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June 10, 2013

Ms. Patricia E. Beck  
Chief Assistant County Counsel  
El Dorado County Office of the County Counsel  
330 Fair Lane  
Placerville, CA 95667

**RE: Your Letter Dated June 4, 2013 Addressed to West Valley, LLC, et al**

Dear Ms. Beck:

Thank you for your letter of June 4, 2013 regarding the proposed bidding and funding of the Silva Valley Parkway Interchange project. As you know, this firm represents West Valley, LLC and its members (collectively, "West Valley"). As it has stated on many prior occasions, and reiterates again in this letter, West Valley will comply with all terms and conditions of the "Funding, Credit and Reimbursement Agreement Between West Valley, LLC and the County of El Dorado" entered into between West Valley, LLC and the County of El Dorado in November of 2005 (the "Agreement").

As you know, Section 6(c) of the Agreement requires West Valley to fund the shortfall amount for the Silva Interchange within thirty (30) days after the County awards a contract for construction of the interchange. Section 6(c) of the Agreement states:

"Project costs projected in excess of the funds described above in a & b above shall be advanced by Developer (Contribution). At such time as the County awards a contract for construction of the Condition 26 improvements and/or upon each determination of right-of-way payment amounts, the County shall provide Developer with an accounting of actual and projected project costs and make a written request for the required cash advance. Developer shall pay the required cash advance to the County within thirty (30) days of receipt of such request. Additional cash advance payments shall be provided as required by County for the completion of the improvement." (Emphasis added)

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You have at least implied in your June 4<sup>th</sup> letter that West Valley's obligation to fund the shortfall amount as described in Section 6 of the Agreement as one which must "be provided at such time as the County is prepared to put the project out to bid". Apparently, you are quoting from a letter which I wrote to you on November 16, 2011 which was one of many letters which we exchanged in a long series of negotiations over this matter. In that letter I stated that as a result of a recent meeting between you and West Valley, West Valley offered to provide you with certain written assurances. I said, in Item 1 of my November 16, 2011 letter, that such shortfall funding would be "provided at such time as the County is prepared to put the contract out to bid". On November 21, 2011, you responded in a letter to me, and I quote:

"Thank you for forwarding the latest draft of the assurance letter." (Emphasis added).

As you can see from your own language, these letters were exchanged as negotiations between lawyers representing their respective clients and certainly did not represent a final meeting of the minds between the parties, let alone a formal amendment to the Agreement. By your own admission, my letter represented a draft of proposed language, and certainly not language which could ever be construed as a binding amendment to the Agreement.

Later, on December 9, 2011, Mr. Mike McDougall, representing West Valley, wrote a letter to two members of the Board of Supervisors. In that letter, Mr. McDougall stated:

"First and foremost, Angelo Tsakopoulos and Larry Gualco, representing each entity within the Company (West Valley), and as the Company, reaffirmed their commitment to fund the anticipated shortfall of the interchange as outlined in the Conditions of Approval and the Reimbursement Agreement." (Emphasis Added)

On December 16, 2011, you responded with a formal letter to me, in which you stated:

"I've been asked to respond on behalf of the Board of Supervisors to the letter from Mike McDougall, President of MJM Properties, LLC, dated December 9, 2011, addressed to Supervisors Knight and Sweeney."

Nowhere in your December 16, 2011 letter did you object to Mr. McDougall's statement to the effect that the shortfall payment would be provided in accordance with the Agreement. You also did not discuss or confirm any agreement on the part of the Board to amend the Agreement to modify the timing of the shortfall payment. In fact, you did not even mention this subject in your December 16<sup>th</sup> letter.

In conclusion, the Funding, Credit and Reimbursement Agreement cannot and was not amended by virtue of "draft" letters being exchanged between lawyers for the respective clients

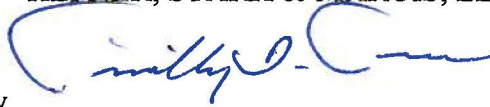
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in the midst of negotiations over outstanding issues relating to the Agreement. West Valley reaffirms its obligation to fund the shortfall pursuant to Section 6(c) of the Agreement.

Thank you for your consideration in this matter.

Sincerely,

HEFNER, STARK & MAROIS, LLP



By

Timothy D. Taron

TDT:dan

cc: El Dorado County Board of Supervisors  
West Valley, LLC  
AKT West Valley Investors, LLC  
Lennar Communities, Inc.  
Lennar West Valley, LLC

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