

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



ITEM: 11.6
(ID # 17684)

MEETING DATE:
Tuesday, December 07, 2021

FROM : FLOOD CONTROL DISTRICT:

SUBJECT: FLOOD CONTROL DISTRICT: Approval of the Assignment, Assumption and Amendment Agreement to Cooperative Agreement Between the Riverside County Flood Control and Water Conservation District, the County of Riverside, Pulte Home Corporation and KB Home Coastal, Inc. for Winchester Hills – Windy Ridge Lane Storm Drain (Tract Map No. 30266-1), Project No. 4-0-00574, District 3. [\$0] (Companion Item to MT Item No. 17715)

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Assignment, Assumption and Amendment to Cooperative Agreement between the Riverside County Flood Control and Water Conservation District (District), the County of Riverside (County), Pulte Home Corporation (Assignor) and KB Home Coastal, Inc. (Assignee);

Continued on page 2

ACTION:Policy

Jason Uhley, GENERAL MGR-CHF FLD CNTRL ENG

11/17/2021

MINUTES OF THE BOARD OF SUPERVISORS

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

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt
Nays: None
Absent: None
Date: December 7, 2021
xc: Flood

(Companion Item 3.56)

Kecia R. Harper
Clerk of the Board
By:
Deputy



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

RECOMMENDED MOTION: That the Board of Supervisors:

2. Authorize the General Manager-Chief Engineer or designee to take all necessary steps to implement the Assignment, Assumption and Amendment Agreement, including, but not limited to, negotiating, approving and executing any non-substantive amendments and any assignment and assumption associated with change of ownership of the property, subject to approval by County Counsel;
3. Authorize the Chair of the District's Board of Supervisors to execute the Assignment, Assumption and Amendment Agreement documents on behalf of the District; and
4. Direct the Clerk of the Board to return four (4) executed Assignment, Assumption and Amendment Agreements to the District and one (1) executed Assignment, Assumption and Amendment Agreement to the County.

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 0	\$ 0	\$ 0	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: The Assignee is funding all construction and construction inspection costs (100%)			Budget Adjustment: No	
			For Fiscal Year: N/A	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

The Assignment, Assumption and Amendment Agreement (Agreement) transfers the rights and responsibilities as established by the Cooperative Agreements executed on October 17, 2006 (District Board Agenda Item No. 11.7) and on February 6, 2007 (District Board Agenda Item No. 11.3) from Pulte Home Corporation (Assignor) to KB Home Coastal Inc. (Assignee). Once executed, the Assignee will assume responsibility for the construction of the storm drain facilities, as originally required as a condition of development for Tract No. 30266-1. Upon completion of the facility's construction, the District will assume ownership, operation and maintenance of the mainline storm drain greater than 36 inches in diameter for the Winchester Hills – Windy Ridge Lane Storm Drain facilities. The County will assume ownership and responsibility for the project's associated certain catch basins, laterals and connector pipes located within City rights of way.

County Counsel has approved the Agreement as to legal form, and the Assignor and Assignee have executed the Agreement. A companion item appears on the Riverside County Transportation Department's agenda this same date.

Environmental Findings

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

The transfer of rights and responsibilities from the Assignor to the Assignee is not a "project" pursuant to Section 15378(b)(5) of the California Environmental Quality Act (CEQA) Guidelines, which states that a "project" does not include "organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment."

The transfer of rights and responsibilities will not, in and of itself, result in a physical change to the environment and does not authorize to any extent whatsoever actual physical development. Any future development, if it occurs at all, will be the result of subsequent actions subject to further CEQA review. Therefore, the transfer of rights and responsibilities is not a project within the meaning of CEQA. No further CEQA analysis is required for this action.

Impact on Residents and Businesses

Assignee's planned development will benefit from the storm drain facilities that are to be constructed by the Assignee. Ancillary benefits will accrue to the public who will utilize the tract's roadways.

Prev. Agn. Ref.: 11.7 of 10/17/06
11.3 of 02/06/07

Additional Fiscal Information

The Assignee is funding all construction and construction inspection costs. Future operation and maintenance costs associated with said mainline storm drain facility will accrue to the District.

