



ORDINANCE NO. 5043

AN ORDINANCE APPROVING DEVELOPMENT AGREEMENT 15-0001 BETWEEN THE COUNTY OF EL DORADO AND RENASCI DEVELOPMENT FOR THE 121.28 ACRE SITE IDENTIFIED AS ASSESSOR'S PARCEL NUMBER 120-070-02

WHEREAS, Government Code Section 65864 et seq. and El Dorado County Ordinance Code Chapter 130.58 authorize the County of El Dorado (the "County") to enter into binding development agreements with any person or persons having a legal or equitable interest in real property for the development of such property;

WHEREAS, Renasci Development owns that certain real property consisting of approximately 121.28 acres of undeveloped land within El Dorado County, identified as Assessor's Parcel Number 120-070-02 (the "Subject Property"), for which the County is concurrently processing an application for rezone (Z14-0007), planned development (PD14-0006) and tentative subdivision map (TM14-1520);

WHEREAS, Renasci Development filed an application with the County for a development agreement regarding development of the Subject Property;

WHEREAS, following a duly noticed public hearing on August 25, 2016 the Planning Commission of the County of El Dorado recommended that the Board of Supervisors adopt the Development Agreement, a copy of which is attached hereto as Exhibit A;

WHEREAS, said matter was set for a public hearing by the Board of Supervisors for the County of El Dorado on September 13, 2016 to consider the Development Agreement, at which hearing the Planning Commission's recommendation and other evidence, both oral and documentary, were received and considered; and

WHEREAS, upon conclusion of the public hearing, the Board of Supervisors for the County of El Dorado voted to approve the Development Agreement and authorize the Chairman to sign the Development Agreement following adoption of this Ordinance.

THE BOARD OF SUPERVISORS OF THE COUNTY OF EL DORADO DOES ORDAIN AS FOLLOWS:

Section 1.

The Board of Supervisors of the County of El Dorado hereby finds and determines that the Development Agreement:

1. Is consistent with the objectives, policies, general land uses and programs specified in the County General Plan;

2. Will not be detrimental to the health, safety and general welfare of persons residing in the immediate area nor detrimental to the general welfare of the residents of the County as a whole;
3. Will not adversely affect the orderly development of property or the preservation of property values;
4. Is consistent with the provisions of Government Code Sections 65864 through 65869.5; and
5. Includes a subdivision that is able to provide sufficient water to serve the project based on the water supply assessment prepared in accordance with Water Code Section 10910, consistent with the provisions of Government Code Section 66473.7.

Section 2. The Board of Supervisors of the County of El Dorado hereby approves the Development Agreement between the County of El Dorado and Renasci Development and authorizes the Chair of the Board of Supervisors to execute the Development Agreement in the form attached hereto as Exhibit A. Pursuant to Government Code section 65868.5, within ten (10) days after full execution of the Development Agreement by all parties, the Clerk of the Board of Supervisors shall record the Development Agreement with the Recorder of the County of El Dorado.

Section 3. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and adopted this ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

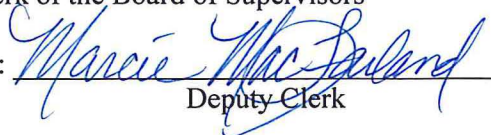
Section 4. This ordinance shall take effect and shall become effective thirty (30) days following the adoption hereof.

PASSED AND ADOPTED by the Board of Supervisors of the County of El Dorado at a regular meeting of said Board, held the 13th day of September, 2016, by the following vote of said Board:

Ayes: Brian K. Veerkamp, Sue Novasel, Ron Mikulaco
Michael Ranalli

Noes: Shiva Frentzen
Absent: None

Attest:
James S. Mitrison
Clerk of the Board of Supervisors

By: 
Deputy Clerk

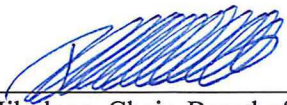

Ron Mikulaco, Chair, Board of Supervisors

EXHIBIT A

**Community Benefit and Development Agreement
Between the County of El Dorado and
Sunset Tartesso, LLC
For the Development Known as
the Saratoga Estates Project**

