

COOPERATIVE AGREEMENT  
Sunnymead – Black Shadow Drive Storm Drain, Stage 1  
Project No. 4-0-00363  
Tract No. 22180-2

The Riverside County Flood Control and Water Conservation District ("DISTRICT"), the City of Moreno Valley ("CITY"), and RSI Communities LLC, a Delaware limited liability company ("DEVELOPER"), hereby agree as follows:

RECITALS

A. DEVELOPER is the legal owner of record of certain real property, including Tract No. 22180-2, located within the County of Riverside. DEVELOPER has submitted for approval of Tract No. 22180-2 located in the city of Moreno Valley. As a condition of approval for Tract No. 22180-2, DEVELOPER must construct certain stormwater management facilities in order to provide flood protection and drainage for DEVELOPER'S planned development; and

B. The legal description of Tract No. 22180-2 is provided in Exhibit "A" attached hereto and made a part hereof; and

C. The required flood control facilities and drainage improvements, as shown on District Drawing No. 4-1106, include construction of approximately 645 lineal feet of underground storm drain system and junction structure ("DISTRICT FACILITIES"), as shown in concept in blue on Exhibit "B", attached hereto and made a part hereof. At its downstream terminus, DISTRICT FACILITIES will connect to DISTRICT'S existing facility. At its upstream terminus, DISTRICT FACILITIES terminate with a concrete bulkhead for future extension; and

D. Associated with the construction of DISTRICT FACILITIES is the construction of certain catch basins, inlets, connector pipes, and lateral storm drains that are thirty-six inches (36") or less in diameter that are located within CITY held easements or rights of way ("APPURTENANCES"); and

E. Together, DISTRICT FACILITIES and APPURTENANCES are hereinafter called "PROJECT"; and

F. DEVELOPER and CITY desire DISTRICT to accept ownership and responsibility for the operation and maintenance of DISTRICT FACILITIES. Therefore,

1 DISTRICT must review and approve DEVELOPER'S plans and specifications for PROJECT and  
2 subsequently inspect the construction of DISTRICT FACILITIES; and

3 G. DEVELOPER and DISTRICT desire CITY to accept ownership and  
4 responsibility for the operation and maintenance of APPURTENANCES. Therefore, CITY must  
5 review and approve DEVELOPER'S plans and specifications for PROJECT and subsequently  
6 inspect the construction of APPURTENANCES; and

7 H. DISTRICT is willing to (i) review and approve DEVELOPER'S plans and  
8 specifications for PROJECT, (ii) inspect the construction of DISTRICT FACILITIES, and (iii)  
9 accept ownership and responsibility for the operation and maintenance of DISTRICT  
10 FACILITIES, provided DEVELOPER (a) complies with this Agreement, (b) constructs  
11 PROJECT in accordance with DISTRICT and CITY approved plans and specifications, and (c)  
12 accepts ownership and responsibility for the operation and maintenance of PROJECT following  
13 completion of PROJECT construction until such time as DISTRICT accepts ownership and  
14 responsibility for the operation and maintenance of DISTRICT FACILITIES; and

15 I. CITY is willing to (i) review and approve DEVELOPER'S plans and  
16 specifications for PROJECT, (ii) inspect the construction of PROJECT, (iii) accept and hold  
17 faithful performance and payment bonds submitted by DEVELOPER for DISTRICT  
18 FACILITIES, (iv) grant DISTRICT the right to inspect, operate and maintain DISTRICT  
19 FACILITIES within CITY rights of way, (v) conveys to DISTRICT all rights of way necessary  
20 for the inspection, operation and maintenance of DISTRICT FACILITIES as set forth herein, and  
21 (vi) accept ownership and responsibility for the operation and maintenance of  
22 APPURTENANCES, provided PROJECT is constructed in accordance with plans and  
23 specifications approved by DISTRICT and CITY.

24 NOW, THEREFORE, the parties hereto mutually agree as follows:  
25  
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SECTION I

DEVELOPER shall:

1. Prepare PROJECT plans and specifications, hereinafter called "IMPROVEMENT PLANS", in accordance with applicable DISTRICT and CITY standards, and submit to DISTRICT and CITY for their respective review and approval.

2. Continue to pay DISTRICT, within thirty (30) days after receipt of periodic billings from DISTRICT, any and all such amounts as are deemed reasonably necessary by DISTRICT to cover DISTRICT'S costs associated with the review of IMPROVEMENT PLANS, review and approval of rights of way and conveyance documents, and with the processing and administration of this Cooperative Agreement. Additionally, DEVELOPER shall deposit with CITY, any and all such amounts as are deemed reasonably necessary by CITY to cover CITY'S costs associated with the review of IMPROVEMENT PLANS, the review and approval of all right of way and conveyance documents, and with the processing and administration of this Agreement.

3. Deposit with DISTRICT (Attention: Business Office - Accounts Receivable), at the time of providing written notice to DISTRICT of the start of PROJECT construction as set forth in Section I.8. herein, the estimated cost of providing construction inspection for DISTRICT FACILITIES, in an amount as determined and approved by DISTRICT in accordance with Ordinance Nos. 671 and 749 of the County of Riverside, including any amendments thereto, based upon the bonded value of DISTRICT FACILITIES. If at any time the costs exceed the deposit or are anticipated by DISTRICT to exceed the deposit with DISTRICT, DEVELOPER shall pay such additional amount(s), as deemed reasonably necessary by DISTRICT to complete inspection of DISTRICT FACILITIES, within thirty (30) days after receipt of billing from DISTRICT. Additionally, deposit with CITY (Attention: Public Works/Land Development), at the time of providing written notice to DISTRICT of the start of PROJECT construction as set forth in Section I.8., the estimated cost of providing construction inspection in an amount as determined and approved by CITY in accordance with the most recent City Code and Fee Resolution of CITY, including any amendments thereto.

