

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

521



FROM: Economic Development Agency

SUBMITTAL DATE:

January 11, 2012

SUBJECT: Assumption of Joint Community Facilities Agreement (JCFA) relating to Community Facilities District (CFD) No. 23 Spring Mountain Ranch – Sewer Improvements

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Assumption of the JCFA by and between SFI SMR LLC, Riverside Unified School District (District), and the County of Riverside (County) on behalf of CSA 152-C; and
2. Authorize the Chairman of the Board to execute the same.

BACKGROUND: The Spring Mountain Ranch development is comprised of Tract Map Nos. 29597, 29598, 29599, 29600, 29740 and 29741 consisting of approximately 1,461 proposed single family residential lots (Property). SFI SMR LLC acquired the Property from SMR Ventures, LLC (Previous Owner), pursuant to Trustees Sale No. 08-24758.

(Continued)

Robert Field

Robert Field
Assistant County Executive Officer/EDA

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	N/A
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	N/A
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2011/12

COMPANION ITEM ON BOARD OF DIRECTORS AGENDA: No

SOURCE OF FUNDS: N/A There are no General Funds used in this project.	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY: *Jennifer L. Sargent*
Jennifer L. Sargent

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

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

Ayes: Buster, Tavaglione, Stone, Benoit and Ashley
Nays: None
Absent: None
Date: January 24, 2012
xc: EDA, Transp., Flood

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

(Com. Item 3.34 and Item 11.6)

Prev. Agn. Ref.: 3.31 of 06/27/07

District: 5

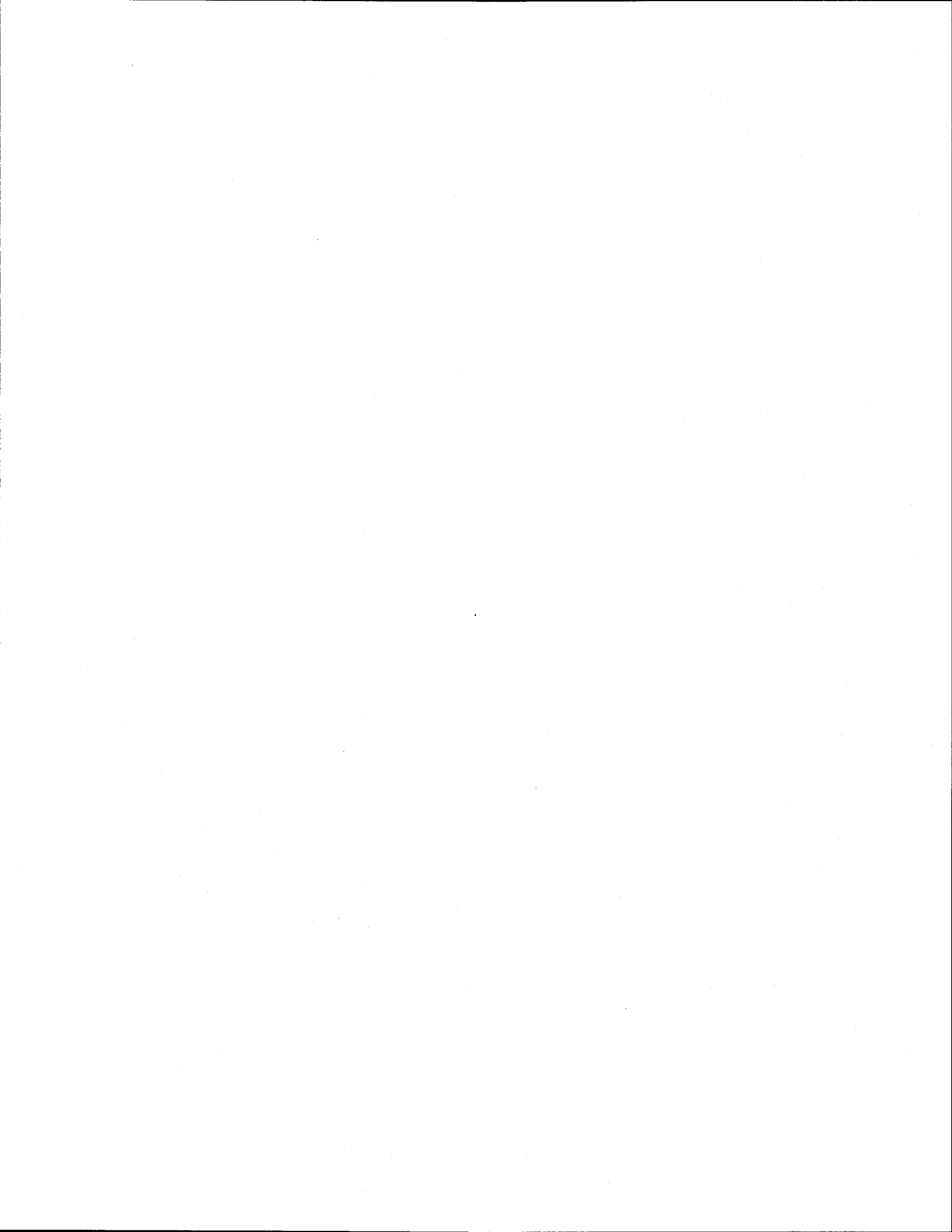
Agenda Number:

3.14

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

FORM APPROVED COUNTY COUNSEL
BY: *DALE A. GARDNER* 12/14/11
Department of Recurrence DATE

Dept's Recomm.: Consent Policy
Per Exec. Ofc.: Consent Policy



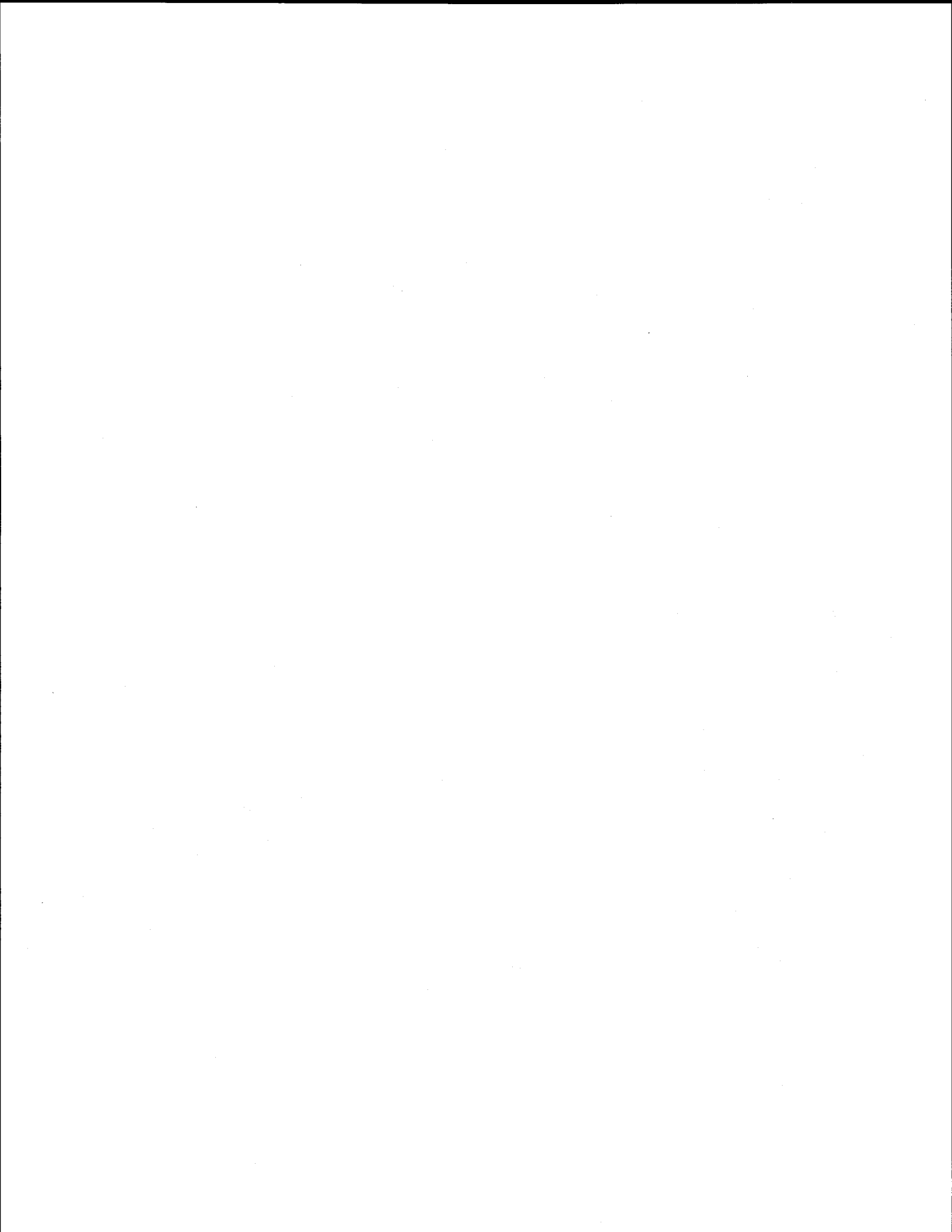
BACKGROUND: (Continued)

On June 26, 2007, the Previous Owner, the District and County entered into and executed a JCFA for Sewer Improvements. The Sewer Collection Facilities are to be owned by the County, acting by and through Riverside County Service Area No. 152-C, and maintained and operated by the City of Riverside (the "City") upon the completion of the construction thereof by the Property Owner and the acceptance thereof by both the County and the City.

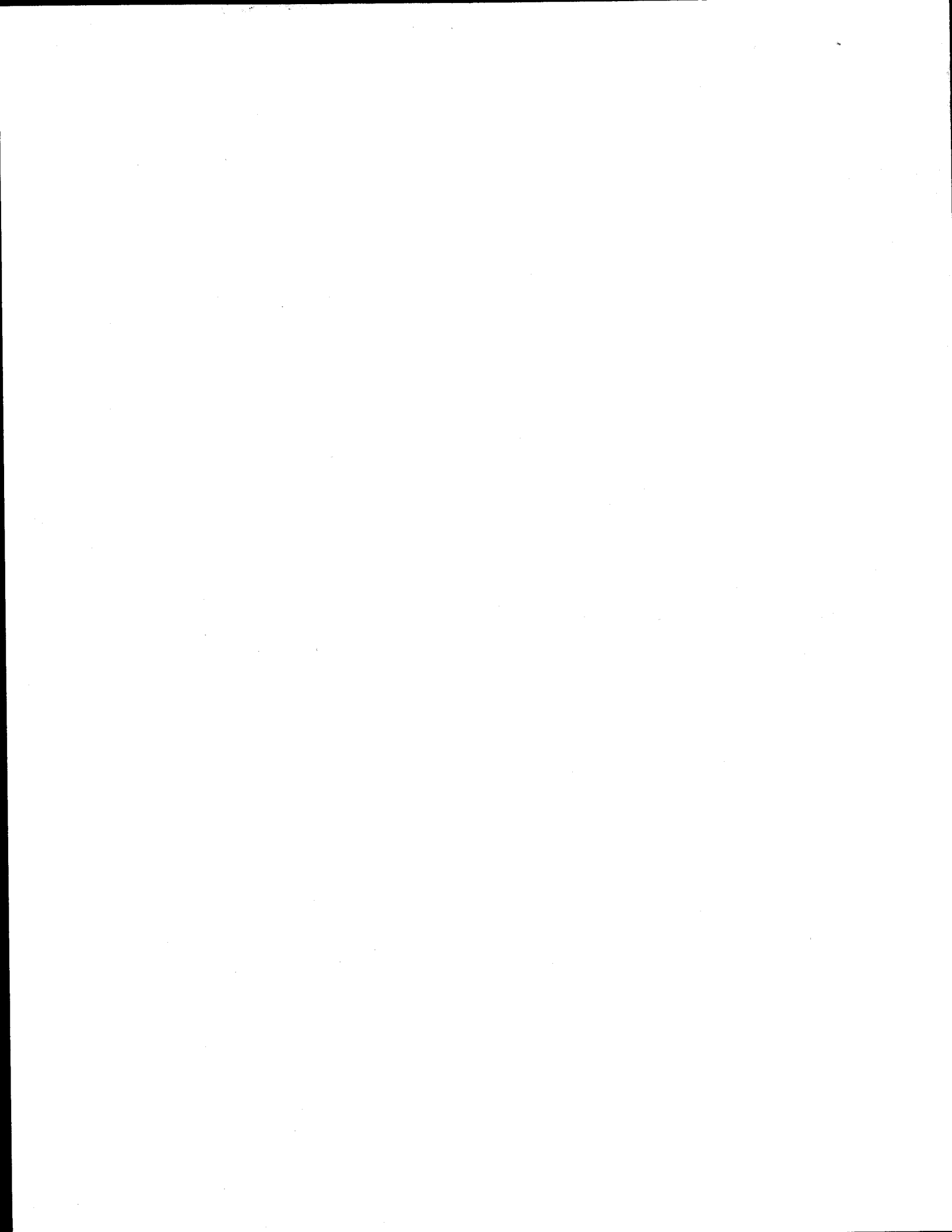
SFI SMR LLC assumes and agrees to perform all duties and obligations of the property owner reflected in the JCFA for Sewer Improvements including duty of indemnification.

County Counsel has approved as to form the Assumption of JCFA (Spring Mountain Ranch – Sewer Improvements).

Companion items appear for Transportation and on the Riverside County Flood Control and Water Conservation District agenda this same date.



**Assumption of Joint Community Facilities Agreement
(Spring Mountain Ranch – Sewer Collection Facilities)**



ASSUMPTION OF JOINT COMMUNITY FACILITIES AGREEMENT
(SPRING MOUNTAIN RANCH – SEWER COLLECTION FACILITIES)

This Assumption Agreement (this “**Agreement**”) is made and entered into as of August 1, 2011, by and among the County of Riverside, a political subdivision of the State of California, acting by and through Riverside County Service Area 152-C, a county service area (respectively, the “**County**” and “**CSA 152-C**”), Riverside Unified School District (the “**District**”), and SFI SMR LLC, a Delaware limited liability company (the “**Property Owner**”).

RECITALS

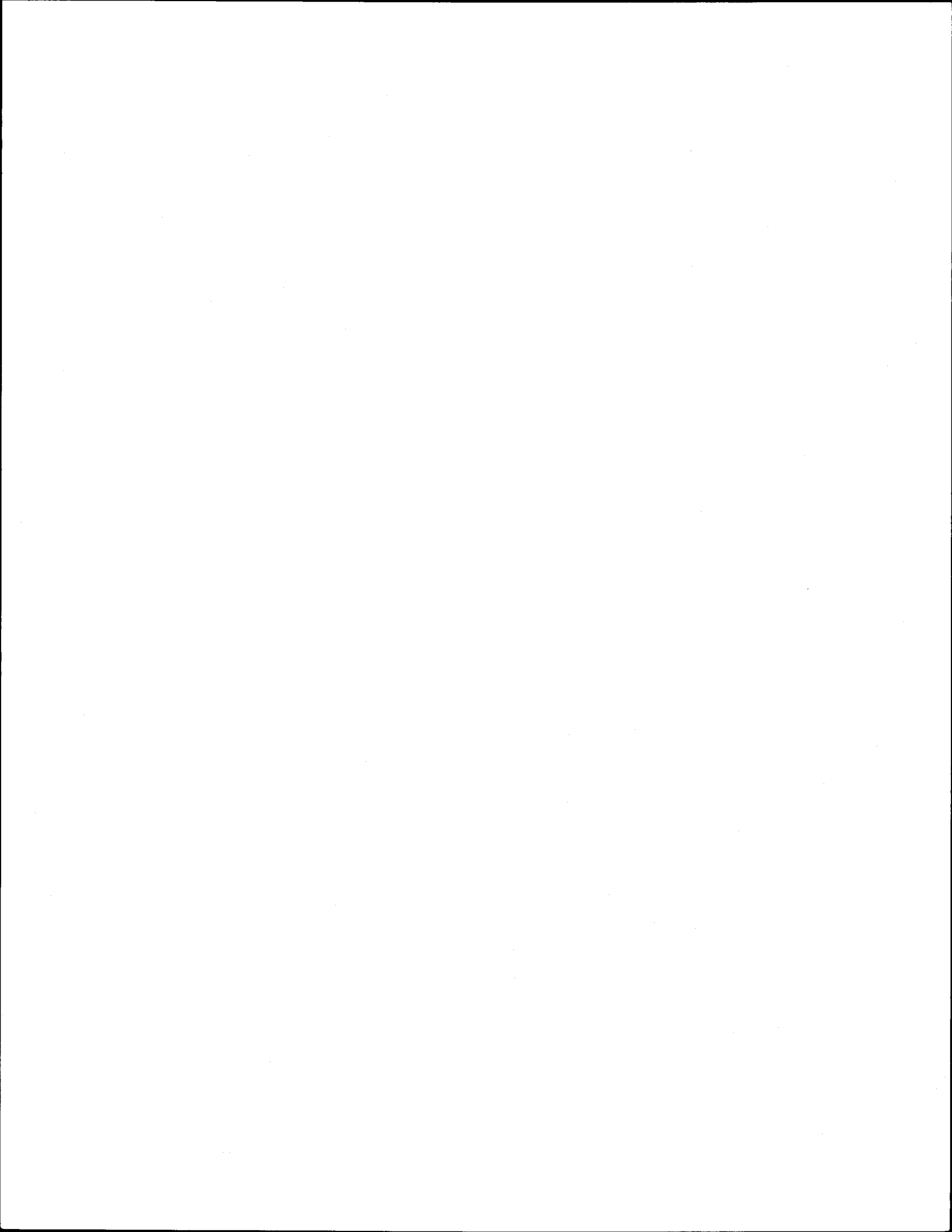
A. The Property Owner is the owner of property which is the subject of Riverside County Tract Map Nos. 29597, 29598, 29599, 29600, 29740 and 29741 (the “**Property**”), providing for the development of approximately 1,461 proposed single family residential lots (“**Spring Mountain Ranch**”). The Property Owner acquired the Property from SMR Ventures, LLC, a Delaware limited liability company (the “**Previous Owner**”), pursuant to Trustee’s Sale No. 08-24758 (the “**Transfer**”).

B. To finance various public facilities required in connection with the development of Spring Mountain Ranch, including the Sewer Collection Facilities described in Recital C, the District contemplates the formation of a community facilities district (anticipated to be designated Community Facilities District No. 23 of Riverside Unified School District, and referred to herein as the “**CFD**”) under the authority of the Mello-Roos Community Facilities Act of 1982, as amended (the “**Act**”).

C. The Act provides that the CFD may finance the acquisition and construction of certain public improvements, including but not limited to the sewer collection facilities (the “**Sewer Collection Facilities**”), which are to be owned by the County, only pursuant to a joint community facilities agreement adopted pursuant to Sections 53316.2, 53316.4, and 53316.6 of the Act.

D. As required by the Act, the District, the County, and the Previous Owner entered into and executed that certain Joint Community Facilities Agreement (Sewer Collection Facilities), dated as of June 26, 2007 (the “**Sewer Collection Facilities JCFA**”), a copy of which is attached hereto as Exhibit A.

E. In connection with the Transfer, the Previous Owner and the Property Owner entered into that certain Assignment of Contracts (the “**Assignment of Contracts**”), a copy of which is attached hereto as Exhibit B, whereby the Previous Owner assigned to the Property Owner, and the Property Owner assumed from the Previous Owner, all of the Previous Owner’s rights and obligations under certain contracts relating to Spring Mountain Ranch previously entered into by the Previous Owner, including, but not limited to, the Sewer Collection Facilities JCFA. Neither the County nor the District approved the Assignment of Contracts at the time of its



execution, and the Assignment of Contracts has not been subsequently ratified by the County or the District.