This Community Benefit and Development Agreement (hereinafter “**Agreement**”) is made and entered into this 13th day of September, 2016, by and between the **County of El Dorado** (hereinafter “**County**”) and Sunset Tartesso, 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, and 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 California. The Developer has an equitable interest in approximately 122 acres of real property which is commonly known as the Saratoga Estates Property (the “**Property**”). The Property is located within the El Dorado Hills area of the County adjacent to Highway 50 and the City of Folsom. The Property is located within an area of the County designated as Community Region in the County's General Plan with a General Plan designation of High Density Residential and is currently zoned R1 (one family residential district) and OS (open space district).

D. Developer submitted a proposal to build 317 residential units on the Property with lots ranging in size from 6000 square feet to 19,000 square feet (the “**Project**”) as depicted in Exhibit 1, attached hereto. The Property consists of 122 acres, El Dorado County Assessor's Parcel No.120-070-02.

E. The Project includes the design and construction of a key element in the County's transportation plan consisting of connecting Saratoga Road in El Dorado Hills to Iron Point Road in the City of Folsom, which will provide a surface road connection between the two communities resulting in reduced traffic on Highway 50. The parties enter into this Agreement in part to provide assurances as to the timing of construction of Saratoga Road and the means of financing such construction.

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 #2015032058) for the Project. The public comment period for the Environmental Impact Report ran from March 24, 2016 to May 7, 2016. On August 25, 2016, 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 September 13, 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 Rezoning to re-align the boundaries of the R1 and OS zoning, a Planned Development, a Development Plan and a tentative map for the Project and certain Design Waivers.

H. On September 13, 2016, the Board of Supervisors introduced Ordinance No. 5043 approving this Agreement and authorizing its execution, and adopted such Ordinance on September 13, 2016, 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.
- D. "CIP" means that list of projects contained within the County of El Dorado Transportation Division Capital Improvement Program, as adopted by the Board of Supervisors and as may be updated and amended from time to time by the Board.
- 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 2.

- F. “County” means the County of El Dorado.
- G. “CSD” has the meaning described in Section 3.2.2.
- H. “Developer” means Sunset Tartesso, LLC, or its successors in interest.
- I. “Effective Date” has the meaning described in Section 1.2.
- J. “EIR” means Final Environmental Impact Report for the Saratoga Estates Project, State Clearinghouse No. 2015032058, certified by the Board of Supervisors on September 13, 2016.
- K. “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 3.
- L. “Property” means the property commonly known as the Saratoga Estates Property, currently identified as El Dorado County Assessor’s Parcel No. 120-070-02. A map showing the location and boundaries of the Property is attached as Exhibit 4, and the legal description describing the Property is attached as Exhibit 5.
- M. “Project” means the Saratoga Estates Project as described in the Recitals.
- N. “Project Approvals” mean 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 map 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 final building permit 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. 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: Sunset Tartesso, LLC
340 Palladio Parkway, Suite 521
Folsom, CA 95630
Attn: Price Walker

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.

- Exhibit 1- Site Plan
- Exhibit 2- Conditions of Approval
- Exhibit 3- Mitigation Monitoring and Reporting Plan
- Exhibit 4- Project Boundary Map
- Exhibit 5- Legal Description of Property
- Exhibit 6- Saratoga Way Configuration

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. Rezones (Z14-0007) and Planned Development (PD14-0006) approved by the County; and

2.1.2. The Planned Development Site Plan and Tentative Map (TM14-1520); and

2.1.3. The Mitigation Monitoring and Reporting Program adopted with the Project, attached hereto as Exhibit 3.

2.2. 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**"). In determining that this

Agreement is consistent with the Applicable General Plan, the County has specifically found that this Agreement and the Project are consistent with the recently enacted Measure E due to the roadway improvements called for in the EIR, Conditions of Approval and this Agreement.

