

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

868A



**FROM:** TLMA - Transportation Department

**SUBMITTAL DATE:**  
August 31, 2011

**SUBJECT:** Assignment of and Consent to Assignment of Contracts relating to Joint Community Facilities Agreement (JCFA) for Temecula Public Financing Authority Community Facilities District (CFD) No. 03-02 Roripaugh Ranch

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

- 1) Approve the Assignment of and Consent to Assignment of Contracts by and between Ashby USA, LLC, Roripaugh Valley Restoration, LLC, City of Temecula, Temecula Public Financing Authority, Temecula Community Services District, Riverside County Flood Control and Water Conservation District and County of Riverside; and
- 2) Authorize the Chairman to execute the same.

Juan C. Perez  
Director of Transportation

Departmental Concurrence

(Continued On Attached Page)

<b>FINANCIAL DATA</b>	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
<b>SOURCE OF FUNDS:</b> N/A				Positions To Be Deleted Per A-30 <input type="checkbox"/>
There are no General Funds used in this project.				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 Buster, seconded by Supervisor Benoit and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Tavaglione, Benoit and Ashley  
Nays: None  
Absent: Stone  
Date: September 13, 2011  
XC: Transp., Flood

Kecia Harper-Ihem  
Clerk of the Board  
By:   
Deputy

(Comp. Item 11.1)

Prev. Agn. Ref. 01/04/05, Item 3.37 | District: 3 | Agenda Number:

3.98

ATTACHMENTS FILED  
WITH THE CLERK OF THE BOARD

FORM APPROVED COUNTY COUNSEL  
DATE: 8/25/11  
BY:   
MARSHA L. VICTOR

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

The Honorable Board of Supervisors

RE: Assignment of and Consent to Assignment of Contracts relating to Joint Community Facilities Agreement (JCFA) for Temecula Public Financing Authority Community Facilities District (CFD) No. 03-02 Roripaugh Ranch

August 31, 2011

Page 2 of 2

**BACKGROUND:** The Roripaugh Ranch development is comprised of Tract Map Nos. 29353-1, 29353-2, and 29353-3 encompassing an approximately 800-acre master-planned community located within the City of Temecula and unincorporated Riverside County (Property). On January 4, 2005, Ashby USA, LLC, Temecula Public Financing Authority, City of Temecula and County of Riverside (County) entered into and executed a JCFA for Street Improvements that enabled Roripaugh Ranch CFD 03-02 to finance the acquisition and construction of certain street and related drainage improvements to be owned and maintained by the County upon acceptance by the County.

In addition, on January 4, 2005, Ashby USA, LLC, Temecula Public Financing Authority, City of Temecula, Riverside County Flood Control and Water Conservation District and County entered into and executed a JCFA for Flood Control Improvements relating to Roripaugh Ranch CFD 03-02.

Ashby USA, LLC (Assignor) is a borrower under a loan agreement dated as of August 29, 2005 that provides for Assignor to use the proceeds of this loan to finance land development and infrastructure construction within the Property. Assignor is in default under the loan agreement and entered into certain Deed-In-Lieu Settlement Agreement with Roripaugh Valley Restoration, LLC (Assignee) to grant Assignee a deed to the Property and to transfer to Assignee all of the other real and personal property including the rights, duties and obligations of the JCFA for Street Improvements and the JCFA for Flood Control Improvements.

County Counsel has reviewed and approved as to form the Assignment of and Consent to Assignment of Contracts.

A companion item appears on the Riverside County Flood Control and Water Conservation District agenda this same date.

**ASSIGNMENT OF AND CONSENT TO ASSIGNMENT OF CONTRACTS**

This **ASSIGNMENT OF AND CONSENT TO ASSIGNMENT OF CONTRACTS AND CONSENT** ("Assignment") is made as of the \_\_\_\_\_ day of May, 2011, by and between **ASHBY USA, LLC**, a California limited liability company ("Assignor"), **RORIPAUGH VALLEY RESTORATION, LLC**, a Delaware limited liability company ("Assignee"), and each of the following contract counterparties (each, a "Counterparty," and collectively, the "Counterparties"):

