

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

County of El Dorado
2850 Fairlane Court
Placerville, CA 95667
Attn: Director of Development Services

EXEMPT FROM RECORDING FEES
PER GOVERNMENT CODE §27383

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

**COMMUNITY BENEFIT AND
DEVELOPMENT AGREEMENT**

BY AND BETWEEN

COUNTY OF EL DORADO

AND

DIXON RANCH VENTURE, LLC

Effective Date: _____, 2016

EXHIBIT J

**Community Benefit and Development Agreement
Between the County of El Dorado and
Dixon Ranch Venture, LLC
For the Development Known as
the Dixon Ranch Residential Project**

This Community Benefit and Development Agreement (hereinafter “Agreement”) is made and entered into this ___ day of _____, 2016, by and between the **County of El Dorado** (hereinafter “**County**”) and **Dixon Ranch Venture, LLC** (hereinafter “**Developer**”), pursuant to the authority of Sections 65864 through 65896.5 of the California Government Code and Chapter 17.85 of the County’s Ordinance Code relating to development agreements.

Recitals

This Agreement is entered into based on the following facts and circumstances, among others:

- A. The County of El Dorado, a semi-rural County located in the Sacramento metropolitan region, prides itself on providing a high quality of life to its residents. The County strives to balance the need for a healthy diverse economy, including a wide variety of commercial and retail opportunities, adequately financed and maintained infrastructure, with a healthy, sustainable, natural environment.
- B. The El Dorado Hills area has been identified by the County for many years as one of the primary areas affording an opportunity for providing residential development to serve the County’s current and future growth.
- C. Developer is in the business of developing residential communities in Northern California. The Developer has an equitable interest in approximately 280 acres of real property which is commonly known as the Dixon Ranch Property (the “**Property**”). The Property is located within the El Dorado Hills area of the County south of Green Valley Road and immediately between the Highland View and Green Springs Ranch communities. The Property is located within an area of the County designated as Community Region in the County’s General Plan.
- D. Developer submitted a proposal to build approximately 604 residential units (in addition to retaining one existing residence, for a total of 605 residential units) on the Property, which includes 160 units designated as age restricted (Active Adult – 55 years old minimum) (the “**Project**”). The Property consists of 280 acres, El Dorado County Assessor’s Parcel Nos.126-020-01 through 04 and 126-150-23.
- E. The Conditions of Approval for the Project provide that the Project shall be developed in two phases in order to ensure compliance with the County’s policies relating to the preservation of oak trees or mitigation for oak tree impacts resulting from the Project. It has been demonstrated to the satisfaction of the County that the first phase of the Project (which includes 410 new residential units and the retained residence (“**Phase 1**”)) can be constructed consistent with the County’s existing policies regulating

oak tree impacts, but the second phase (which includes 194 new residential units (“Phase 2”)) cannot proceed until such time as the County has adopted policies, as provided in the County’s General Plan, allowing for the utilization of offsite mitigation or the payment of impact fees, or otherwise amends its oak tree conservation policies to allow for offsite mitigation techniques and removal of oak tree canopy beyond 10%, and that oak tree impacts also are otherwise mitigated for in accordance with the mitigation measures contained within the approved Project Environmental Impact Report. The intent of this Agreement is that at such time as the County adopts a policy consistent with the provisions of General Plan Policy 7.4.4.4, Developer may submit a plan for Phase 2 of the Project consistent with the policy so adopted and the Conceptual Development Plan, as discussed below.

F. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risks of development, the Legislature of the State of California adopted Sections 65865 et seq. of the California Government Code enabling a County and an applicant for a development project to enter into a development agreement establishing with certainty what zoning standards and land use regulations of the County will govern the construction and implementation of the development project from beginning to completion.

G. County hired a consultant to prepare an Environmental Impact Report (State Clearinghouse #2012062023) for the Project. The public comment period for the Environmental Impact Report ran from November 9, 2014 to February 9, 2015. On _____, the County Planning Commission considered the EIR and the Project and after having conducted duly noticed public hearings, recommended certification of the EIR and approval of the Project to the County Board of Supervisors. On _____, 2016, the County Board of Supervisors held duly noticed public hearings on the Project. At the conclusion of these hearings, the County Board of Supervisors, after making specific findings, certified the EIR, made a Statement of Overriding Considerations, and adopted the Mitigation Monitoring and Reporting Program (MMRP) for the Project, and approved the Project consisting of a General Plan Amendment to a mix of High Density, Medium Density, Low Density Residential and Open Space, Rezoning to a mix of R1, R1A, R3A, RE-5, RF and OS Planned Development, a Development Plan and tentative map for Phase 1 of the Project, a Conceptual Development Plan for Phase 2 of the Project and certain Design Waivers.