2.3. Vested Rights of the Developer. Developer shall have the vested right to develop the Property in accordance with the Project Approvals described in Section 2.1 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.

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

2.4.1. 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.

2.4.2. 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.

2.4.3. 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, provided such regulations are uniformly applied on a county-wide basis to all substantially similar types of development projects and properties.

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

2.4.5. 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.

2.4.6. 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, including 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.

2.5. 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.

3.2. Developer Obligations. The following obligations of Developer are provided as consideration for County entering into this Agreement.

3.2.1. Saratoga Way Construction. Developer shall design and construct Saratoga Way, in accordance with plans approved by the County, from the intersection of the existing Saratoga Way to the point of connection with Iron Point Road in the City of Folsom in the configuration as shown on Exhibit 6, attached hereto. Developer shall provide the financing for the construction of the improvements subject to reimbursement as provided herein. Such financing may take the form of public financing such as a community facilities district, or participation in the Statewide Community Infrastructure Program (SCIP) with County's cooperation.

3.2.1.1. Timing of Construction. The improvement plans for Saratoga Way shall be submitted prior to, or concurrently with, the first final map filed for the Project. At the time that improvement plans are approved by the County, the parties shall enter into a road improvement agreement, which shall provide the mechanics of bonding, construction, and the County's acceptance of the road improvements. Construction of the Saratoga Way improvements shall begin with the initial construction of improvements for the Project and shall be completed prior to a final residential building permit within the Project. Although it is the intent of the parties that Saratoga Way be fully constructed as part of the initial phase of development of the Project, the County agrees that should the acquisition of offsite right of way as provided below in Section 3.2.2.1, or other delays arise associated with the connection of Saratoga Way to Iron Point Road in the City of Folsom, Developer shall be entitled

to construct homes within the Project, provided that no more than one hundred (100) final building permits may be completed within the Project until such time as the connection is fully completed. In the event of such a delay and to ensure completion of the connection at such time as right of way is acquired, Developer shall post a bond, or other security acceptable to County, in an amount adequate to fully complete the connection of Saratoga Way.

3.2.2. Saratoga Way Right of Way. Developer shall grant to the County the necessary right of way for the ultimate planned configuration of Saratoga Way across the Property. As partial consideration for this Agreement, Developer agrees that it shall be entitled to reimbursement for only fifty percent (50%) of the value of the right of way so granted. The parties agree that the value of the right of way property shall be calculated at its fair market value which has been determined to be Two Hundred and Twenty-Five Thousand dollars (\$225,000.00) per acre.

3.2.2.1 Offsite Right of Way. The Saratoga Way improvements will require the acquisition of right of way not owned by Developer. Developer will use its best efforts to acquire the needed right of way at the best possible price. However, if Developer is unable to acquire the property through good faith negotiation at or near the appraised value of the property to be acquired, the County agrees that it will utilize its power of eminent domain to acquire the needed property rights. The County's agreement to utilize eminent domain is a reflection of the importance of Saratoga Way to the County's overall circulation and Capital Improvement Plan and is not intended as a means to aid the Project as a private undertaking.

3.2.3. 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.

3.2.4. 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**"). A portion of the revenue generated through collection of the Affordable Housing Fee may 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 shall be Five Hundred Dollars (\$500), subject to annual adjustment on January 1 of each year for inflation as calculated under the Engineering News-Record National Construction Cost Index. The County shall grant credit for such payments against any fees, taxes, assessment, and charges related to affordable housing to which Section 2.5.6 applies. The obligations under this Section 3.2.4 shall survive expiration of the twenty (20) year term of this Agreement.

3.2.5. Park Dedication/Improvements. The Project contains areas designated for public parks. Developer intends to enter into a separate agreement with the El Dorado Hills 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:

3.2.5.1 Park and Public Trail Improvements. Developer agrees that improvements to Lots I and M as shown on the Project tentative map as park parcels, together with public trail improvements shall be constructed by Developer and that the total cost of such improvements shall be a credit against park fees charged at the time of building permit issuance.