1. **CITY OF TEMECULA**, a municipal corporation;
2. **TEMECULA PUBLIC FINANCING AUTHORITY**, a joint exercise of powers authority;
3. **TEMECULA COMMUNITY SERVICES DISTRICT**, a public agency;
4. **RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT**, a public agency;
5. **COUNTY OF RIVERSIDE**, a political subdivision of the State of California;

**RECITALS**

WHEREAS, Assignor and each of the Counterparties are parties to the agreement(s) (the "Contracts") set forth under such Counterparty's name on Exhibit A hereto; and

WHEREAS, the Contracts relate to the development and/or operation of a real estate development located in the City of Temecula, Riverside County known as "Roripaugh Ranch," envisioned as an approximately 800-acre master-planned community (the "Property"); and

WHEREAS, Assignor is a borrower under a Loan Agreement dated as of August 29, 2005 that provides for Assignor to use the proceeds of the loan (the "Loan") to finance land development and infrastructure construction within the Property; and

WHEREAS, Assignor is in default under the Loan; and

WHEREAS, Assignor has entered into that certain Deed-In-Lieu Settlement Agreement, dated as of May \_\_\_\_, 2011, pursuant to which Assignor has agreed to grant Assignee a deed to the Property and to transfer to Assignee all of the other real and personal property, including the Contracts, pledged as security for the repayment of the Loans; and

WHEREAS, the terms of the Contracts may require that the Counterparties provide consent to the assignment of the Contracts to Assignee;

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

1. Assignment of Contracts. Assignor hereby sells, assigns, grants, transfers and conveys to Assignee all of Assignor's rights, title, interest and obligations now owned or hereafter acquired in, to, or under the Contracts. This assignment is a present, complete and absolute assignment and is not intended as security of any kind.

2. Acceptance of Assignment and Promise to Perform. Assignee hereby accepts the foregoing grant and assignment from Assignor and agrees to assume and perform all of Assignor's obligations under the Contracts.

3. Consent to Assignment. Each of the Counterparties hereby consents to the foregoing grant and assignment from Assignor to Assignee, insofar as such consent may be required under the specific Contracts to which each Counterparty is a party.

4. Counterparts. This Assignment may be executed in counterparts, each of which shall be deemed an original and all of which together will constitute one instrument.

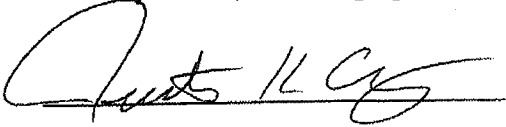
5. Governing Law. This Assignment shall be governed by the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have executed this Consent as of the date first stated above.

**[SIGNATURE PAGES FOLLOW]**

**ASHBY USA, LLC**  
a California limited liability company

By: Ashby Development Company, Inc.  
a California corporation, its Managing Member

By: 

Name: Justin K. Ashby  
Its: President

**RORIPAUGH VALLEY RESTORATION, LLC**  
a Delaware limited liability company

By: AmT CADC Venture, LLC  
a Delaware limited liability company, its Sole Member

By: PMO Loan Acquisition Venture, LLC  
a Delaware limited liability company,  
its Managing Member

By: Milestone Asset Resolution Company, LLC  
a Delaware limited liability company  
as Attorney-in-Fact for  
PMO Loan Acquisition Venture, LLC

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**ASHBY USA, LLC**  
a California limited liability company

By: Ashby Development Company, Inc.  
a California corporation, its Managing Member

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

Name: Justin K. Ashby  
Its: President

**RORIPAUGH VALLEY RESTORATION, LLC**  
a Delaware limited liability company

By: AmT CADC Venture, LLC  
a Delaware limited liability company, its Sole Member

By: PMO Loan Acquisition Venture, LLC  
a Delaware limited liability company,  
its Managing Member

By: Milestone Asset Resolution Company, LLC  
a Delaware limited liability company  
as Attorney-in-Fact for  
PMO Loan Acquisition Venture, LLC

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


Name: R. PATTERSON JACKSON

Its: CEO

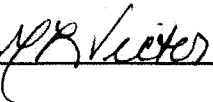
IN WITNESS WHEREOF, the Parties hereto have executed this Consent as of the day and year first above written.

