMENT, shall be tried in a court of
23 competent jurisdiction in the County of Riverside, State of California, and the parties hereto waive
24 all provisions of law providing for a change of venue in such proceedings to any other county.

25 11. The individuals executing this ASSIGNMENT on behalf of ASSIGNOR and
26 ASSIGNEE hereby certify that they have the authority within their respective companies to enter
27 into and execute this ASSIGNMENT, and have been authorized to do so by any and all boards of
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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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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

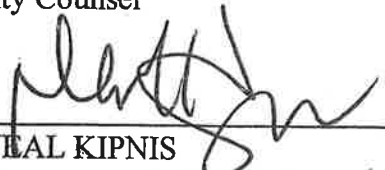
By _____
MARION ASHLEY, Chairman
Riverside County Flood Control and Water
Conservation District Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

By  _____
NEAL KIPNIS
Deputy County Counsel

By _____
Deputy


(SEAL)

Assignment Assumption and Amendment Agreement: Tract No. 30809
AMR:blm
10/05/15

1 RECOMMENDED FOR APPROVAL:

COUNTY OF RIVERSIDE

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By 
JUAN C. PEREZ
Director of Transportation
and Land Management


By _____
MARION ASHLEY, Chairman
Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

By  11/23/15
MARSHA L. VICTOR
Principal Deputy County Counsel

By _____
Deputy

(SEAL)

Assignment Assumption and Amendment Agreement: Tract No. 30809
AMR:blm
10/05/15

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ASSIGNOR

CONTINENTAL RESIDENTIAL, INC.
a California corporation

By _____
BARBARA MURAKAMI
Vice President

(ATTACH NOTARY ACKNOWLEDGEMENT
WITH CAPACITY STATEMENT)

Assignment Assumption and Amendment Agreement: Tract No. 30809
AMR:blm
10/01/15

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ASSIGNEE

**THE WOODS (RIVERSIDE) VENTURE,
L.L.L.P.**

a Delaware limited liability limited partnership

By: The Woods (Riverside) ASLI V, L.L.L.P., a
Delaware limited liability limited
partnership, its sole general partner

By: The Woods (Riverside) GP, LLC, a
Delaware limited liability company,
its sole general partner

By: Avanti Properties Group II, L.L.L.P., a
Delaware limited liability limited partnership,
its sole member and manager

By: Avanti Management Corporation, a Florida
corporation, its sole general partner

By: _____
MARVIN SHAPIRO
President

(ATTACH NOTARY ACKNOWLEDGEMENT
WITH CAPACITY STATEMENT)

Assignment Assumption and Amendment Agreement: Tract No. 30809

AMR:blm

10/05/15