H. On _____, 2016, the Board of Supervisors adopted Ordinance No. __, and approved this Agreement with the Effective Date as set forth in Section 1.2.

Definitions

The following words or phrases used in this Agreement shall have the meanings set forth in this Section. All words not specifically defined shall be deemed to have their common meaning and/or the meaning generally given to such words in the parlance of the planning and development of real property in the State of California.

A. “Affordable Housing Fee” has the meaning described in Section 3.2.4.

- B. "Agreement" means this Community Benefit and Development Agreement.
- C. "Applicable General Plan" means the County's General Plan, adopted on July 19, 2004, as amended through _____, 2016.
- C. "CIP" means that list of projects contained within the County of El Dorado Department of Transportation Capital Improvement Program, as adopted by the Board of Supervisors and as may be updated and amended from time to time by the Board.
- D. "Conceptual Development Plan" means the plan for Phase 2 of the Project, as depicted in the attached Exhibit __, which may be adjusted as necessary to achieve conformance with the policies currently being considered and ultimately approved by the County pursuant to General Plan Policy 7.4.4.4.
- E. "Conditions of Approval" mean the requirements placed on the Project Approvals as conditions to development of the Project. A copy of the Conditions of Approval is attached as Exhibit __.
- F. "Developer" means Dixon Ranch Venture, LLC, or its successors in interest.
- G. "Effective Date" has the meaning described in Section 1.2.
- H. "EIR" means Final Environmental Impact Report for the Dixon Ranch, State Clearinghouse No. 2012062023, certified by the Board of Supervisors on _____, 2016.
- I. "Mitigation Measures" mean the requirements placed on the Property to cure or lessen the environmental impacts of the Project as identified in the analysis of the Project done in the EIR. The Mitigation Monitoring and Reporting Program adopted with the Project is attached as Exhibit __.
- J. "Phase 1" has the meaning described in Recital E.
- K. "Phase 2" has the meaning described in Recital E.
- L. "Property" means the property commonly known as the Dixon Ranch Property, currently identified as El Dorado County Assessor's Parcels No. 126-020-01 through 04 and 126-150-23. A map showing the location and boundaries of the Property is attached as Exhibit __ and the legal description describing the Property is attached as Exhibit __.
- M. "Project" means the Dixon Ranch Project as described in the Recitals, including the tentative map for Phase 1 and the Conceptual Development Plan for Phase 2 of the Project.
- N. "Project Approvals" means the development approvals and entitlements set forth in Section 2.1.
- O. "Traffic Impact Mitigation Fee Program" or "TIM Fee Program" means that

program wherein fees are charged by the County on new development for the purpose of funding the construction of road improvements identified in the County CIP.

SECTION 1. - GENERAL PROVISIONS

1.1. All Exhibits Deemed Incorporated by Reference. Unless specifically stated to the contrary, the reference to an exhibit by a designated letter or number shall mean that the exhibit is made a part of this Agreement.

1.2. Agreement to be Recorded; Effective Date. When fully executed, this Agreement will be recorded in the Official Records of El Dorado County, pursuant to Government Code Section 65868.5. The effective date of this Agreement shall be the later of (a) the date that is thirty (30) days after the date that Ordinance enacting this Agreement is adopted, or (b) the date this Agreement is fully executed by the Parties (“**Effective Date**”). The Effective Date is inserted at the beginning of this Agreement. The Parties acknowledge that section 65868.5 of the Development Agreement Statute requires this Agreement to be recorded in the Official Records no later than ten (10) days after the County enters into this Agreement.

1.3. Term. The term of this Agreement is twenty years, commencing on the Effective Date. The expiration date for the tentative maps for Phase 1 and any subsequently approved tentative maps for the Project, shall be extended for the term of this Agreement.