F. Section 6.3 of the Sewer Collection Facilities JCFA requires a purchaser or assignee of the Property, as a condition to receiving payment of the purchase price of the Sewer Collection Facilities, to enter into an assignment agreement with the County, the District, and the CFD, in a form acceptable to the County, the District and the CFD, to assume the duties and obligations of the Previous Owner under the Sewer Collection Facilities JCFA. Since the CFD has not yet been formed, it cannot enter into any such agreement.

G. In order to effectuate the assignment and assumption of the Sewer Collection Facilities JCFA and to receive and accept all of the corresponding benefits under the Sewer Collection Facilities JCFA, the Property Owner desires to enter into this Agreement to satisfy the conditions set forth under Section 6.3 of the Sewer Collection Facilities JCFA, and to assume the duties and obligations of the Previous Owner under the Sewer Collection Facilities JCFA.

H. Pursuant to California Civil Code Section 1589, a voluntary acceptance of the benefit of a transaction is equivalent to a consent to all the obligations arising from it, so far as the facts are known, or ought to be known, to the person accepting. The Property Owner has read and understood the Sewer Collection Facilities JCFA and consents to all of its terms.

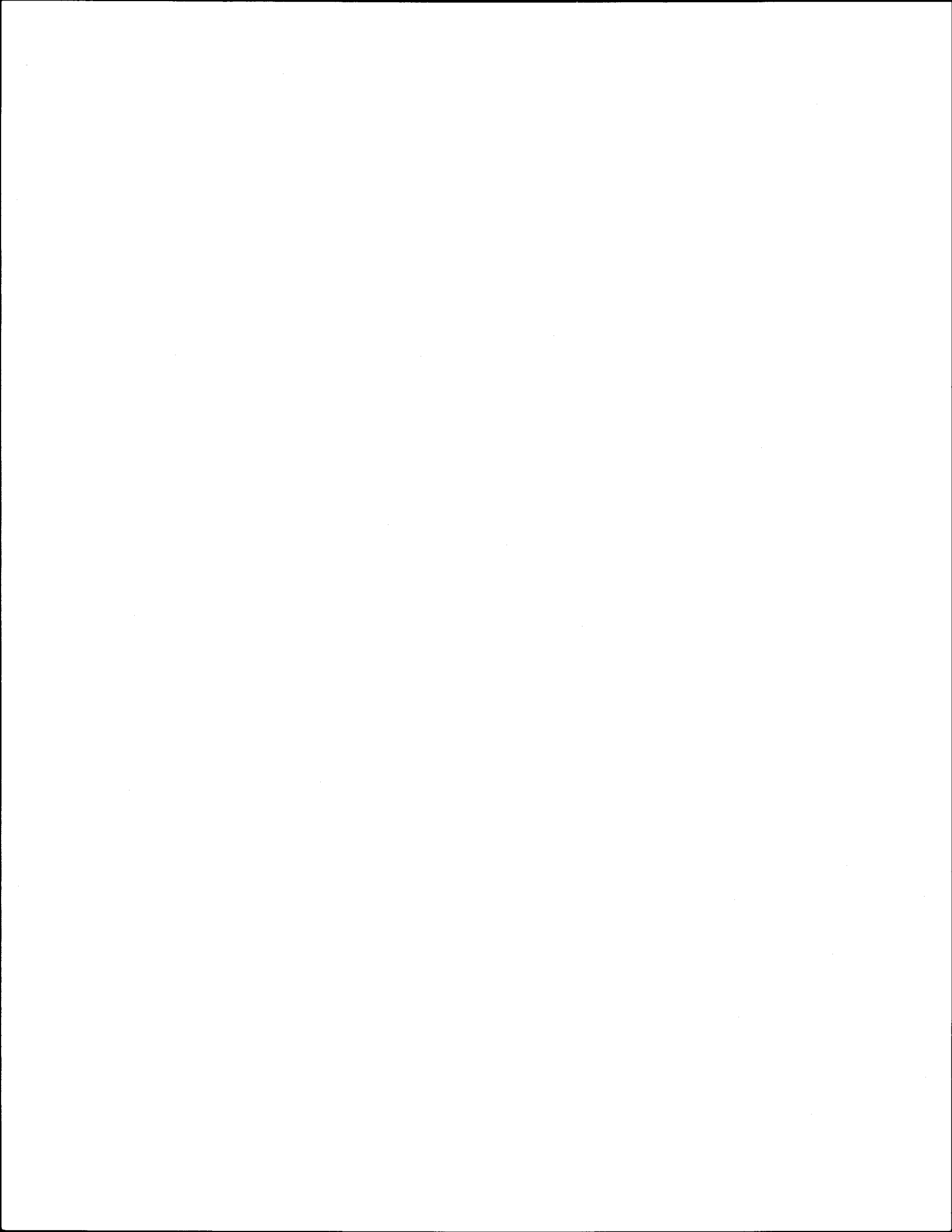
NOW THEREFORE for the mutual promises reflected herein and for other valuable consideration the receipt of which is hereby acknowledged by all of the signatory parties, the parties hereby agree as follows:

Section 1. Definitions. Except as expressly defined herein, all capitalized terms shall have the meaning afforded to those terms in the Sewer Collection Facilities JCFA.

Section 2. Recitals Correct. It is expressly agreed by the signatories that the recitals are true and correct.

Section 3. Assumption. The Property Owner hereby assumes and agrees to perform and faithfully discharge all of the duties and obligations of the property owner in the Sewer Collection Facilities JCFA. The other party signatories to this Agreement accept and consent to the assumption of those duties by the Property Owner. From and after the date hereof, the Property Owner agrees to perform all duties of the property owner reflected in the Sewer Collection Facilities JCFA including the duty of indemnification as set-forth therein. From and after the date hereof it is agreed that the Property Owner shall be entitled to enjoy all of the benefits that the Sewer Collection Facilities JCFA affords to the property owner. Notwithstanding the foregoing, it is the intent of the parties that this Agreement shall not effect a novation.

Section 4. Representations and Warranties of the Property Owner. The Property Owner, as the current owner of the Property, makes the following



representations and warranties for the benefit of the County and the District as of the date hereof:

(a) Organization. The Property Owner represents and warrants that it is validly existing as a limited liability company and in good standing under the laws of the State of Delaware and is duly registered to transact intrastate business in the State of California as a foreign limited liability company and is in good standing in the State of California.

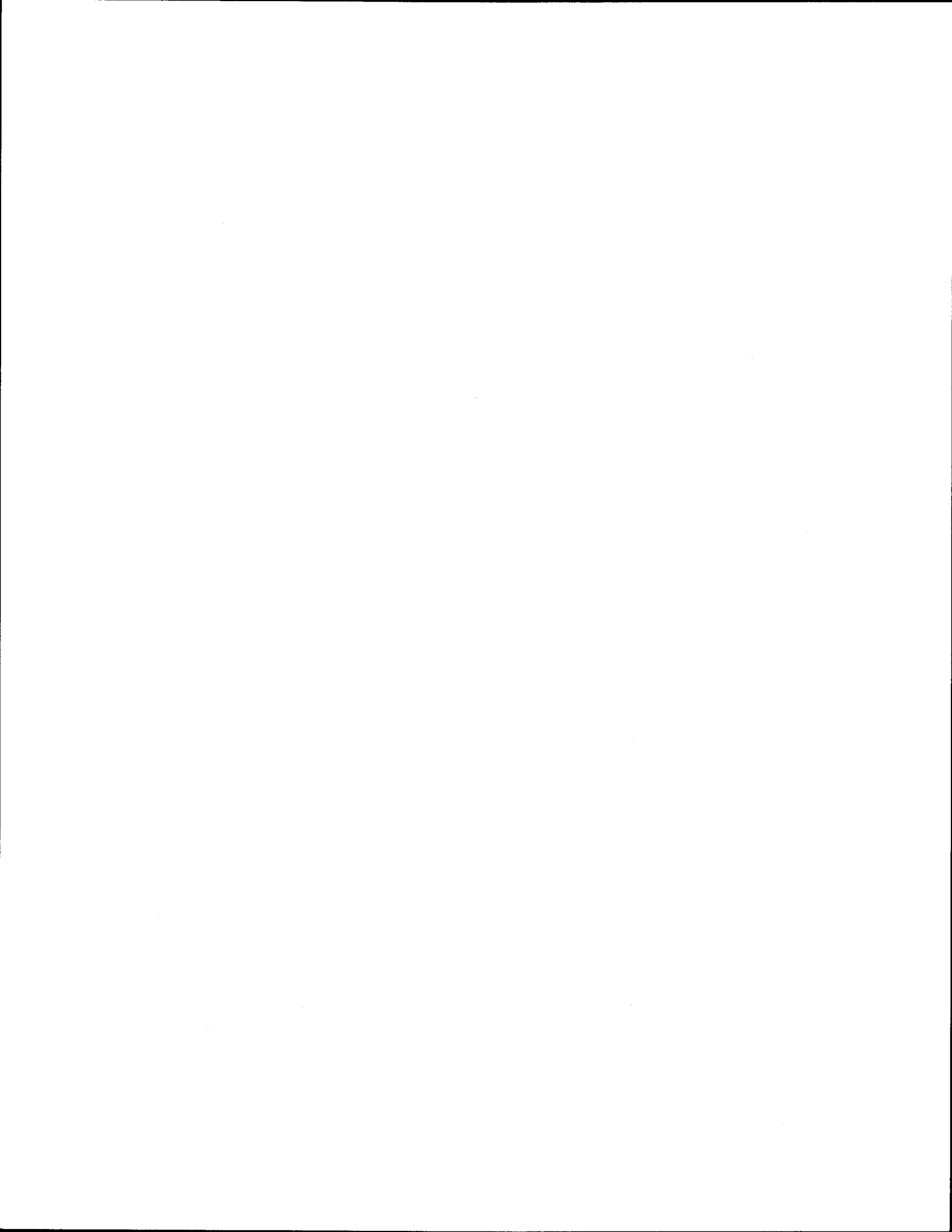
(b) Authority. The Property Owner represents and warrants that it has the power and authority to enter into this Agreement, and has taken all action necessary to cause this Agreement to be executed and delivered, and this Agreement has been duly and validly executed and delivered on behalf of the Property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

(c) Binding Obligation. The Property Owner represents and warrants that this Agreement is a valid and binding obligation of the Property Owner and is enforceable against the Property Owner 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) Ownership. The Property Owner represents and warrants that it has lawfully obtained fee title to the Property and that no other known entity has a superior claim of title.

Section 5. Indemnification. The Property Owner, with respect to the responsibilities of the property owner under the Sewer Collection Facilities JCFA, agrees to protect, indemnify, defend and hold the District, the CFD (when formed), the County, and their respective directors, officers, Board of Supervisors, Board of Education, Legislative Body, elected officials, employees, representatives and agents, and each of them, harmless from and against any and all claims, losses, liabilities, expenses, suits, actions, decrees, judgments, awards, reasonable attorney's fees, and court costs in accordance with and pursuant to the indemnification provisions set forth under Section 5.4 of the Sewer Collection Facilities JCFA.

Not as a limitation of, but in addition to the Property Owner's duty of indemnification reflected in Section 5.4 of the Sewer Collection Facilities JCFA, the Property Owner further agrees to protect, indemnify, defend and hold the District, the CFD (when formed), the County, and their respective directors, officers, Board of Education, Board of Supervisors, Legislative Body, elected officials, employees, representatives and agents (the "**Indemnified Parties**"), and each of them, harmless from and against any and all claims, losses, liabilities, expenses, suits, actions, decrees, judgments, awards, reasonable attorney's fees, and court costs by reason of or arising out of or in consequence of this Agreement or the approval of this Agreement or the Indemnified Parties' good-faith performance under this Agreement, including, but not limited to, any and all claims and liabilities asserted by the Previous Owner against the Indemnified Parties under the Sewer Collection Facilities JCFA.



If the Property Owner fails to do so, the Indemnified Parties, or each of them, 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 reasonable attorney's fees or court costs, to and recover the same from the Property Owner.

No indemnification is required to be paid by the Property Owner for any and all claims, losses, liabilities, expenses, suits, actions, decrees, judgments, awards, reasonable attorney's fees, and court costs arising directly from the willful misconduct or sole or active negligence of the Indemnified Parties.

The provisions of this Section 5 shall survive the termination of this Agreement.

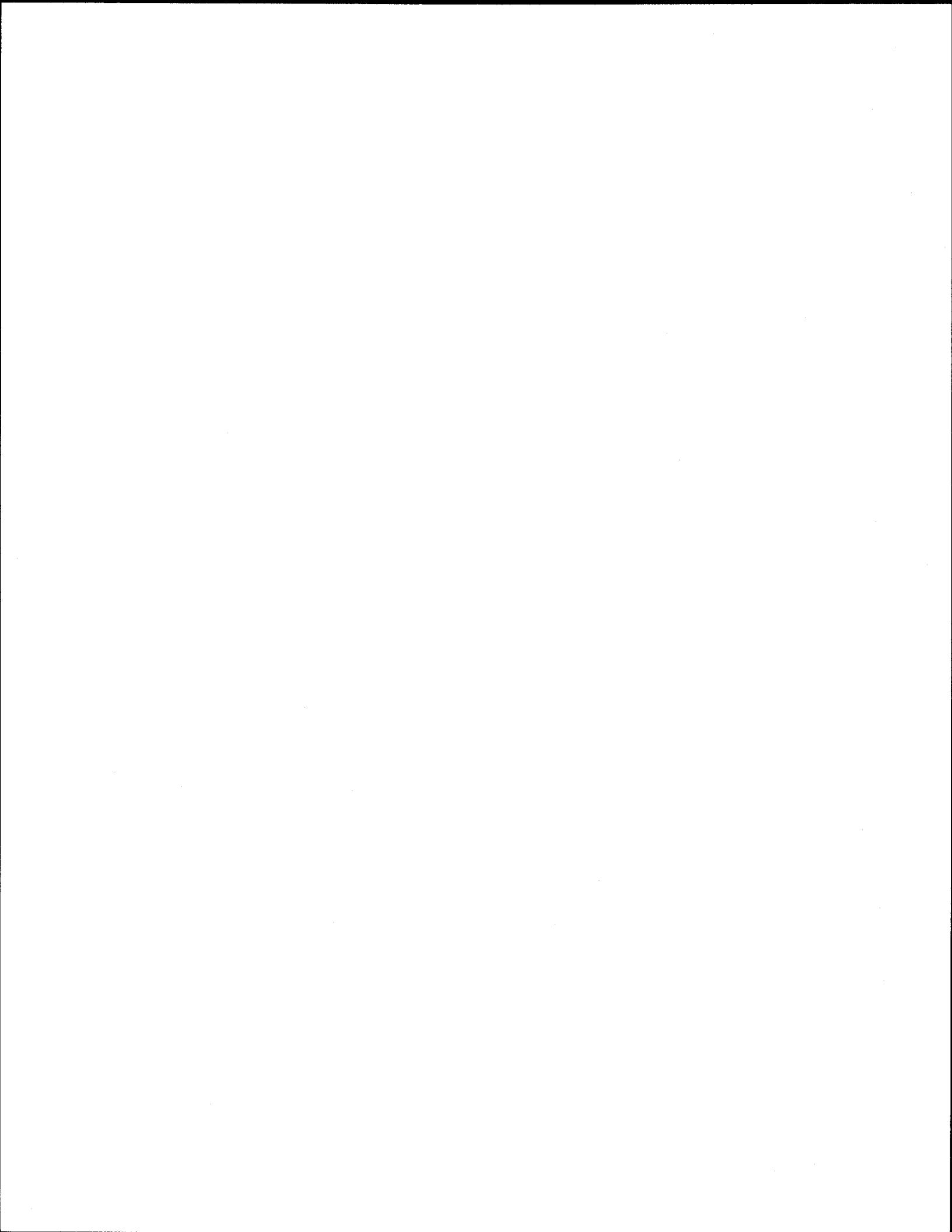
Section 6. Amendments. This Agreement may only be amended by an instrument in writing executed and delivered by the District, the County, and the Property Owner.

Section 7. 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 of Riverside
C/O Economic Development Agency
Attn: Suzanne Holland
3403 10th Street, Suite 300
Riverside, California 92501
Telephone: (951) 955-8916
Fax: (951) 955-9505

District: Riverside Unified School District
3070 Washington Street
Riverside, California 92504
Attention: Director Planning & Development
Telephone: (951) 788-7554
Fax: (951) 275-9349

Property Owner: SFI SMR, LLC
c/o iStar Financial Inc.
5 Park Plaza, Suite 1640
Irvine, California 92614
Attention: Steven Magee
Telephone: (949) 567-8066
Fax: (949) 567-2411



With a copy to: iStar Financial Inc.
1114 Avenue of the Americas, 27th Floor
New York, New York 10036
Attn: Chief Operating Officer
Telephone: (212) 930-9400
Fax: (212) 930-9494

With a copy to: iStar Financial Inc.
1114 Avenue of the Americas, 27th Floor
New York, New York 10036
Attn: Nina B. Matis, Esq./General Counsel
Telephone: (212) 930-9400
Fax: (212) 930-9492

With a copy to: iStar Asset Services Inc.
180 Glastonbury Blvd., Suite 201
Glastonbury, Connecticut 06033
Attn: President
Telephone: (860) 815-5900
Fax: (860) 815-5901

With a copy to: Katten Muchin Rosenman LLP
2029 Century Park East, Suite 2600
Los Angeles, California 90067
Attn: Benzion J. Westreich, Esq.
Telephone: (310) 788-4409
Fax: (310) 712-8228

Section 8. Miscellaneous Provisions.

(a) Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the matters provided for herein and supersedes all prior agreements and negotiations between the parties with respect to the subject matter of this Agreement.

(b) Governing Law. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of California applicable to contracts made and performed in the State.


