


# CONTRACT ROUTING SHEET

Date Prepared: July 19, 2017

Need Date: August 10, 2017

**PROCESSING DEPARTMENT:**

Department: Planning & Building Dept.  
Dept. Contact: Debbie Ercolini  
Phone #: X7674  
Department  
Head Signature: 

**CONTRACTOR:**

Name: Not Applicable  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_

**CONTRACTING DEPARTMENT:** Planning & Building Dept.

Service Requested: Review of Development Agreement for Bell Woods (DA16-0002)  
Contract Term: NA Contract Value: \$0.00  
Compliance with Human Resources requirements? Yes: \_\_\_\_\_ No: \_\_\_\_\_  
Compliance verified by: \_\_\_\_\_

**COUNTY COUNSEL:** (Must approve all contracts and MOU's)

Approved: ✓ Disapproved: \_\_\_\_\_ Date: 8/16/17 By: DL  
Approved: \_\_\_\_\_ Disapproved: \_\_\_\_\_ Date: \_\_\_\_\_ By: \_\_\_\_\_

*\* SEE REVISIONS TO HAWK VIEW DA*

EL DORADO COUNTY COUNSEL  
2017 JUL 19 PM 12:51

**RISK MANAGEMENT:** (All contracts and MOU's except boilerplate grant funding agreements)

Approved: N/A Disapproved: \_\_\_\_\_ Date: \_\_\_\_\_ By: \_\_\_\_\_  
Approved: \_\_\_\_\_ Disapproved: \_\_\_\_\_ Date: \_\_\_\_\_ By: \_\_\_\_\_

**NOT APPLICABLE**

**OTHER APPROVAL:** (Specify department(s) participating or directly affected by this contract).

Departments: \_\_\_\_\_  
Approved: N/A Disapproved: \_\_\_\_\_ Date: \_\_\_\_\_ By: \_\_\_\_\_  
Approved: \_\_\_\_\_ Disapproved: \_\_\_\_\_ Date: \_\_\_\_\_ By: \_\_\_\_\_

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

County of El Dorado  
2850 Fairlane Court  
Placerville, CA 95667  
Attn: Director of Planning and Building

EXEMPT FROM RECORDING FEES  
PER GOVERNMENT CODE §27383

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

**COMMUNITY BENEFIT AND  
DEVELOPMENT AGREEMENT**

**BY AND BETWEEN**

**COUNTY OF EL DORADO**

**AND**

**LENNAR WINNCREST, LLC,**

**FOR THE DEVELOPMENT KNOWN AS  
THE BELL WOODS RESIDENTIAL PROJECT**

**Effective Date: \_\_\_\_\_, 2017**

**Community Benefit and Development Agreement  
Between the County of El Dorado and  
Lennar Winncrest, LLC  
For the Development Known as  
the Bell Woods Residential Project**

This Community Benefit and Development Agreement (hereinafter “**Agreement**”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2017, by and between the **County of El Dorado** (hereinafter “**County**”) and **Lennar Winncrest, LLC**, (hereinafter “**Developer**”), pursuant to the authority of Sections 65864 through 65896.5 of the California Government Code and Chapter 130.58 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 Northern California. The Developer owns approximately 34 acres of real property which is commonly known as the Bell Woods Property (the “**Property**”). The Property is located within the El Dorado Hills area of the County at the east end of Salt Wash Way and at the north end of Covello Court. The Property is located within an area of the County designated as Community Region in the County’s General Plan.

D. In 1995, the County approved the Bass Lake Hills Specific Plan (“**BLH Specific Plan**”). In 1996, the County entered into a development agreement with the then-land owner, Declaration of the Bell Trust dated November 23, 1993 (“**1996 Bell Woods Development Agreement**”). In 2004, the County adopted the Bass Lake Hills Specific Plan Public Facilities Financing Plan (“**BLH Financing Plan**”). In 2005, the County approved a tentative map (“**Tentative Map**”) to subdivide the Property into 54 single-family lots (see Exhibit 1 attached hereto). At the same time, the County approved two other tentative maps for projects in the BLH Specific Plan area. They were the Hawk View tentative map that created 114 lots and the Bell Ranch tentative map that created 113 lots (together are referred to as the “**Other Tentative Maps**”). In 2008, the County extended the life of the Tentative Map to May 2013. With statutory extensions, the life of the Tentative Map was extended to May 2017. In April 2016, the County approved a request to amend a number of the conditions of approval and extended the life of the

Tentative Map one additional year to May 2018. The Tentative Map and the related entitlements are the “**Project**”. The Property is sometimes referred to as El Dorado County Assessor’s Parcel No. 119-020-50-100.