3.2.5.2 Land Dedications. Developer shall dedicate Lots I and M, and those areas depicted in the Project Approvals as public trails, which fully satisfies the Quimby Act obligations of the Project.

3.2.5.3 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 Saratoga Way improvements and any other offsite roadway improvements which are included in the County's TIM Fee Program, the Parties will enter into a credit and/or reimbursement agreement providing the means and timing by which Developer will be provided credit and/or reimbursement for such improvements. With respect to the Saratoga Way improvement costs, including onsite and offsite right of way costs, such agreement shall provide that Developer shall receive credits against TIM fees payable at the time of the issuance of building permits, provided that the amount of such credits does not result in the County's failure to meet its contractual obligation to make payments pursuant to reimbursement agreements existing as of the effective date of this Agreement. 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. To the extent that the improvement and right of way costs exceed the amount of creditable TIM Fees, the remaining balance shall be reimbursed through TIM Fee revenues, so long as such revenues are available, over a six (6) year period beginning upon the acceptance of the Saratoga Way improvements by County and a reconciliation of the final cost of the improvements has been made, at a rate of fifteen percent (15%) of the outstanding balance in each of the first five years with the balance (25%) being paid in the sixth year.

CREDIT/REIMBURSEMENT EXAMPLE

| | |
|---|-----------|
| TIM Fee Allowable Credit Base | \$ 23,340 |
| Less Silva Valley Interchange Set-aside | (7,002) |
| Allowable TIM Fee Credit Per Unit | \$ 16,338 |

| | |
|--|--------------------|
| Qualified CIP-Related Creditable Cost | \$ 5,479,000 |
| Allowable TIM Fee Credit Total (317 lots) | <u>(5,179,000)</u> |
| Balance of Reimbursable Costs after TIM Fee Credit | \$ 300,000* |

* Amount is the excess expended for qualified CIP expenses realized by Sunset Tartesso, LLC subject to six (6) year reimbursement.

3.5. 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 Ca1.3d 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.

3.6. 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.

3.7. 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.

3.8. 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. 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 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.

3.9. 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.

3.10. Changes in State or Federal Law. In the event changes in County law [based on changes to state or federal law] prevent or preclude, or render substantially more expensive or time consuming, compliance with one or more provisions of this Agreement, County and Developer shall meet and confer in good faith in order to determine whether such provisions of this Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary to comply with such changes in the law. County shall reasonably cooperate with Developer, at Developer's expense, in Developer's effort to obtain any permits, approvals, or entitlements that may be required as a result of modifications or suspensions made pursuant to this Section 3.11. Nothing in this Agreement shall preclude County or Developer from contesting by any available means (including administrative or judicial proceedings) the applicability to the Project of any such changes in the law. If changes in the law preclude or substantially prevent or preclude, or render substantially more expensive or time consuming, performance of this Agreement in a manner that makes the Project economically infeasible, Developer, in its sole and absolute discretion, may terminate this Agreement by providing written notice thereof to County.

3.11. Estoppel Certificate. Developer or its lender may, at any time, and from time to time, deliver written notice to County requesting County to certify in writing that: (a) this Agreement is in full force and effect; (b) this Agreement has not been amended or modified or, if so amended or modified, identifying the amendments or modifications; and (c) Developer is not in default of the performance of its obligations, or if in default, to describe therein the nature and extent of any such defaults. Developer shall pay, within thirty (30) days following receipt of County's invoice, the actual costs borne by County in connection with its review of the proposed estoppel certificate, including the costs expended by the County Counsel's Office in connection therewith. The Director of Development Services shall be authorized to execute any certificate requested by Developer hereunder. The form of estoppel certificate shall be in a form reasonably acceptable to the County Counsel. The Director of Development Services shall execute and return such certificate within thirty (30) days following Developer's request therefor. Developer and County acknowledge that a certificate hereunder may be relied upon by tenants, transferees, investors, partners, bond counsel, underwriters, bond holders and mortgagees. The request shall clearly indicate that failure of County to respond within the thirty-day period will lead to a second and final request. Failure to respond to the second and final request within twenty (20) days of receipt thereof shall be deemed approval of the estoppel certificate.