(c) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

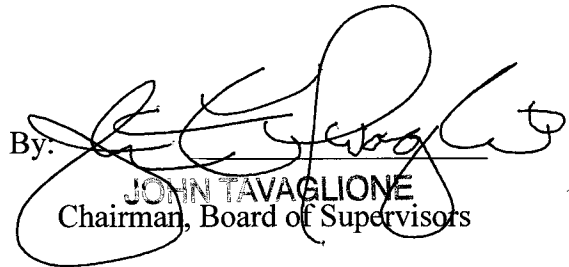
12/17

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

RECOMMENDED
FOR APPROVAL:

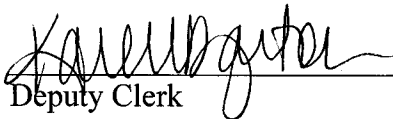
COUNTY OF RIVERSIDE

By: 
Robert Field
Assistant County Executive Officer EDA

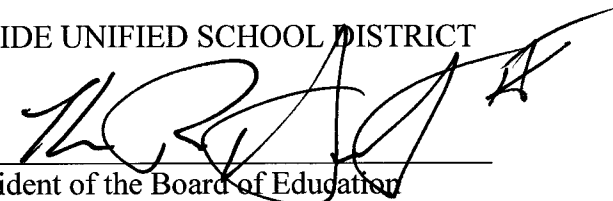
By: 
JOHN TAVAGLIONE
Chairman, Board of Supervisors

ATTEST:
Kecia Harper-Ihem, Clerk of the
Board of Supervisors

FORM APPROVED COUNTY COUNSEL
BY:  12/14/11
DALE A. GARDNER DATE

By: 
Deputy Clerk

RIVERSIDE UNIFIED SCHOOL DISTRICT

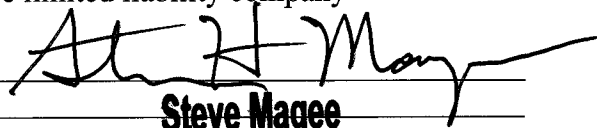
By: 
President of the Board of Education

ATTEST:

By: 
Clerk of the Board of Education

PROPERTY OWNER

SFI SMR LLC,
a Delaware limited liability company

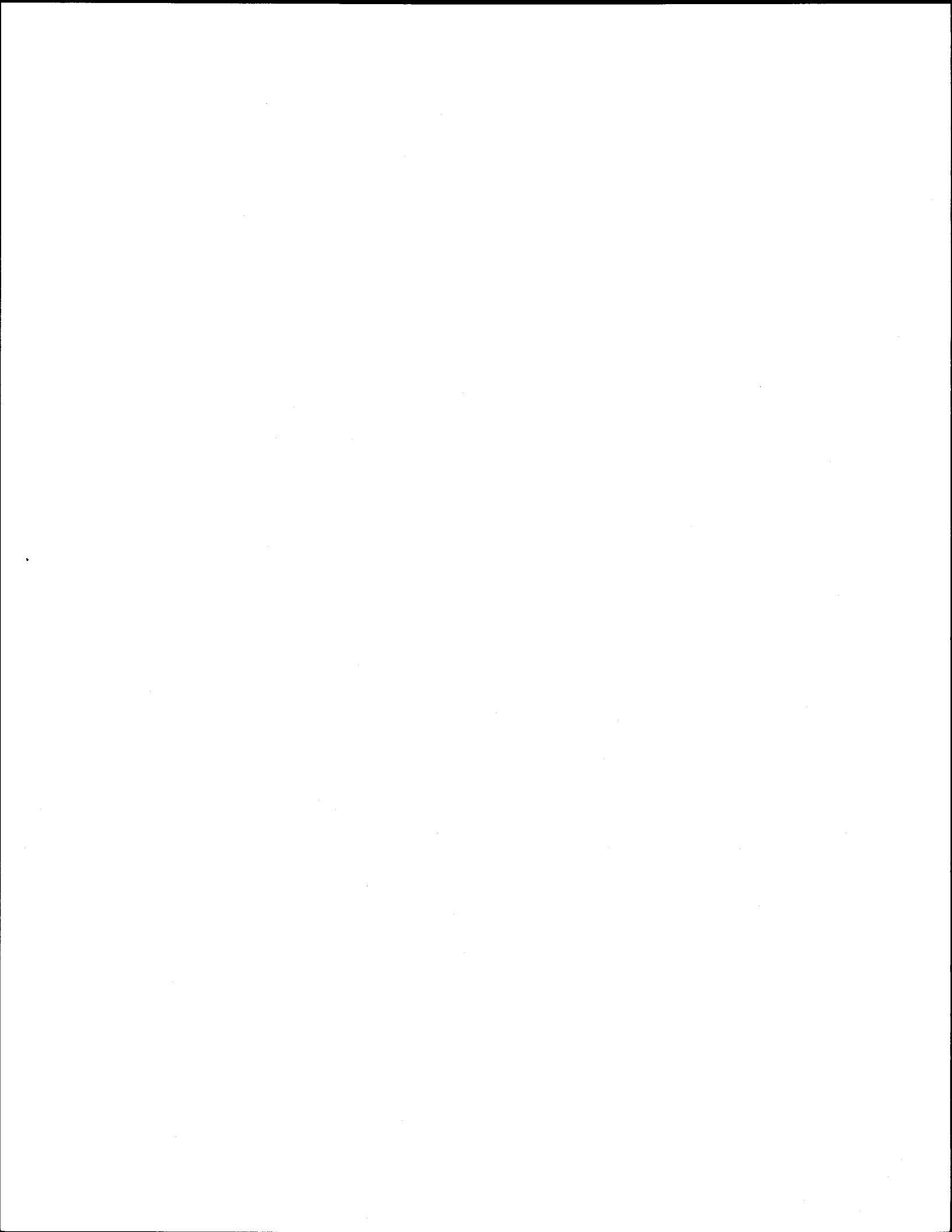
By: 
Name: Steve Magee
Title: Executive Vice President

1998

EXHIBIT A

JOINT COMMUNITY FACILITIES AGREEMENT
(SEWER COLLECTION FACILITIES)

[See Attachment]



JOINT COMMUNITY FACILITIES AGREEMENT
(Sewer Collection Facilities)

by and among

RIVERSIDE UNIFIED SCHOOL DISTRICT,

COUNTY OF RIVERSIDE,

and,

SMR VENTURES, LLC,
a Delaware limited liability company,

Dated as of June 26, 2007

Relating to:
Community Facilities District No. 23
of Riverside Unified School District

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JOINT COMMUNITY FACILITIES AGREEMENT

THIS JOINT COMMUNITY FACILITIES AGREEMENT (this "Joint Community Facilities Agreement") is made and entered into as of June 26, 2007, by and among Riverside Unified School District, a unified school district of the State of California (the "School District"), County of Riverside, a political subdivision of the State of California, acting by and through Riverside County Service Area 152-C, a county service areas (respectively, the "County" and "CSA 152-C") and SMR Ventures, LLC, a Delaware limited liability company (the "Property Owner").

RECITALS

A. The Board of Education of the School District (the "Board of Education") has been requested to initiate proceedings to form a community facilities district that is to be identified as "Community Facilities District No. 23 of Riverside Unified School District" (the "Community Facilities District") under the authority of the Mello-Roos Community Facilities Act of 1982 (the "Act") (commencing with Section 53311 of the California Government Code (the "Code")) that is to be located in an unincorporated portion of the County known as "Highgrove."

B. The Property Owner is the owner of certain real property, as generally shown on Exhibit A, attached hereto, representing Tract Map Nos. 29597, 29598, 29599, 29600, 29740, and 29741 (each a "Tract," and collectively, the "Tracts"), that provide for the development of approximately 1,461 proposed single family residential lots; the boundaries of the Community Facilities District include all of the territory within the Tracts. The Property Owner has requested that in forming the Community Facilities District two or more improvement areas be designated therein (each an "Improvement Area," and collectively, the "Improvement Areas"). It is the intention of the parties hereto that each Improvement Area shall be authorized to finance all or any part of the Sewer Collection Facilities (as defined below) to the extent bond proceeds are available. The determination of which Tracts will be in which Improvement Area will be made by the School District and the Property Owner at the time the Community Facilities District is formed.

C. The Property Owner has requested and proposed that the Community Facilities District be formed for the purpose of providing the means of financing the acquisition and construction of certain public improvements, including but not limited to the sewer collection facilities listed in Exhibit B (each of the facilities described as Facilities 1 through 11 shall be referred to herein as a "Sewer Collection Facility" and, collectively, as the "Sewer Collection Facilities") to be constructed by the Property Owner with the purchase price therefor to be paid from the proceeds of bonds to be sold and issued by the Community Facilities District. The Sewer Collection Facilities are to be owned by the County, acting by and through CSA 152-C, and maintained and operated by the City of Riverside (the "City") upon the completion of the construction thereof by the Property Owner and the acceptance thereof by both the County and the City.

D. County Service Area 152-C has been formed pursuant to Chapter 2.2, Part 2, Division 2, Title 3 of the Code (commencing at Section 25210.1) and is authorized, among other things, to provide wastewater treatment and collection services.

E. The County and the Property Owner have entered into an agreement entitled "Amended and Restated Sanitation System Installation and Service Agreement," dated as of June 22, 2004 (the "Sewer Installation Agreement"), that provides for the terms under which the Property Owner agrees to design, engineer and construct or to cause the design, engineering and construction of the Sewer Collection Facilities and the terms under which this is to be accomplished.

F. In addition, the City and the County have entered into an agreement entitled "Operation and Maintenance Agreement," dated June 22, 2004, that provide the terms and conditions under which the City will operate and maintain the Sewer Collection Facilities (the "Operation and Maintenance Agreement").

G. Section 53313.5 of the Code provides that a community facilities district may only finance the purchase of facilities whose construction has been completed, as determined by the legislative body of the community facilities district, before the resolution of formation to establish the community facilities district is adopted pursuant to Section 53325.1 of the Code, except that a community facilities district may finance the purchase of facilities completed after the adoption of a resolution of formation if the facility is constructed as if it had been constructed under the direction and supervision, or under the authority of the local agency, in this instance either the County or the City.

H. Section 53314.9 of the Code provides that at any time either before or after the formation of a community facilities district, the legislative body may accept advances of funds or work in-kind from any source, including, but not limited to, private persons or entities, and may provide, by resolution, for the use of those funds or that work in-kind for any authorized purpose, under all of the following conditions: (a) the proposal to repay the funds or the value or cost of the work in-kind, whichever is less, is included in both the resolution of intention to establish the community facilities district adopted pursuant to Section 53321 of the Code and in the resolution to establish the community facilities district pursuant to Section 53325.1 of the Code, (b) any proposed special tax is approved by the qualified electors of the community facilities district pursuant to the Act, and (c) any work in-kind accepted pursuant to Section 53314.9 of the Code shall have been performed or constructed as if the work had been performed or constructed under the direction and supervision, or under the authority of either the County or the City.

I. Pursuant to the Act, the Board of Education, upon approval of this Joint Community Facilities Agreement by the School District, the County and the Property Owner, intends to consider a resolution of intention stating that it is the intention of the School District to cause the proposed Community Facilities District to be established and the Improvement Areas therein to be designated, and if established, the Community Facilities District will use its best efforts to sell and issue special tax bonds the proceeds of which will be used in part to pay the Property Owner the purchase price of the Sewer Collection Facilities, provided all of the conditions of Sections 53313.5 and 53314.9 of the Code are satisfied and that the purchase price shall only be paid from the proceeds of special tax bonds, if any are sold and issued by the proposed Community Facilities District and the Improvement Areas therein.

J. The Act provides that the proposed Community Facilities District may finance the Sewer Collection Facilities pursuant to a joint community facilities agreement adopted pursuant to Sections 53316.2, 53316.4 and 53316.6 of the Code.

K. The School District, the County and the Property Owner desire to enter into this Joint Community Facilities Agreement, as required by the aforementioned sections of the Code and prior to the adoption by the Board of Education of the resolution establishing the Community Facilities District and the designation of the Improvement Areas therein.

L. The School District and the County by entering into this Joint Community Facilities Agreement will enable the Community Facilities District to finance the acquisition and construction of some or all of the Sewer Collection Facilities, and, consistent with Section 53316.2 of the Code, the School District and the County have determined that executing this Joint Community Facilities Agreement will be beneficial to the residents of their respective jurisdictions and to the owners of the property within the Community Facilities District.

M. Notwithstanding anything in this Joint Community Facilities Agreement to the contrary, this Joint Community Facilities Agreement shall not obligate the Property Owner to construct a Sewer Collection Facility in the manner set forth in this Joint Community Facilities Agreement, or obligate the Property Owner to otherwise comply with any of the provisions of this Joint Community Facilities Agreement with respect to a Sewer Collection Facility concerning, among other things, bidding, financing, insuring, maintaining and constructing such Sewer Collection Facility, unless the Property Owner seeks reimbursement for such Sewer Collection Facility from the proceeds of the Bonds. In clarification of the foregoing, the parties agree that if the Property Owner wants to be paid or to be reimbursed for the costs of a Sewer Collection Facility from the proceeds of the Bonds (when and if issued), it must comply with the provisions of this Joint Community Facilities Agreement with respect to such Sewer Collection Facility. If the Property Owner chooses not to be paid or to seek reimbursement for a Sewer Collection Facility from the proceeds of the Bonds, or the proceeds of the Bonds are insufficient to finance a Sewer Collection Facility, then the Property Owner may construct such Sewer Collection Facility without complying with the provisions of this Joint Community Facilities Agreement. Instead, the construction of such Sewer Collection Facility will be dictated by the Sewer Agreements (as defined herein).

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual premises and covenants contained herein, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. Unless the context otherwise requires, the terms defined in this Article I shall have the meaning herein specified when used in this Joint Community Facilities Agreement:

"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 and the City not to interfere with the intended use of such land or easement and therefore are not required to be cleared from title.

"Acceptance Date" means, with respect to a Sewer Collection Facility, the date that said Sewer Collection Facility is accepted by the County for ownership and the City as to operation and maintenance.

"Act" means the Mello-Roos Community Facilities Act of 1982, constituting Section 53311 *et seq.* of the Code, as amended.

"Actual Cost" means, with respect to a Sewer Collection Facility, to the extent authorized by law, an amount equal to the sum of (a) the Property Owner's actual, reasonable cost of constructing the Sewer Collection Facility, including labor, material and equipment costs, (b) the Property Owner's actual reasonable cost of designing and preparing the Plans and Specifications for the Sewer Collection Facility, including engineering services provided in connection with designing and preparing such Plans and Specifications, (c) the Property Owner's actual, reasonable cost of environmental evaluations and any mitigation measures required by any governmental agency with jurisdiction with regard to such Sewer Collection Facility, or portions thereof, (d) the amount of any fees actually paid by the Property Owner to governmental agencies in order to obtain permits, licenses or other necessary governmental approvals and reviews for such Sewer Collection Facility including but not limited to plan check and inspection fees by the City and the County, (e) the Property Owner's actual reasonable cost for professional services directly related to the construction of such Sewer Collection Facility, including engineering, legal, inspection, construction staking, materials testing and similar professional services, (f) the Property Owner's actual, reasonable cost, as determined by the Contract Administrator, for construction management, bid administration and contract administration services which shall not exceed 2% of construction costs, (g) the costs incurred by the County acting as the Contract Administrator; (h) the Property Owner's actual reasonable cost of payment, performance or maintenance bonds and insurance including any title insurance required for such Sewer Collection Facility, (i) the actual, reasonable cost of easements or other real property or interest therein acquired from a party other than the Property Owner, which real property or interest therein is either necessary for the construction of such Sewer Collection Facility (e.g., temporary construction easements, haul roads, etc.) or is required to be conveyed with such Sewer Collection Facility in order to convey Acceptable Title thereto to the County and the City

and allow for operation and maintenance by the City, all as specified in a Payment Request that is to be reviewed and approved by the Contract Administrator; provided, however, that (x) no item of cost relating to a Sewer Collection Facility shall be included in more than one category of cost specified in clauses (a) through (i) of this definition, and (y) each item of cost shall include only amounts actually paid by the Property Owner to third parties and shall not include overhead or other internal expenses of the Property Owner, except that, if Property Owner employees perform construction management, bid administration or contract administration services with respect to a Sewer Collection Facility, the actual reasonable cost of the salaries and benefits paid by the Property Owner to such employees for performing such services may be included as an item of cost relating to such Sewer Collection Facility for the category of cost specified in clause (f) of this definition and subject to the 2% limitation specified in clause (f).

"Administrator" means the Director of Planning and Development of the School District (or any successor to the responsibilities thereof if such office is no longer in existence), or his/her designee as specified in the written certificate required pursuant to Section 6.15., below.

"Board of Education" means the Board of Education of the School District.

"Board of Supervisors" means the Board of Supervisors of the County.

"Bonds" means the special tax bonds that the Community Facilities District may attempt to sell and issue in one or more series for each Improvement Area if the Proceedings are approved, a portion of the proceeds of which will be used to finance the acquisition and construction of all or a portion of the Sewer Collection Facilities.

"Business Day" means a day which is not a Saturday or Sunday or a day of the year on which the City or the County are not required or authorized to be open.

"CEQA" means the California Environmental Quality Act (CEQA), constituting Section 21000 *et seq.* of the California Public Resources Code, as amended.

"City" means the City of Riverside, a charter city and municipal corporation duly organized and existing under the laws of the State and its successors.

"City Council" means the City Council of the City.

"City Engineer" means the Public Works Director of the City who is the duly appointed and acting head of the Public Works Department or the authorized designee of the Public Works Director, as specified in the written certificate required pursuant to Section 6.15., below.

"Code" means the California Government Code.

"Community Facilities District" means "Community Facilities District No. 23 of Riverside Unified School District," a community facilities district to be organized and existing under the Act.

"Construction Site" means the site on which a Sewer Collection Facility is to be constructed, including off site staging areas and material storage areas.

"**Contract Administrator**" means the Assistant County Executive Officer/Economic Development Agency (or any successor to the responsibilities thereof if such office is no longer in existence), or his/her designee as specified in the written certificate required pursuant to Section 6.15., below.

"**County**" means the County of Riverside, a political subdivision of the State, and its successors.

"**County Engineer**" means that licensed civil engineer retained by CSA 152-C to fulfill the County's obligations under the Sewer Agreements to review and approve, in a timely manner, the Plans and Specifications to be prepared or caused to be prepared by the Property Owner by the Sewer Agreements and this Joint Community Facilities Agreement and as specified in the written certificate required pursuant to Section 6.15., below.

"**CSA 152-C**" means Community Service Area 152-C formed pursuant to Chapter 2.2, Part 2, Division 2, Title 3 of the Code (commencing at Section 25210.1)

"**General Prevailing Wage Rates**" means those rates as determined by the Director of the Department of Industrial Relations of the State pursuant to Sections 1770, *et seq.* of the Labor Code of the State that are applicable to public works construction activity within the County.

"**Hazardous Material**" means any and all pollutants, wastes, flammables, explosives, radioactive materials, hazardous or toxic substances, materials or waste which is or becomes regulated by any local governmental authority, the State or the federal government and specifically includes, without limitation, any material or substance which is (i) designated as "hazardous substance" pursuant to Section 3111 of the Federal Water Pollution Control Act, 33 U.S.C. Sections 1251 *et seq.* (33 U.S.C. Section 1321), (ii) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901 *et seq.* (42 USC Section 6903), (iii) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 *et seq.*, (iv) petroleum or petroleum products, (v) asbestos, (vi) hydrocarbons, or (vii) polychlorinated biphenyl ("PCB" or PCB containing materials)..

"**Improvement Area**" or "**Improvement Areas**" means, either individually or collectively, one or more of the Improvement Areas, as the context would indicate, that are to be designated within the Community Facilities District.

"**Indenture**" means each indenture, trust agreement, resolution, fiscal agent agreement or similar instrument, regardless of title, pursuant to which bonds, notes or other evidences of indebtedness of the Community Facilities District have been issued for an Improvement Area and are outstanding, as originally executed or as the same may from time to time be supplemented or amended pursuant to the provisions thereof.

"**Joint Community Facilities Agreement**" means this Joint Community Facilities Agreement, dated as of June 26, 2007, by and among the School District, the County and the Property Owner, as originally executed or as the same may be amended from time to time in accordance with its terms.

"Legislative Body" means the Board of Education, acting *ex officio* as the legislative body of the Community Facilities District.

"Mitigation Agreement" means the Mitigation Agreement to be entered into by and between the School District and the Property Owner, as originally executed or as the same may be amended from time to time in accordance with its terms.

"Operation and Maintenance Agreement" means the Operation and Maintenance Agreement, dated June 22, 2004, that provides the terms and conditions under which the City will operate and maintain the Sewer Collection Facilities.

"Payment Request" means the document to be provided by the Property Owner to the Contract Administrator to substantiate the Purchase Price of a Sewer Collection Facility which shall be substantially in the form of Exhibit D attached hereto.

"Plans and Specifications" mean the plans and specifications for a Sewer Collection Facility prepared or to be prepared at the direction of the Property Owner pursuant to Section 4.2., hereof.

"Proceedings" means those proceedings to be undertaken by the Board of Education to consider the formation of the Community Facilities District and the designation of Improvement Areas therein and the approval by said Board of Education and the qualified electors of the Community Facilities District and each Improvement Area, of the authorization to levy special taxes therein pursuant to the Rate and Method and to incur bonded indebtedness to finance the construction and acquisition of certain public improvements and by the Legislative Body to sell and issue the Bonds.

"Property Owner" means SMR Ventures, LLC, a Delaware limited liability company, and its successors and assigns, acting as the master developer of infrastructure within the Community Facilities District, including but not limited to the Sewer Collection Facilities.

"Property Owner's Representative" means the person executing this Joint Community Facilities Agreement or the person or persons designated as such by the Property Owner in a certificate signed by the Property Owner and delivered to the School District, the Community Facilities District and the County consistent with Section 6.15., below.

"Public Contract Code" means the Public Contract Code of the State.

"Purchase Price" means, subject to the provisions of Section 3.2., hereof, the Actual Cost of a Sewer Collection Facility as determined by the Contract Administrator.

"Rate and Method" means the rate and method of apportionment of special taxes for each Improvement Area authorized to be levied within the Community Facilities District pursuant to the Proceedings.