ATTACHMENTS:

1. Vicinity Map
2. Assignment, Assumption and Amendment Agreement

AMR:blm
P8/241084



Jason Farin, Principal Management Analyst 11/30/2021



Gregory V. Priarios, Director County Counsel 11/22/2021

ASSIGNMENT, ASSUMPTION AND AMENDMENT TO
COOPERATIVE AGREEMENT

Winchester Hills – Windy Ridge Lane Storm Drain
Project No. 4-0-00574
Tract Map No. 30266-1

This Assignment, Assumption and Amendment to Cooperative Agreement ("ASSIGNMENT") is made by and between (i) the Riverside County Flood Control and Water Conservation District, a body politic ("DISTRICT"); (ii) the County of Riverside, a political subdivision of the State of California ("COUNTY"); (iii) Pulte Home Corporation, a Michigan limited liability company ("ASSIGNOR"); and (iv) KB Home Coastal, Inc., a California corporation ("ASSIGNEE"), together referred to as the "Parties" and individually as "party". The Parties hereto agree as follows:

RECITALS

A. DISTRICT, COUNTY and ASSIGNOR have previously entered into an agreement, which was executed on October 17, 2006, (DISTRICT Board Agenda Item No. 11.7) and recorded as Document No. 2006-0858978 in the Official Records of the County of Riverside ("ORIGINAL AGREEMENT"), setting forth the Parties' respective rights and obligations concerning ASSIGNOR's proposed design and construction of certain flood control and drainage facilities required as a condition of approval for Tract Map No. 30266-1 located in an unincorporated area of western Riverside County in the State of California, hereinafter called "PROPERTY"; and

B. In connection with PROPERTY, DISTRICT, COUNTY and ASSIGNOR have previously entered into that certain Amended and Restated Agreement, which was executed on February 6, 2007, (DISTRICT Board Agenda Item No. 11.3) ("SECOND AGREEMENT") whereby SECOND AGREEMENT provided for the withholding of issuance of the occupancy permits for the final twenty percent (20%) of units located within any portion of Tract Map No. 30266-1, or any phase thereof, until construction of the project is complete; and

C. ORIGINAL AGREEMENT together with SECOND AGREEMENT are hereinafter collectively referred to as "AGREEMENTS"; and

D. Subsequent to the execution of said AGREEMENTS and pursuant to one or more Grant Deeds recorded in 2009, Winchester Meadows, LLC acquired title to PROPERTY from Shopoff Properties Trust, Inc. Pursuant to a grant deed dated December 14, 2020, recorded as Document No. 2020 – 0640381 in the Official Records of the County of Riverside, ASSIGNEE acquired fee title to PROPERTY from Winchester Meadows, LLC and plans to proceed in accordance with AGREEMENTS; and

E. True and correct copies of AGREEMENTS have been provided to ASSIGNEE. AGREEMENTS describe the terms and conditions by which those certain flood control and drainage improvements that are required in connection with the development of Tract Map No. 30266-1 are to be designed and constructed by ASSIGNOR and inspected and accepted for operation and maintenance by DISTRICT and COUNTY; and

F. Sections IV.16 of AGREEMENTS stipulate that ASSIGNOR may assign its rights and responsibilities as set forth therein subject to the written consent of the Parties thereto; and

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

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

I. ASSIGNOR, ASSIGNEE, COUNTY and DISTRICT intend that, by execution of this ASSIGNMENT, ASSIGNEE shall assume and agrees to perform all RIGHTS AND OBLIGATIONS as stated in AGREEMENTS; and

J. Concurrently with the assignment and assumption of AGREEMENTS, DISTRICT desires to make certain amendments to AGREEMENTS in its entirety, which together encompass ASSIGNMENT; and

K. Sections IV.18 of AGREEMENTS specify that AGREEMENTS may be changed or modified subject to the written consent of the Parties thereto; and

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

1. The above Recitals are true and correct and incorporated into the terms of this ASSIGNMENT.

2. By execution of this ASSIGNMENT, ASSIGNOR hereby assigns all of its RIGHTS AND OBLIGATIONS to ASSIGNEE and ASSIGNEE accepts RIGHTS AND OBLIGATIONS.