SECTION 4. - ANNUAL REVIEW

4.1. Annual Review. During the term of this Agreement, the County shall, once every calendar year, 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. This review shall be conducted pursuant to Section 130.85.026 of the County Ordinance Code.

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. 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. Developer specifically acknowledges that it may not seek monetary damages of any kind, and Developer hereby waives, relinquishes and surrenders any right to any monetary remedy. 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 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 owner 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 Developer liability to third parties including, but not limited to, assignees of all or part of this Agreement, buyers and lessees of buildings, 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 hereby agrees 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, the ordinance adopting it, or any of the underlying entitlements.

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.

SECTION 7-MISCELLANEOUS

7.1. Mortgagee Protection. Nothing in this Agreement shall prevent or limit Developer, at its sole discretion, from granting one or more Mortgages encumbering all or a portion of Developer's interest in the Property or portion thereof or improvement thereon as security for one or more loans or other financing, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against and shall run to the benefit of Mortgagee who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

7.2. Signatures. Developer and County represent and warrant that the individuals executing this Agreement have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and County.

7.3. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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

DEVELOPER:

Sunset Tartesso, LLC.

By: _____

Name: Harry Elliott, III

Title: President

COUNTY:

El Dorado County

By: _____

Name: RON MIRALACO

Title: CHAIR, BOARD OF SUPERVISORS

ATTEST: James S. Mitrison
Clerk of the Board of Supervisor

By: _____

APPROVED AS TO FORM:
Michael J. Ciccozzi
County Counsel

By: _____

David A. Livingston
Chief Assistant County Counsel

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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

State of California)
County of Sacramento)

On November 17, 2016 before me, Susan R Stephens, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Harry Elliott III
Name(s) of Signer(s)

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 Susan R Stephens
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Community Benefit and Development Agreement Document Date: November 18, 2016
Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

ACKNOWLEDGMENT

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

State of California
County of El Dorado

On DECEMBER 20, 2016 before me, JAMES S. MITRISIN, NOTARY PUBLIC
(insert name and title of the officer)

personally appeared RON MIKULACO,
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.

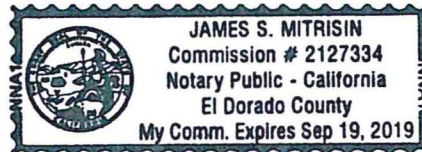
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)

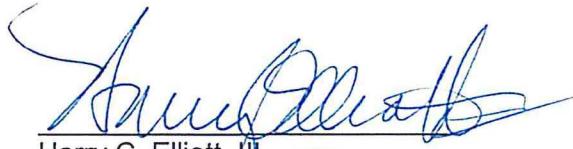


RESOLUTION OF DIRECTORS
OF
SUNSET TARTESSO, LLC
AN ARIZONA LIMITED LIABILITY COMPANY

Effective this 17TH day of November, 2016, the undersigned, being members of the Board of Directors of SUNSET TARTESSO, LLC, hereby adopt the following resolution by unanimous consent pursuant to the powers conferred by the Bylaws of SUNSET TARTESSO, LLC, and the Arizona Corporation Code.

RESOLVED, that Harry C. Elliott, III, as President, and Stephen J. Hemington, as Vice President, of Sunset Tartesso, LLC, are hereby authorized to sign the following documents on behalf of the Company:

1. Seller's Instructions
2. Notices of Completion
3. Corporate Grant Deeds
4. Extension Agreements
5. FHA and VA Submissions and Applications
6. State Public Reports
7. Contracts to Purchase or Sell Land
8. Subdivision Maps
9. Subdivision Agreements
10. Bonds



Harry C. Elliott, III
PRESIDENT



Stephen Hemington
VICE PRESIDENT