"School District" means the Riverside Unified School District, a school district organized and existing under the laws of the State of California.

"Sewer Agreements" means (i) the Sewer Installation Agreement, as originally executed or as the same may be amended from time to time in accordance with its terms, (ii) the Operation and Maintenance Agreement, as originally executed or as the same may be amended from time to time in accordance with its terms, Riverside Unified School District CFD No. 23
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be amended from time to time in accordance with its terms, and (iii) any agreement between the Property Owner, the City and/or the County which is supplemental to or in lieu of the agreements described in (i) and (ii). Under no circumstances shall the amendment or restatement of the Sewer Installation Agreement or the Operation and Maintenance Agreement invalidate this Joint Community Facilities Agreement.

"Sewer Collection Facilities" shall have the meaning ascribed to the term "Collection System" in the Sewer Installation Agreement and the Operation and Maintenance Agreement and as described in Exhibit B hereto. The ownership of the Sewer Collection Facilities shall be in accordance with the provisions set forth in the Operation and Maintenance Agreement. Pursuant to the Operation and Maintenance Agreement, the City will operate the portions of the Sewer Collection Facilities owned by the County on behalf of the County. Lateral connections within the public right of way are not part of the Sewer Collection Facilities and shall be owned by the respective property owners connecting to the Sewer Collection Facilities.

"Sewer Collection Facility" means any individual facility described in Exhibit B as Facility 1 through 11.

"Sewer Collection Facilities Account" means the account (however denominated) established pursuant to an Indenture providing for the issuance of Bonds for an Improvement Area to hold that portion of Bond proceeds to be applied to pay all or a portion of the Purchase Price for a Sewer Collection Facility.

"Sewer Installation Agreement" means the Amended and Restated Sanitation System Installation and Service Agreement, dated as of June 22, 2004, by and between the County and the Property Owner that provides for the terms under which the Property Owner agrees to design, engineer and construct or to cause the design, engineering and construction of a sewer collection system, which includes the Sewer Collection Facilities, and the terms under which this is to be accomplished.

"State" means the State of California.

"Tract" or "Tracts" means, individually or collectively, Tract Map Nos. 29597, 29598, 29599, 29600, 29740, and 29741.

ARTICLE II

CONDITIONS PRECEDENT

Section 2.1. Proceedings for the Formation of the Community Facilities District and the Improvement Areas therein; Costs of Formation. The Property Owner has submitted to the School District an application requesting that the Proceedings be initiated by the School District to form the Community Facilities District and designate the Improvement Areas therein for the purpose of financing, and among other things, the acquisition and construction of certain public facilities, including the Sewer Collection Facilities, and to authorize the levy of special taxes within the Community Facilities District pursuant to the Rate and Method for each Improvement Area and the incurrence of bonded indebtedness to finance the construction and acquisition of said public facilities and for the Legislative Body to authorize the sale and issuance of the Bonds for each Improvement Area pursuant to the Act and the applicable Indenture.

Should the formation of the Community Facilities District and the designation of the Improvement Areas be approved to finance the acquisition and construction of the Sewer Collection Facilities, the Legislative Body will use its best efforts to cause the Bonds to be sold and issued for each Improvement Area in one or more series, pursuant to the terms of the Act, the applicable Indenture and the applicable sections of the Mitigation Agreement. A portion of the proceeds of the Bonds are intended to provide funds that will allow the Community Facilities District to finance the costs of constructing and acquiring the Sewer Collection Facilities. Should the Board of Education not approve the formation of the Community Facilities District and/or the Legislative Body not sell and issue any Bonds, the School District, the County and the Property Owner will not be bound by the terms of this Joint Community Facilities Agreement and it shall be considered null and void by the parties to it. The School District will notify all parties to this Joint Community Facilities Agreement within fifteen (15) calendar days of either event occurring.

The Property Owner acknowledges that the decision of the Board of Education to approve the formation of the Community Facilities District and the designation of the Improvement Areas therein and of the Legislative Body to authorize the sale and issuance of the Bonds for each Improvement Area is an exercise of legislative discretion by the Board of Education and Legislative Body, respectively, and the School District may not enter into a contract or obligate either the Board of Education or the Legislative Body to exercise its legislative discretion in a particular manner. This Joint Community Facilities Agreement does not, therefore, in any way create a contractual, legal or equitable obligation of or commitment by the Board of Education to approve the formation of the Community Facilities District and the designation of Improvement Areas therein or the Legislative Body to authorize the sale and issuance of the Bonds for each Improvement Area.

The Board of Education and the Legislative Body shall have the jurisdiction to and shall be solely responsible for undertaking the Proceedings consistent with the provisions of the Act, each Indenture and the Mitigation Agreement.

The County is not directly or indirectly approving or responsible in any way whatsoever for: (i) the levy of special taxes within the Community Facilities District or (ii) the issuance of the Bonds. The County shall not be responsible in any way whatsoever for the costs of formation of the Community Facilities District and the designation of the Improvement Areas therein.

Section 2.2. CSA No. 152-C; Ownership of the Sewer Collection Facilities.

The construction and development of the Sewer Collection Facilities is one of the conditions that have been placed on the development of the Tracts within the Community Facilities District. When the Sewer Collection Facilities are completed consistent with the terms of this Joint Community Services District they are to be owned by the County on behalf of CSA No. 152-C. Annexation of the tracts to CSA No. 152-C has been completed consistent with the procedures established by the Local Area Formation Commission ("LAFCO") and the administrator for CSA No. 152-C.

Section 2.3. Addendum to Exhibit B of this Joint Community Facilities Agreement for Modification of the Sewer Collection Facility.

It is the intent of both the Property Owner and the Community Facilities District to cause one or more series of Bonds to be issued for each Improvement Area. All of the Sewer Collection Facilities eligible to be financed by the Community Facilities District are identified in Exhibit B. Each Improvement Area shall be authorized to finance the Sewer Collection Facilities. The descriptions of the Sewer Collection Facilities are general and any minor differences between the Sewer Collection Facilities described in Exhibit B and those Sewer Collection Facilities actually acquired hereunder shall not prevent the financing of such Sewer Collection Facilities. Further refinement of the description of such Sewer Collection Facilities may be addressed through an addendum to Exhibit B that is to be prepared by the Contract Administrator and executed by the Contract Administrator, the County Engineer, the City Engineer and the Property Owner and that will not require further amendment to this Joint Community Facilities Agreement. Other than the modifications described in the previous sentence, should there be additional amendments deemed necessary by the County to be made to this Joint Community Facilities Agreement, any necessary amendments to this Joint Community Facilities Agreement be made pursuant to Section 6.4., hereof, and such amendments shall be made prior to the authorization by the Legislative Body to sell and issue any additional Bond series the proceeds of which will be used to finance all or a portion of the cost of the construction or acquisition of the Sewer Collection Facilities.

Section 2.4. Fee Deposit with County for Preparation and Implementation of this Joint Community Facilities Agreement.

The Property Owner is to cause to be deposited with the County Executive Officer, or his/her designee (the "Special Districts Administrator") an aggregate amount of \$12,000.00 for the three joint community facilities agreements that are to be prepared with regard to the Community Facilities District, of which \$4,000.00 has been deposited by the Property Owner, to be held in a trust account to cover all costs incurred in drafting, preparing and implementing this Joint Community Facilities Agreement and the other two such agreements. The Special Districts Administrator will prepare an accounting of the costs incurred and provide an accounting to the Property Owner. If the amount deposited is insufficient to cover such costs, the Property Owner will cause an additional amount to be deposited with the Special District Administrator within thirty (30) calendar days of being provided a written request for the additional funds. The amounts deposited with the Special District

Administrators that have not been used will be returned to the Property Owner. Any portion of the amounts deposited with the Special District Administrator that are used for the purposes identified above shall be reimbursable to the Property Owner from the proceeds of the Bonds.

ARTICLE III

ACQUISITION OF THE SEWER COLLECTION FACILITIES

Section 3.1. Acquisition of the Sewer Collection Facilities. This Article III applies only to Sewer Collection Facilities that the Property Owner elects to finance with a portion of the proceeds of the Bonds that will be deposited in the Sewer Collection Facilities Account for an Improvement Area. Notwithstanding that the Property Owner elects not to finance one or more Sewer Collection Facilities with the proceeds of the Bonds, the Property Owner shall not be relieved from its obligation with respect to such Sewer Collection Facilities consistent with the Sewer Agreements.

For such Sewer Collection Facilities, the Property Owner hereby agrees to transfer to the County, the Sewer Collection Facilities to be operated and maintained by the City and the Community Facilities District hereby agrees to pay the Purchase Price(s) therefor, subject to the terms and conditions hereof, the Sewer Agreements, and the Mitigation Agreement. Acceptable Title to any parcels on which such Sewer Collection Facilities are constructed and for which title is not presently held by the County as well as Acceptable Title to such Sewer Collection Facilities shall be transferred to the County as of the Acceptance Date; provided, however, that notwithstanding such transfer the Property Owner shall be solely responsible for the operation and maintenance of each such Sewer Collection Facility until the Acceptance Date of said Sewer Collection Facility.

The Purchase Price for each such Sewer Collection Facility will be paid solely from the amounts on deposit in the Sewer Collection Facilities Accounts established by the applicable Indentures for the issuance of Bonds for one or more Improvement Areas, and the Community Facilities District shall not be obligated to pay the Purchase Price for any Sewer Collection Facility except from the amounts on deposit in said Sewer Collection Facilities Accounts. None of the School District, the Community Facilities District, or the County makes any warranty, either expressed or implied, that the proceeds of the Bonds deposited in such Sewer Collection Facilities Accounts, and investment earnings, will be sufficient to pay the full amount of the Purchase Price for the Sewer Collection Facilities or any specific Sewer Collection Facility.

It is understood by the Property Owner that the net principal amount of the Bonds that will be deposited in each Sewer Collection Facilities Account, pursuant to the terms of the Mitigation Agreement and the applicable Indenture, and any investment earnings thereon, may not be sufficient to pay the full amount of the Purchase Prices for the Sewer Collection Facilities, or any Sewer Collection Facility, at the time a Payment Request is approved by the Contract Administrator. If the amounts on deposit in the applicable Sewer Collection Facilities Account, and any investment earnings thereon, at the time a Payment Request is approved by the Contract Administrator and submitted to the Administrator for payment, are not sufficient to pay the Purchase Price for any Sewer Collection Facility, the timing of the payment of the Purchase Price therefor and the proportionate amount of the Purchase Price to be paid will be determined consistent with the terms of the Mitigation Agreement. It is understood that, at all times for the purpose of this Joint Community Facilities Agreement, the construction of the Sewer Collection Facilities that the Property Owner elects to finance with the proceeds of the Bonds will

be accomplished by the Property Owner with the expectation that the Purchase Price for each such Sewer Collection Facility is to be paid by the Community Facilities District (but solely from the proceeds of the Bonds, if any, issued for and deposited in the Sewer Collection Facilities Account(s) for one or more of the Improvement Areas), and that the conveyance of any such Sewer Collection Facility to the County prior to the receipt of the Purchase Price, or any portion thereof, for the Sewer Collection Facility will not constitute or be construed as a dedication, gift, or waiver of the payment of the Purchase Price or any unpaid balance thereof.

Notwithstanding any other provision of this Joint Community Facilities Agreement, the fact that there may not be sufficient funds available in a Sewer Collection Facilities Account to pay the Purchase Price for any Sewer Collection Facility will not relieve the Property Owner from its obligation to construct such Sewer Collection Facility consistent with the Sewer Agreements.

Failure of the Property Owner to comply with the terms of Articles III and IV of this Joint Community Facilities Agreement may result in a Sewer Collection Facility that the Property Owner is responsible to construct not being accepted by the County and the City and/or the Property Owner receiving no reimbursement for any costs it incurs in the design, engineering and construction of said Sewer Collection Facility.

Each portion of the Sewer Collection Facilities listed as Facilities 1 through 11 in Exhibit B may be acquired by the County pursuant to the terms hereof without regard to any other portion of the Sewer Collection Facilities, and each such Sewer Collection Facility may be acquired by the County when such Sewer Collection Facility is accepted by the County and the City and otherwise meets the conditions specified in this Joint Community Facilities Agreement.

Section 3.2. Determination of the Purchase Price; Processing Payment Requests. The determination of the Purchase Price for a Sewer Collection Facility shall be made consistent with the provisions of this Section 3.2.

In order for the Contract Administrator to be able to determine the Purchase Price for a Sewer Collection Facility, the Property Owner shall deliver to the Contract Administrator:

- (a) A Payment Request for the Sewer Collection Facility, together with all attachments and exhibits to be included therewith;
- (b) A copy of the documents conveying or which previously conveyed to the County Acceptable Title to the real property on, in or over which such Sewer Collection Facility is located, as provided in Section 3.3 hereof, and Acceptable Title to the Sewer Collection Facility.
- (c) A copy of the Notice of Completion for said Sewer Collection Facility that will be filed in accordance with Section 3093 of the California Civil Code, if applicable. Final lien releases addressed to the County, the City, the School District and the Community Facilities District must be received by the Contract Administrator prior to the Contract Administrator executing the Payment Request

which determines the Purchase Price for said Sewer Collection Facility and authorizes payment;

(d) The Property Owner's civil engineer of record or construction civil engineer of record duly registered in the State shall provide to the County redlined "as-built" plans and profile sheets for the Sewer Collection Facility. After the County's and the City's approval of the redlined "as-built" drawings, the Property Owner's engineer shall schedule with the County a time to transfer the redlines onto the County's original mylars at the County's office, after which, said engineer shall review, stamp and sign the original mylars "As-Built."

Notwithstanding anything to the contrary contained herein, no payment of the Purchase Price for the Sewer Collection Facility shall be made unless the County has by written notice to the Administrator stated that the County is willing to accept ownership of the Sewer Collection Facility and the City has by written notice to the Contract Administrator stated that the City is willing to operate and maintain the Sewer Collection Facility as constructed as of the Acceptance Date.

When the Contract Administrator has been provided with a complete Payment Request and all other documents as required to determine the Purchase Price, the Contract Administrator will sign the Payment Request, identifying the completed Sewer Collection Facility and specifying the Purchase Price to be paid, and forward it to the Administrator for payment.

Upon receipt of such a completed Payment Request from the Contract Administrator, the Administrator shall submit it to the fiscal agent or trustee for the Sewer Collection Facilities Account from which the Purchase Price is to be paid together with such other information as the fiscal agent or trustee may require to authorize payment of the Purchase Price from the Sewer Collection Facilities Account. If at the time such a Payment Request is received by the Administrator, there are not sufficient funds on deposit in the applicable Sewer Collection Facilities Account to pay the Purchase Price for the identified Sewer Collection Facility, the Administrator shall notify the Contract Administrator and the Property Owner of the amount of funds that are on deposit in the Sewer Collection Facilities Account to be applied to payment of a portion of the Purchase Price for the Sewer Collection Facility, and shall authorize the fiscal agent or trustee to pay the available amount to the Property Owner as a partial payment of the Purchase Price for the Sewer Collection Facility.

Section 3.3. Dedication of Property and Easements to County. Acceptable Title to all property not presently held by the County on, in or over which the Sewer Collection Facility will be located shall be conveyed to the County by way of grant deed, quitclaim, or dedication of such property, or easement thereon, if such easement is approved by the County as being a sufficient interest therein to permit the County to properly own and the City to properly operate and maintain the Sewer Collection Facility located therein, thereon or thereover, and to permit the Property Owner to perform its obligations as set forth in this Joint Community Facilities Agreement.

The Property Owner shall furnish to the County a title report for such property not previously dedicated or otherwise conveyed to the County for review and approval at least thirty (30) calendar days prior to the notice required by Section 4.8., hereof. Both

the County and the City shall approve the title report unless it reveals a matter that, in the judgment of the County or the City, could materially affect the County's use and enjoyment of any part of the property or easement covered by the title report or compromise the City's ability to operate and maintain the Sewer Collection Facility. In the event the County or the City does not approve such title report, the County or the City shall notify the Contract Administrator in writing and the County shall not be obligated to accept title to a Sewer Collection Facility, and the Community Facilities District shall not be obligated to pay any portion of the Purchase Price for a Sewer Collection Facility until the Property Owner has cured such objections to title to the satisfaction of the County and the City.

Consistent with the preceding paragraph, the Property Owner shall obtain and provide, or cause to be obtained or provided, to the County duly executed irrevocable offer(s) of dedication to the public for wastewater collection and distribution purposes, including ingress and egress, for rights of way deemed necessary by the County and the Contract Administrator for the construction, inspection, operation and maintenance of a Sewer Collection Facility. The irrevocable offer(s) of dedication shall be in a form approved by the County and shall be executed by all legal and equitable owners described in the offer.

To the extent that any of the provisions in this Section conflict with the provisions contained in the Sewer Agreements, the provisions in this Section shall control.

or the Sewer Agreements or (ii) require the Property Owner to cause the Plans and Specifications to be prepared for the Sewer Collection Facility at a specific time or in a manner other than as required by the approved conditions for the development of the Tracts.

Section 4.4. Bid and Public Work Construction Requirements.

(a) In order to ensure that the Sewer Collection Facilities that are to be acquired with the proceeds of the Bonds will be constructed as if they had been constructed under the direction and supervision, or under the authority of, a public agency, so that it may be acquired pursuant to Sections 53313.5 and 53314.9 of the Code, the Property Owner shall comply with all of the applicable requirements set forth in the Public Contract Code regarding the notice of bidding and award of contract for a public works project by a public agency, in this instance the County.

(b) Prior to awarding the construction contract for a Sewer Collection Facility, the Property Owner shall submit a bid packet for review to the City Engineer and the County Engineer for review of the general and technical specifications and to the Contract Administrator for compliance with Public Contract Code requirements. The contract for construction of the Sewer Collection Facility is to be awarded to the responsible bidder submitting the lowest responsive bid after public notice inviting sealed bids. Sealed bids are to be publicly solicited consistent with the applicable provisions of the Public Contract Code dealing with the bidding of public works projects constructed by the County. Public notice is to be given consistent with the Public Contract Code as to the date, time and place where bids will be opened. The Contract Administrator is to be provided with copies of all bids received and provided with a declaration, in a form satisfactory to the Contract Administrator, as to solicitation of bids, the bid opening and award of bid.

(c) The Property Owner shall require, and the Plans and Specifications, bid and contract documents shall require, all contractors, subcontractors, vendors, equipment operators and owner operators, in each such case to the extent such individuals or entities are engaged to perform work on the Sewer Collection Facility, as required by the Labor Code of the State, to pay not less than General Prevailing Wage Rates to all workers employed in the execution of the contract, to post a copy of the General Prevailing Wage Rates at the job-site in a conspicuous place available to all employees and applicants for employment, and to otherwise comply with applicable provisions of the Labor Code of the State, the Code and the Public Contracts Code relating to General Prevailing Wage Rates as required by the specifications approved by the Contract Administrator. The Contract Administrator shall provide the Property Owner with copies of tables setting forth the General Prevailing Wage Rates, and the Property Owner hereby acknowledges receipt thereof.

(d) The Property Owner shall require each principal contractor to provide proof of insurance coverage to the Contract Administrator and the Administrator consistent with the applicable provisions of the Sewer Agreements. Rather than requiring its principal contractors to provide such insurance, the Property Owner may elect to provide the same for the benefit of its principal contractors.

(e) Each principal contractor engaged to perform work on the Sewer Collection Facility shall be required to furnish (i) labor and material payment bonds, and

ARTICLE IV

CONSTRUCTION OF THE SEWER COLLECTION FACILITIES

Section 4.1. Controlling Contractual Provisions. This Article IV applies only to a Sewer Collection Facility that the Property Owner determines to finance with the proceeds of the Bonds. Notwithstanding that the Property Owner determines not to finance all or portion of a Sewer Collection Facility with the proceeds of the Bonds, the Property Owner shall not be relieved from its obligation consistent with the Sewer Agreements.