1                   4. Grant DISTRICT and CITY, by execution of this Cooperative Agreement,  
2 the right to enter upon DEVELOPER'S property where necessary and convenient for the purpose  
3 of gaining access to, and performing inspection service for, the construction of PROJECT as set  
4 forth herein.

5                   5. Secure, at its sole cost and expense, all necessary licenses, agreements,  
6 permits and rights of entry as may be needed for the construction, inspection, operation and  
7 maintenance of DISTRICT FACILITIES. DEVELOPER shall furnish DISTRICT, at the time of  
8 providing written notice to DISTRICT of the start of construction as set forth in Section I.8., with  
9 sufficient evidence of DEVELOPER having secured such necessary licenses, agreements, permits  
10 and rights of entry, as determined and approved by DISTRICT.

11                   6. Prior to commencing construction, furnish DISTRICT and CITY with copies  
12 of all permits, approvals or agreements required by any federal, state or local resource and/or  
13 regulatory agency for the construction, operation and maintenance of PROJECT. Such documents  
14 include but are not limited to those issued by the U.S. Army Corps of Engineers, California  
15 Regional Water Quality Control Board, California State Department of Fish and Game, State  
16 Water Resources Control Board, and Western Riverside County Regional Conservation  
17 Authority.

18                   7. Provide CITY, at the time of providing written notice to DISTRICT of the  
19 start of construction as set forth in Section I.8., with faithful performance and payment bonds,  
20 each in the amount of one hundred percent (100%) of the estimated cost for construction of  
21 DISTRICT FACILITIES as determined by DISTRICT. The surety, amount and form of the  
22 bonds, shall be subject to approval of DISTRICT and CITY. The bonds shall remain in full force  
23 and effect until DISTRICT FACILITIES are accepted by DISTRICT as complete; at which time  
24 the bond amount may be reduced to five percent (5%) for a period of one (1) year to guarantee  
25 against any defective work, labor or materials.

26                   8. Notify DISTRICT in writing (Attention: Administrative Services Section)  
27 and CITY, at least twenty (20) days prior to the start of construction of PROJECT. Construction  
28 shall not begin on any element of PROJECT, for any reason whatsoever, until DISTRICT has



1 issued to DEVELOPER a written Notice to Proceed authorizing DEVELOPER to commence  
2 construction of PROJECT.

3 9. [INTENTIONALLY DELETED]

4 10. [INTENTIONALLY DELETED]

5 11. Furnish DISTRICT, at the time of providing written notice to DISTRICT of  
6 the start of construction as set forth in Section I.8., with a complete list of all contractors and  
7 subcontractors to be performing work on DISTRICT FACILITIES, including the corresponding  
8 license number and license classification of each. At such time, DEVELOPER shall further  
9 identify in writing its designated superintendent for PROJECT construction.

10 12. Furnish DISTRICT, at the time of providing written notice to DISTRICT of  
11 the start of construction as set forth in Section I.8., a construction schedule which shall show the  
12 order and dates in which DEVELOPER or DEVELOPER'S contractor proposes to carry out the  
13 various parts of work, including estimated start and completion dates. As construction of  
14 DISTRICT FACILITIES progresses, DEVELOPER shall update said construction schedule as  
15 requested by DISTRICT.

16 13. Furnish DISTRICT and CITY with final mylar PROJECT plans and assign  
17 their ownership to DISTRICT and CITY prior to the start on any portion of PROJECT  
18 construction.

19 14. Not permit any change to or modification of DISTRICT and CITY approved  
20 IMPROVEMENT PLANS without the prior written permission and consent of DISTRICT and  
21 CITY.

22 15. Comply with all Cal/OSHA safety regulations including regulations  
23 concerning confined space and maintain a safe working environment for DEVELOPER, CITY  
24 and DISTRICT employees on the site.

25 16. Furnish DISTRICT, at the time of providing written notice to DISTRICT of  
26 the start of construction as set forth in Section I.8., a confined space entry procedure specific to  
27 PROJECT. The procedure shall comply with requirements contained in California Code of  
28 Regulations, Title 8, Section 5158, Other Confined Space Operations, Section 5157, Permit

1 Required Confined Space and District Confined Space Procedures, SOM-18. The procedure shall  
2 be reviewed and approved by DISTRICT prior to the issuance of a Notice to Proceed.

3 17. DEVELOPER shall not commence operations until DISTRICT and CITY  
4 have been furnished with original certificate(s) of insurance and original certified copies of  
5 endorsements and if requested, certified original policies of insurance including all endorsements  
6 and any and all other attachments as required in this Section.

7 Without limiting or diminishing DEVELOPER'S obligation to indemnify or  
8 hold DISTRICT or CITY harmless, DEVELOPER shall procure and maintain or cause to be  
9 maintained, at its sole cost and expense, the following insurance coverage's during the term of  
10 this Agreement:

11 A. Workers' Compensation:

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

19 B. Commercial General Liability:

20 Commercial General Liability insurance coverage, including but not  
21 limited to, premises liability, unmodified contractual liability, products  
22 and completed operations liability, personal and advertising injury, and  
23 cross liability coverage, covering claims which may arise from or out  
24 of DEVELOPER'S performance of its obligations hereunder. Policy  
25 shall name DISTRICT, the County of Riverside and CITY, its agencies,  
26 districts, special districts, and departments, their respective directors,  
27 officers, Board of Supervisors, employees, elected or appointed  
28 officials, agents or representatives as additional insureds. Policy's limit

1 of liability shall not be less than \$2,000,000 per occurrence combined  
2 single limit. If such insurance contains a general aggregate limit, it  
3 shall apply separately to this Agreement or be no less than two (2) times  
4 the occurrence limit.