3. For the benefit of DISTRICT and COUNTY, ASSIGNEE hereby agrees to be fully bound by the terms of AGREEMENTS that are stated and imposed on ASSIGNOR in AGREEMENTS. ASSIGNOR is referred to as DEVELOPER in AGREEMENTS.

4. AGREEMENTS are hereby amended as follows

i. RECITALS B of AGREEMENTS are hereby revised to read:

"The required flood control facilities include construction of (i) approximately 728 lineal feet of underground concrete pipe and outlet structure, hereinafter called "WINDY RIDGE LANE STORM DRAIN" as shown in concept in red on Exhibit "A", attached hereto and made a part hereof, and (ii) approximately 70 lineal feet of underground concrete pipe and outlet structure as shown in concept in red on Exhibit "A". Together, the two storm drain facilities are hereinafter called "STORM DRAINS", as shown on DISTRICT's Drawing No. 4-0878; and"

ii. Section I.18 of AGREEMENTS is amended to read:

"DEVELOPER shall not commence operations until DISTRICT (Attention: Contract Services Section) and COUNTY have been furnished with original certificate(s) of insurance and original certified copies of endorsements and, if requested, certified original policies of insurance including all endorsements and any and all other attachments. Prior to DISTRICT issuing a Notice to Proceed to its construction contractor(s) to begin construction of PROJECT, an original certificate of insurance evidencing the required insurance coverage shall be provided to DISTRICT and COUNTY. At minimum, the procured insurance coverages should adhere to DISTRICT's required insurance provided in Exhibit "C", attached hereto and made a part hereof. Failure to maintain the insurance required by this paragraph shall be deemed a material breach of this Agreement and shall authorize and constitute authority for DISTRICT, at its sole discretion, to provide written notice to DEVELOPER that DISTRICT is unable to perform its obligations hereunder, nor to accept responsibility for ownership, operation and maintenance of STORM DRAINS due, either in whole or in part, to said breach of this Agreement.";

iii. Section I.19 of AGREEMENTS is deleted in its entirety.

iv. Section II.10 of AGREEMENTS is added to read:

"Prior to DISTRICT acceptance of ownership and responsibility for the operation and maintenance of STORM DRAINS, STORM DRAINS shall be in a satisfactorily maintained condition as solely determined by DISTRICT. If, subsequent to the inspection and in the sole discretion of DISTRICT, STORM DRAINS are not in an acceptable condition, corrections shall be made at sole expense of DEVELOPER."

- v. Section IV.7 of AGREEMENTS is deleted in its entirety.
- vi. Section IV.8 of AGREEMENTS is amended to read:

"DEVELOPER shall indemnify and hold harmless DISTRICT, COUNTY, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as "Indemnitees") from any liability whatsoever, claim, damage, proceeding or action, present or future, based upon, arising out of or in any way relating to DEVELOPER's (including its officers, employees, contractors, subcontractors and agents) actual or alleged acts or omissions related to this Agreement, performance under this Agreement or failure to comply with the requirements of this Agreement, including, but not limited to: (a) property damage; (b) bodily injury or death; (c) liability or damage pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution or any other law, ordinance or regulation caused by the diversion of waters from the natural drainage patterns or the discharge of drainage within or from PROJECT; or (d) any other element of any kind or nature whatsoever arising from the performance of DEVELOPER, its officers, employees, contractors, subcontractors, agents or representatives ("Indemnitors") from this Agreement.

DEVELOPER shall defend, at its sole expense, including all costs and fees (including but not limited to attorney fees, cost of investigation, defense and settlements or awards), the Indemnitees in any claim, proceeding or action for which indemnification is required.

With respect to any action or claim subject to indemnification herein by DEVELOPER, DEVELOPER shall, at its sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle or compromise any such action or claim, proceeding or action without the prior consent of DISTRICT and COUNTY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes DEVELOPER's indemnification obligations to Indemnitees as set forth herein.

DEVELOPER's indemnification obligations hereunder shall be satisfied when DEVELOPER has provided to DISTRICT and COUNTY the appropriate form of dismissal (or similar document) relieving DISTRICT or COUNTY from any liability for the claim, proceeding or action involved.