E. The Project includes the design and construction of a key element in the County’s transportation plan consisting of the realignment of Country Club Drive and installation of a new intersection at Bass Lake Road and realigned Country Club Drive and certain improvements to lower Bass Lake Road from the new intersection with Country Club Drive to the Highway 50 Interchange (“**Country Club Drive Improvements**”). These improvements will eliminate one of the most congested and dangerous intersections in the County. The Project also includes certain improvements at the Highway 50 Interchange with Bass Lake Road (“**Bass Lake Road/Highway 50 Interchange Improvements**”). The parties enter into this agreement in part to provide assurances as to the timing of construction of the Country Club Drive Improvements and the Bass Lake Road/Highway 50 Interchange Improvements 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. In June 1991, El Dorado County released the Bass Lake Hills Study Area (“**BLHSA**”) Draft Program Environmental Impact Report (“**Draft PEIR**”) (SCH#1990020375). Numerous comment letters were received, and the BLHSA Final PEIR was adopted in January 1992. In November 1995, as part of approval of the BLH Specific Plan, the County approved an Addendum to the 1992 BLRSA Final PEIR (“**1992 EIR Addendum**”). In January 2005, the County published a Draft Initial Study/Mitigated Negative Declaration (“**IS/MND**”) for the Tentative Map. Following the comment period, the County prepared a Final IS/MND for the Tentative Map approval. The Final IS/MND included a mitigation monitoring and reporting program. In February 2016, Environmental Science Associates prepared for the County the Bass Lake Hills Specific Plan Conditions of Approval Amendments Addendum and Initial Study of Environmental Significance (“**2016 EIR Addendum**”). The 2016 EIR Addendum was prepared to identify and assess the anticipated environmental impacts of the revisions to, and one year extension of, the Tentative Map (and the Other Tentative Maps). The 2016 EIR Addendum also covered the approval of this Agreement on the Property.

H. On \_\_\_\_\_, 2017, the Board of Supervisors introduced Ordinance No. \_\_\_ approving this Agreement and authorizing its execution, and adopted such Ordinance on \_\_\_\_\_, 2017, 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. “Agreement” means this Community Benefit and Development Agreement.
- B. “Applicable General Plan” means the County’s General Plan, adopted on July 19, 2004, as amended through \_\_\_\_\_ (insert date DA is approved by Board), 2017.
- C. “BLH Financing Plan” means the Bass Lake Hills Specific Plan Public Facilities Financing Plan, as it may be amended.
- D. “CIP” means that list of projects contained within the County of El Dorado 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. “County-wide Facility Fee” has the meaning described in section 3.2.3.
- H. “Developer” means Lennar Winncrest, LLC, or its successors in interest.
- I. “Effective Date” has the meaning described in Section 1.2.
- J. “EIR” means Final Program Environmental Impact Report for the Bass Lake Road Study Area, State Clearinghouse No. 1990020375, certified by the Board of Supervisors in January 1992.
- 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, 1992 EIR Addendum, the Final IS/MND, and the 2016 Addendum.
- L. “Property” means the property commonly known as the Bell Woods Property, currently identified as El Dorado County Assessor’s Parcel No. 119-020-50-100. 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 Tentative Map and related entitlements 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 "TIM 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 ten (10) years, commencing on the Effective Date. The expiration date for the Tentative Map 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 ten (10) 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 building permit final 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 fee simple interest in the Property and is 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, and provided that Developer is not in default of this Agreement pursuant to Section 5 herein, Developer shall have the right to assign this Agreement as to the Property, or any portion thereof, in connection with the sale, transfer or conveyance thereof to a third party during the term of this Agreement, provided prior written notice of such assignment is given to County. Provided such assignment is done in writing and the assignee assumes all of Developer's obligations hereunder, Developer shall be released from any further liability or obligation from this Agreement related to the Property, or the portion thereof so conveyed and the assignee shall thereafter be the "Developer" with all rights and obligations related thereto, with respect to such conveyed property.

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. An amendment to the BLH Financing Plan as required in the Conditions of Approval shall not require an amendment to this Agreement.

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 this 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 Planning and Building  
Department

Notice to Developer: Lennar Winncrest, LLC  
c/o Lennar Homes of California, Inc.  
1420 Rocky Ridge Drive, Suite 320  
Roseville, CA 95661  
Attn: Larry Gualco



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: Tentative Map
- Exhibit 2: Conditions of Approval
- Exhibit 3: Property Map
- Exhibit 4: Property Legal Description

1.17. 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.