1.4. Termination. This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

1.4.1. Expiration of the twenty (20) year term;

1.4.2. Entry of a final court judgment or issuance of a final court order directed to the County to set aside, withdraw, or abrogate the County’s approval of this Agreement or any material part of the Project Approvals; or

1.4.3. The effective date of a party’s election to terminate the Agreement as provided in Section 5.2 of this Agreement.

1.4.4. As to a single residential lot within the Project, upon the issuance of a certificate of occupancy and the conveyance of such lot to a bona fide good faith purchaser. Such termination shall be automatic without any further action by either party or the need to record any further documents.

1.5. Interest of Developer. Developer represents that it has a controlling interest in the Property and that all other persons or entities holding legal or equitable interests in the Property are to be bound by this Agreement.

1.6. Covenants Running With the Land. Any successors in interest to the County or Developer shall be subject to the provisions set forth in Government Code Sections

65865.4 and 65868.5. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do, or refrain from doing, some act with regard to the development of the Property (a) is for the benefit of and is a burden upon the Property; (b) runs with the Property and every portion thereof; and (c) is binding upon each Party and each successor in interest during ownership of the Property or any portion thereof. Nothing herein shall waive or limit the provisions of Section 2.4, and no successor owner of the Property, any portion of it, or any interest in it shall have any rights except those assigned to the successor by Developer in writing pursuant to Section 1.7.

1.7. Right to Assign; Non-Severable Obligations.

1.7.1. Except as otherwise provided, Developer shall have the right to sell, encumber, convey, assign or otherwise transfer (collectively “assign”) in whole or in part, its rights, interests and obligations under this Agreement to a third party during the term of this Agreement, provided written notice of such assignment is given to County.

1.7.2. The obligations and conditions set forth in this Agreement are not severable, and any sale of the Property, in whole or in part, or assignment of this Agreement, in whole or in part, which attempts to sever the obligations and/or conditions shall be a nullity and shall have no force or effect.

1.8. Amendment of Agreement. This Agreement may be amended from time to time by mutual consent of the County and Developer, as provided in Government Code Section 65868. The cost to the County in processing such a proposed amendment shall be paid by the requesting party.

1.9. Whole Agreement. This Agreement, together with any subsequent amendments, shall constitute the entire agreement of the Parties as to the development of the Property. All prior agreements of the Parties, whether written or oral, are of no further force and effect.

1.10. Modification to the Project Approvals. Developer may apply, in writing, to modify the Project Approvals or the Conceptual Development Plan for Phase 2. Such modification may be processed without any amendment to this Agreement, if the County, in its sole discretion, determines that the requested modification (1) is consistent with this Development Agreement, (2) does not alter this Agreement’s term, provisions for reservation and dedication of land, or monetary contributions, (3) does not substantially alter the permitted uses, density or intensity of use, and (4) is consistent with the Applicable General Plan. If the County determines that the requested modification is inconsistent with this Agreement, alters its term or substantially alters its uses, the modification will not be processed without processing a concurrent amendment to this Agreement in accordance with Section 1.8.

1.11. Waivers. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

1.12. Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, or unenforceable, in whole or in part for any reason, the remaining terms and provisions of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement would be defeated by loss of the invalid or unenforceable provisions, in which case either Party may terminate this Agreement by providing written notice thereof to the other Parties. In the event of such termination, the provisions of Section 1.4 relating to termination of the Agreement by mutual written consent shall apply. Without limiting the generality of the foregoing, no judgment determining that a portion of this Agreement is unenforceable or invalid shall release Developer from its obligations to indemnify the County under this Agreement.

1.13. Choice of Law; Venue. This Agreement shall be interpreted according to the laws of the State of California. The venue for any litigation concerning its meaning shall be the Superior Court of El Dorado County, California.

1.14. Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the principal offices of the County and Developer or Developer's assigns and successors. Notice shall be effective on the date delivered in person, or the date when the postal authorities indicate that the mailing was delivered to the address of the receiving party indicated below:

Notice to the County: County of El Dorado
 2850 Fairlane Court
 Placerville, CA 95667
 Attn: Director of Development Services

Notice to Developer: Dixon Ranch Ventures, LLC
 12647 Alcosta Blvd., Suite 470
 San Ramon, CA 94583
 Attn: Russell K. Schaeffer

1.15. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. No other person shall have any right of action based upon any provision in this Agreement.