The specified insurance limits required in this Agreement shall in no way limit or circumscribe DEVELOPER's obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

In the event there is conflict between this section and California Civil Code Section 2782, this section shall be interpreted to comply with California Civil Code Section 2782. Such interpretation shall not relieve DEVELOPER from indemnifying the Indemnitees to the fullest extent allowed by law."

vii. Section IV.16 of AGREEMENTS is revised to read:

"DEVELOPER shall not assign or otherwise transfer any of its rights, duties or obligations hereunder to any person or entity without the written consent of the other Parties hereto being first obtained.

In the event DEVELOPER sells PROPERTY with Tract Map No. 30266-1, DEVELOPER shall notify DISTRICT and COUNTY of any such transfer or

assignment in writing no later than 30 days from the date of the sale. DEVELOPER expressly understands and agrees that it shall remain liable with respect to any and all of the obligations and duties contained in this Agreement unless and until DISTRICT, COUNTY, DEVELOPER and the new owner(s) of PROPERTY with Tract Map No. 30266-1 fully execute an assignment and assumption agreement that transfers all DEVELOPER's rights, duties or obligations hereunder to the new owner(s) of PROPERTY with Tract Map No. 30266-1."

5. In regard to the assignment of RIGHTS AND OBLIGATIONS set forth herein, DISTRICT and COUNTY hereby consent and agree to (i) the assignment of RIGHTS AND OBLIGATIONS in favor of ASSIGNEE, and (ii) the assumption by ASSIGNEE of said RIGHTS AND OBLIGATIONS. In further clarification of the intent of the Parties, ASSIGNEE and ASSIGNOR specifically agree with DISTRICT that access and/or grant of real property interests required by DISTRICT pursuant to AGREEMENTS, if any, shall be satisfied by ASSIGNEE, and in regard to all financial obligations, DISTRICT shall invoice ASSIGNEE for all charges incurred pursuant to AGREEMENTS.

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

7. In the event that any action or suit by the party hereto is brought against another party hereunder by reason of any breach of any of the covenants, conditions, agreements or provisions on the part of the other party arising out of this ASSIGNMENT, the prevailing party shall be entitled to have and recover of and from the other party all costs and expenses of the action or suit, including reasonable attorneys' fees.

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

9. If any provision in this ASSIGNMENT is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

10. Nothing in the provisions of this ASSIGNMENT is intended to create duties or obligations to or rights in third parties not Parties to this ASSIGNMENT.

11. This ASSIGNMENT may be changed or modified only upon the written consent of the Parties hereto.

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

RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT
1995 Market Street
Riverside, CA 92501
Attn: Contract Services Section

COUNTY OF RIVERSIDE
4080 Lemon Street, 8th Floor
Riverside, CA 92502-1090
Attn: Transportation Department
Plan Check Section

PULTE HOME CORPORATION
27401 Los Altos, Suite 400
Mission Viejo, CA 92691
Attn: Sohail Bokari

KB HOME COASTAL, INC.
36310 Inland Valley Drive
Wildomar, CA 92595
Attn: Vernell Williams

13. The individuals executing this ASSIGNMENT on behalf of ASSIGNEE hereby certify that they have the authority within their respective companies to enter into and execute this ASSIGNMENT, and have been authorized to do so by any and all boards of directors, legal counsel and/or any other board, committee or other entity within their respective companies which have the authority to authorize or deny entering into this ASSIGNMENT.

14. This ASSIGNMENT may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall constitute but one and the same instrument.