The Sewer Agreements are intended to establish certain conditions to be placed on the County, the City and the Property Owner with regard to the construction and acceptance of the Sewer Collection Facilities. However, they were not written to address those issues that would be imposed on the acquisition and construction of the Sewer Collection Facilities if said Sewer Collection Facilities were to be financed through the Community Facilities District. The following provisions are intended to address the additional conditions that are intended to insure that such Sewer Collection Facilities are constructed as if they were a public work. To the extent that any of the provisions contained in this Article are in conflict with the provisions contained in the Sewer Agreements, the provisions in this Article shall control in order to allow the Property Owner to receive reimbursement for the design, engineering and construction costs incurred consistent with the provisions of Section 53313.5 and 53314.9 of the Code.

Section 4.2. Preparation and Approval of Plans and Specifications. To the extent that the Property Owner has not already done so, it shall cause the Plans and Specifications to be prepared for the Sewer Collection Facilities consistent with the applicable terms of the Sewer Agreements. The Property Owner shall obtain the written approval of the Plans and Specifications from the City Engineer and the County Engineer. The Property Owner shall provide the approved copy of all such Plans and Specifications to the Contract Administrator. When the Plans and Specifications have been approved, no changes are to be made thereto without prior written consent of the City Engineer and the County Engineer, and all approved modifications to the approved Plans and Specifications are to be provided to the Contract Administrator.

Section 4.3. Duty of Property Owner to Construct. The Property Owner shall construct or cause to be constructed the Sewer Collection Facilities in accordance with the Plans and Specifications approved by the City Engineer and County Engineer. If the Property Owner seeks to finance a Sewer Collection Facility with proceeds of the Bonds, the Property Owner shall perform all of its obligations hereunder and in the Sewer Agreements and shall conduct all operations with respect to the construction of the Sewer Collection Facility 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 Joint Community Facilities Agreement shall be construed (i) to require the Property Owner to perform any work requiring a contractor's license, nor shall the Property Owner be deemed to be performing construction services pursuant to this Joint Community Facilities Agreement

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(ii) contract performance bonds, each in an amount equal to 100% of the contract price naming the Property Owner, the School District, the Community Facilities District and the County as obligees and with an admitted surety insurer which complies with the provisions of Section 995.660 of the California Code of Civil Procedure. All such bonds shall be in a form as shown in Exhibit C. All other terms of said performance and payment bonds are to comply with the applicable terms set forth in the Sewer Agreements.

(f) The Property Owner shall comply, and shall cause each contractor, subcontractor, vendor, equipment operator and owner operator, in each such case to the extent such individual or entity is engaged to perform work on the Sewer Collection Facility, to comply, with such other requirements relating to the construction of the Sewer Collection Facility as the Contract Administrator or the County may impose by written notification delivered to the Property Owner, to the extent legally required as a result of changes in applicable federal, State or County laws, regulations, rules or procedures.

(g) The Property Owner shall require, and the Plans and Specifications and the bid and contract documents shall require, all contractors, subcontractors, vendors, equipment operators and owner operators, in each such case to the extent such individuals or entities are engaged to perform work on the Sewer Collection Facility, to submit certified weekly payroll records or other proof of payment of General Prevailing Wage Rates to the Property Owner and to furnish certified payroll records or such other proof of payment of General Prevailing Wage Rates to the Contract Administrator promptly upon request.

(h) All change orders shall be reviewed and, if appropriate, approved by the City Engineer and the County for the purpose of ensuring that they comply with the City's standards and the terms of the Sewer Agreements. A copy of all approved change orders are to be provided to the Contract Administrator for the work represented by the change order to be eligible for consideration in determining the Purchase Price.

(i) The Property Owner shall provide proof to the Contract Administrator at such intervals and in such form as the Contract Administrator may require that the foregoing requirements have been satisfied as to all of the Sewer Collection Facility.

(j) The Property Owner has deposited or will deposit with the County and the City an appropriate amount, as determined by the County and the City, to cover the anticipated costs, deemed necessary and reasonable, associated with the review and approval of the Plans and Specifications, the review and approval of right of way and conveyance documents and with the processing and administration of this Joint Community Facilities Agreement. The Property Owner, within thirty (30) calendar days after receipt of an additional billing for such costs, will forward the billed amount to the County or the City, as applicable.

(k) At the time the Property Owner submits a "Notice of Intent" to commence construction as set forth in Section 4.8, below, the Property Owner shall deposit with County and the City the estimated cost of providing construction inspection for the Sewer Collection Facility, in an amount as determined and approved by County and the City, respectively.

Section 4.5 Licenses and Regulatory Permits. The Property Owner shall secure all necessary licenses, agreements, permits, rights of entry and temporary construction easements (collectively "Licenses") that may be needed for the construction, inspection, operation and maintenance of the Sewer Collection Facilities. The Property Owner is to secure all permits approvals or agreements, if any, required by the various Federal and State resource and/or regulatory agencies (collectively, the "Regulatory Permits") for the construction, operation and maintenance of the Sewer Collection Facilities. The Regulatory Permits include, but are not limited to, those permits issued by the U.S. Army Corps of Engineers, the State Water Resources Control Board ("SWRCB"), California State Department of Fish and Game and the Regional Water Quality Control Board. All Licenses and Regulatory Permits secured by the Property Owner shall be reviewed by the County Engineer and the City Engineer prior to execution or acceptance by the Property Owner to determine whether the conditions they specify are satisfactory to the County and to the City to allow it to operate and maintain the Sewer Collection Facilities.

Section 4.6. NPDES Compliance. The Property Owner shall prepare and implement, or cause to be prepared and implemented, a Stormwater Pollution Prevention Plan (SWPPP) in accordance with the requirement of the State's National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges Associated with Construction Activity (SWRCB Order No. 99-08 DWQ) and any amendments thereto (the "General Permit"). The General Permit regulates both stormwater and non-stormwater discharges associated with construction activities required by this Joint Community Facilities Agreement.

The SWPPP shall identify site specific "Best Management Practices" ("BMP's") to be implemented during and after construction to control pollution of Stormwater runoff and receiving waters. The identified BMP's shall include, but not be limited to, "good housekeeping" practices for the Construction Site such as establishing stabilized construction access points, providing adequate sanitary/septic waste management, designating vehicle and equipment cleaning/maintenance areas, employing proper material handling and storage practices, maintaining adequate soil stabilization and erosion control practices to control the discharge of pollutants from the Construction Site and any activities thereon. The SWPPP shall also stipulate to an ongoing program for monitoring and maintenance of all BMP's.

The Property Owner shall be solely responsible throughout the duration of constructing the Sewer Collection Facilities for placing, installing, constructing, inspecting and maintaining all BMP's identified in the SWPPP and amendments thereto and for removing and disposing of temporary BMP's.

The Property Owner shall become fully informed of and comply with the applicable provisions of the General Permit, Federal, State and local regulations that govern the Property Owner's activities and operation pertaining to both stormwater and non-stormwater discharges from the Construction Site of the Sewer Collection Facilities and any area of disturbance outside said Construction Site relating to the Sewer Collection Facilities. The Property Owner shall, at all times, keep copies of the General Permit, approved SWPPP and all amendments at the Construction Site. The SWPPP shall be made available upon request of a representative of the SWRCB, Santa Ana Regional Water Quality Control Board, or the United States Environmental Protection Agency. The Property Owner shall, at reasonable times, allow authorized agents of the

above cited agencies, upon the presentation of credentials to: (i) enter upon the Construction Site; (ii) have access to and copy any records required to be kept as specified in the General Permit, (iii) inspect the Construction Site and determine whether related soil stabilization and sediment control BMP's have been implemented and maintained, and (iv) sample or monitor stormwater or non-stormwater runoff for purposes of ensuring compliance with the General Permit.

The Property Owner shall be solely and exclusively responsible for any arrangements made between it and other property owners or entities that result in disturbance of land at the Construction Site.

The Property Owner shall be responsible for all costs and for any liability imposed by law as a result of the its failure to comply with the requirements set forth in this Section, including but not limited to, compliance with the applicable provisions of the General Permit and Federal, State and local regulations. For the purpose of this Section, costs and liabilities include, but are not limited to, fines, penalties and damages whether assessed against the County, the School District, the Community Facilities District or the Property Owner, including those levied under the Federal Clean Water Act and the State's Porter-Cologne Water Quality Act.

Section 4.7 Cal/OSHA; Confined Space Entry. At all times during the construction of the Sewer Collection Facilities, the Property Owner shall require all contractors to comply with all Cal/OSHA safety regulations including regulations concerning confined space and maintenance of a safe working environment for the County, the City and their respective employees on the site. This will include the preparation of a confined space procedure specific for all wastewater facilities. The procedure shall comply with requirements contained in Sections 5157 and 5158 of Title 8 of the California Code of Regulations. The confined space procedure is to be reviewed and approved by the County Engineer and the City before proceeding with construction of the Sewer Collection Facilities.

Section 4.8. Notice of Intent to Commence Construction. Not less than twenty (20) calendar days prior to the date on which it intends to commence construction of a Sewer Collection Facility, the Property Owner is to provide written "Notice of Intent" to the Contract Administrator. Construction on the Sewer Collection Facility may not proceed until the Contract Administrator issues a "Notice to Proceed" to the Property Owner. The "Notice of Intent" is to include the following documents:

(a) Copies of all Licenses and Regulatory Permits secured pursuant to Sections 4.5. and 4.6., above, including a copy of the Notice of Intent ("NOI") and waste discharge identification number ("WDID No.") received from the SWRCB pursuant to Section 4.6., above.

(b) Copies of the bonds required by Section 4.4.(e), above.

(c) Construction Inspection Deposit required by Section 4.4.(j) above.

(d) Duly executed irrevocable offer(s) of dedication to the public for wastewater transmission purposes, including ingress and egress, for the rights of way deemed necessary by the County and the City for the construction, inspection, operation and maintenance of the Sewer Collection Facility.

(e) Preliminary reports of title dated not more than thirty (30) days prior to date of submission for all property described in the irrevocable offer(s) of dedication.

(f) A complete list of all contractors and subcontractors to be performing work on the Sewer Collection Facility, including the corresponding license number and license classification of each. On said list, the Property Owner shall also identify its designated superintendent for construction of the Sewer Collection Facility.

(g) A construction schedule which shall show the order and dates in which the Property Owner and the Property Owner's contractor proposes to carry on the various parts of work, including estimated start and completion dates. As the construction progresses the Property Owner shall update said construction schedule upon request.

(h) Two sets of the final mylar plan and profile sheets for the Sewer Collection Facility and assign their ownership to the County or the City prior to the start of construction of the Sewer Collection Facility.

(i) Certificates of insurance and endorsements as required by Section 4.12, below.

(j) The confined space procedure as required by Section 4.7., above.

Section 4.9. Additional Conditions to be Satisfied during Construction.

Construction of each Sewer Collection Facility shall be on a five (5) day, forty (40) hour workweek with no work on Saturday, Sunday or days designated by the County as legal holidays, unless otherwise approved by the County. If the Property Owner feels it is necessary to work more than normal forty (40) hour workweek or on holidays, the Property Owner shall make a written request for permission from the County and the City to work the additional hours. The request shall be submitted to the County and the City at least 72 hours prior to the request date for additional work hours and state the reasons for the overtime and the specific time frames required. The decision granting permission for overtime work shall be made by the County and the City at their sole discretion and shall be final. If permission is granted, the Property Owner will be charged the cost incurred at the overtime rates for additional inspection time required in connection with the overtime work in accordance with Ordinances Nos. 671 and 749 of the County, including any amendments thereto.

Section 4.10. Inspection; Completion of Construction. The Property Owner shall coordinate with the City Engineer for the inspection of the construction of the Sewer Collection Facilities to ensure that the work of construction is accomplished in accordance with the Plans and Specification approved by both the County and the City Engineer. Those individuals designated by the County and the City Engineer shall have access to the Construction Site at all reasonable times for the purpose of accomplishing such inspection. However, consistent with the terms of the Operation and Maintenance Agreement, the City Engineer shall perform the final inspection before the construction of each Sewer Collection Facility is to be considered complete and acceptable to the City for operation and maintenance.

The Property Owner is to provide the County and the City Engineer with written notice that it considers construction of a Sewer Collection Facility to have been completed consistent with the Plans and Specifications and, upon receipt of said notice, those individuals designated by the County and the City Engineer to inspect the Sewer Collection Facility will provide written confirmation that construction of said Facilities are complete consistent with the approved Plans and Specifications and the provisions of the Sewer Agreements and this Joint Community Facilities Agreement. Upon receipt of written notices from both the County and the City Engineer, the Contract Administrator will in a timely manner notify the Property Owner and the Administrator that the Sewer Collection Facility has been satisfactorily completed and that the Property Owner is to proceed with the recording of a Notice of Completion with respect to such construction pursuant to Section 3093 of the California Civil Code. The Property Owner is to provide a duplicate copy of the recorded Notice of Completion to the Administrator, the Contract Administrator, the County, and the City Engineer. Within a reasonable time following receipt of the duplicate copies of the recorded Notice of Completion and the Property Owner's compliance with other provisions of Section 3.2., hereof, the County will issue the written notice required by said Section 3.2. that the County will accept ownership of the Sewer Collection Facility and the City Engineer will issue the written notice required by said Section 3.2. that the City will accept responsibility for the maintenance and operation of the Sewer Collection Facility.

Section 4.11. Maintenance of Sewer Collection Facility; Warranties.

Consistent with the applicable provision of the Sewer Agreements, the Property Owner shall maintain each Sewer Collection Facility in good and safe condition until the Acceptance Date of the Sewer Collection Facility consistent with the applicable provisions of the Sewer Agreements. After the Acceptance Date, the City shall assume full responsibility for the maintenance and operation of the Sewer Collection Facility pursuant to the Operation and Maintenance Agreement.

As of the Acceptance Date, the performance bond provided by each of the principal contracts for the Sewer Collection Facility pursuant to Section 4.4.(e), hereof, shall be reduced to an amount equal to 10% of the original amount thereof and shall serve as a warranty bond to guarantee that the Sewer Collection Facility will be free from defects due to faulty workmanship or materials for a period of 12 months from the Acceptance Date, or the appropriate principal contractor may elect to provide a new warranty bond or cash in such an amount. As of the Acceptance Date, the Property Owner and each principal contractor shall assign to County all of their rights in any warranties, guarantees, maintenance obligations or other evidence of contingent obligations of third persons with respect to the Sewer Collection Facility.

Section 4.12. Insurance Requirements. Without limiting or diminishing the Property Owner's obligation to indemnify or hold the County, the School District and the Community Facilities District, when formed, harmless pursuant to Section 5.5., hereof, the Property Owner shall procure and maintain or cause to be procured and maintained, at its sole cost and expense those types of insurance specified in the Sewer Installation Agreement and at the amounts specified, during the term of this Joint Community Facilities Agreement. The County, the School District, the Community Facilities District, their respective directors, officers, Board of Supervisors, Board of Education,

Legislative Body, elected officials, employees, agents or representatives are to be named as "Additional Insureds."

Section 4.13. Ownership of Sewer Collection Facilities. Notwithstanding the fact that some or all of the Sewer Collection Facilities may be constructed within dedicated street rights-of-way or on property which is owned by or has been or will be dedicated to the County, a Sewer Collection Facility shall be and remain the property of the Property Owner until Acceptable Title to parcels not owned by the County with respect to such Sewer Collection Facility is conveyed to the County as provided herein, and such Sewer Collection Facility has been formally accepted by the County for ownership and the City for operation and maintenance. Ownership of said parcels by the Property Owner or other third parties shall likewise not be affected by any agreement that the Property Owner 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.

ARTICLE V

REPRESENTATIONS, WARRANTIES, COVENANTS, INDEMNIFICATION

Section 5.1. Representations, Warranties and Covenants of the Property Owner. The Property Owner, as the owner of the Tracts encompassed within the proposed boundaries of the Community Facilities District, makes the following representations, warranties and covenants for the benefit of the County, the School District, and the Community Facilities District, when formed, as of the date hereof:

(a) Organization. The Property Owner represents and warrants that it is a limited liability company duly organized and validly existing under the laws of the State of Delaware, is in good standing under the laws of the State, 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 in this Community Facilities District.

(b) Authority. The Property Owner represents and warrants that it has the power and authority to enter into this Joint Community Facilities Agreement and the Sewer Installation Agreement, and has taken all action necessary to cause this Joint Community Facilities Agreement and the Sewer Installation Agreement to be executed and delivered, and this Joint Community Facilities Agreement and the Sewer Installation Agreement have been duly and validly executed and delivered on behalf of the Property Owner.

(c) Binding Obligation. The Property Owner represents and warrants that this Joint Community Facilities Agreement and the Sewer Installation Agreement are valid and binding obligations of the Property Owner and are enforceable against the Property Owner in accordance with their 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 Sewer Collection Facilities. The Property Owner covenants that it will use its commercially reasonable and diligent efforts to do all things that may be lawfully required of it in order to cause the Sewer Collection Facilities the construction of which has been made a condition for the development of the Tracts to be completed in accordance with this Joint Community Facilities Agreement and the Sewer Installation Agreement.

(e) Compliance with Laws. The Property Owner covenants that, while the Sewer Collection Facility is owned by the Property Owner or required pursuant to this Joint Community Facilities Agreement and the Sewer Agreements to be maintained by it, the Property Owner 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 Sewer Collection Facility 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 Sewer Collection Facility.

(f) Hazardous Materials. The Property Owner represents and warrants that neither the Property Owner, nor its principal contractors or any subcontractor, agent or employee thereof will use, generate, manufacture, procure, store, release, discharge or dispose of any Hazardous Material on, under or about the Construction Site of the Sewer Collection Facility or transport any Hazardous Material to or from the Construction Site of the Sewer Collection Facility in violation of any federal, state or local law, ordinance, regulation, rule, decision or policy statement regulating Hazardous Material.

(g) Permits. The Property Owner covenants that it will pursue in a commercially reasonable manner all governmental or other permits or licenses required to proceed with the construction of the Sewer Collection Facility and that it will pay all fees relating thereto. The Property Owner represents and warrants that to the best of the Property Owner's knowledge, as of the date hereof, there is no material legal impediment to the Property Owner's proceeding with and completing the construction of the Sewer Collection Facility or to the development of the Construction Site as contemplated by the Property Owner, except for government or other permits to be obtained.

(h) Payment Requests. The Property Owner represents and warrants that (i) it will not request payment from the Community Facilities District under this Joint Community Facilities Agreement for the acquisition of any improvements that are not part of a Sewer Collection Facility, and (ii) it will diligently follow all procedures set forth in this Joint Community Facilities Agreement.

(i) Financial Records. Until the determination of the Purchase Price of all Sewer Collection Facility to be financed by the Community Facilities District, the Property Owner covenants to maintain proper books of record and account for the Sewer Collection Facility and all costs related thereto. The Property Owner covenants that such accounting books will be maintained in accordance with generally accepted accounting principles, and will be available for inspection by the Community Facilities District, the School District, the City, and the County and their respective agents, at any reasonable time during regular business hours on two (2) Business Days' prior written notice, subject to mutually acceptable arrangements regarding the confidentiality of proprietary data.

(j) CEQA Compliance. The Property Owner represents and warrants that it has taken all actions required of it under the terms of the Sewer Installation Agreement to secure compliance under CEQA for the construction, maintenance and operation of the Sewer Collection Facilities.

(k) Property Owner's Responsibilities. Whether or not a portion of the Sewer Collection Facility is acquired from the proceeds of the Bonds, the Property Owner accepts responsibility for and shall be responsible for identification and compliance with all applicable laws pertaining to constructing and installing the Sewer Collection Facility and the contract or contracts

pertaining thereto, including the laws that would apply to the County and/or the City if either of them were constructing the Sewer Collection Facility itself as set forth in this Joint Community Facilities Agreement. Notwithstanding the requirements of this Joint Community Facilities Agreement the County, the School District, and the Community Facilities District make no representation as to the applicability or inapplicability of any laws regarding contracts, including contracts related to the construction and installation of the Sewer Collection Facility, and especially the matters of competitive bidding and payment of prevailing wages. Any of the County, the School District or the Community Facilities District may, in its sole discretion, supply guidance to the Property Owner with respect to laws governing the construction of the Sewer Collection Facility if requested to do so by the Property Owner. Whether or not any or all of them have done so, the Property Owner will neither seek to hold or hold them liable for any consequences of any failure by the Property Owner to correctly determine applicability of any such requirements to any contract it enters into, irrespective of whether the County, the School District, or the Community Facilities District, as the case may be, knew or should have known about applicability of any such requirement.

