

## **FUNDING, CREDIT AND REIMBURSEMENT AGREEMENT BETWEEN WEST VALLEY, LLC AND THE COUNTY OF EL DORADO**

This Funding and Reimbursement Agreement, hereinafter called "Agreement" made and entered into by and between the County of El Dorado, a political subdivision of the State of California ("County") and West Valley, LLC ("Developer"), concerning the funding, and reimbursement and/or credit for funding of certain improvements more particularly described herein.

### **RECITALS**

**WHEREAS**, on January 22, 2004, Developer obtained approval of the tentative map, TM99-1359, subsequently amended on July 7, 2004 as TM 99-1359R, West Valley Village project, now commonly referred to as "Blackstone", subject to certain conditions of approval. The Blackstone project is generally described on Exhibit A attached hereto and made a part hereof (the "Project"), and the Planning Commission's conditions of approval (hereinafter the "Conditions") are attached hereto as Exhibit "B" and incorporated by reference as though fully set forth herein; and

**WHEREAS**, Conditions Nos. 21, 25, 26, 27, 28, and 61 of the approved tentative map for the Project require Developer to, among other obligations, prepare plans and specifications, secure right-of-way, obtain permits, provide for the relocation of utilities and provide all or partial funding for certain improvements including the planned Silva Valley Parkway Interchange and related improvements, and improvements to Latrobe Road and the US 50/Latrobe/El Dorado Hills Boulevard Interchange. ; and

**WHEREAS**, the Conditions require that the Developer and the County enter into a credit/reimbursement agreement consistent with any Board of Supervisors' adopted reimbursement policies in effect at the time the agreement is executed and the parties intend that this Agreement will comply with that requirement to enter into a credit/reimbursement agreement only; Nothing by way of this Agreement shall be deemed to satisfy any of the Conditions; and

**WHEREAS**, the parties now intend to more particularly set forth the manner in which, in accordance with the Conditions, Developer will meet its funding obligations and the County will apply credits against applicable fees and provide reimbursements to which Developer will be entitled as a result of such funding; and

**WHEREAS**, some of the Improvements are identified on Exhibit B of Resolution adopted September 20, 2005 establishing the Interim 2004 General Plan Traffic Impact Mitigation Fees Program (TIM CIP), some of such Improvements are scheduled for construction within the initial five-year period as depicted in the Proposed Interim Capital Improvement Program dated September 12, 2005 ("CIP"); and others are not in the CIP. The parties acknowledge that with respect to those Improvements which are currently not included in the TIM CIP, the reimbursement provisions contained in this Agreement shall not apply to such Improvements unless and until such Improvements are included within the TIM CIP; and

**WHEREAS**, the parties intend that this Agreement will reflect the high priority of the nature of the improvements required by Condition 25 while at the same time

recognizing that the County has additional high priority projects that will need to be funded from and/or reimbursed from accruals within the County road impact fee programs, and this Agreement is intended to reflect the equal need for reimbursement to the Developer and continued accrual of road impact fees to the County; and

**WHEREAS**, the parties acknowledge that the County has previously designated in the El Dorado Hills/Salmon Falls Area Road Impact Fee program certain set asides, inclusive of the 30% Silva Valley Interchange Set-Aside, and the South of Highway 50 set aside, as well as entered into prior reimbursement agreements, and this Agreement is intended to be, and shall be construed to be, consistent with and subject to existing set asides and reimbursement agreements already executed; and

**WHEREAS**, County has adopted "Guidelines for Road Impact Fee/Traffic Impact Mitigation Fee Reimbursement Projects" (the "Guidelines") that identify requirements for pre-construction procedures, bid/proposal procedures, project award, construction, reimbursement and cost reimbursement policies, and the like, where on May 20, 2003 the reimbursement provisions only of these guidelines related to the El Dorado Hills RIF were suspended; a copy of which is on file and available at the El Dorado County Department of Transportation's main office located at 2850 Fairlane Court, Placerville, California 95667, and is incorporated herein and made by reference a part hereof as if set forth in full.

