

# ORIGINAL

## SUBDIVISION GRADING AGREEMENT BETWEEN COUNTY AND OWNER AGMT # 10-53059

**THIS AGREEMENT**, made and entered into by and between the **COUNTY OF EL DORADO**, a political subdivision of the State of California, (hereinafter referred to as "County"), and **TAYLOR MORRISON OF CALIFORNIA, LLC**, a limited liability company, duly qualified to conduct business in the State of California, whose principal place of business is 15 Cushing, Irvine, California 92618 and whose local office address is 1180 Iron Point Road, Suite 100, Folsom, California 95630; (hereinafter referred to as "Owner"); concerning **WEST VALLEY VILLAGE UNIT 8, TM 99-1359-8** (hereinafter referred to as "Subdivision"); the tentative map of which was approved by County's Planning Commission on the 22nd day of January 2004.

### RECITALS

**WHEREAS**, Owner is vested with fee title to Subdivision, a tract of land located in the County of El Dorado, State of California, and intends to begin construction of certain public improvements in Subdivision prior to obtaining approval of a Final Map and entering into a Subdivision Improvement Agreement with County pursuant to Section 16.16.040 of the El Dorado County Ordinance Code (hereinafter referred to as "Code");

**WHEREAS**, Sections 16.16.010 and 16.16.020 of the Code require all subdivision improvements to be constructed in accordance with County's Design and Improvement Standards Manual (hereinafter referred to as "Manual");

**WHEREAS**, subsection F to Section 2, Volume II of the Manual requires Owner to execute a Subdivision Grading Agreement and to furnish financial security before commencing or causing to be commenced any construction of subdivision improvements;

**NOW, THEREFORE**, the parties hereto in consideration of the recitals, terms, and conditions herein, do hereby agree as follows:

### AGREEMENT

#### **OWNER WILL:**

1. Make or cause to be made all of those improvements in the Subdivision required by Section 16.16.010 or 16.16.020 of the Code and shown or described in the improvement plans and specifications which were approved by County's Department of Transportation on the 26th day of June 2007, and which are described in the cost estimates, attached hereto as Exhibit A, marked "Cost

Estimates – WEST VALLEY VILLAGE UNIT 8, TM 99-1359-8," incorporated herein and made by reference a part hereof. The estimated cost of installing the improvements agreed to be performed herein is **EIGHT HUNDRED NINE THOUSAND TEN DOLLARS AND SIXTY-SEVEN CENTS (\$809,010.67)**.

2. Install or cause to be installed, modify or cause to be modified, any and all erosion and sediment control features, whether temporary or permanent, deemed necessary by the County Engineer to ensure compliance with the Clean Water Act, the Statewide General Permit, and the County Grading, Erosion and Sediment Control Ordinances. Failure to comply with this provision shall constitute a material breach of this Agreement.

3. Complete said improvements on or before two years from the effective date of this Agreement.

4. Post security for the construction and maintenance of the improvements, including erosion control, as determined by the Department of Transportation as follows:

Restoration security: **EIGHT HUNDRED FOUR THOUSAND TEN DOLLARS AND SIXTY-SEVEN CENTS (\$804,010.67)**.

Restoration security is defined as the amount of money necessary to return the subdivision property to an unimpaired (not impacting surrounding properties) or improved (safe and stable) condition. The dollar amount shall be equal to 50% of the grading costs, plus 100% of the stormwater compliance and drainage costs, plus 100% of the erosion control costs, and 100% of project administration, staking and contingency estimates. Prior to the filing of the Final Map, all mechanics liens encumbering the property shall be removed, at Owner's sole cost and expense.

5. Provide for and pay the costs of related civil engineering services.

6. Provide deposits for and pay all costs of construction oversight, inspection, administration and acceptance of the work by County in accordance with the County Engineer Fee Schedule adopted by Resolution of County's Board of Supervisors.

7. Have as-built plans prepared by a civil engineer and filed with County's Department of Transportation as provided in Section 16.16.060 of the Code.

8. To the fullest extent allowed by law, defend, indemnify and hold County harmless against and from any and all claims, suits, losses, damages, fines penalties and liability for damages of every name, kind and description, including attorneys' fees and costs incurred, brought for, or on account of, injuries to or

death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any other economic or consequential losses, which are claimed to or in any way arise out of or are connected with Owner's work, operation, construction of the improvements, or performance of this Agreement, regardless of the existence or degree of fault or negligence on the part of County, Owner, any Contractor(s), Subcontractor(s) and employee(s) of any of these, except for the sole, or active negligence of County, its officers and employees, or as expressly provided by statute. This duty of Owner to indemnify and save County harmless includes the duties to defend set forth in California Civil Code section 2778.