5 C. Vehicle Liability:

6 If DEVELOPER'S vehicles or mobile equipment are used in the  
7 performance of the obligations under this Agreement, then  
8 DEVELOPER shall maintain liability insurance for all owned, non-  
9 owned or hired vehicles so used in an amount not less than \$1,000,000  
10 per occurrence combined single limit. If such insurance contains a  
11 general aggregate limit, it shall apply separately to this Agreement or  
12 be no less than two (2) times the occurrence limit. Policy shall name  
13 DISTRICT, the County of Riverside and CITY, its agencies, districts,  
14 special districts, and departments, their respective directors, officers,  
15 Board of Supervisors, employees, elected or appointed officials, agents  
16 or representatives as additional insureds.

17 D. Professional Liability:

18 DEVELOPER shall maintain Professional Liability Insurance  
19 providing coverage for DEVELOPER'S performance of work included  
20 within this Agreement, with a limit of liability of not less than  
21 \$2,000,000 per occurrence and \$4,000,000 annual aggregate. If  
22 DEVELOPER'S Professional Liability Insurance is written on a claims  
23 made basis rather than an occurrence basis, such insurance shall  
24 continue through the term of this Agreement and DEVELOPER shall  
25 purchase at his sole expense either 1) an Extended Reporting  
26 Endorsement (also known as Tail Coverage); or 2) Prior Dates  
27 Coverage from a new insurer with a retroactive date back to the date  
28 of, or prior to, the inception of this Agreement; or 3) demonstrate

1 through Certificates of Insurance that DEVELOPER has maintained  
2 continuous coverage with the same or original insurer. Coverage  
3 provided under items: 1), 2) or 3) will continue as long as the law  
4 allows.

5 E. General Insurance Provisions – All Lines:

- 6 i. Any insurance carrier providing insurance coverage hereunder shall  
7 be admitted to the State of California and have an A.M. BEST  
8 rating of not less than an A: VIII (A: 8) unless such requirements  
9 are waived, in writing, by the County and CITY Risk Managers. If  
10 the Risk Managers waives a requirement for a particular insurer  
11 such waiver is only valid for that specific insurer and only for one  
12 policy term.
- 13 ii. DEVELOPER must declare its insurance self-insured retention for  
14 each coverage required herein. If any such self-insured retention  
15 exceeds \$500,000 per occurrence each such retention shall have the  
16 prior written consent of the County and CITY Risk Managers  
17 before the commencement of operations under this Agreement.  
18 Upon notification of self-insured retention deemed unacceptable to  
19 DISTRICT, and at the election of the Risk Managers,  
20 DEVELOPER'S carriers shall either: 1) reduce or eliminate such  
21 self-insured retention with respect to this Agreement with  
22 DISTRICT, or 2) procure a bond which guarantees payment of  
23 losses and related investigations, claims administration, and  
24 defense costs and expenses.
- 25 iii. DEVELOPER shall cause their insurance carrier(s) or its  
26 contractor's insurance carrier(s), to furnish DISTRICT with 1) a  
27 properly executed original certificate(s) of insurance and certified  
28 original copies of endorsements effecting coverage as required

1 herein; and 2) if requested to do so orally or in writing by the  
2 County and CITY Risk Managers, provide original certified copies  
3 of policies including all endorsements and all attachments thereto,  
4 showing such insurance is in full force and effect. Further, said  
5 certificate(s) and policies of insurance shall contain the covenant of  
6 the insurance carrier(s) that a minimum of sixty (60) days written  
7 notice shall be given to DISTRICT prior to any material  
8 modification, cancellation, expiration or reduction in coverage of  
9 such insurance. If DEVELOPER insurance carrier(s) policies does  
10 not meet the minimum notice requirement found herein,  
11 DEVELOPER shall cause DEVELOPER'S insurance carrier(s) or  
12 its contractor's insurance carrier(s) to furnish a 60 day Notice of  
13 Cancellation Endorsement. In the event of a material modification,  
14 cancellation, expiration or reduction in coverage, this Agreement  
15 shall terminate forthwith, unless DISTRICT receives, prior to such  
16 effective date, another properly executed original certificate of  
17 insurance and original copies of endorsements or certified original  
18 policies, including all endorsements and attachments thereto,  
19 evidencing coverages set forth herein and the insurance required  
20 herein is in full force and effect. An individual authorized by the  
21 insurance carrier to do so on its behalf shall sign the original  
22 endorsements for each policy and the certificate of insurance.