**COUNTY OF RIVERSIDE**

RECOMMENDED FOR APPROVAL:

By:  Date: 8/16/11  
Juan C. Perez  
Director of Transportation

APPROVED AS TO FORM:

By:  Date: 8/25/11  
County Counsel


APPROVAL BY THE COUNTY BOARD OF SUPERVISORS:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Chairman, County Board of Supervisors


ATTEST:

\_\_\_\_\_  
Date: \_\_\_\_\_  
Kecia Harper-Ihem  
Clerk of the Board


**CITY OF TEMECULA**

By:   
Name: Shawn D. Nelson  
Its: City manager

**TEMECULA PUBLIC FINANCING AUTHORITY**

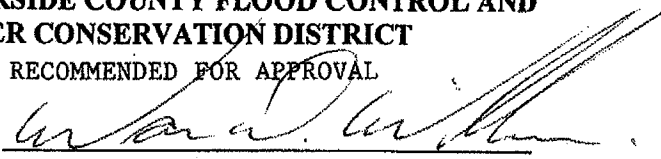
By:   
Name: Shawn D. Nelson  
Its: Executive Director

**TEMECULA COMMUNITY SERVICES DISTRICT**

By:   
Name: Shawn D. Nelson  
Its: General manager

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

RECOMMENDED FOR APPROVAL

By:   
Name: WARREN D. WILLIAMS  
Its: GENERAL MANAGER-CHIEF ENGINEER



APPROVAL BY THE DISTRICT BOARD OF SUPERVISORS:

FORM APPROVED COUNTY COUNSEL  
BY DALE A. GARDNER 8/29/11  
DATE

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

ATTEST:

KECIA HARPER-IHEM  
Clerk of the Board

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

(SEAL)

## EXHIBIT A

### Contracts with City of Temecula

1. Development Agreement between City of Temecula and Ashby USA, LLC, dated as of December 17, 2002.
2. First Operating Memorandum to the Recorded Development Agreement between City of Temecula and Ashby USA, LLC (Roripaugh Ranch Project), dated as of October 21, 2004.
3. First Amendment to Development Agreement between City of Temecula and Ashby USA, LLC (Roripaugh Ranch Specific Plan), dated as of February 14, 2006.
4. Second Operating Memorandum to the Recorded Development Agreement between City of Temecula and Ashby USA, LLC (Roripaugh Ranch Project), dated as of March 21, 2006.
5. Third Operating Memorandum to the Recorded Development Agreement between City of Temecula and Ashby USA, LLC (Roripaugh Ranch Project), dated as of August 31, 2006.
6. Fourth Operating Memorandum to the Recorded Development Agreement between City of Temecula and Ashby USA, LLC (Roripaugh Ranch Project), dated as of March 6, 2007.
7. Agreement to Defer Completions of Conditions of Approval Until After Recordation Final Map for Tract 29353-2 Roripaugh Ranch Specific Plan between the City of Temecula and Ashby USA, LLC, dated as of September 23, 2003.
8. First Amendment to Agreement to Defer Completion of Conditions of Approval Until after Recordation of Final Map for Tract 29353-2 (Roripaugh Ranch Specific Plan), dated as of June 28, 2005.
9. Joint Community Facilities Agreement (Flood Control Improvements) by and among Riverside County Flood Control and Water Conservation District, County of Riverside, City of Temecula, Temecula Public Financing Authority and Ashby USA, LLC, dated as of November 1, 2004.
10. Joint Community Facilities Agreement (Street Improvements) by and among County of Riverside and City of Temecula and Temecula Public Financing Authority and Ashby USA, LLC, dated as of November 1, 2004.