1.18. 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.

## **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 Bass Lake Hills Specific Plan, approved November 7, 1995;
- 2.1.2. The Planned Development Site Plan for the Project;
- 2.1.3. The Tentative Map (TM01-1380) approved by the County;
- 2.1.4. The revisions to the conditions of approval of the Tentative Map (TM01-1380-R);
- 2.1.5. The Bass Lake Hills Specific Plan Public Facilities Financing Plan, dated June 8, 2004; and
- 2.1.6. The Mitigation Monitoring and Reporting Program adopted with the Project.

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**”).

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 and 2.3, 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.

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

2.4.5. Nothing herein shall be construed to limit the County's general police power to implement, based upon appropriate and adequate findings, specific measures necessary to alleviate legitimate and bona fide harmful and noxious uses, or protect against real, actual, and dangerous threats to the health and safety of County residents, in which event any rule, regulation or policy imposed on the development of the Property shall be done to the minimum extent necessary to correct such bona fide harmful and noxious uses or protect against any such real, actual and dangerous threats to the health and safety of County residents.

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 Planning and Building Department, 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 Planning and Building Department 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 Planning and Building Department approval at the time of the action requested. If the Director of Planning and Building Department 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.

2.5.1. Parties Required to Amend. Where a portion of Developer's rights or obligations have been transferred, assigned, and assumed in accordance with this Agreement, the signature of the person or entity to whom such rights or obligations have been assigned shall not be required to effectuate a revision or amendment of this Agreement unless such amendment would materially alter the rights or obligations of such assignee, provided thirty (30) days' prior written notice of any amendment is provided to such person or entity by the amending parties. In no event shall the signature or consent of any non-assuming assignee be required to amend this Agreement. The consent of Developer shall be required to any amendment to this Agreement only to the extent that such an amendment relates to or affects any portion of the Property which Developer still owns in fee.

### **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.

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. Timing of Construction of Country Club Drive Improvements. Developer shall be responsible for the design, plans, specifications and estimates, utility relocation, right-of-way acquisition, and construction of the Country Club Drive Improvements as more fully described in the Conditions of Approval. At the time of entering into this Agreement, Developer has already begun the improvement plans for the Country Club Drive Improvements. The Developer shall satisfy the timing requirements for construction of the Country Club Drive Improvements (or submittal of the bid-ready package to the County) as set forth in the Conditions of Approval. For purposes of this Agreement, the terms "complete(s)" or "completion" when referring to the Country Club Drive Improvement mean the earlier of one of the following: (a) Developer is under contract for the construction of Country Club Drive Improvements, with proper sureties in place; or (b) Developer has provided the County with a complete set of improvement plans, specifications and estimates and adequate funding

for completion of the improvements. Developer agrees to using its good-faith, reasonable efforts to secure all necessary rights-of-way and permits. But the parties agree that completion of right-of-way acquisition and outstanding federal, state, local and public utility permits and approvals are not required for satisfaction of (b) above.

3.2.2. Off-site Right-of-Way. A number of off-site improvements for the Project will require the acquisition of right-of-way not owned by Developer. Developer has already started to acquire the necessary right-of-way and will continue to use its good faith, reasonable efforts to acquire the necessary right-of-way. However, if Developer is unable to acquire the necessary right-of-way through good faith negotiation at or near the appraised value of the interests being acquired, the County agrees that it will commence proceedings to authorize it to exercise its power of eminent domain to acquire the needed property rights. The County's agreement to commence proceedings to utilize the eminent domain process is a reflection of the importance of the Country Club Drive Improvements to the County's overall circulation and CIP and is not intended as a means to aid the Project as a private undertaking. Should Developer require the County's intervention to acquire the necessary right-of-way, the Parties shall enter into a separate agreement for the funding and reimbursement of acquisition costs, as more specifically described in the Conditions of Approval.