1.16. List of Exhibits.

[Insert list of Exhibits when done]

SECTION 2. - DEVELOPMENT OF THE PROPERTY

2.1. Project Approvals. The Property shall be developed in accordance with the Project Approvals. The Project Approvals shall consist of:

2.1.1. The General Plan Amendments (A11-0006), Rezones (Z11-0008) and Planned Development (PD11-0006) approved by the County; and

2.1.2. The Planned Development Site Plan for Phase 1 of the Project, together with the Tentative Map for Phase 1 (TM11-1505); and

2.1.3. The Conceptual Development Plan for Phase 2 of the Project, and

2.1.4. The Mitigation Monitoring and Reporting Program adopted with the Project, attached here as Exhibit 4; and

2.1.4. Any subsequent approvals including a Planned Development Site Plan and any tentative maps implementing the Conceptual Development Plan for Phase 2 of the Project, as more specifically discussed below, shall, upon such approvals, be deemed Project Approvals.

2.2. Conceptual Development Plan for Phase 2. As shown on the proposed Conceptual Development Plan (attached hereto as Exhibit ___), Phase 2 of the Project contemplates development of 194 residential lots that would result in removal of more than 10% of the oak canopy present on the project site. As such, Phase 2 of the Project is inconsistent with “Option A” of the County’s General Plan Policy 7.4.4.4. Currently, “Option B,” payment of an in-lieu fee, is not available; therefore, development of Phase 2 of the Project in accordance with the proposed Conceptual Development Plan is not possible under existing General Plan oak policies and ordinances. The Parties acknowledge that the County is in the process of reviewing and considering amendments and revisions to the County’s General Plan Biological Policies related to management of and mitigation for biological resource impacts, including impacts to oak woodlands, and implementation of the Oak Woodland Management Plan and specifically in relation to Option B of General Plan Policy 7.4.4.4. (in-lieu fee option). If the County adopts an Option B that provides for offsite mitigation through, for example, a fee program or dedication of offsite preserves, or otherwise amends its oak tree conservation policies to allow for offsite mitigation techniques and removal of oak tree canopy beyond 10%, development of Phase 2 in accordance with the proposed Conceptual Development Plan may be possible, provided Developer complies with the policies and programs ultimately adopted by the Board of Supervisors.

In the event of such action by the Board of Supervisors, Developer intends to submit to the County an application for a Planned Development Site Plan and tentative map for Phase 2 to permit development of 194 additional residential units, as shown on the attached Conceptual Development Plan. Provided the Planned Development Site Plan and tentative map comply with such later adopted oak tree policies and provide for retention of oak woodlands in an amount not less than that shown on the Conceptual Development Plan, Developer shall be entitled to have such applications decided by the County in accordance with the County rules, regulations, policies, standards, specifications and ordinances, including the zoning ordinance, in effect on the date of

adoption of the ordinance for this Agreement, provided that Developer is not in default under this Agreement. In accordance with Government Code § 65866 and County Ordinance Code 130.85.027, however, nothing herein shall be construed to prevent the County from denying or conditionally approving any subsequent development project applications as required by the aforementioned rules, regulations, policies, standards, specifications and ordinances, including the zoning ordinance. If approved, the Planned Development Site Plan and Tentative Map for Phase 2 shall constitute “Project Approvals” in accordance with Section 2.1.4 above. To the extent that any changes to the Conceptual Development Plan are required by the aforementioned rules, regulations, policies, standards, specifications and ordinances and such changes result in impacts not analyzed in the EIR, Developer understands and agrees that additional environmental analysis may be required for Phase 2 of the Project.

2.3. Consistency with the General Plan. The County finds that the provisions of this Agreement and the development of the Property are consistent with and conform to the 2004 General Plan of the County of El Dorado, as amended through the adoption of the ordinance for this Agreement (“**Applicable General Plan**”).

2.4. Vested Rights of the Developer. Developer shall have the vested right to develop the Property in accordance with the Project Approvals described in Sections 2.1 above and the provision of Section 2.2 above, and in conformity with the County rules, regulations, policies, standards, specifications and ordinances, including the zoning ordinance, in effect on the date of adoption of the ordinance for this Agreement, provided that Developer is not in default under this Agreement. The vested right to proceed with the Project shall be subject to any subsequent discretionary approvals required in order to complete the Project provided that any conditions, terms, restrictions, and requirements for such subsequent discretionary approvals shall not prevent development of the land for the uses and to the density or intensity of development or rate or timing of development set forth in this Agreement and the Project Approvals.