11. Joint Community Facilities Agreement by and among the Temecula Public Financing Authority and Ashby USA, LLC and Eastern Municipal Water District, dated as of January 1, 2005.
12. Joint Community Facilities Agreement – City Temecula Public Financing Authority Community Facilities District No. 03-02 (Roripaugh Ranch), dated as of January 1, 2005.
13. Joint Community Facilities Agreement – City, Amended and Restated
14. Agreement between the City of Temecula and Ashby USA LLC for the Acquisition of Certain Property for Public Rights of Way in connection with the Roripaugh Ranch Project, dated as of August 23, 2005.
15. Subdivision Improvement Agreement (Recorded Instrument No. 2003-779101).
16. Subdivision Improvement Agreement (Recorded Instrument No. 2003-779102).
17. Subdivision Improvement Agreement (Recorded Instrument No. 2003-779103).
18. Subdivision Improvement Agreement (Recorded Instrument No. 2006-322168).
19. Subdivision Monument Agreement (Recorded Instrument No. 2003-779104).
20. Subdivision Monument Agreement (Recorded Instrument No. 2006-322167).
21. License Agreement Between the City of Temecula and Ashby USA, LLC for Access to Fire Station Property, dated as of December 29, 2004.
22. Amended and Restated Deposit/Reimbursement Agreement by and among the City of Temecula, the Temecula Public Financing Authority for itself and on behalf of the proposed TPFA Community Facilities District No. 03-02 (Roripaugh Ranch), Ashby USA, LLC, and Calloway 220, LLC, dated as of March 29, 2004.
23. Roripaugh Ranch Project Transportation Uniform Mitigation Fee Program Improvement and Credit Agreement by and between the City of Temecula, Ashby USA, LLC, Davidson Roripaugh Ranch 122, LLC, Tanamera/Roripaugh, LLC, Tanamera/Roripaugh II, LLC, Traditions at Roripaugh and Western Riverside County Council of Governments, dated as of February 28, 2006.
24. TUMF Reimbursement Agreement, dated as of March 23, 2006.

**Contracts with Temecula Public Financing Authority**

1. Joint Community Facilities Agreement (Flood Control Improvements) by and among Riverside County Flood Control and Water Conservation District, County of Riverside, City of Temecula, Temecula Public Financing Authority and Ashby USA, LLC, dated as of November 1, 2004.
2. Joint Community Facilities Agreement (Street Improvements) by and among County of Riverside and City of Temecula and Temecula Public Financing Authority and Ashby USA, LLC, dated as of November 1, 2004.
3. Joint Community Facilities Agreement by and among the Temecula Public Financing Authority and Ashby USA, LLC and Eastern Municipal Water District, dated as of January 1, 2005.
4. Joint Community Facilities Agreement – City Temecula Public Financing Authority Community Facilities District No. 03-02 (Roripaugh Ranch), dated as of January 1, 2005.
5. Joint Community Facilities Agreement – City, Amended and Restated
6. Joint Community Facilities Agreement – TCSD Temecula Public Financing Authority Community Facilities District No. 03-02 (Roripaugh Ranch), dated as of January 1, 2005.
7. Amended and Restated Acquisition Agreement by and between the Temecula Public Financing Authority and Ashby USA, LLC, dated as of July 21, 2009.
8. Fiscal Agent Agreement by and between Temecula Public Financing Authority and U.S. Bank National Association, dated as of March 1, 2006.
9. Fiscal Agent Agreement – Supplemental Agreement #1
10. Continuing Disclosure Agreement by and between Temecula Public Financing Authority and U.S. Bank National Association, as disseminating agent, dated as of March 1, 2006.
11. Amended and Restated Deposit/Reimbursement Agreement by and among the City of Temecula, the Temecula Public Financing Authority for itself and on behalf of the proposed TPFA Community Facilities District No. 03-02 (Roripaugh Ranch), Ashby USA, LLC, and Calloway 220, LLC, dated as of March 29, 2004.
12. Assessment Lien Discharge Escrow Agreement by and between Temecula Public Financing Authority and Ashby USA, LLC, dated as of March 23, 2006.

**Contracts with Temecula Community Services District**

1. Joint Community Facilities Agreement – TCSD Temecula Public Financing Authority Community Facilities District No. 03-02 (Roripaugh Ranch), dated as of January 1, 2005.

**Contracts with Riverside County Flood Control and Water Conservation District**

1. Joint Community Facilities Agreement (Flood Control Improvements) by and among Riverside County Flood Control and Water Conservation District, County of Riverside, City of Temecula, Temecula Public Financing Authority and Ashby USA, LLC, dated as of November 1, 2004.

**Contracts with County of Riverside**

1. Joint Community Facilities Agreement (Flood Control Improvements) by and among Riverside County Flood Control and Water Conservation District, County of Riverside, City of Temecula, Temecula Public Financing Authority and Ashby USA, LLC, dated as of November 1, 2004.
2. Joint Community Facilities Agreement (Street Improvements) by and among County of Riverside and City of Temecula and Temecula Public Financing Authority and Ashby USA, LLC, dated as of November 1, 2004.