Section 5.2. Representations, Warranties and Covenants of the School District. The School District makes the following representations, warranties and covenants for the benefit of the County, the Property Owner and the Community Facilities District, when formed, as of the date hereof:

(a) **Authority.** The School District represents and warrants that the School District has the power and authority to enter into this Joint Community Facilities Agreement, and has taken all actions necessary to cause this Joint Community Facilities Agreement to be executed and delivered, and this Joint Community Facilities Agreement has been duly and validly executed and delivered on behalf of the School District.

(b) **Binding Obligation.** The School District represents and warrants that this Joint Community Facilities Agreement is a valid and binding obligation of the School District and is enforceable against the School District 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) **Payment Requests.** The School District represents and warrants that the School District will cause the Community Facilities District to process all completed and approved Payment Requests it receives in a timely manner consistent with the procedures set forth in this Joint Community Facilities Agreement and the Mitigation Agreement.

(d) **Financial Records.** The School District covenants to maintain, or cause to be maintained, books of record and account for the special taxes and each series of Bonds, including the proceeds thereof.

Section 5.3. Representations, Warranties and Covenants of the County. The County makes the following representations, warranties and covenants for the

benefit of the School District, the Property Owner and the Community Facilities District, when formed, as of the date hereof:

(a) Authority. The County represents and warrants that the County has the power and authority to enter into this Joint Community Facilities Agreement, the Sewer Installation Agreement and the Operation and Maintenance Agreement and has taken all actions necessary to cause this Joint Community Facilities Agreement, the Sewer Installation Agreement and the Operation and Maintenance Agreement to be executed and delivered, and this Joint Community Facilities Agreement, the Sewer Installation Agreement and the Operation and Maintenance Agreement have been duly and validly executed and delivered on behalf of the County.

(b) Binding Obligation. The County represents and warrants that this Joint Community Facilities Agreement, the Sewer Installation Agreement and the Operation and Maintenance Agreement are valid and binding obligations of the County and are enforceable against the County in accordance with their terms, subject to bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights in general and by general equity principles.

(c) CEQA Compliance. The County represents and warrants that it has taken all actions necessary under CEQA to allow for the development of the Tracts and the construction, operation and maintenance of the Sewer Collection Facilities.

(d) Completion of Sewer Collection Facilities. The County covenants that it will use its reasonable and diligent efforts to take expeditiously all actions that may be lawfully required of it in processing and approving Plans and Specifications, reviewing and approving rights-of-way documents, inspecting a Sewer Collection Facility and serving as Contract Administrator in accordance with this Joint Community Facilities Agreement, the Sewer Installation Agreement and the Operation and Maintenance Agreement.

(e) Payment Requests. The County represents and warrants that it will cause the Contract Administrator to process all complete Payment Requests it receives in a timely manner consistent with the procedures set forth in this Joint Community Facilities Agreement.

Section 5.4. The Property Owner Indemnification. The Property Owner, with regard to its respective responsibilities under this Joint Community Facilities Agreement, agrees to protect, indemnify, defend and hold the School District, the Community Facilities District, when formed, the County and their respective directors, officers, Board of Supervisors, Board of Education, Legislative Body, elected officials, employees, representatives and agents (the "Indemnified Parties"), and each of them, harmless from and against any and all claims, liabilities, losses, expenses, suits, actions, decrees, judgments, awards, reasonable attorneys' fees, and court costs which the Indemnified Parties, or any combination thereof, may suffer or which may be sought against or recovered or obtained from the Indemnified Parties, or any combination thereof, as a result of, or by reason of, or arising out of, or in consequence of (a) the approval of this Joint Community Facilities Agreement, (b) the acquisition, construction, or installation of the Sewer Collection Facilities, (c) the design, construction, or failure of

the Sewer Collection Facilities, (d) the untruth or inaccuracy of any representation or warranty made by the Property Owner in this Joint Community Facilities Agreement or in any certifications delivered by the Property Owner hereunder, or (e) any act or omission of the Property Owner or any of its contractors, subcontractors, or their respective officers, employees or agents, in connection with the Sewer Collection Facilities or its responsibilities or obligations under this Joint Community Facilities Agreement. If the Property Owner fails to do so, the Indemnified Parties, or each of them, 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 reasonable attorneys' fees or court costs, to and recover the same from the Property Owner.

No indemnification is required to be paid by the Property Owner as to an Indemnified Party for any claims, losses, liabilities, expenses, suits, actions, decrees, judgments, awards, reasonable attorney's fees, and court costs (a) arising directly from the willful misconduct or sole or active negligence of that Indemnified Parties or (b) arising from the use or operation of a Sewer Collection Facility after the Acceptance Date of the Sewer Collection Facility, unless such claims, losses, liabilities, expenses, suits, actions, decrees, judgments, awards, reasonable attorney's fees, and court costs result from the defective or improper design, construction or installation of such Sewer Collection Facility by the Property Owner or its contractors, subcontractors, or respective officers, employees or agents.

The provisions of this Section shall survive the termination of this Joint Community Facilities Agreement.

ARTICLE VI

MISCELLANEOUS

Section 6.1. Property Owner as Independent Contractor. In performing under this Joint Community Facilities Agreement, it is mutually understood that the Property Owner is acting as an independent contractor, and not as an agent of the School District, the Community Facilities District, or the County. None of the School District or the County shall have any responsibility for payment to any contractor, subcontractor or supplier of the Property Owner. The Community Facilities District shall not have any responsibility for payment to any contractor, subcontractor or supplier of the Property Owner unless such entity or individual is specifically listed as a payee on the Payment Request submitted by said Property Owner pursuant to this Joint Community Facilities Agreement in which case the Community Facilities District shall be responsible for making such payment only if such Payment Request is approved pursuant to the provisions of this Joint Community Facilities Agreement and the Mitigation Agreement and only from funds available in the applicable Sewer Collection Facilities Accounts.

It is not intended by the parties that this Joint Community Facilities Agreement create a partnership or joint venture among them and this Joint Community Facilities Agreement shall not otherwise be construed.

Section 6.2. Other Agreements. Nothing contained herein shall be construed as affecting the School District's, the County's, or the Property Owner's respective duty to perform its respective obligations under other agreements, land use regulations or subdivision requirements relating to the development of the Tracts, which obligations are and shall remain independent of the Property Owner's rights and obligations, the School District's rights and obligations, and the County's rights and obligations, under this Joint Community Facilities Agreement; provided, however, that the Property Owner shall use its commercially 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 Sewer Collection Facility to be financed with the proceeds of the Bonds.

Section 6.3. Binding on Successors and Assigns. The Property Owner may assign its duties and obligations pursuant to this Joint Community Facilities Agreement to one or more purchasers of its property, except the purchaser of a single-family residential unit, the owner of a multi-family residential complex or the end user of a non-residential parcel, and to whom said Property Owner shall assign the right to receive payment of the Purchase Price for the Sewer Collection Facility. Such a purchaser and assignee shall, as a condition to receiving payment of the Purchase Price, enter into an assignment agreement with the County, the School District and the Community Facilities District, in a form acceptable to the County, the School District and the Community Facilities District, whereby such purchaser agrees, except as may be otherwise specifically provided therein, to assume the duties and obligations of the Property Owner pursuant to this Joint Community Facilities Agreement and to be bound thereby. Neither this Joint Community Facilities Agreement nor the duties and obligations of the County,

the School District or the Community Facilities District hereunder may be assigned to any person or legal entity, without the written consent of the Property Owner, 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 6.4. Amendments. This Joint Community Facilities Agreement can only be amended by an instrument in writing executed and delivered by the Community Facilities District, once formed, the School District, the County and the Property Owner or successor thereto.

Section 6.5. Waivers. No waiver of, or consent with respect to, any provision of this Joint Community Facilities 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 6.6. No Third Party Beneficiaries. Other than the Community Facilities District, when formed, no person or entity shall be deemed to be a third party beneficiary hereof, and nothing in this Joint Community Facilities Agreement (either expressed or implied) is intended to confer upon any person or entity, other than the School District, the Community Facilities District, when formed, the County, and the Property Owner (and its respective successors and assigns), any rights, remedies, obligations or liabilities under or by reason of this Joint Community Facilities Agreement.

Section 6.7. 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 of Riverside
C/O Economic Development Agency
Attn: Tina English
1325 Spruce Street, Suite 400
Riverside, California 92507
Telephone: (951) 955-8916
Fax: (951) 955-6686

School District: Riverside Unified School District
3070 Washington Street
Riverside, California 92504
Attention: Director of Planning and Development
Telephone: (951) 788-7554
Fax: (951) 275-9349

Property Owner: SMR Ventures, LLC
c/o Troxler Residential Ventures XII, LLC
2053 North Parkway Calabasas
Calabasas, California 91302

Attention: Nicholas Biro
Telephone: (818) 876-9651
Fax: (818) 876-9751

With a copy to:

RWR Homes, Inc.
2710 Locker Avenue West, Suite 350
Carlsbad, California 92010
Attention: Bob Turi
Telephone: (760) 918-6797
Fax: (760) 918-6798

With a copy to:

RWR Homes, Inc.
575 Anton Blvd., Suite 820
Costa Mesa, California 92626
Attention: Ryan Ellis
Telephone: (714) 852-5656, Ext. 201
Fax: (714) 852-5650

With a copy to:

Goodwin Procter LLP
10250 Constellation Blvd., 21st Floor
Los Angeles, California 90067
Attention: Robert M. Haight, Jr., Esq.
Telephone: (310) 788-5150
Fax: (310) 286-0992

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 telecopier, upon the sender's receipt of a document confirming satisfactory transmission, (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 6.8. Jurisdiction and Venue. Each of the Community Facilities District, the School District, the County, and the Property Owner (a) agrees that any suit action or other legal proceeding arising out of or relating to this Joint Community Facilities Agreement shall be brought in state or local court in the County of Riverside or 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 Community Facilities District, the School District, the County and the Property Owner 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 6.9. Attorney's Fees. If any action is instituted to interpret or enforce any of the provisions of this Joint Community Facilities Agreement, the party prevailing in such action shall be entitled to recover from the other parties thereto reasonable attorney's fees and costs of such suit (including both prejudgment and post judgment fees and costs) as determined by the court as part of the judgment.

Section 6.10. Governing Law. This Joint Community Facilities Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State applicable to contracts made and performed in the State.

Section 6.11. Severability. If any part of this Joint Community Facilities Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Joint Community Facilities Agreement shall be given effect to the fullest extent reasonably possible.

Section 6.12. 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 6.13. Counterparts. This Joint Community Facilities Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 6.14. Interpretation. The parties to this Joint Community Facilities Agreement and their counsel have reviewed and revised this Joint Community Facilities 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 Joint Community Facilities Agreement.

Section 6.15. Designation of Party's Representative. Each party is to prepare a certificate designating the person or persons that are to serve as the liaison between, the County, and the Community Facilities District, regarding design, engineering and construction of the Sewer Collection Facilities. The certificates are to contain an original and specimen signature of each designated person. The certificates are to be provided to the County, and the Community Facilities District at the time the first series of Bonds are issued.


Section 6.16. Nature of Agreement; Allocation of Special Taxes. This Joint Community Facilities Agreement shall constitute a joint community facilities agreement entered into pursuant to Sections 53316.2, 53316.4 and 53316.6 of the Code. The entire amount of the proceeds of the special taxes levied pursuant to each Rate and Method shall be allocated and distributed to the Community Facilities District.

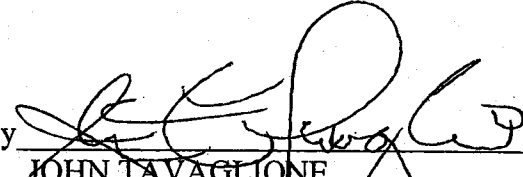
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IN WITNESS WHEREOF, the parties hereto have executed this Joint Community Facilities Agreement as of the day and year first herein above written.

RECOMMENDED FOR APPROVAL:

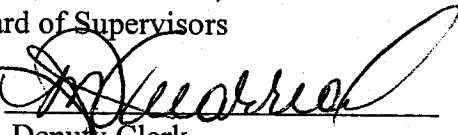
COUNTY OF RIVERSIDE

By: 
ROBIN ZIMPFER
Assistant County Executive
Officer/EDA

By: 
JOHN TAVAGLIONE
Chairman, Board of Supervisors

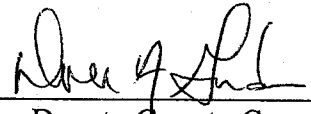
ATTEST:

NANCY ROMERO, Clerk to the Board of Supervisors

By: 
Deputy Clerk

APPROVED AS TO FORM:

JOE S. RANK
County Counsel

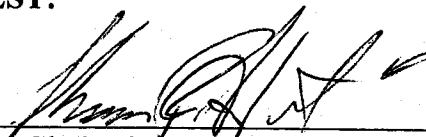
By: 
Deputy County Counsel

Dale A. Gardner

RIVERSIDE UNIFIED SCHOOL DISTRICT

By: 
President of the Board of Education

ATTEST:

By: 
Clerk of the Board of Education

[Signatures continued on next page.]

SMR VENTURES, LLC,
a Delaware limited liability company

By: SMR Mezzanine, LLC,
a Delaware limited liability company,
its sole member

By: Troxler Residential Ventures XII, LLC,
a Delaware limited liability company,
its Managing Member

By: Troxler Ventures Partners, Inc.,
a California corporation
its Operating Member

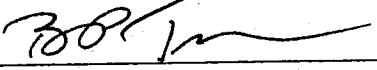
By: 
Bryan P. Troxler
President

EXHIBIT A

**Map of Area Proposed to be Included Within
Community Facilities District No. 23
of Riverside Unified School District**

[See Attached Map]

EXHIBIT B

SEWER COLLECTION FACILITIES

**Community Facilities District No. 23
of Riverside Unified School District**

FACILITY	SEGMENT	DESCRIPTION
1.	A	<p>Pigeon Pass Road East From Station 0+00.00 to 46+67.67, Pigeon Pass Road West From Station 1+00.00 to 11+26.80; Line B From Station 10+00.00 to 12+00.16; Line B Park From Station 10+00.00 to 12+25.00; Line C From Station 0+00.00 to 10+42.16; Future Grazing Lane From Station 0+00.00 to 2+56.11.</p> <p>Installation of 8" Diameter and 12" Diameter Sewer Mains Including but not limited to Manholes, Cleanouts, Laterals, Sleeves, Connections, and appurtenances.</p>
2.	B	<p>Mount Vernon Road From Station 0+00 to 10+51.07 and 0+00 to 12+77.14; Line R From Station 0+00.00 to 0+56.00 and 0+00.00 to 0+44.00; Line S From Station 0+00.00 to 0+44.00; Line T From Station 0+00.00 to 0+44.00.</p> <p>Installation of 8" Sewer Mains Including but not limited to Manholes, Cleanouts, Sleeves, Connections and appurtenances.</p>
3.	C	<p>Palmyrita Avenue From Station 74+47.29 to 83+54.05, and 72+45.22 to 77+53.19; Line U From 0+00.00 to 0+39.00; Line V From Station 0+00.00 to 0+27.00; Line W From Station 0+00.00 to 0+39.00.</p> <p>Installation of 8" Sewer Mains and 10" Sewer Mains Including but not limited to Manholes, Cleanouts, Laterals, Sleeves, Connections and appurtenances.</p>
4.	D	<p>Future Prairie Drive From Station 0+00 to 11+11.27; Future Barrel Road From 0+00.00 to 0+91.42; Sewer Line L From Station 1+00.00 to 2+90.16; Spring Street West from Station 0+00.00 to 23+63.00; Lines M 0+00 to 0+10; N 0+00 to 0+24; O 0+00 to 0+24; P 0+00 to 0+27 and Q 0+00 to 0+27.</p> <p>Installation of 8" Sewer Mains and 10" Sewer Mains Including but not limited to Manholes, Cleanouts, Laterals, Sleeves, Connections and appurtenances.</p>
5.	E	<p>Spring Mountain Road From Station 00+00.00 to 10+91.90 and 0+00 to 20+38.31; Lyon Road From Station 0+00.00 to 5-67.37; Future Stockyard Road Line I From Station 0+00.00 to 1+55.56; Future Lost Creek Road From Station 0+00.00 to 0+26.33; Future Center Street West From Station 0+26.00 to 3+77.29, and Lines H 0+00 to 0+27 and J 0+00 to 0+24.</p>

		Installation of 8" Sewer Mains Including but not limited to Manholes, Cleanouts, Laterals, Sleeves, Connections and appurtenances.
6.	F	Pigeon Pass Road Sewer Lift Station at Station 23+63. Installation of Pigeon Pass Road Sewer Lift Station including but not limited to Site Grading, Site Access Road, Masonry Block Walls, Fencing with Gates and Accessories, Wet Well Valve Vault Structures, Access Doors, Miscellaneous Concrete Work, Piping, Valves, Appurtenant Earthwork, Pumps, Electric Motors, Electric and Telemetry Systems, and Portable Diesel Fuel Emergency Electric Generating System.
7.	G	Stockyard Road (West) From Station 1+65.00 to 15+13.82; Stockyard Road (East) From Station 24+50.00 to 32+32.98; Stockyard Road From Station 18+79.55 to 24+51.11; Center Street From Station 3+77.29 to Tract Boundary. Installation of 8" Sewer Mains and 10" Sewer Mains Including but not limited to Manholes, Cleanouts, Laterals, Sleeves, Connections and appurtenances.
8.	H	Grazing Lane From Station 2+56.11 to 24+38.41. Installation of 8" Sewer Mains and 10" Sewer Mains Including but not limited to Manholes, Cleanouts, Laterals, Sleeves, Connections and appurtenances.
9.	I	Spring Street From Station 0+00.00 to 18+79.55; Smokestack Road From Station 9+59.62 to 11+30.09; Hearst Street From Station 10+00.00 to 19+48.13; Stockyard Road From Station 40+12.57 to 44+94.21; Center Street From Station 73+34.69 to Station 76+84.69. Installation of 8" Sewer Mains and 10" Sewer Mains Including but not limited to Manholes, Laterals, Sleeves, Connections and appurtenances.
10.	J	Spring Mountain Road From Station 8+49.46 to 44+06.51; Lost Creek Road from Station 15+36.62 to 41+45.52; Mountain Gate Road From Station 10+00.00 to 15+36.04; Booker Road From 10+32.79 to 17+37.20. Installation of 8" Sewer Mains and 10" Sewer Mains Including but not limited to Manholes, Cleanouts, Laterals, Sleeves, Connections and appurtenances
11.	K	Lost Creek Road From Station 41-45.52 to 50+80.07. Installation of 8" Sewer Mains and 10" Sewer Mains Including but not limited to Manholes, Cleanouts, Laterals, Sleeves, Connections and

		appurtenances.
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EXHIBIT C
PAYMENT BOND

(Public Work - Civil Code Section 3247 *et seq.*)

The makers of this Bond are _____ as Principal and Original Contractor and _____, a corporation, authorized to issue Surety Bonds in California, as Surety, and this Bond is issued in conjunction with that certain public works contract dated as of _____, 200_, between Principal, _____, as owner, for _____ dollars (\$ _____) the total amount payable. THE AMOUNT OF THIS BOND IS 100% OF SAID SUM. Said contract is for public work of those certain Sewer Collection Facilities as defined and described in said agreement entitled: "Joint Community Facilities Agreement by and among Riverside Unified School District, a unified school district of the State of California, County of Riverside, a political subdivision of the State of California and SMR Ventures, LLC, a Delaware limited liability company" dated as of June 26, 2007.