2.5. Rights Retained by the County. Notwithstanding any other provisions of this Agreement, including the vesting granted by Section 2.1 and 2.2, the following regulations and provisions shall apply to the development of the Property:

2.5.1. Application fees and charges of every kind and nature imposed by the County to cover the actual costs to the County of processing development applications or for monitoring compliance with any land use entitlements granted or issued.

2.5.2. Procedural Regulations related to hearing bodies, applications, notices, findings, hearings, reports, appeals and any other matter of procedure, provided such procedures are uniformly applied on a county-wide basis to all substantially similar types of development projects and properties.

2.5.3. Regulations governing construction standards and specifications, including, without limitations, the County’s building code, plumbing code, mechanical code, electrical code and grading code and all other uniform construction codes then applicable in the County at the time of permit application.

2.5.4. New County laws or regulations that are mandated by state or federal law.

2.5.5. New County laws and regulations which are reasonably necessary to protect the public health and safety, provided that such laws and regulations are uniformly applied on a County wide basis to all substantially similar types of development projects and properties.

2.5.6. Any fees, taxes, assessment, and charges which are in effect and collected at the time of the approval of a subsequent entitlement or the issuance of a Building Permit, as provided in this Agreement or as generally applicable throughout the County, included but not limited to impact fees, provided that such fees, taxes and assessments apply to all similar private projects within the County and are reasonably related to the cost of the facility or service for which the fee or assessment is imposed. For any fees that are assessed by zone or area, "similar private projects" will mean projects in the same zone or area as the Project.

2.6. Revisions to Project Approvals. Developer may apply, in writing to revise the Project Approvals. If the Director of Development Services, or his/her designee, determines, in his sole discretion, that the requested revision is (1) a minor change to the Project considered as a whole; (2) does not increase the density or intensity of the use approved in the Project Approvals; (3) is consistent with this Agreement; (4) is consistent with the Applicable General Plan; and (5) does not change the analysis contained in the EIR, the Director of Development Services or his/her designee may approve the requested revision without public hearing. The notice and appeal process for such a revision shall be the same process as for any other Director of Development Services approval at the time of the action requested. If the Director of Development Services determines the application does not comply with the above, then it shall be processed with all applicable public hearing and notice provisions then in effect.

SECTION 3. - OBLIGATIONS OF THE PARTIES

3.1. Property Development. The Property shall be developed in accordance with the Project Approvals described in Section 2.1 above and the provisions of Section 2.2 above.

3.2. Developer Obligations Conferring County-wide Benefit. The following obligations of Developer are provided as consideration for County entering into this Agreement and are considered county-wide benefits.

3.2.1. County-wide Benefit Fee. Developer agrees that a fee will be collected at the time of the issuance of each residential building permit within the Project ("**County-wide Benefit Fee**"). The revenue generated through collection of the County-wide Benefit Fee shall be deposited in a fund to be created by the County to be utilized by the County for any purpose as determined in the sole discretion of the County Board of Supervisors. For each residential building permit, the County-wide Benefit Fee for Phase 1 of the Project shall be _____ dollars

(\$ _____) and for Phase 2 of the Project shall be _____ dollars
(\$ _____).

3.2.2. Park Maintenance Funding. Although the County is not responsible for park maintenance, the County recognizes that Developer shall, through the creation of the Landscape and Lighting District discussed below, be providing enhanced funding to the El Dorado Hills Community Services District (“CSD”) that may be utilized by the CSD for the improvement and maintenance of community and regional facilities which will benefit the general population of El Dorado Hills and the County.

3.2.3. Public Services Funding. Developer shall, in cooperation with the County, form a Community Facilities District which shall, at least in part, provide for an annual special tax in the amount of Two Hundred and Thirty-One dollars (\$231) per residential unit. This special tax shall be utilized for the enhancement of public services and facilities provided by the County to offset any negative impact the Project may have on such services or facilities.

3.2.4. Affordable Housing Fee. Developer agrees that a fee will be collected at the time of the issuance of each residential building permit within the Project (“**Affordable Housing Fee**”). The revenue generated through collection of the Affordable Housing Fee shall be used by the County for the purpose of financing studies or the development of a program for the provision of affordable housing within the County, and/or for the construction or other contribution towards creating housing in the County affordable to moderate income earners (defined in the Housing Element of the County’s General Plan as earners with annual incomes greater than 80% but no more than 120% of the County average median income). For each residential building permit, the Affordable Housing Fee for Phase 1 of the Project shall be _____ (\$ _____) and for Phase 2 of the Project shall be _____ dollars (\$ _____).