- 23 iv. It is understood and agreed by the parties hereto that  
24 DEVELOPER'S insurance shall be construed as primary insurance,  
25 and DISTRICT'S and CITY'S insurance and/or deductibles and/or  
26 self-insured retentions or self-insured programs shall not be  
27 construed as contributory.  
28

- 1 v. If, during the term of this Agreement or any extension thereof, there  
2 is a material change in the scope of services or there is a material  
3 change in the equipment to be used in the performance of the scope  
4 of work which will add additional exposures (such as the use of  
5 aircraft, watercraft, cranes, etc.); or the term of this Agreement,  
6 including any extensions thereof, exceeds five (5) years,  
7 DISTRICT and CITY reserve the right to adjust the types of  
8 insurance required under this Agreement and the monetary limits  
9 of liability for the insurance coverages currently required herein, if  
10 in the County or CITY Risk Manager's reasonable judgment, the  
11 amount or type of insurance carried by DEVELOPER has become  
12 inadequate.
- 13 vi. DEVELOPER shall pass down the insurance obligations contained  
14 herein to all tiers of subcontractors working under this Agreement.
- 15 vii. The insurance requirements contained in this Agreement may be  
16 met with a program(s) of self-insurance acceptable to DISTRICT  
17 and CITY.
- 18 viii. DEVELOPER agrees to notify DISTRICT and CITY of any claim  
19 by a third party or any incident or event that may give rise to a claim  
20 arising from the performance of this Agreement.

21 Failure to maintain the insurance required by this paragraph shall be deemed  
22 a material breach of this Agreement and shall authorize and constitute authority for DISTRICT  
23 or CITY, at their sole discretion, to provide written notice to DEVELOPER that DISTRICT or  
24 CITY is unable to perform its obligations hereunder, nor to accept responsibility for ownership,  
25 operation and maintenance of DISTRICT FACILITIES or APPURTENANCES due, either in  
26 whole or in part, to said breach of this Agreement.

27 18. Construct or cause to be constructed, PROJECT at DEVELOPER'S sole cost  
28 and expense, in accordance with DISTRICT and CITY approved IMPROVEMENT PLANS.

1           19. Within two (2) weeks of completing PROJECT construction, provide  
2 DISTRICT (Attention: Development Review Section) and CITY with written notice that  
3 PROJECT construction is substantially complete and requesting that DISTRICT conduct a final  
4 inspection of DISTRICT FACILITIES and CITY conduct a final inspection of  
5 APPURTENANCES.

6           20. Upon completion of PROJECT construction, and upon acceptance by CITY  
7 of all rights of way deemed necessary by DISTRICT and CITY for the operation and maintenance  
8 of PROJECT, but prior to DISTRICT acceptance of DISTRICT DRAINAGE FACILITIES for  
9 ownership, operation and maintenance, convey, or cause to be conveyed to DISTRICT the flood  
10 control easement(s) including ingress and egress, in a form approved by DISTRICT.

11           21. [INTENTIONALLY DELETED]

12           22. Accept ownership and sole responsibility for the operation and maintenance  
13 of PROJECT until such time as DISTRICT accepts ownership and responsibility for operation  
14 and maintenance of DISTRICT FACILITIES and CITY accepts ownership and responsibility for  
15 operation and maintenance of APPURTENANCES. Further, it is mutually understood by the  
16 parties hereto that prior to DISTRICT and CITY acceptance of ownership and responsibility for  
17 the operation and maintenance of DISTRICT FACILITIES and APPURTENANCES, DISTRICT  
18 FACILITIES and APPURTENANCES shall be in a satisfactorily maintained condition as solely  
19 determined by DISTRICT and CITY. If, subsequent to the inspection and, in the sole discretion  
20 of DISTRICT and CITY, DISTRICT FACILITIES and APPURTENANCES are not in an  
21 acceptable condition, corrections shall be made at sole expense of DEVELOPER.

22           23. Pay, if suit is brought upon this Cooperative Agreement or any bond  
23 guaranteeing the completion of PROJECT, all costs and reasonable expenses and fees, including  
24 reasonable attorneys' fees, and acknowledge that, upon entry of judgment, all such costs, expenses  
25 and fees shall be computed as costs and included in any judgment rendered.

26           24. Upon completion of PROJECT construction, but prior to DISTRICT  
27 acceptance of DISTRICT FACILITIES for ownership, operation and maintenance, provide or  
28 cause its civil engineer of record or construction civil engineer of record, duly registered in the



1 State of California, to provide DISTRICT with a redlined "record drawings" copy of PROJECT  
 2 plans. After DISTRICT approval of the redlined "record drawings", DEVELOPER'S engineer  
 3 shall schedule with DISTRICT a time to transfer the redlined changes onto DISTRICT'S original  
 4 mylars at DISTRICT'S office, after which the engineer shall review, stamp and sign the original  
 5 PROJECT engineering plans "record drawings".

6 25. Ensure that all work performed pursuant to this Cooperative Agreement by  
 7 DEVELOPER, its agents or contractors is done in accordance with all applicable laws and  
 8 regulations, including but not limited to all applicable provisions of the Labor Code, Business and  
 9 Professions Code, and Water Code. DEVELOPER shall be solely responsible for all costs  
 10 associated with compliance with applicable laws and regulations.

## 11 SECTION II

12 DISTRICT shall:

13 1. Review and approve IMPROVEMENT PLANS prior to the start of  
 14 PROJECT construction.

15 2. Provide CITY an opportunity to review and approve IMPROVEMENT  
 16 PLANS prior to DISTRICT'S final approval.

17 3. Upon execution of this Cooperative Agreement, record or cause to be  
 18 recorded, a copy of this Cooperative Agreement in the Official Records of the Riverside County  
 19 Recorder.

20 4. [INTENTIONALLY DELETED]

21 5. Inspect DISTRICT FACILITIES construction.

22 6. Keep an accurate accounting of all DISTRICT costs associated with the  
 23 review and approval of IMPROVEMENT PLANS, the review and approval of right of way and  
 24 conveyance documents, and the processing and administration of this Cooperative Agreement.