The beneficiaries of this Bond are as is stated in 3248 of the Civil Code and the requirements and conditions of this Bond are as is set forth in Sections 3248, 3249, 3250 and 3252 of said Code. Without notice, Surety consents to extension of time for performance, change in requirements, amount of compensation, or prepayment under said Contract.

Signed and Sealed this _____ Day of _____ 200__

(Firm Name - Principal)

(Business Address)

Affix Seal
if
Corporation

By: _____

(Signature - Attach Notary's Acknowledgment)

(Title)

(Corporation Name - Surety)

(Business Address)

Affix
Corporate
Seal

By: _____

(Signature - Attached Notary's Acknowledgment)

ATTORNEY-IN-FACT
(Title-Attach Power of Attorney)

PERFORMANCE BOND

The makers of this Bond, _____ as Principal, and _____ as Surety, are held and firmly bound unto _____, hereinafter called the Owner, and unto the County of Riverside, the Riverside Unified School District, and Community Facilities District No. 23 of the Riverside Unified School District as additional obligees, in the sum of _____ Dollars (\$ _____) for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

The condition of this obligation is such, that whereas the Principal entered into a certain contract, hereto attached, with the Owner, dated as of _____, 200_ for those certain Sewer Collection Facilities as defined and described in said agreement entitled: "Joint Community Facilities Agreement by and among Riverside Unified School District, a unified school district of the State of California, County of Riverside, a political subdivision of the State of California and SMR Ventures, LLC, a Delaware limited liability company" dated as of June 26, 2007.

Now therefore, if the Principal shall well and truly perform and fulfill all the undertakings covenants, terms, conditions and agreements of said Contract during the original term of said Contract and any extension thereof that may be granted by the Owner, with or without notice to the Surety, and during the file of any guarantee required under the Contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said Contract that may thereafter be made, then this obligation to be void, otherwise to remain in full force and virtue. Without notice, Surety consents to extension of time for performance, change in requirements, change in compensation or prepayment under said Contract.

Signed and Sealed this _____ Day of _____, 200_

(Firm Name - Principal)

(Business Address)

Affix Seal
if
Corporation

By: _____
(Signature - Attach Notary's Acknowledgment)

(Title)

(Corporation Name - Surety)

(Business Address)

Affix
Corporate
Seal

By: _____
(Signature - Attach Notary's Acknowledgment)

ATTORNEY-IN-FACT
(Title-Attach Power of Attorney)

EXHIBIT D

FORM OF PAYMENT REQUEST

Community Facilities District No. 23 of Riverside Unified School District

_____, hereby requests payment of the Purchase Price for the Sewer Collection Facility described in Attachment A attached hereto. Capitalized undefined terms shall have the meanings ascribed thereto in this Joint Communities Facilities Agreement, dated as of June 26, 2007 (the "Joint Community Facilities Agreement"), by and among Riverside Unified School District, a unified school district of the State of California (the "School District"), County of Riverside, a political subdivision of the State of California (the "County") and SMR Ventures, LLC, a Delaware limited liability company (the "Property Owner"). In connection with this Payment Request, the undersigned hereby represents and warrants to the Contract Administrator as follows:

1. The undersigned has been authorized by the Property Owner and is qualified to execute this request for payment on behalf of the Property Owner and is knowledgeable as to the matters set forth herein.
2. The Property Owner has submitted or submits herewith to the Contract Administrator and the County Engineer as-built drawings or similar Plans and Specifications for the Sewer Collection Facility for which payment is requested, and such drawings or plans and specifications, as applicable, are true, correct and complete.
3. The Sewer Collection Facility has been constructed in accordance with the Plans and Specifications therefor, and in accordance with all applicable standards of the City and the County and the requirements of this Joint Community Facilities Agreement, and the as-built drawings or similar Plans and Specifications referenced in paragraph 2 above.
4. There has not been filed with or served upon the Property Owner notice of any lien, right to lien or attachment upon, or claim affecting the right to receive the payment requested herein which has not been released or will not be released simultaneously with the payment of such obligation, other than material men's or mechanics' liens accruing by operation of law. Copies of lien releases for all work for which payment is requested hereunder are attached hereto.
5. The representations and warranties of the Property Owner set forth in Section 5.1 of the Joint Community Facilities Agreement are true and correct on and as of the date hereof with the same force and effect as if made on and as of the date hereof.

I hereby declare under penalty of perjury that the above representations and warranties are true and correct.

Date: _____

Property Owner

By: _____
Authorized Representative

ATTACHMENT A PAYMENT REQUEST - ACTUAL COSTS

Property Owner is to complete Columns 1 through 7

CFD/Improvement Area/Tract Number: _____
 Facility Description: _____

1 Bid Item No.	2 Bid Item Description	3 Unit of Measure	4 Unit Price	5 Original Contract Quantity	6 Quantity Invoiced	7 Amount Invoiced	8 Quantity Calculated By Flood District	9 Amount Calculated By Flood District	10 Difference	11 Actual Cost
1			0.00	0	0	0.00	0	0.00	0.00	0.00
2			0.00	0	0	0.00	0	0.00	0.00	0.00
3			0.00	0	0	0.00	0	0.00	0.00	0.00
4			0.00	0	0	0.00	0	0.00	0.00	0.00
5			0.00	0	0	0.00	0	0.00	0.00	0.00
6			0.00	0	0	0.00	0	0.00	0.00	0.00
7			0.00	0	0	0.00	0	0.00	0.00	0.00
8			0.00	0	0	0.00	0	0.00	0.00	0.00
9			0.00	0	0	0.00	0	0.00	0.00	0.00
10			0.00	0	0	0.00	0	0.00	0.00	0.00
11			0.00	0	0	0.00	0	0.00	0.00	0.00
12			0.00	0	0	0.00	0	0.00	0.00	0.00
13			0.00	0	0	0.00	0	0.00	0.00	0.00
14			0.00	0	0	0.00	0	0.00	0.00	0.00
15			0.00	0	0	0.00	0	0.00	0.00	0.00
16			0.00	0	0	0.00	0	0.00	0.00	0.00
17			0.00	0	0	0.00	0	0.00	0.00	0.00
18			0.00	0	0	0.00	0	0.00	0.00	0.00
19			0.00	0	0	0.00	0	0.00	0.00	0.00
20			0.00	0	0	0.00	0	0.00	0.00	0.00
Total:										0.00

Amount Requested: _____

APPROVAL BY THE CONTRACT ADMINISTRATOR

The Contract Administrator confirms that the Sewer Collection Facility described in Attachment A-1 has been constructed in accordance with the Plans and Specifications therefor. The Actual Cost of each Sewer Collection Facility as described in Attachment A-1 has been reviewed, verified and approved by the Contract Administrator. The Purchase Price for said Sewer Collection Facility is established at \$ _____. Payment of the Purchase Price for the Sewer Collection Facility is hereby approved.

Date: _____

CONTRACT ADMINISTRATOR

By: _____

ATTACHMENT A-1 PAYMENT REQUEST - ACTUAL COSTS

Contract Administrator to complete Columns 8 through 11

CFD/Improvement Area/Tract Number: _____
 Facility Description: _____

1 Bid Item No.	2 Bid Item Description	3 Unit of Measure	4 Unit Price	5 Original Contract Quantity	6 Quantity Invoiced	7 Amount Invoiced	8 Quantity Calculated By Flood District	9 Amount Calculated By Flood District	10 Difference	11 Actual Cost
1			0.00	0	0	0.00	0	0.00	0.00	0.00
2			0.00	0	0	0.00	0	0.00	0.00	0.00
3			0.00	0	0	0.00	0	0.00	0.00	0.00
4			0.00	0	0	0.00	0	0.00	0.00	0.00
5			0.00	0	0	0.00	0	0.00	0.00	0.00
6			0.00	0	0	0.00	0	0.00	0.00	0.00
7			0.00	0	0	0.00	0	0.00	0.00	0.00
8			0.00	0	0	0.00	0	0.00	0.00	0.00
9			0.00	0	0	0.00	0	0.00	0.00	0.00
10			0.00	0	0	0.00	0	0.00	0.00	0.00
11			0.00	0	0	0.00	0	0.00	0.00	0.00
12			0.00	0	0	0.00	0	0.00	0.00	0.00
13			0.00	0	0	0.00	0	0.00	0.00	0.00
14			0.00	0	0	0.00	0	0.00	0.00	0.00
15			0.00	0	0	0.00	0	0.00	0.00	0.00
16			0.00	0	0	0.00	0	0.00	0.00	0.00
17			0.00	0	0	0.00	0	0.00	0.00	0.00
18			0.00	0	0	0.00	0	0.00	0.00	0.00
19			0.00	0	0	0.00	0	0.00	0.00	0.00
20			0.00	0	0	0.00	0	0.00	0.00	0.00

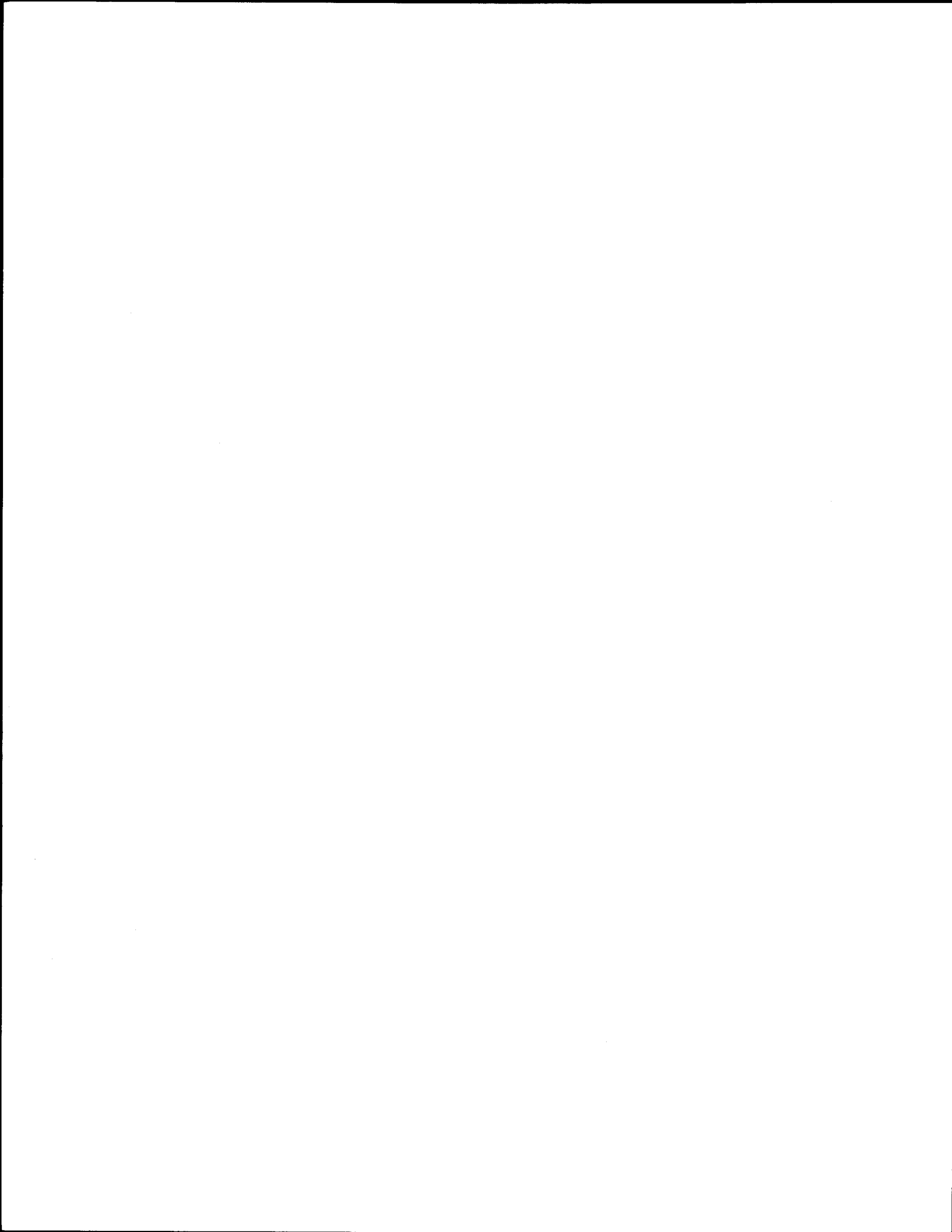
Total: 0.00 0.00 0.00 0.00

Amount Requested: _____

EXHIBIT B

ASSIGNMENT OF CONTRACTS

[See Attachment]



ASSIGNMENT OF CONTRACTS

THIS ASSIGNMENT OF CONTRACTS ("Assignment") is made this _____ day of _____, 20____, by and between SMR VENTURES, LLC, a Delaware limited liability company ("Assignor"), and SFI SMR LLC, a Delaware limited liability company ("Assignee").

RECITALS

A. Assignor is or was the owner of the property which is the subject of Riverside County Tract Map Nos. 29597, 29598, 29599, 29600, 29740 and 29741 ("Property"), providing for the development of approximately 1,461 proposed single family residential lots ("Spring Mountain Ranch").

B. Concurrently herewith, the Property is being transferred to Assignee by First American Title Insurance Company pursuant to that certain Trustee's Sale No. 08-24758 ("Transfer").

C. In connection with the Transfer, Assignor desires to assign to Assignee, and Assignee desires to assume from Assignor all of Assignor's rights and obligations under each of the contracts identified on Exhibit A attached hereto (the "Contracts"), in accordance with the terms and conditions set forth below.

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

1. Assignment. Assignor hereby assigns, sells and transfers to Assignee, all of Assignor's right, title and interest in the Contracts.

2. Representations and Warranties of Assignor. Assignor hereby represents and warrants to Assignee that as of the date of this Assignment:

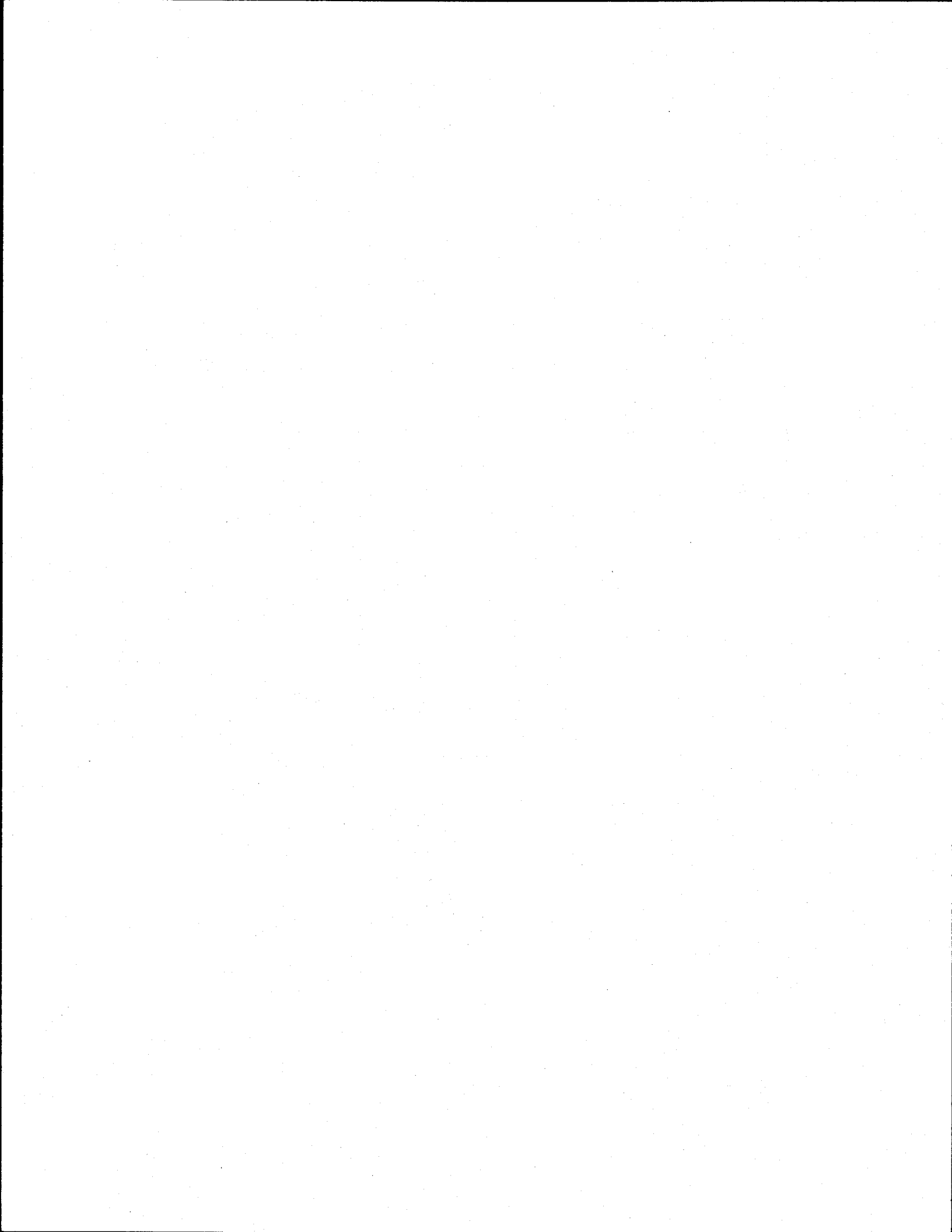
A. The Contracts are assigned to Assignee free and clear of all liens, claims or encumbrances;

B. Assignor is a party to the Contracts, and Assignor has the full power and authority to execute, deliver and perform its obligations under this Assignment; and

C. To Assignor's knowledge, neither the execution and delivery of this Assignment and the instruments to be executed or delivered by Assignor pursuant to this Assignment nor the consummation of the transaction contemplated herein conflict with or result in the material breach of the Contracts or any written agreement relating to the Contracts.

3. Acceptance of Contracts. Effective as of the date hereof, Assignee hereby accepts Assignor's assignment of the Contracts.