3.3. Developer Obligations Conferring a Community Benefit. As additional consideration for County entering into this Agreement agrees to provide the following improvements which provide a community benefit within the El Dorado Hills/Rescue area of the County.

3.3.1. Green Valley Corridor Improvements. The County caused to be performed a *Green Valley Road Corridor Analysis Report*, which identified a number of improvements on and along Green Valley Road which would make the roadway safer for motorists, bicyclists and pedestrians. Developer agrees to pay County the sum of Four Hundred and Twenty-Six Thousand dollars (\$426,000) which is the estimated cost of designed and constructing those improvements identified in Exhibit 9, attached hereto. The payment of such funds shall occur prior to the issuance of certificates of occupancy in the Project.

3.3.2. Green Valley Road/Trans 5 Improvements. The traffic analysis for the Project revealed that the intersection of Green Valley Road and El Dorado Hills Blvd/Salmon Falls Road is not consistent with County level of service standards with or without the Project and congestion already occurs at this location. To alleviate this

existing condition and provide further mitigation for the Project, Developer shall advance the construction of those improvements called for in Mitigation Measure Trans 5 in the EIR and more particularly described in Exhibit 8, attached hereto (the “**Trans 5 Improvements**”). The construction of such improvements shall begin prior to the first occupancy permit being issued within the Project, or at such time as the County has certified that the necessary right of way exists or has been acquired for the completion of the improvements, whichever occurs last.

3.3.3. Park Dedication/Improvements. The Project contains areas designated for parks, both public and private. Developer intends to enter into a separate agreement with the CSD with respect to such parks, but for the purposes of this Agreement and to the extent that County has a role in such matters, the parties agree as follows:

3.3.3.1 Developer agrees that improvements to the “Village Park” in Phase 1 of the Project, together with public trail improvements, estimated to cost approximately Three Million Five Hundred Thousand Dollars (\$3,500,000), shall be constructed by Developer as part of Phase 1 of the Project and that the total cost of such improvements shall be a credit against park fees charged at the time of building permit issuance.

3.3.3.2 Developer shall dedicate the land for the Village Park, and those areas depicted in the Project Approvals as public trails, together with the private park facilities associated with the age restricted portion of the Project fully satisfies the Quimby Act obligations of the entire project. Accordingly, no further park dedications will be required of Phase 2 of the Project.

3.3.3.3 Park Maintenance Funding. Developer shall, in accordance with CSD policies, form a Landscaping and Lighting District which shall provide funding to the CSD for park maintenance, notwithstanding that the Fiscal Impact Analysis prepared for the Project shows that the tax revenues which shall accrue to the CSD exceed the cost of maintaining the parks proposed within the Project.

3.4. TIM Fee Credit/ Reimbursement. With respect to the Trans 5 Improvements and any other offsite roadway improvements undertaken by Developer, including those in Section 3.3.1, and which are included in the County’s TIM fee program, the Parties may enter into a credit/reimbursement agreement providing the means and timing by which Developer will be provided credit and/or reimbursement for such improvements. County agrees that the advancement of the Trans 5 Improvements and any other offsite improvements within the TIM fee program may be a significant benefit to the community and accordingly acknowledges that, in addition to the standard reimbursement provisions provided for in the County’s TIM Fee Reimbursement Guidelines, the developer may be eligible for credits against TIM fees payable at the time of the issuance of building permits. The amount of such credits will be that portion of the TIM Fee which is allocated to local improvements (net of the Silva Valley Interchange set-aside and funds allocated to the State Highway system) up to the total amount of the actual costs of the creditable/reimbursable improvements.

3.5. Age-Restricted Lots Reduced Fees. County agrees that those portions of the Project which are designated as age restricted lots shall be entitled to reduced school fees and TIM fees based on their reduced impacts, consistent with the current policies in place for such fees.

3.6. Timing of Development. The Parties acknowledge that Developer cannot at this time predict when or the rate at which phases of the Property will be developed. Such decisions depend upon numerous factors which are not within the control of Developer, such as the timing of construction of the roadway improvements, market orientation and demand, interest rates, absorption, competition and other similar factors. Since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that Developer shall have the right to develop the Property in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment, subject only to any timing or phasing requirements set forth in this Agreement with respect to roadway improvements.