25 7. Keep an accurate accounting of all DISTRICT construction inspection costs,  
 26 and within forty-five (45) days after DISTRICT acceptance of DISTRICT FACILITIES as being  
 27 complete, submit a final cost statement to DEVELOPER. If the deposit, as set forth in Section  
 28

1 I.3., exceeds such costs, DISTRICT shall reimburse DEVELOPER the excess amount within sixty  
2 (60) days after DISTRICT acceptance of DISTRICT FACILITIES as being complete.

3 8. Accept ownership and sole responsibility for the operation and maintenance  
4 of DISTRICT FACILITIES upon (i) DISTRICT inspection of DISTRICT FACILITIES in  
5 accordance with Section I.19.; (ii) DISTRICT acceptance of PROJECT construction as being  
6 complete; (iii) DISTRICT receipt of stamped and signed "record drawings" of PROJECT plans,  
7 as set forth in Section I.24.; (iv) CITY acceptance of APPURTENANCES for ownership,  
8 operation, and maintenance; and (v) DISTRICT'S sole determination that DISTRICT  
9 FACILITIES are in a satisfactorily maintained condition.

10 9. Provide CITY with a reproducible duplicate copy of "record drawings"  
11 PROJECT plans upon DISTRICT acceptance of DISTRICT FACILITIES as being complete.

### 12 SECTION III

13 CITY shall:

14 1. Review and approve IMPROVEMENT PLANS prior to the start of  
15 PROJECT construction.

16 2. Accept CITY and DISTRICT approved faithful performance and payment  
17 bonds submitted by DEVELOPER as set forth in Section I.7., and hold said bonds as provided  
18 herein.

19 3. Inspect PROJECT construction.

20 4. [INTENTIONALLY DELETED]

21 5. [INTENTIONALLY DELETED]

22 6. Grant DISTRICT, by execution of this Agreement, the right to construct,  
23 inspect, operate and maintain DISTRICT FACILITIES within CITY rights of way.

24 7. Accept ownership and sole responsibility for the operation and maintenance  
25 of APPURTENANCES upon DISTRICT acceptance of DISTRICT FACILITIES for ownership,  
26 operation and maintenance.

8. Not grant any occupancy permits for any units within any portion of Tract No. 22180-2, or any phase thereof, until construction of PROJECT is complete, unless otherwise approved in writing by DISTRICT.

9. Upon DISTRICT acceptance of PROJECT construction as being complete, accept sole responsibility for the adjustment of all PROJECT manhole rings and covers located within CITY rights of way which must be performed at such time(s) that the finished grade along and above the underground portions of DISTRICT FACILITIES are improved, repaired, replaced or changed. It being further understood and agreed that any such adjustments shall be performed at no cost to DISTRICT.

## SECTION IV

It is further mutually agreed:

1. All work involved with PROJECT shall be inspected by DISTRICT and CITY but shall not be deemed complete until DISTRICT and CITY mutually agree in writing that construction is completed in accordance with DISTRICT and CITY approved IMPROVEMENT PLANS.

2. CITY and DEVELOPER personnel may observe and inspect all work being done on DISTRICT FACILITIES, but shall provide any comments to DISTRICT personnel who shall be solely responsible for all quality control communications with DEVELOPER'S contractor(s) during the construction of PROJECT.

3. DEVELOPER shall complete construction of PROJECT within twelve (12) consecutive months after execution of this Cooperative Agreement and within one hundred twenty (120) consecutive calendar days after commencing work on PROJECT. It is expressly understood that since time is of the essence in this Cooperative Agreement, failure of DEVELOPER to perform the work within the agreed upon time shall constitute authority for DISTRICT to perform the remaining work and require DEVELOPER'S surety to pay to CITY the penal sum of any and all bonds. In which case, CITY shall subsequently reimburse DISTRICT for DISTRICT costs incurred.

1                   4. If DEVELOPER fails to commence construction of PROJECT within nine  
2 (9) months after execution of this Cooperative Agreement, then DISTRICT reserves the right to  
3 withhold issuance of the Notice to Proceed pending a review of the existing site conditions as they  
4 exist at the time DEVELOPER provides written notification to DISTRICT of the start of  
5 construction as set forth in Section I.8. In the event of a change in the existing site conditions that  
6 materially affects PROJECT function or DISTRICT'S ability to operate and maintain DISTRICT  
7 FACILITIES, DISTRICT may require DEVELOPER to modify IMPROVEMENT PLANS as  
8 deemed necessary by DISTRICT.

9                   5. DISTRICT shall endeavor to issue DEVELOPER a Notice to Proceed within  
10 twenty (20) days of receipt of DEVELOPER'S complete written notice as set forth in Section I.8.;  
11 however, DISTRICT'S construction inspection staff is limited and, therefore, the issuance of a  
12 Notice to Proceed is subject to staff availability.

13                   In the event DEVELOPER wishes to expedite issuance of a Notice to  
14 Proceed, DEVELOPER may elect to furnish an independent qualified construction inspector at  
15 DEVELOPER'S sole cost and expense. DEVELOPER shall furnish appropriate documentation  
16 of the individual's credentials and experience to DISTRICT for review and, if appropriate,  
17 approval. DISTRICT shall review the individual's qualifications and experience, upon approval  
18 thereof, said individual, hereinafter called "DEPUTY INSPECTOR", shall be authorized to act  
19 on DISTRICT'S behalf on all DISTRICT FACILITIES construction and quality control matters.  
20 If DEVELOPER'S initial construction inspection deposit furnished pursuant to Section I.3.  
21 exceeds ten thousand dollars (\$10,000), DISTRICT shall refund to DEVELOPER up to eighty  
22 percent (80%) of DEVELOPER'S initial inspection deposit within forty-five (45) days of  
23 DISTRICT'S approval of DEPUTY INSPECTOR; however, a minimum balance of ten thousand  
24 dollars (\$10,000) shall be retained on account.

