

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

814B



FROM: General Manager-Chief Engineer

SUBMITTAL DATE:
September 13, 2011

SUBJECT: Joint Community Facilities Agreement (Flood Control Improvements) for Temecula Public Financing Authority Community Facilities District No. 03-02 (Roripaugh Ranch) Assignment of and Consent to Assignment of Contracts

RECOMMENDED MOTION:

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

Continued on Page 2

Warren D. Williams

WARREN D. WILLIAMS
General Manager-Chief Engineer

FINANCIAL DATA	Current F.Y. District Cost:	N/A	In Current Year Budget:	N/A
	Current F.Y. County Cost:	N/A	Budget Adjustment:	N/A
	Annual Net District 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

Michael R. Shetler
BY: Michael R. Shetler

County Executive Office Signature

MINUTES OF THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT

On motion of Supervisor Tavaglione, seconded by Supervisor Buster 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: Flood, Transp.

Kecia Harper-Ihem
Clerk of the Board
By: *Kecia Harper-Ihem*
Deputy

(Comp. Item 3.98)

Prev. Agn. Ref.: 01/04/05, Item 11.6 | **District:** 3rd | **Agenda Number:**

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

11.1

FORM APPROVED COUNTY COUNSEL
BY: *Dale A. Gardner* 8/14/11 DATE
DALE A. GARDNER

Departmental Concurrence

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

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

SUBJECT: Joint Community Facilities Agreement (Flood Control Improvements) for Temecula
Public Financing Authority Community Facilities District No. 03-02 (Roripaugh Ranch)
Assignment of and Consent to Assignment of Contracts

SUBMITTAL DATE: September 13, 2011
Page 2

BACKGROUND:

The proposed flood control drainage improvements are associated with Tract Map Nos. 29353-1, 29353-2 and 29353-3 and the Roripaugh Ranch Specific Plan in the City of Temecula. On January 4, 2005, the District, County of Riverside (County), City of Temecula (City), Temecula Public Financing Authority and Ashby USA, LLC entered into a Joint Community Facilities Agreement for Flood Control Improvements that enabled the establishment of the Temecula Public Financing Authority Community Facilities District (CFD) No. 03-02 to finance certain public drainage improvements including portions of the Long Valley Wash Channel, the Santa Gertrudis Creek Channel and associated underground storm drains.

The Assignment Agreement transfers the rights and responsibilities as established by the original Joint Community Facilities Agreement executed on January 4, 2005, from Ashby USA, LLC (Assignor) and Roripaugh Valley Restoration, LLC (Assignee). Once executed, the Assignee will complete the construction of the proposed flood control drainage improvements. Upon completion of construction and the transfer of necessary rights of way, the District will accept the proposed flood control drainage improvements for ownership, operation and maintenance.

County Counsel has approved the Assignment Agreement as to legal form. The Assignor and Assignee have executed the Assignment Agreement. The City of Temecula, Temecula Public Financing Authority and Temecula Community Services District have also executed the Assignment Agreement.

A companion item appears on the County's agenda this same date.

TT:seb
P8\139930

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.

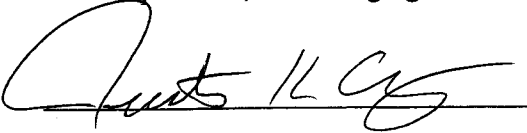
5. Governing Law. This Assignment shall be governed by the laws of the State of California.

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

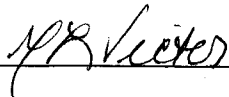
IN WITNESS WHEREOF, the Parties hereto have executed this Consent as of the day and year first above written.

COUNTY OF RIVERSIDE

RECOMMENDED FOR APPROVAL:

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

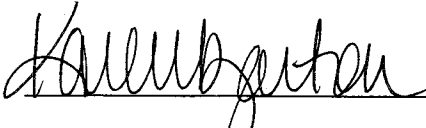
APPROVED AS TO FORM:

By:  Date: 8/25/11
County Counsel


APPROVAL BY THE COUNTY BOARD OF SUPERVISORS:

By:  Date: SEP 13 2011
BOB BUSTER
Chairman, County Board of Supervisors

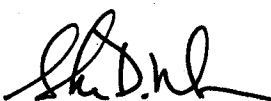
ATTEST:

 Date: SEP 13 2011
Kecia Harper-Ihem
Clerk of the Board


CITY OF TEMECULA

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

TEMECULA PUBLIC FINANCING AUTHORITY

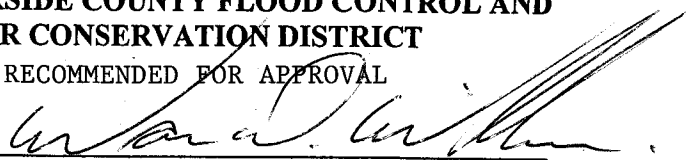
By: 
Name: Shawn D. Nelson
Its: Executive Director

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
DALE A. GARDNER DATE

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

ATTEST:

KECIA HARPER-IHEM
Clerk of the Board

By Kecia Harper-Ihem
Deputy

(SEAL)

SEP 13 2011 11.1

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 TPF 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 TPF 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.