3.7. Connection to Public Improvements. County shall cooperate with Developer to connect, through the issuance of appropriate encroachment permits or cooperation with other agencies providing services, any improvements constructed under the Development Plan to existing or newly constructed public improvements, provided the costs of such connections are borne by Developer.

3.8. County Cooperation. County through its officers, agents and employees, shall cooperate with Developer and support the Project as necessary to obtain other permits or approvals required from other government agencies to effectuate the development of the Property.

3.9. Public Financing. County agrees to cooperate with Developer in the formation and implementation of public financing districts or areas of benefit, such as, a Community Facilities District or Statewide Community Infrastructure Program districts, as provided in the *Dixon Ranch Public Facilities Financing Plan*, attached hereto as Exhibit __ (the "PFFP"). County and Developer shall use their best efforts to cause to be formed any such financing district(s) provided that such formation is consistent with the criteria set forth in the PFFP and applicable County ordinances or adopted policies regulating such matters. County agrees that any credits or reimbursements owed to Developer shall not be affected or reduced because improvements for which credits or reimbursements are due were financed with any special taxes or bond proceeds.

3.10. Funding and Construction of Public Improvements. Nothing in this Agreement shall be construed as obligating the County to fund, design or construct any specific projects or improvements at any specific time. The County shall not be obligated to expend monies from its general fund or from any source not identified in this Agreement to design or construct any improvements necessary for the development of the Property.

SECTION 4. - ANNUAL REVIEW

4.1. Annual Review. County may, during the term of this Agreement, review the extent of good faith compliance by Developer with the terms of this Agreement. Such periodic review shall be limited in scope to compliance with the terms and conditions of this Agreement pursuant to California Government Code section 65865.1. The parties agree that due to the nature of this Agreement and the obligations contained herein, annual reviews may not be necessary or practical so strict compliance with Government Code section 65865.1 is not necessary. However, County may determine that a review is necessary or desirable during the term of this Agreement. Notice of such review shall include the statement that any review may result in amendment or termination of this Development Agreement.

Upon not less than thirty (30) days' written notice by the Development Service Director, Developer shall provide such information as may be reasonably requested by the Director and deemed by the Director to be required in order to ascertain compliance with this Agreement. County shall deposit in the mail to Developer a copy of all staff reports and, to the extent practical, related exhibits concerning contract performance at least ten (10) calendar days prior to any such periodic review. Developer shall be permitted an opportunity to be heard orally and/or in writing regarding its performance under this Agreement before the County Board of Supervisors, or, if the matter is referred to the Planning Commission, before said Commission. If the County determines, based on substantial evidence, that Developer is in default following completion of the normal scheduled periodic review, written notice of proposed termination or modification of this Agreement shall be given, pursuant to applicable laws and regulations, specifying in said notice the alleged nature of the default, and suggested or potential actions and timing to cure said default where appropriate. Developer shall have not less than ninety (90) days to cure any alleged default determined pursuant to this Section. County shall have no duty to give notice of an annual review to anyone having an ownership interest in a portion of the project deemed complete by the County and released from the obligations of this Agreement. Formal rules of evidence shall not apply to such proceedings.

SECTION 5. - DEFAULT, ENFORCEMENT AND REMEDIES

5.1. Application of Section. The Parties agree that the following provisions shall govern the availability of remedies should any of the Parties breach any of its obligations under this Agreement.

5.2. Default. Failure or delay by either party to perform any term or provision of this Agreement shall constitute a default provided, however, the default by any successor in interest of Developer to whom Developer has assigned development rights pursuant to Section 1.7, shall not be considered a default by Developer or by any other successor-in-interest of Developer. The County may institute proceedings pursuant to this Section against any individual defaulting party. In the event of alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party not less than sixty (60) days' notice in writing specifying the nature of the alleged default and the manner in which said default may be satisfactorily cured.

During any sixty (60) day period, the party charged shall not be considered in default for purposes of termination or institution of legal proceedings.

After notice of expiration of the sixty (60) day period, the party alleging default, at its option, may institute legal proceedings pursuant to Section 5.3 of this Agreement or give notice of intent to terminate the Agreement pursuant to California Government Code section 65868 or may pursue such other administrative remedies as may be appropriate. Following notice of intent to terminate, the matter shall be scheduled for a hearing before the County Board of Supervisors to consider and review the matter within sixty (60) calendar days. Following consideration of the evidence presented in the review, if no resolution of the matter is reached, either party alleging the default by the other party may give written notice of termination of this Agreement to the other party.