25                   6. PROJECT construction work shall be on a five (5) day, forty (40) hour work  
26 week with no work on Saturdays, Sundays or DISTRICT designated legal holidays, unless  
27 otherwise approved in writing by DISTRICT. If DEVELOPER feels it is necessary to work more  
28 than the normal forty (40) hour work week or on holidays, DEVELOPER shall make a written

1 request for permission from DISTRICT to work the additional hours. The request shall be  
2 submitted to DISTRICT at least seventy-two (72) hours prior to the requested additional work  
3 hours and state the reasons for the overtime and the specific time frames required. The decision  
4 of granting permission for overtime work shall be made by DISTRICT at its sole discretion and  
5 shall be final. If permission is granted by DISTRICT, DEVELOPER will be charged the cost  
6 incurred at the overtime rates for additional inspection time required in connection with the  
7 overtime work in accordance with Ordinance Nos. 671 and 749, including any amendments  
8 thereto, of the County of Riverside.

9           7. DEVELOPER shall indemnify and hold harmless DISTRICT, County of  
10 Riverside and CITY (including their agencies, districts, special districts and departments, their  
11 respective directors, officers, Board of Supervisors, elected and appointed officials, employees,  
12 agents and representatives) from any liability, claim, damage, proceeding or action, present or  
13 future, based upon, arising out of or in any way relating to DEVELOPER'S (including its officers,  
14 employees, subcontractors and agents) actual or alleged acts or omissions related to this  
15 Agreement, performance under this Agreement, or failure to comply with the requirements of this  
16 Agreement, including but not limited to: (a) property damage; (b) bodily injury or death; (c)  
17 liability or damage pursuant to Article I, Section 19 of the California Constitution, the Fifth  
18 Amendment of the United States Constitution or any other law, ordinance or regulation caused by  
19 the diversion of waters from the natural drainage patterns or the discharge of drainage within or  
20 from PROJECT; or (d) any other element of any kind or nature whatsoever.

21           DEVELOPER shall defend, at its sole expense, including all costs and fees  
22 (including but not limited to attorney fees, cost of investigation, defense and settlements or  
23 awards), DISTRICT, County of Riverside and CITY (including their agencies, districts, special  
24 districts and departments, their respective directors, officers, Board of Supervisors, elected and  
25 appointed officials, employees, agents and representatives) in any claim, proceeding or action for  
26 which indemnification is required.

27           With respect to any of DEVELOPER'S indemnification requirements,  
28 DEVELOPER shall, at its sole cost, have the right to use counsel of their own choice and shall

1 have the right to adjust, settle, compromise any such claim, proceeding or action without the prior  
2 consent of DISTRICT, County of Riverside and CITY; provided, however, that any such  
3 adjustment, settlement or compromise in no manner whatsoever limits or circumscribes  
4 DEVELOPER'S indemnification obligations to DISTRICT or CITY.

5 DEVELOPER'S indemnification obligations shall be satisfied when  
6 DEVELOPER has provided to DISTRICT and CITY the appropriate form of dismissal (or similar  
7 document) relieving DISTRICT or CITY from any liability for the claim, proceeding or action  
8 involved.

9 The specified insurance limits required in this Cooperative Agreement shall  
10 in no way limit or circumscribe DEVELOPER'S obligations to indemnify and hold harmless  
11 DISTRICT and CITY from third party claims.

12 In the event there is conflict between this section and California Civil Code  
13 Section 2782, this section shall be interpreted to comply with California Civil Code Section 2782.  
14 Such interpretation shall not relieve DEVELOPER from indemnifying DISTRICT or CITY to the  
15 fullest extent allowed by law.

16 8. DEVELOPER for itself, its successors and assigns hereby releases  
17 DISTRICT, County of Riverside and CITY, their respective officers, agents, and employees from  
18 any and all claims, demands, actions, or suits of any kind arising out of any liability, known or  
19 unknown, present or future, including, but not limited to any claim or liability, based or asserted,  
20 pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United  
21 States Constitution, or any other law or ordinance which seeks to impose any other liability or  
22 damage, whatsoever, for damage caused by the discharge of drainage within or from PROJECT.  
23 Nothing contained herein shall constitute a release by DEVELOPER of DISTRICT or CITY, their  
24 officers, agents and employees from any and all claims, demands, actions or suits of any kind  
25 arising out of any liability, known or unknown, present or future, for the negligent maintenance  
26 of DISTRICT FACILITIES and APPURTENANCES, after the acceptance of DISTRICT  
27 FACILITIES and APPURTENANCES by DISTRICT and CITY, respectively.  
28

9. Any waiver by DISTRICT or by CITY of any breach of any one or more of the terms of this Cooperative Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term hereof. Failure on the part of DISTRICT or CITY to require exact, full and complete compliance with any terms of this Cooperative Agreement shall not be construed as in any manner changing the terms hereof, or estopping DISTRICT or CITY from enforcement hereof.

10. Any and all notices sent or required to be sent to the parties of this Cooperative 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: Administrative Services Section

CITY OF MORENO VALLEY  
14177 Frederick Street  
Moreno Valley, CA 92553  
Attn: Vince Giron  
Public Works Department

RSI COMMUNITIES LLC  
620 Newport Center Drive, 12<sup>th</sup> Floor  
Newport Beach, CA 92660  
Attn: Rola Ann Nicasio

11. This Agreement is to be construed in accordance with the laws of the State of California. If any provision of this Agreement 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.