3.2.3. County-wide Facility Fee. Developer agrees that a fee may be collected at the time of the issuance of each residential building permit within the Project ("**County-wide Facility Fee**"), as set forth in this paragraph. The County may use these funds for any purpose as determined in the sole discretion of the Board of Supervisors. In consideration of the importance of the Country Club Drive Improvements to the County's circulation plan and as an incentive to Developer to advance the construction of the improvements, County agrees that if Developer "completes", as this term is defined in Section 3.2.1, the Country Club Drive Improvements prior to two (2) years from the Effective Date, then no County-wide Facility Fee shall be collected within the Project. If Developer completes the Country Club Drive Improvements more than two (2) years but prior to (3) years after the Effective Date, then a County-wide Facility Fee of \$1,500 (One Thousand Five Hundred Dollars) shall be collected with each residential building permit issued within the Project. If Developer completes the Country Club Drive Improvements more than three (years) after the Effective Date of this Agreement, then a County-wide Facility Fee of \$2,500 (Two Thousand Five Hundred Dollars) shall be collected with each residential building permit issued within the Project. The County-wide Facility Fee shall be subject to annual adjustment on January 1 of each year for inflation as calculated under the Engineering News-Record National Construction Cost Index, starting after the first year it is to be collected. The County shall grant credit for such payments against any development fees, taxes, assessment, and charges related to County-wide Facilities that the County may adopt subsequent to this Agreement. The obligation to pay fees which may accrue under this Section 3.2.3 shall survive expiration of the ten (10) year term of this Agreement.

3.2.4. Upper Bass Lake Road Overlay. In conjunction with the Country Club Drive Improvements, the Developer agrees to do a grind and pavement overlay ("**Overlay Project**") on the existing, upper segment of Bass Lake Road in conjunction

with the other construction work being done by the Developer on Bass Lake Road. The segment of road to be overlaid is generally from the northern limit of the Country Club Drive Improvements to the southern limit of the work previously done as part of the Hollow Oak Road/Bass Lake Road realignment project. In-lieu of the overlay, the Developer, at its option, may pay to the County adequate funding for the Overlay Project (based on a mutually agreed upon engineer's estimate of costs). The costs incurred by Developer for the Overlay Project are eligible for funding in the BLH Financing Plan.

3.2.5. Timing of Bass Lake Road/Highway 50 Interchange Improvements. For the Bass Lake Road/Highway 50 Interchange Improvements, the Conditions of Approval require a traffic study to be done prior to each final map and that the improvements identified in the study need to be constructed prior to the first certificate of occupancy for any lot within that final map. A preliminary traffic study indicates installation of a traffic signal ("**Signal Improvement**") will be necessary. In order to accelerate installation of the Signal Improvement, within 10 days of the Effective Date, Developer agrees to provide the County with Fifteen Thousand dollars (\$15,000.00) to complete the design of and improvement plans for the Signal Improvement. So long as the County has completed the design of and improvement plans for the Signal Improvement, the Developer agrees to pay the County the sum of Two Hundred and Twenty-Five Thousand dollars (\$ 225,000.00), the estimate of the necessary funding to construct the Signal Improvement, prior to recordation of any final map. Upon providing the payments as provided above, the Conditions of Approval that require improvements at the Highway 50 Interchange will be deemed satisfied.

3.3. TIM Fee Credits/ Reimbursements. With respect to the Country Club Drive Improvements, the Bass Lake Road/Highway 50 Interchange Improvements and any other offsite roadway improvements undertaken by Developer that are included in the County's TIM Fee Program, the Parties will enter into a credit and/or reimbursement agreement for such improvements consistent with the terms of this Agreement.

3.3.1 Calculating Credits and Reimbursements. The "**Country Club Drive Improvements Costs**" and the "**Bass Lake Road/Highway 50 Interchange Improvements Costs**" include actual construction costs, onsite and offsite right-of-way costs, design, engineering, environmental permitting, construction management and other costs typically funded by the TIM Fee Program. The Developer shall receive credits, subject to Section 3.3.2, against the local improvement portion, less the Silva Valley Interchange set aside amount, of the TIM Fees payable at the time of issuance of building permits, up to the total amount of the Country Club Drive Improvement Costs. The Developer shall receive credits against the Highway 50 portion of the TIM Fees payable at the time of issuance of building permits, up to the total amount of the Bass Lake Road/Highway 50 Interchange Costs. To the extent that the Country Club Drive Improvement Costs exceed the amount of credits that can be used against the local portion of TIM Fees for the Project and to the extent that the Bass Lake Road Highway 50 Interchange Costs exceed the amount of credits that can be used against the Highway 50 portion of the TIM Fee, Developer shall have the right either to assign remaining credits to other development projects within the Bass Lake Hills Specific Plan area or have the remaining balance reimbursed to Developer through TIM Fee revenues or a combination of both credits and reimbursements. Reimbursements under

this paragraph will be subject to availability of funds in the TIM Fee program and shall be paid over a six (6) year period beginning upon the acceptances of the improvements by County and a reconciliation of the final cost of the improvements has been made, at an annual rate of fifteen percent (15%) of the outstanding balance in each of the first five years with the balance of twenty-five percent (25%) being paid in the sixth year. County shall not be required to issue credits pursuant to this section if doing so would impair the County's ability to meet its contractual obligation to make payments pursuant to reimbursement commitments existing as of the effective date of this Agreement.