EXHIBIT 5 PAGE 53

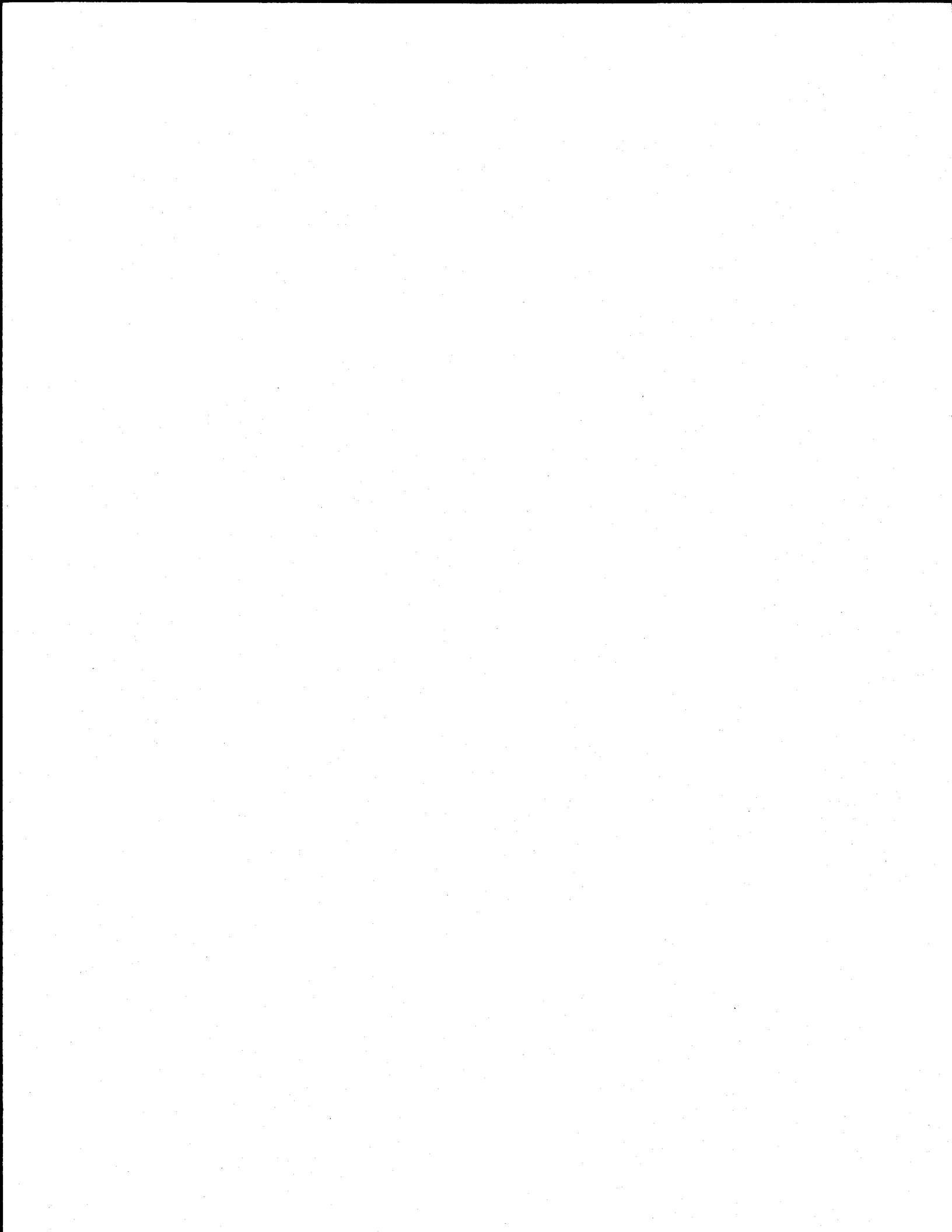


4. **Indemnification.** Assignor shall protect, indemnify, defend and hold Assignee free and harmless from and against any and all claims, damages, liens, liabilities, losses, costs and expenses, including reasonable attorneys' fees and court costs (collectively, "**Liabilities**"), resulting from or arising out of the inaccuracy of the foregoing representations and/or warranties of Assignor. Assignor's indemnification obligations set forth herein shall survive the transfer of the Contracts pursuant to this Assignment.

5. **Further Assurances.** Each of Assignor and Assignee agree to execute such further documents as the other may deem reasonably necessary or desirable to effectuate the purposes of this Assignment. Assignor and Assignee further hereby covenant and agree to reasonably cooperate with each other in order to effectuate the proposed transfer described herein.

6. **Miscellaneous.** There are no agreements, understandings, commitments, representations or warranties with respect to the subject matter hereof except as expressly set forth in this Assignment and the Contracts. This Assignment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. This Assignment shall be binding upon the parties and their heirs, representatives, executors, administrators, successors and assigns and shall inure to the benefit of the parties and to their respective heirs, representatives, executors, administrators, successors and assigns. This Assignment shall be governed by and construed in accordance with California law.

[Signatures on Following Page]



IN WITNESS WHEREOF, Assignor and Assignee do hereby execute this Assignment as of the date first written above.

ASSIGNOR:

SMR VENTURES, LLC, a Delaware limited liability company

ASSIGNEE:

SFI SMR LLC,
a Delaware limited liability company

By: _____
Name: _____
Its: _____

*RECEIVED, SOLELY
IN THAT CAPACITY*

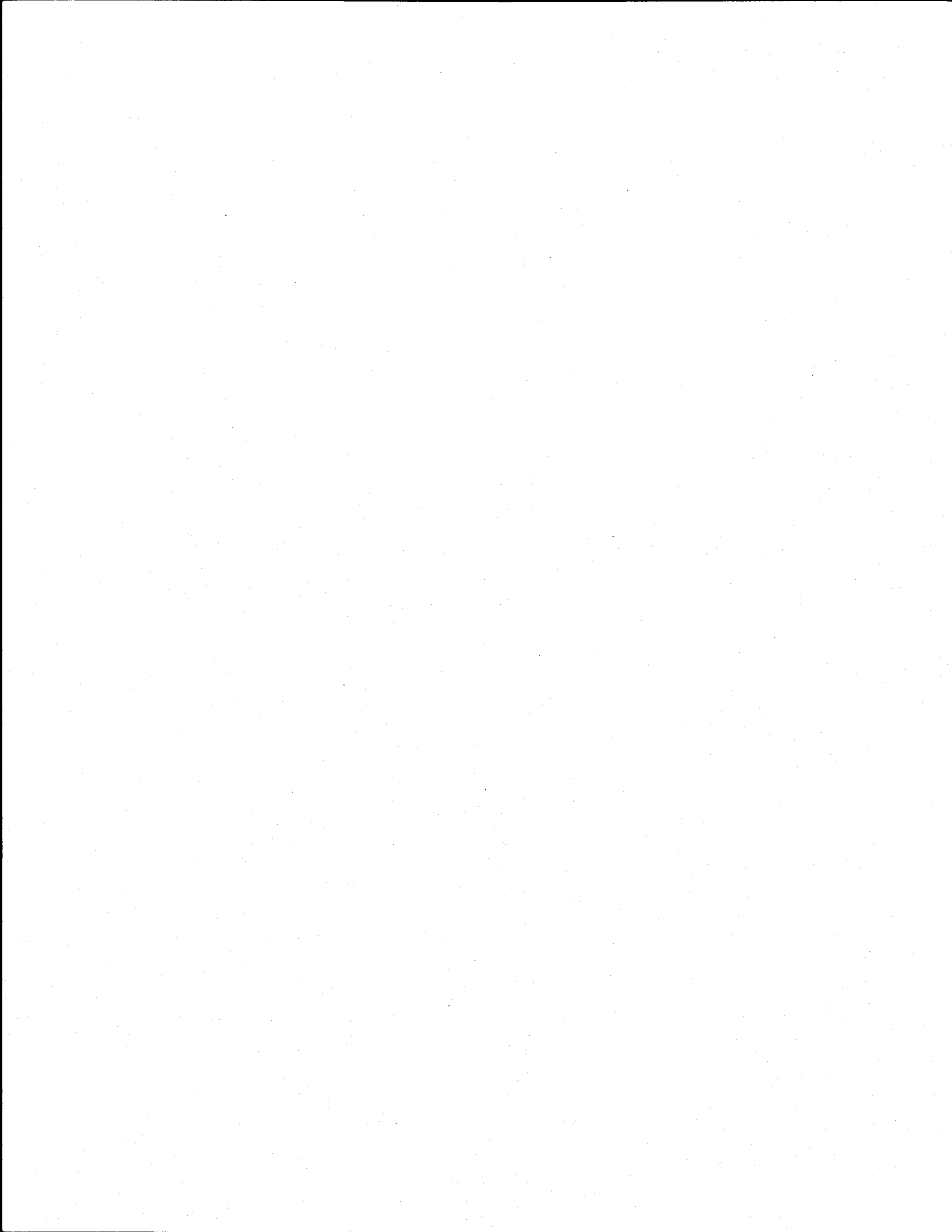
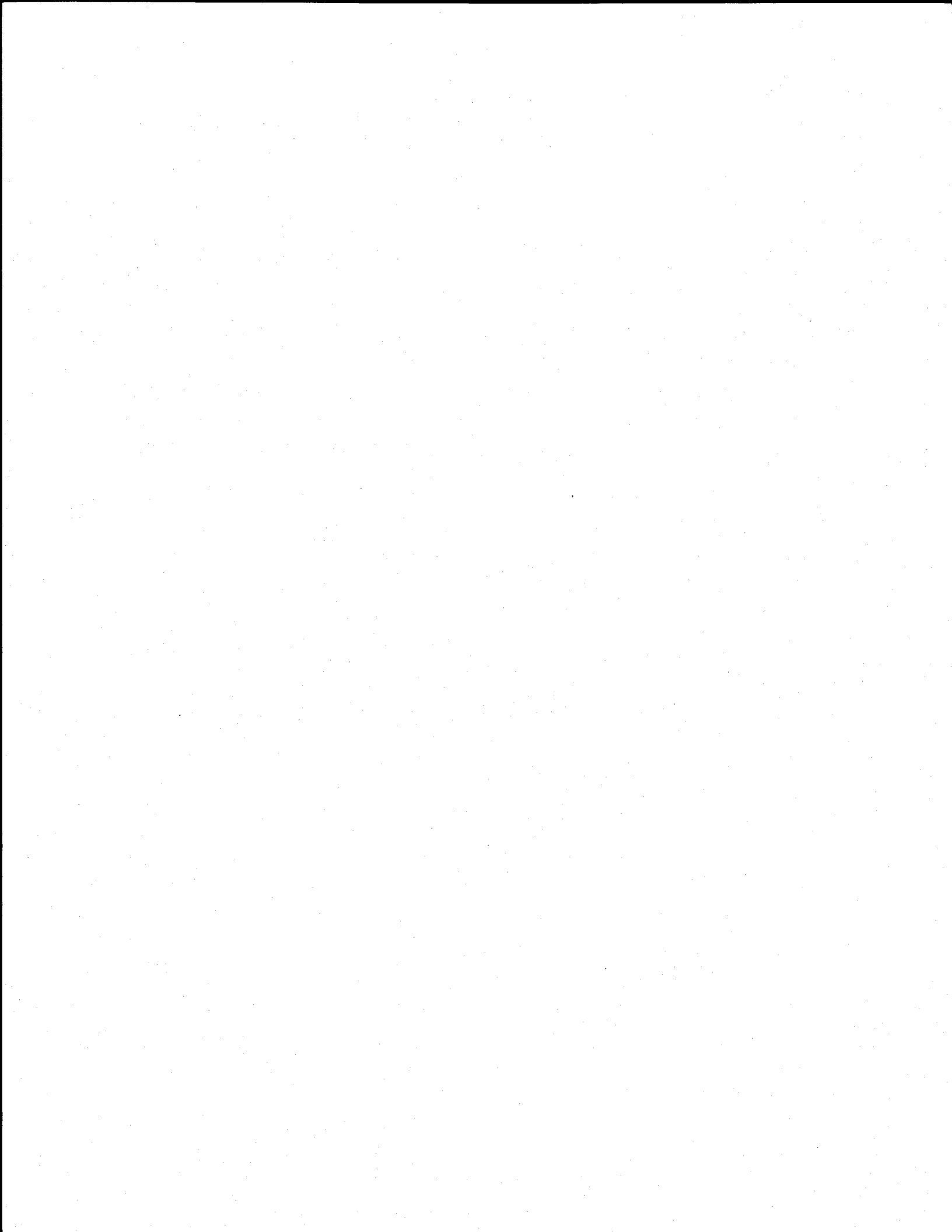


EXHIBIT A

LIST OF CONTRACTS

1. Joint Community Facilities Agreement- Flood Control, dated June 26, 2007, by and between SMR Ventures, LLC, the Riverside Unified School District, Riverside County Flood Control and the County of Riverside.
2. Joint Community Facilities Agreement - Street Improvements, dated June 26, 2007, by and between SMR Ventures, LLC, Riverside Unified School District, and the County of Riverside.
3. Joint Community Facilities Agreement- Sewer Collection Facilities, dated June 26, 2007, by and between SMR Ventures, LLC, Riverside Unified School District; and the County of Riverside.
4. Water and Sewer Backbone Improvement and Tri-party Reimbursement Agreement, dated January 8, 2004, and amended December 1, 2005, by and between SMR Ventures, LLC, MFR-Groves Development, L.P., a Texas limited partnership, and Springbrook Investments, L.P., a California limited partnership.
5. Agreement Providing for Reimbursement of Development Fees from Bond Proceeds Relating to Riverside Unified School District Community Facilities District No. 23 (sewer facilities reimbursement fee), dated October 1, 2006, by and between SMR Ventures, LLC, and the Riverside Unified School District.
6. Agreement Providing for Reimbursement of Development Fees from Bond Proceeds Relating to Riverside Unified School District Community Facilities District No. 23 (traffic mitigation fee), dated February 1, 2006, by and between SMR Ventures, LLC, and the City of Grand Terrace.
7. Amended Sanitation System and Installation Agreement, dated June 22, 2004, by and between SMR Ventures, LLC and the County of Riverside.
8. City of Riverside Development Indemnification Agreement, dated June 22, 2004, by and between SMR Ventures, LLC and the City of Riverside.
9. Agreement Between Riverside Highland Water Company and Eastbridge Partners L.P. for the Construction of Water Related Facilities and Furnishing of Domestic and Irrigation Water, dated April 26, 2002, by and between Riverside Highland Water Company and Eastbridge Partners L.P (the "RHWC Agreement"), and Addendum I to the RHWC Agreement, dated May 10, 2004, as assigned to SMR Ventures, LLC, on May 10, 2004.
10. Department of the Army Permit Authorization No. 200400186-RRS (404 Permit), dated December 19, 2003, issued by the Army Corps of Engineers to Eastbridge, L.P, as predecessor in interest to SMR Ventures, LLC.



11. Clean Water Act Section 401 Water Quality Certifications for Spring Mountain Ranch - CRWQCB No. 200100542-RRS, dated October 21, 2003, issued by the California Regional Water Quality Control Board to Eastbridge, L.P., as predecessor in interest to SMR Ventures, LLC.

12. Agreement Regarding Proposed Activities Subject to California Fish and Game Code Section 1603, 6-2001-141, dated December 10, 2002, by and between U.S. Department of Fish and Game and Eastbridge, L.P., as assigned to SMR Ventures, LLC.

13. Agreement Regarding Proposed Stream or Lake Alteration, 6-2003-035, dated March 20, 2003, by and between U.S. Department of Fish and Game and Eastbridge, L.P., as assigned to SMR Ventures, LLC.

14. Contract for Extension of Electric Distribution Line Rule No. 15 (Work Order No. 6531-1988/51916) dated as of June 30, 2006, (Work Order No. 6531-1990/51918) dated as of July 6, 2006, and (Work Order No. 6531-1990/51918) dated as of July 6, 2006, by and between Southern California Edison Company and SMR Ventures, LLC.

15. Line Extension Contract (Project No. 93976), dated September 25, 2007, by and between the Southern California Gas Company and SMR Ventures, LLC, for residential single family project at Spring Mountain Ranch (Tract Nos. 29597, 29598, 29599, 29600).

16. Application and Letter of Agency for Custom Work (Work Order LB-29, 5563373), dated April 26, 2005, by and between SBC and SMR Ventures, LLC.

17. Right of Entry Agreement for Pigeon Pass Road Corridor Project, dated April, 2009, by and between SMR Ventures, LLC and the County of Riverside.

18. Right of Entry and Construction License Agreement, dated March 17, 2009, by and between SMR Ventures, LLC and the County of Riverside on behalf of the Waste Management Department.

19. All of Assignor's right, title, and interest, in and to all unexpired claims, warranties, and guarantees received in connection with the construction and equipping of the Property, including, without limitation, the right to sue any obligor thereto for any breach of any covenant, agreement, representation, warranty, or guarantee contained therein.

20. All of Assignor's right, title, and interest, in and to all licenses, permits, opinions, agreements, resolutions, certifications, approvals, certificates of occupancy, entitlements, tract maps, tentative tract maps and franchises issued by any federal, state, county, regional or other governmental authority in any way relating to the development, construction, subdivision, use, occupancy, maintenance, or operation of the Property (collectively, the "Licenses and Permits"), running to, or in favor of, Assignor and/or the Property and Assignor's interest in any performance or payment bonds issued in favor of Assignor pursuant to such Licenses and Permits.

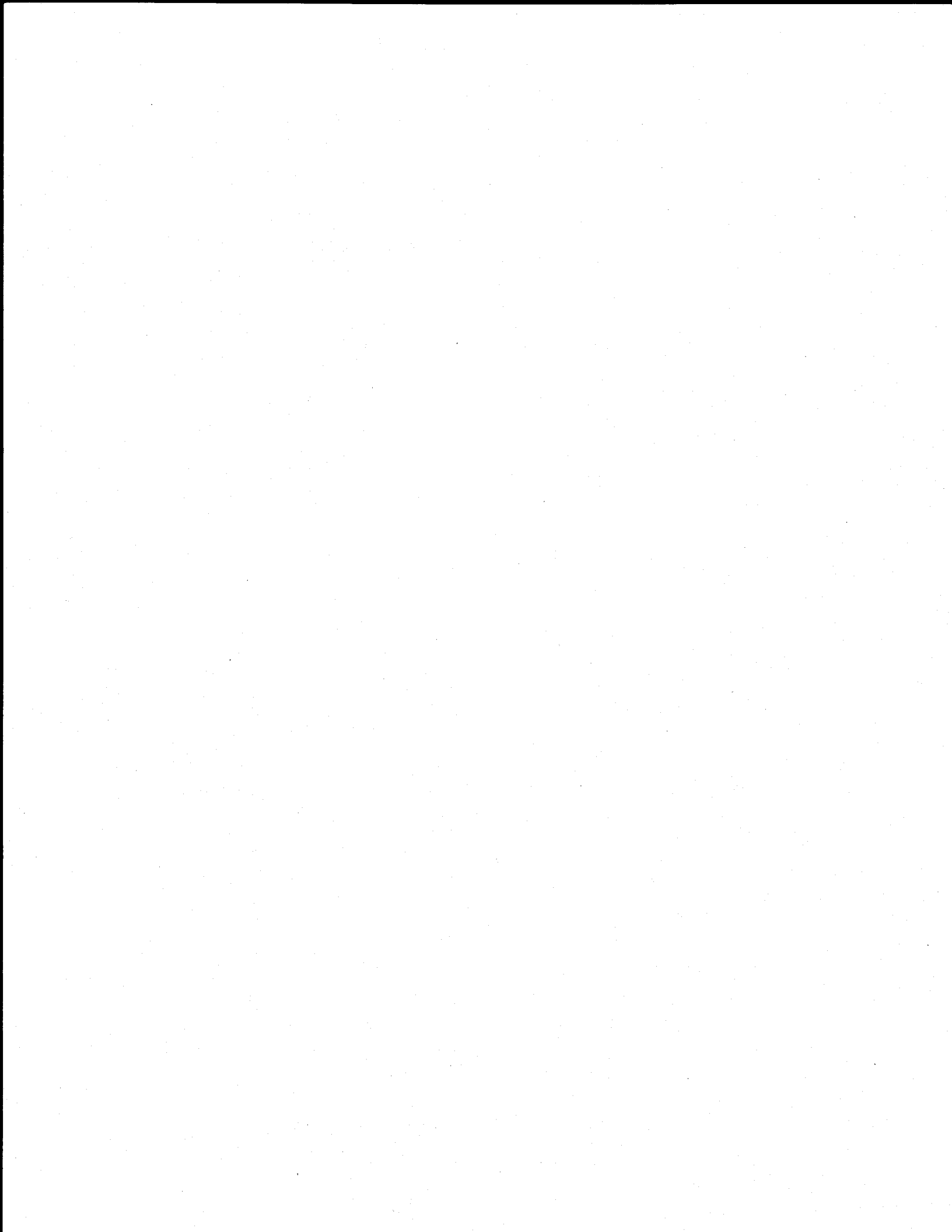
21. All of Assignor's right, title and interest, in and to any plans and specifications, studies, drawings and other technical descriptions prepared for construction, repair or alteration of the

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Property, in both hard copy and original computer aided design or similar electronic formats, and all amendments and modifications thereof.

22. All of Assignor's right, title, and interest in, the engineers' contracts, utility contracts, maintenance agreements, management agreements, marketing agreements, any Joint Community Facility Agreements related to reimbursement of the cost of the infrastructure construction for the Property, listing agreements, reciprocal easement or operating agreements, equipment leases, declarations, any purchase agreements, any sale contracts, all earnest money sales deposits, development agreements, service contracts, in any way relating to the development, use, occupancy, operating, maintenance, enjoyment, acquisition or ownership of the Property or services produced in or relating to the Property, or the proceeds (as defined in the California Uniform Commercial Code) and any refunds or reimbursements derived therefrom.

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