12. Any action at law or in equity brought by any of the parties hereto for the purpose of enforcing a right or rights provided for by the Cooperative Agreement, shall be tried in a court of competent jurisdiction in the County of Riverside, State of California, and the parties hereto waive all provisions of law providing for a change of venue in such proceedings to any other county.

13. This Cooperative Agreement is the result of negotiations between the parties hereto, and the advice and assistance of their respective counsel. The fact that this Cooperative Agreement was prepared as a matter of convenience by DISTRICT shall have no import or



1 significance. Any uncertainty or ambiguity in this Cooperative Agreement shall not be construed  
2 against DISTRICT because DISTRICT prepared this Cooperative Agreement in its final form.

3 14. The rights and obligations of DEVELOPER shall inure to and be binding  
4 upon all heirs, successors and assignees.

5 15. DEVELOPER shall not assign or otherwise transfer any of its rights, duties  
6 or obligations hereunder to any person or entity without the written consent of the other parties  
7 hereto being first obtained. In the event of any such transfer or assignment, DEVELOPER  
8 expressly understands and agrees that it shall remain liable with respect to any and all of the  
9 obligations and duties contained in this Cooperative Agreement.

10 16. The individual(s) executing this Cooperative Agreement on behalf of  
11 DEVELOPER certify that they have the authority within their respective company(ies) to enter  
12 into and execute this Cooperative Agreement, and have been authorized to do so by all boards of  
13 directors, legal counsel, and/or any other board, committee or other entity within their respective  
14 company(ies) which have the authority to authorize or deny entering into this Cooperative  
15 Agreement.

16 17. This Cooperative Agreement is intended by the parties hereto as a final  
17 expression of their understanding with respect to the subject matter hereof and as a complete and  
18 exclusive statement of the terms and conditions thereof and supersedes any and all prior and  
19 contemporaneous agreements and understandings, oral or written, in connection therewith. This  
20 Cooperative Agreement may be changed or modified only upon the written consent of the parties  
21 hereto.

22 //

23 //

1 IN WITNESS WHEREOF, the parties hereto have executed this Cooperative Agreement on

2 \_\_\_\_\_  
3 (to be filled in by Clerk of the Board)

4 RECOMMENDED FOR APPROVAL: **RIVERSIDE COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT**

6 By \_\_\_\_\_  
7 JASON E. UHLEY  
8 General Manager-Chief Engineer

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

9  
10 APPROVED AS TO FORM:

11 GREGORY P. PRIAMOS  
12 County Counsel

ATTEST:

KECIA HARPER-IHEM  
Clerk of the Board

13  
14 By \_\_\_\_\_  
LEILA MOSHREF-DANESH  
15 Deputy County Counsel

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

(SEAL)

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24 Cooperative Agreement:  
25 Sunnymead - Black Shadow Drive Storm Drain, Stage 1  
26 Project No. 4-0-00363  
27 Tract No. 22180-2  
28 AMR:blm  
02/16/17

1 RECOMMENDED FOR APPROVAL:

CITY OF MORENO VALLEY

2  
3 By \_\_\_\_\_  
4 AHMAD R. ANSARI  
Public Works Director/City Engineer

By \_\_\_\_\_  
MICHELLE DAWSON  
City Manager

5  
6 APPROVED AS TO FORM:

ATTEST:

7 MARTIN D. KOCZANOWICZ  
8 City Attorney

9  
10 By \_\_\_\_\_  
11 PAUL EARLY  
Assistant City Attorney

By \_\_\_\_\_  
MARIE MACIAS  
Interim City Clerk

12 (SEAL)

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24 Cooperative Agreement:  
25 Sunnymead - Black Shadow Drive Storm Drain, Stage 1  
26 Project No. 4-0-00363  
27 Tract No. 22180-2  
AMR:blm  
02/16/17

1  
2 **RSI COMMUNITIES LLC**  
3 a Delaware limited liability company

4 By: RSI Holding LLC,  
5 a Delaware limited liability company  
6 its Manager

7 By \_\_\_\_\_  
8 **DARIUS FATAKIA**  
9 Vice President of Land Development

10 (ATTACH NOTARY WITH CAPACITY  
11 STATEMENT)

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24 Cooperative Agreement:  
25 Sunnymead - Black Shadow Drive Storm Drain, Stage 1  
26 Project No. 4-0-00363  
27 Tract No. 22180-2  
28 AMR:blm  
02/16/17

# Exhibit A

## LEGAL DESCRIPTION

Real property in the City of Moreno Valley, County of Riverside, State of California, described as follows:

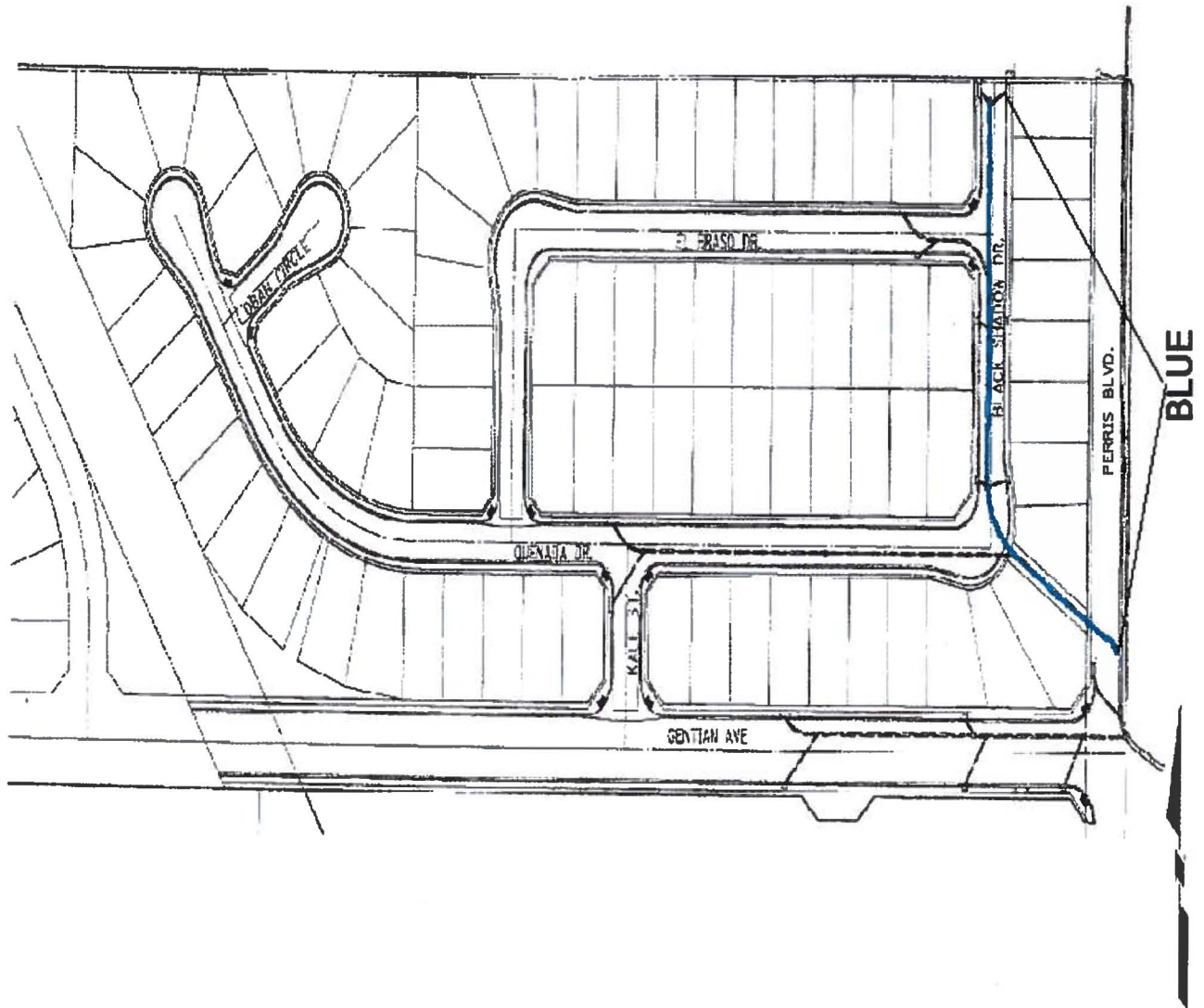
PARCEL 1: (APN'S: 485-111-001-7, 485-111-002-8, 485-111-003-9, 485-111-004-0, 485-111-005-1 THROUGH 485-111-009-5, 485-111-010-5 THROUGH 485-111-014-9, 485-111-015-0, 485-111-016-1 THROUGH 485-111-018-3, 485-112-001-0 THROUGH 485-112-008-7, 485-112-022-9, 485-112-023-0, 485-122-014-0 THROUGH 485-121-024-9, 485-121-025-0, 485-121-014-0, 485-121-015-1 THROUGH 485-121-024-9, 485-121-025-0, 485-113-033-2, 485-113-003-5 THROUGH 485-113-007-9, 485-113-008-0, 485-113-009-1, 485-113-010-1 THROUGH 485-113-018-9, 485-113-019-0, 485-113-020-0, 485-113-021-1 THROUGH 485-113-029-9, 485-114-001-6 THROUGH 485-114-004-9, 485-114-005-0, 485-114-006-1 THROUGH 485-114-015-9, 485-114-016-0 AND 485-114-017-1 THROUGH 485-114-022-5)

LOTS 1 THROUGH 87 INCLUSIVE OF TRACT NO. 22180-2, IN THE CITY OF MORENO VALLEY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 207 PAGES 97 THROUGH 103 INCLUSIVE OF MAPS, RIVERSIDE COUNTY RECORDS.

PARCEL 2: (APN'S: 485-121-001-8, 485-121-002-9, 485-121-003-0, 485-121-004-1 THROUGH 485-121-009-6, 485-121-010-6, 485-122-001-1 THROUGH 485-122-009-9, 485-122-010-9, 485-122-011-0, 485-122-012-1, 485-123-001-4 THROUGH 485-123-006-9, 485-123-007-0, 485-123-008-1, 485-123-009-2, 425-123-010-2 THROUGH 425-123-017-9, 485-123-018-0, 485-123-019-1, 485-123-020-1 THROUGH 485-123-028-9, 485-123-029-0 AND 485-123-030-0)

LOTS 1 THROUGH 53 INCLUSIVE OF TRACT NO. 22180-3, IN THE CITY OF MORENO VALLEY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 208 PAGES 1 THROUGH 6 INCLUSIVE OF MAPS, RIVERSIDE COUNTY RECORDS.

## Exhibit B



### COOPERATIVE AGREEMENT

Sunnymead - Black Shadow Drive Storm Drain, Stage 1

TR 22180-2

Project No. 4-0-00363 Page

1 of 1