CREDIT/REIMBURSEMENT EXAMPLE

TIM Fees (Non-Highway 50) Generated by Project (54 units x Local TIM Fee)	\$809,622
Less Silva Valley Interchange Set-aside	(\$242,887)
Allowable TIM Fee Credit Amount	\$566,735
Qualified CIP-related Creditable Cost of Country Club Drive Improvements	\$6,000,000
Allowable TIM Fee Credit Amount	(\$566,735)
Balance to be Reimbursed/Assigned as Credits or combination of both	\$5,433,265
Credits Assigned to Bell Ranch Project (113 Units x Local, non-Silva Valley, TIM Fee)	\$1,185,946
Amount to Be Reimbursed to Developer	\$4,247,319

This example is intended to be illustrative of the process described above and assumes that the proposed TIM Fee Zone amendment referenced below occurs. If the TIM Fee Zone amendment does not occur, the parties will meet and confer regarding the credits and reimbursements at the time of entering into a credit/reimbursement agreement.

3.3.2 If Developer completes the Country Club Drive Improvements more than two (2) years but prior to (3) years after the Effective Date, the amount of Country Club Drive Improvement Costs that are eligible for credits shall be reduced by 50 percent. If Developer completes the Country Club Drive Improvements more than (3) years after the Effective Date, the amount of Country Club Drive Improvement Costs that are eligible for credits shall be reduced to 25 percent of the cost amount.

3.4. 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.

3.5. 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 as part of the Project to existing or newly constructed public improvements, provided the costs of such connections are borne by Developer.

3.6. County Cooperation and Processing. County, through its officers, agents and employees, shall cooperate with Developer and support the Project as necessary: (a) to issue approvals of improvement plans, encroachment permits, final maps and other ministerial approvals in a timely manner and (b) to obtain other permits or approvals required from other government agencies to effectuate the development of the Property. In particular, County agrees to expedite its review and processing of the Country Club Drive improvements, together with the improvement plans for the Tentative Map, to facilitate the parties' mutual desire to achieve the benefits of the improvements as soon as practically possible.

3.6.1 TIM Fee Zone Amendment. The County is currently processing an adjustment to the TIM Fee Zone boundaries which would result in additional properties within the BLH Specific Plan, including the Other Tentative Maps, being included within Zone 8. This boundary adjustment is important to achieving the goals of this Agreement of ensuring the timely construction of the Country Club Drive Improvements, together with other important infrastructure. Accordingly, County agrees to continue to process the proposed amendment to Zone 8 and consider such proposed amendment in a timely manner with the understanding that County's discretion with respect to the amendment is not affected by this Section

3.6.2 Bass Lake Road Traffic Control. County and Developer will agree on the most efficient means of controlling traffic on Bass Lake Road during the construction of the Country Club Drive Improvements. County agrees to consider a temporary closure of Bass Lake Road during the construction process provided that the parties agree that would be the most efficient means of expediting the construction without risking public safety.

3.6.3 Wetland Permitting. At the request of Developer County agrees to submit, as the applicant, any applications for wetlands permits necessary for the construction of the road improvements offsite of the Project property, provided that Developer agrees to fund, subject to credits or reimbursement pursuant to this Agreement, any such application(s).

3.7. 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 BLH Financing Plan, as may be amended. 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 BLH Financing Plan 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.

3.8. 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.

3.9. Changes in State or Federal Law. In the event of 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 effort to obtain any permits, approvals, or entitlements that may be required as a result of modifications or suspensions made pursuant to this Section. 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.

3.10. 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 there 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 Planning and Building Department 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 Planning and Building Department 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 30-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 130.58 of the County Ordinance Code. Upon not less than thirty (30) days' written notice by the Director of the Planning and Building Department, 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. Developer's failure to provide the requested information within thirty (30) days of the Director's request shall constitute a default of this Agreement in accordance with Section 5 herein.

#### 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, and its successors, hereby waive, relinquishes and surrenders any right to any monetary remedy. Developer, and its successors, 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, and its successors, 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 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.

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

DEVELOPER:

Lennar Winncrest, LLC,  
a Delaware limited liability company

By: Lennar Homes of California, Inc.  
a California corporation,  
its Managing Member

By: \_\_\_\_\_  
Larry Gualco, Vice President

COUNTY:

El Dorado County

By: \_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
County Counsel