

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

109



FROM: TLMA - Transportation Department

SUBMITTAL DATE:
June 10, 2010

SUBJECT: Partial Assignment and Assumption of TUMF Improvement Credit Agreement by and between Capital Pacific Holdings, LLC, Capital Pacific Real Estate, Inc. and the County for Tract 31724 within Scott Road CFD 05-8

RECOMMENDED MOTION: That the Board of Supervisors:

- 1) Approve the Partial Assignment and Assumption Agreement by and between Capital Pacific Holdings, LLC, Capital Pacific Real Estate, Inc. and the County; and
- 2) Authorize the Chairman to execute the same.

BACKGROUND: Capital Pacific Real Estate, Inc. acquired 15 lots of Tract 31724 (the Property) from Capital Pacific Holdings, LLC, which is located within the boundaries of Community Facilities District No. 05-8 (Scott Road CFD). Capital Pacific Holdings desires to

Juan C. Perez
Director of Transportation

(Continued On Attached Page)

FINANCIAL DATA	Current F.Y. Total Cost:	\$ N/A	In Current Year Budget:	N/A
	Current F.Y. Net County Cost:	\$ N/A	Budget Adjustment:	N/A
	Annual Net County Cost:	\$ N/A	For Fiscal Year:	N/A
SOURCE OF FUNDS: N/A				Positions To Be Deleted Per A-30 <input type="checkbox"/>
				Requires 4/5 Vote <input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY: Tina Grande

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Benoit, seconded by Supervisor Buster and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Benoit and Ashley
Nays: None
Absent: Tavaglione and Stone
Date: June 15, 2010
xc: Transp.

Kecia Harper-Ihem
Clerk of the Board
By:
Deputy

Prev. Agn. Ref. 2/26/08, Item 3.63 | **District:** 3 | **Agenda Number:**

3.32

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

FORM APPROVED COUNTY COUNSEL
BY: Dale A. Gardner 5/25/10
DATE

Dep't Recomm.: ☐ Policy ☒ Policy
Per Exec. Ofc.: ☐ Consent ☒ Consent

The Honorable Board of Supervisors

RE: Partial Assignment and Assumption of TUMF Improvement Credit Agreement by and between Capital Pacific Holdings, LLC, Capital Pacific Real Estate, Inc. and the County for Tract 31724 within Scott Road CFD 05-8

June 10, 2010

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convey to Capital Pacific Real Estate all rights, title, interests and obligations in and under a Scott Road CFD TUMF Improvement Credit Agreement entered into by and between Capital Pacific Holdings, LLC, SCC Canyon II, LLC and the County, dated February 26, 2008, relating to the Property, including the TUMF Credit amount for each residential unit developed within the Property.

Capital Pacific Real Estate, Inc. hereby accepts this assignment and agrees to be bound by all applicable provisions of the Scott Road CFD TUMF Improvement Credit Agreement with respect to the Property.

**PARTIAL ASSIGNMENT AND ASSUMPTION
OF
IMPROVEMENT CREDIT AGREEMENT**

This Partial Assignment and Assumption of Improvement Credit Agreement (this "**Assignment**") is made as of April 12, 2010, by and between Capital Pacific Holdings, LLC, a Delaware Limited Liability Company ("**Assignor**") and Capital Pacific Real Estate, Inc., a Delaware corporation ("**Assignee**"), and the County of Riverside ("County").

RECITALS

A. Assignor is a "Developer" under that certain agreement titled "County of Riverside, Community Facilities District No. 05-8 (Scott Road CFD) Improvement Credit Agreement, Transportation Uniform Mitigation Fee Program" (the "**TUMF Agreement**") with respect to that certain real property described on Exhibit A attached hereto (the "**Property**"), which comprises a portion of the Tract. Any capitalized term used but not otherwise defined herein shall have the meaning ascribed thereto in the TUMF Agreement.

B. Assignor and Assignee are parties to that Real Estate Purchase and Sale Contract (the "**Contract**") dated as of June 5, 2009, respecting the sale of the Property.

C. Assignor desires to assign to Assignee all of Assignor's rights under the TUMF Agreement relating to the Property, and Assignee desires to assume all of Assignor's obligations thereunder relating to the Property, all on the terms and conditions set forth below.