5.3. Remedies. In the event of an uncured default, the Parties' remedies under this Agreement are as follows:

5.3.1. An action for specific performance of an obligation of a Party, after giving that Party the opportunity to cure a default as provided in Section 5.2.

5.3.2. An action for injunctive relieve to preserve the physical or legal status quo of the development of the Project pending a judicial determination of the rights of the Parties in the event of a dispute between the Parties as to their rights and obligations under this Agreement.

5.3.3. An action for declaratory relief to determine the rights and obligations of the Parties under this Agreement.

5.3.4. The Developer understands and agrees that the County would not be willing to enter into this Agreement if it created any monetary exposure for the County for damages (whether actual, compensatory, consequential, punitive or otherwise) in the event of a breach by the County. The Developer specifically acknowledges that it may not seek monetary damages of any kind and the Developer hereby waives relinquishes and surrenders any right to any monetary remedy. The Developer hereby agrees to indemnify, defend, and hold the County harmless for any cost, loss, liability, expense or claim, including attorneys' fees, arising from or related to any claim brought by the Developer inconsistent with the foregoing waiver.

SECTION 6 – HOLD HARMLESS AND INDEMNIFICATION

6.1. No Joint Venture or Partnership. County and Developer hereby renounce the existence of any form of joint venture or partnership between the County and Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating a partnership joint venture, or other legal entity between them.

In entering into this Agreement, the County is acting under the statutory and police powers that it holds as a political subdivision of the State of California which authorize it to regulate the development of land within its boundaries and to provide for the general health, safety and welfare.

In entering into this Agreement, Developer is acting in a purely private capacity as the owners of real property in the County of El Dorado, which property is subject to the jurisdiction of the County.

6.2. No Liability for Acts of Developer.

6.2.1. It is expressly understood that the development of the Project is an undertaking that may create for the Developer liability to third parties including, but not limited to, assignees of all or part of this Agreement, buyers and lessees of building, building contractors and subcontractors, and suppliers. Developer understands and agrees that the County would not execute this Agreement if, in so doing, it created for the County any liability to any third party. Consequently, Developer, and its successors, heirs and assigns agree to defend, indemnify and hold harmless the County, and its officers, agents, and employees from any claim or injury to person or property arising out of or relating to this Agreement or the operations of Developer in the development of the Project under the terms of this Agreement.

6.2.2. Developer and all successors also agree to and shall hold County and its appointed councils, boards, commissions, officers, agents and employees harmless from any liability, including costs and attorneys' fees, for any challenge to the Agreement, damages or claims for damage for personal injury, including death, and from claims for property damage which may arise from any act or omission of Developer, of its assigns, successors in interest, or its agents, employees, contractors or sub-contractors, pursuant to this Agreement.

6.2.3. Notwithstanding anything in Section 6.3 to the contrary, the County shall have any remedy available to it at law or in equity to enforce the provision of, or to collect damages for, any breach of this Section.

6.3. Duty to Defend Challenges to this Agreement.

6.3.1. The Parties recognize that there may be third party challenges to this Agreement, relative to the procedure used to adopt it or the contents of it.

6.3.2. Developer shall defend the County and its elective and appointive councils, boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damage caused by reason of the aforesaid operations under this Agreement.

6.3.3. The County shall have the right, at its sole discretion, to select its own attorneys to defend the County in any action brought by a third party, and Developer and Developer hereby agree to pay the fees and expenses of the attorneys selected.

6.3.4. The County agrees to cooperate in good faith in the defense of any action or proceeding brought to challenge this Agreement or the ordinance adopting it.

6.3.5. Should a court, in any action challenging this Agreement or the ordinance adopting it, award attorneys' fees costs or other litigation expenses against the County, Developer shall be responsible for the payment of those fees, costs, and expenses and shall hold the County harmless from any claim thereto.

IN WITNESS WHEREOF, the parties have duly signed this Agreement as of the date first written above.

DEVELOPER:

Dixon Ranch Venture, LLC

By: _____
Its: _____

COUNTY:

El Dorado County

By: _____
Its: _____

ATTEST:

By: _____

APPROVED AS TO FORM:

By: _____
County Counsel