//

IN WITNESS WHEREOF, the Parties hereto have executed this ASSIGNMENT on

December 7, 2021
(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

By J. Uhley
JASON E. UHLEY
General Manager-Chief Engineer

By Karen S. Spiegel
KAREN SPIEGEL, Chair
Riverside County Flood Control and Water
Conservation District Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS
County Counsel

KECIA HARPER
Clerk of the Board

By [Signature]
MICHELLE CLACK
Chief Deputy County Counsel

By [Signature]
Deputy

(SEAL)

Assignment, Assumption and Amendment to Cooperative Agreement:
Winchester Hills – Windy Ridge Lane Storm Drain
Project No. 4-0-00574
Tract Map No. 30266-1
AMR:blm
10/12/2021

RECOMMENDED FOR APPROVAL:

COUNTY OF RIVERSIDE

By Mark Lancaster
MARK LANCASTER
Director of Transportation

By Karen S. Spiegel
KAREN SPIEGEL, Chair
Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS
County Counsel

KECIA HARPER
Clerk of the Board

By Sarah K. Moore
SARAH K. MOORE
Deputy County Counsel

By Yvonne Kasse
Deputy

(SEAL)

Assignment, Assumption and Amendment to Cooperative Agreement:
Winchester Hills – Windy Ridge Lane Storm Drain
Project No. 4-0-00574
Tract Map No. 30266-1
AMR:blm
10/12/2021

ASSIGNOR

PULTE HOME COMPANY, LLC,
a Michigan limited liability company

By  _____
Authorized Signatory

SOHAIL BOKHARI
PULTE HOME COMPANY LLC
Director of Land
Planning & Entitlements

Printed Name

Title

(ATTACH NOTARY WITH CAPACITY
STATEMENT)

Assignment, Assumption and Amendment to Cooperative Agreement:
Winchester Hills – Windy Ridge Lane Storm Drain
Project No. 4-0-00574
Tract Map No. 30266-1
AMR:blm
10/12/2021

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of ORANGE)

On NOVEMBER 3, 2021 before me, CRESIDA DIAZ, NOTARY PUBLIC
(insert name and title of the officer)

personally appeared SOHAIL BOKHARI,
who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~
subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in
his/~~her/their~~ authorized capacity~~(ies)~~, and that by his/~~her/their~~ signature~~(s)~~ on the instrument the
person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Cresida Diaz* (Seal)

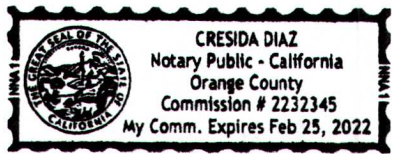
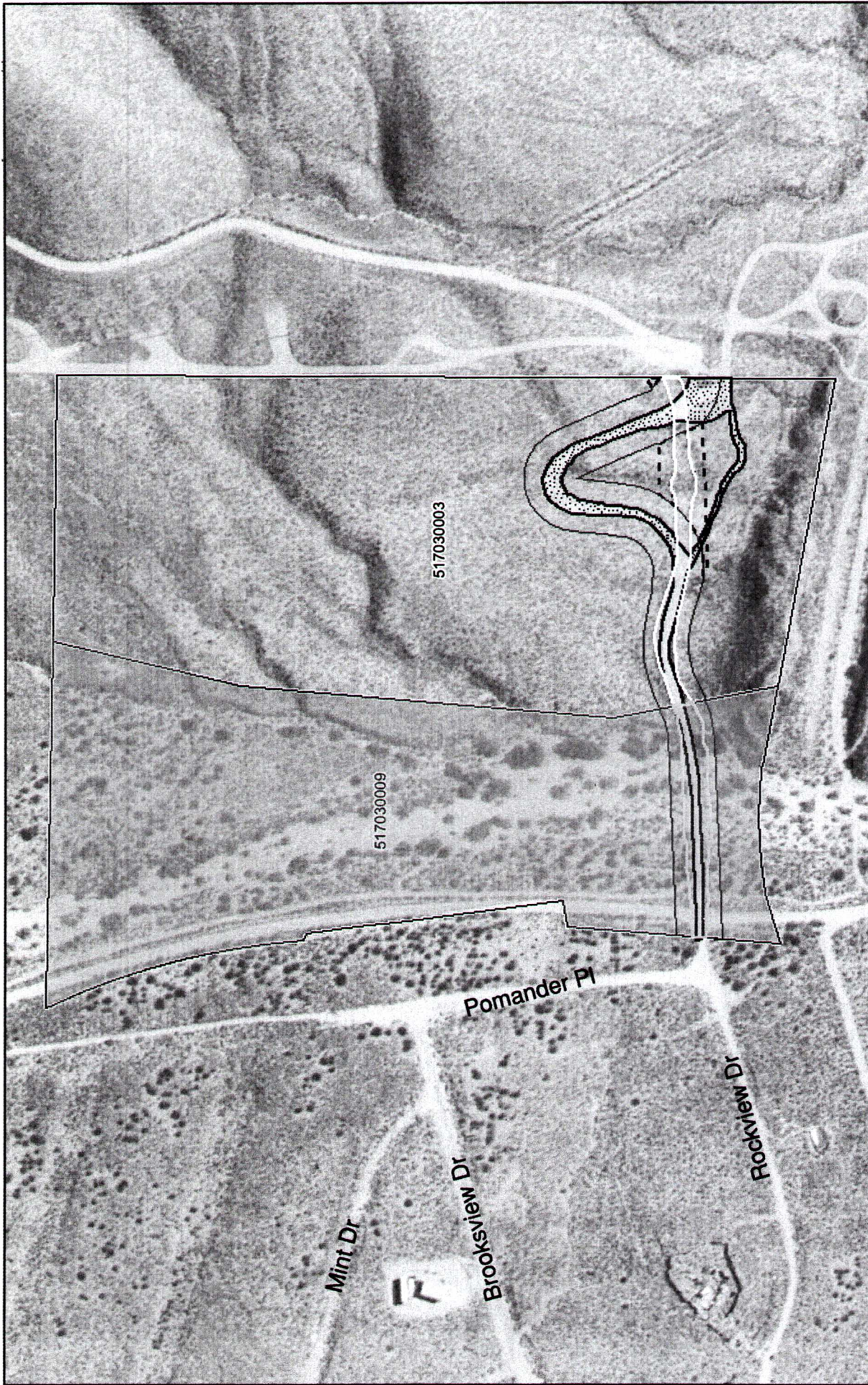