9. Enter into a separate agreement with County for all road improvements to be performed on County property. Such agreement shall include the requirement that Owner shall furnish insurance in compliance with the provisions of the County's standard insurance requirements.

**COUNTY WILL:**

10. Upon execution of this Agreement and receipt of good and sufficient security as required by Paragraph 4 above and receipt of the appropriate service fees, authorize the subdivision improvements described in Paragraph 1 above for construction.

11. Upon satisfactory completion of the construction, or upon execution of a Subdivision Improvement Agreement pursuant to Section 16.16.040 of the Code and receipt of good and sufficient securities as provided in Section 16.16.050 of the Code, release the security posted in accordance with Section 15.14.300(F) of the Grading Ordinance.

12. Require Owner to make such corrections of deficiencies in the improvements agreed to be performed herein and shown and described on the plans, specifications, and cost estimates as may be deemed to be required by County's Director of Transportation to be necessary to the proper completion or construction of the whole work contemplated. Require Owner to make such alterations, deviations, additions to or deletions in the improvements agreed to be performed herein and shown and described on the plans, specifications and cost estimates as may be deemed to be advisable by County's Director of Transportation to be appropriate for the proper completion or construction of the whole work contemplated provided that the amount of such alterations, deviations, additions to or deletions from the improvements does not exceed ten percent (10%) of the total estimated cost of the improvements.

13. Require Owner to maintain, and to make such alterations, deviations, additions to, or deletions from, the project erosion control features shown and described on the plans, specifications and cost estimates and the Storm Water Pollution Prevention Plan (SWPPP) as may be deemed by County's Director of

Transportation to be necessary or advisable for compliance with the Clean Water Act, Statewide General Permit requirements and County's Grading, Erosion and Sediment Control Ordinances.

14. Require Owner to pay County for costs and reasonable attorney fees should County be required to commence an action to enforce the provisions of this Agreement or in enforcing the security obligations provided herein.

**ADDITIONAL TERMS:**

15. Owner shall conform to and abide by all federal, state and local building, labor and safety laws, ordinances, rules and regulations. All Work and materials shall be in full accordance with the latest rules and regulations of the State Fire Marshal, safety orders of the Division of Industrial Safety, California Electrical Code, California Building Code, California Plumbing Code, and any and all other applicable laws and regulations. Nothing in this Agreement, including but not limited to, the improvement plans and specifications, is to be construed to permit work not conforming to these codes, laws and regulations.

16. Neither this Agreement, nor any part thereof, or any monies due or to become due hereunder, may be assigned by Owner without written approval of County.

17. This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

18. All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested.

Notices to County shall be in duplicate and addressed as follows:

County Of El Dorado  
Department Of Transportation  
2850 Fairlane Court  
Placerville, California 95667

County Of El Dorado  
Department Of Transportation  
2850 Fairlane Court  
Placerville, California 95667

Attn.: Eileen Crawford,  
Supervising Civil Engineer  
Transportation Planning &  
Land Development Division

Attn.: Tim C. Prudhel,  
Contract Services Officer

or to such other location as County directs.

Notices to Owner shall be addressed as follows:

Taylor Morrison of California, LLC  
1180 Iron Point Road, Suite 100  
Folsom, California 95630

Attn.: Jay Pawlek,  
Director of Land


or to such other location as Owner directs.

19. The County Officer or employee with responsibility for administering this Agreement is Eileen Crawford, Supervising Civil Engineer, Transportation Planning & Land Development Division, Department of Transportation, or successor.

20. The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties the obligations set forth herein.

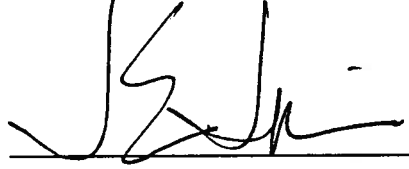
IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below, the latest of which shall be deemed to be the effective date of this Agreement.

--COUNTY OF EL DORADO--

By:   
James W. Ware, P.E.  
Director of Transportation  
"County"

Dated: 10/18/10

--TAYLOR MORRISON OF CALIFORNIA, LLC--

By:   
James E. Jimison  
Vice President of Land  
"Owner"

Dated: 9/20/2010

**Notary Acknowledgment Attached**

OWNER

ACKNOWLEDGMENT

State of California

County of \_\_\_\_\_

On 9/20/2010 before me, Kathleen Faye Lopez  
(here insert name and title of the officer)

personally appeared J E Jimison

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 Kathleen Faye Lopez



(Seal)