D. County is an express intended beneficiary of the rights, duties and obligations undertaken by Assignor and Assignee.

AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Assignor hereby assigns to Assignee all of Assignor's rights, title, interest, and obligations in and under the TUMF Agreement to the extent relating to the Property, including, without limitation, the TUMF Credit Amount for each residential unit developed within the Property.

2. Assignee hereby accepts this Assignment and agrees to be bound by all applicable provisions of the TUMF Agreement with respect to the Property.

3. Assignor hereby covenants that it will, at any time and from time to time upon written request therefor, but at no out-of-pocket cost to Assignor, execute and deliver to Assignee, its nominees, successor and/or permitted assigns, any new or confirmatory instructions and do and perform any other acts which Assignee, its nominees, successors and/or assigns, may

reasonably request in order to fully transfer and assign the rights of Assignor, its nominees, successors and/or assigns in and under the TUMF Agreement and the TUMF Credit Amount with respect to the Property.

4. This Assignment shall be binding upon and inure to the benefit of the successors and assignees of all respective parties hereto. All rights, title, and interest to all benefits accruing under this Assignment shall only be assigned to a subsequent assignee pursuant to the execution of an assignment and assumption agreement among the subsequent assignor, the subsequent assignee and the County, in a form acceptable to the County, whereby the parties consent to such assignment and the subsequent assignee expressly agrees to assume all duties, liabilities, obligations or responsibilities under the TUMF Agreement and to be bound thereby.

5. This Assignment shall be governed by and construed in accordance with the laws of the State of California.

6. This Assignment may be executed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

[Signatures on following page]

IN WITNESS WHEREOF, Assignor and Assignee have executed and delivered this Assignment as of the day and year first above written.


ASSIGNOR:

Capital Pacific Holdings, LLC a Delaware
Limited Liability Company


By: 
Name: Matthew C. Kern
Title: Chief Financial Officer

ASSIGNEE:

Capital Pacific Real Estate, Inc., a Delaware
corporation

By: 
Name: Scott Cole
Title: President

By: _____
Name: _____
Title: _____

By: 
Name: MARK MULLEN
Title: VIC PRESIDENT

COUNTY OF RIVERSIDE:

By: 
MARION ASHLEY
Chairman, County Board of Supervisors

APPROVED AS TO FORM:
County Counsel

By: 
Dale A. Gardner

ATTEST:

Kecia Harper-Ihem
Clerk of the Board

By: , deputy

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

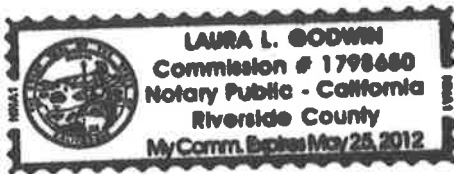
State of California

County of Orange

On April 12th, 2010 before me, Laura L. Godwin, Notary Public
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Scott Coler, Mark G Mullin & Mathew C. Kern,
NAME(S) OF SIGNERS

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/her/they executed the same in his/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.

Laura L. Godwin
SIGNATURE OF NOTARY

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER		DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/> INDIVIDUAL		
<input type="checkbox"/> CORPORATE OFFICER(S)		
	TITLE(S)	TITLE OR TYPE OF DOCUMENT
<input type="checkbox"/> PARTNER(S)	<input type="checkbox"/> LIMITED	
	<input type="checkbox"/> GENERAL	NUMBER OF PAGES
<input type="checkbox"/> ATTORNEY-IN-FACT		
<input type="checkbox"/> TRUSTEE(S)		DATE OF DOCUMENT
<input type="checkbox"/> GUARDIAN/CONSERVATOR		
<input type="checkbox"/> OTHER: _____		
SIGNER IS REPRESENTING: NAME OF PERSON(S) OR ENTITY(IES)		SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT A

DESCRIPTION OF PROPERTY

Lots 7 through 13, inclusive, lots 62 through 65, inclusive and lots 96 through 99, inclusive of Tract No. 31724, as shown by Map filed in Book 406, pages 87-94, inclusive, of Maps, Official Records of Riverside County, California