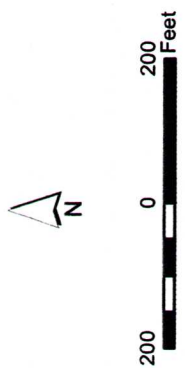


EXHIBIT A



-  Existing Access Road
-  Proposed Access Road
-  Existing Access Road, to be Restored
-  Parcel Boundary
-  Proposed BLM Easement
-  Existing BLM Road Easement



ASSIGNEE

KB HOME COASTAL, INC.,
a California corporation

By 

SCOTT HANSEN
Vice President

**(ATTACH NOTARY WITH CAPACITY
STATEMENT)**

**Assignment, Assumption and Amendment to Cooperative Agreement:
Winchester Hills – Windy Ridge Lane Storm Drain
Project No. 4-0-00574
Tract Map No. 30266-1
AMR:blm
10/12/2021**

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

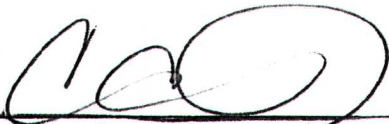
State of California }

County of Riverside }

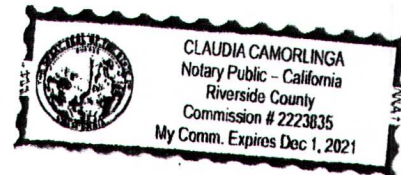
On November 2, 2021 before me, Claudia Camorlinga, Notary Public, personally appeared Scott Hansen, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Claudia Camorlinga, Notary Public



(SEAL)

EXHIBIT C

DISTRICT's Insurance Requirements is as follows:

Without limiting or diminishing DEVELOPER's obligation to indemnify or hold DISTRICT harmless, DEVELOPER shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the DISTRICT herein refers to the Riverside County Flood Control and Water Conservation District, the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds.

A. Workers' Compensation:

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

B. Commercial General Liability:

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of DEVELOPER's performance of its obligations hereunder. Policy shall name the DISTRICT as Additional Insured. Policy's limit of liability shall not be less than \$2,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit.

ASSIGNMENT, ASSUMPTION AND AMENDMENT TO
COOPERATIVE AGREEMENT

Winchester Hills – Windy Ridge Lane Storm Drain

Project No. 4-0-00574

Tract Map No. 30266-1

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EXHIBIT C

C. Vehicle Liability:

If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then DEVELOPER shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit. Policy shall name the DISTRICT as Additional Insureds.

D. Professional Liability:

DEVELOPER shall cause any architect or engineer retained by DEVELOPER in connection with the performance of DEVELOPER's obligations under this Agreement to maintain Professional Liability Insurance providing coverage for the performance of their work included within this Agreement, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. DEVELOPER shall require that, if such Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and that such architect or engineer shall purchase at such architect or engineer's sole expense either 1) an Extended Reporting Endorsement (also known as Tail Coverage); or 2) Prior Dates Coverage from a new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that such architect or engineer has maintained continuous coverage with the same or original insurer. Coverage provided under items: 1), 2) or 3) shall continue for the term specified in the insurance policy as long as the law allows.

E. General Insurance Provisions – All Lines:

- a. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A.M. BEST rating of not

ASSIGNMENT, ASSUMPTION AND AMENDMENT TO
COOPERATIVE AGREEMENT

Winchester Hills – Windy Ridge Lane Storm Drain

Project No. 4-0-00574

Tract Map No. 30266-1

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EXHIBIT C

less than an A: VIII (A: 8) unless such requirements are waived, in writing, by the DISTRICT Risk Manager. If the DISTRICT's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

- b. The DEVELOPER must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence each such retention shall have the prior written consent of the DISTRICT Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention deemed unacceptable to the DISTRICT, and at the election of the DISTRICT's Risk Manager, DEVELOPER's carriers shall either: 1) reduce or eliminate such self-insured retention with respect to this Agreement with DISTRICT, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.
- c. DEVELOPER shall cause their insurance carrier(s) or its contractor's insurance carrier(s), to furnish DISTRICT with 1) a properly executed original certificate(s) of insurance and certified original copies of endorsements effecting coverage as required herein; and 2) if requested to do so orally or in writing by the DISTRICT Risk Manager, provide original certified copies of policies including all endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that a minimum of thirty (30) days written notice shall be given to the DISTRICT prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. If DEVELOPER insurance carrier(s) policies does not meet the minimum notice requirement found herein, DEVELOPER shall

ASSIGNMENT, ASSUMPTION AND AMENDMENT TO
COOPERATIVE AGREEMENT

Winchester Hills – Windy Ridge Lane Storm Drain

Project No. 4-0-00574

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EXHIBIT C

- cause DEVELOPER's insurance carrier(s) to furnish a 30 day Notice of Cancellation Endorsement.
- d. In the event of a material modification, cancellation, expiration or reduction in coverage, this Agreement shall terminate forthwith, unless DISTRICT receives, prior to such effective date, another properly executed original certificate of insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto, evidencing coverages set forth herein and the insurance required herein is in full force and effect. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the certificate of insurance.
- e. It is understood and agreed by the parties hereto that DEVELOPER's insurance shall be construed as primary insurance, and DISTRICT's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.
- f. If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services or there is a material change in the equipment to be used in the performance of the scope of work which will add additional exposures (such as the use of aircraft, watercraft, cranes, etc.); or the term of this Agreement, including any extensions thereof, exceeds five (5) years, DISTRICT reserves the right to adjust the types of insurance required under this Agreement and the monetary limits of liability for the insurance coverages currently required herein, if, in the DISTRICT Risk Manager's reasonable judgment, the amount or type of insurance carried by DEVELOPER has become inadequate.
- g. DEVELOPER shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

ASSIGNMENT, ASSUMPTION AND AMENDMENT TO
COOPERATIVE AGREEMENT

Winchester Hills – Windy Ridge Lane Storm Drain

Project No. 4-0-00574

Tract Map No. 30266-1

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EXHIBIT C

- h. The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to DISTRICT.
- i. DEVELOPER agrees to notify DISTRICT of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

ASSIGNMENT, ASSUMPTION AND AMENDMENT TO
COOPERATIVE AGREEMENT

Winchester Hills – Windy Ridge Lane Storm Drain

Project No. 4-0-00574

Tract Map No. 30266-1

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