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

1. The Recitals are true and correct and incorporated into this Agreement.
2. **Offer of Dedication:** Pursuant to Condition 21, Developer is required to provide irrevocable offers of dedication, and right-of-way acquisition as follows: (a) Developer will irrevocably dedicate in fee to the County the on-site portions of Latrobe Road, with necessary slope easements ("Developer's IODs"). The on-site portions of Latrobe Road include but are not limited to those parcels depicted on On-Site Right of Way Needs attached hereto and incorporated by reference as Exhibit "C". The Developer acknowledges and agrees that Developer, any member of Developer, and any successor interests to Developer, and its members, in this real property shall not be considered a third party for purposes of reimbursement under this Agreement. Developer IODs are not eligible for reimbursement under the 2004 El Dorado Hills TIM (EDH TIM) program; (b) Developer will secure right-of-way needs from off-site portions of Latrobe Road from third party property owners ("Third Party ROW") including but not limited to those parcels as depicted on Off-Site Right of Way Needs attached hereto and incorporated by reference as Exhibit "D". Developer shall be eligible for credits/reimbursements for Third Party ROW.
- 3 **Latrobe Road Improvements:** In accordance with the terms and conditions of Condition 25, Developer is required to provide funding for each of the road improvements set forth in Condition 25(hereinafter referred to as "Condition 25 Improvements"),). Funding for Condition 25 Improvements shall have the meaning set forth in the Condition, which includes the entire cost of the identified improvements(s) including but not limited to design, engineering, environmental clearances, permits, right-of-way, surveying, and construction. In addition, Condition 61 requires Developer to

fund and construct a Class I bicycle and pedestrian trail along the portion of Latrobe Road adjacent to the project site consistent with El Dorado County and El Dorado Hills Community Services District standards ("Condition 61 Improvements").

**4. Bike Path Improvements:** Costs incurred by Developer shall not be eligible to apply credits or obtain reimbursement for Condition 61 Improvements unless and until these bike paths are included within the El Dorado Hills Tim program. At that time, credits or reimbursement shall be applied in accordance with the Board of Supervisors reimbursement policies then in effect at the time of inclusion.

**5. El Dorado Hills Boulevard Interchange Improvements:** The parties hereby acknowledge that the elements of the El Dorado Hills/Latrobe Interchange listed in Condition 25(c) have been previously funded by the County, through its RIF program, and no reimbursement is due Developer under this Condition 25(c).

**6. Silva Valley Interchange Improvements and Set Aside Fund:** As set forth in Condition 26, Developer is obliged to fund the Silva Valley Parkway Interchange (hereinafter "Condition 26 Improvements") as set forth in the terms of the condition. County will reserve an amount equal to 30% of all El Dorado Hills TIM fees collected for the Silva Valley Interchange. The reserve will be created from a combination of two funds: the El Dorado Hills TIM where the reserve will be deposited into the Silva Valley Interchange Set Aside Fund, and from the Highway 50 TIM where the reserve will be held within the Highway 50 TIM fund (the Hwy 50 Silva Valley Set Aside).

(a) Except as provided hereinbelow, the cash balance in the Silva Valley Set Aside fund as of November 19, 2005, the effective date of the new fee program, shall be utilized first.

(b) After cash balances in section (a) have been exhausted, the cash balances in the two reserves: the Silva Valley Set Aside Fund and the Hwy 50 Silva Valley Set Aside reserve will be used.

(c) Project costs projected in excess of the funds described above in (a) and (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 County within 30 days of receipt of such request. Additional cash advance payments shall be provided as required by County for the completion of the improvement.

With respect to section (a) above, the cash balance shall be reduced by amounts segregated for prior reimbursements by County for any existing obligations of the fund to include Serrano Associates, LLC.

Contribution shall be reimbursed from cash receipts collected according to the 30% reservation described above. Reimbursement payments shall be made for those costs where project has been accepted as complete by the County Board of Supervisors with payments being made on an annual basis no later than March 1<sup>st</sup> of each year until paid

in full. The amount of each payment will reflect the balance in the two set aside reserves as of December 31<sup>st</sup> of each year up to the outstanding advance balance with County maintaining the equal distribution between the two funds. In the event the fee program is restructured, the 30% set aside obligation shall be funded according to the structure of the new fee program.

**7. Planning Studies/Preliminary Designs for Alternative Connections:** Pursuant to Condition 27 as set forth on Exhibit B, Developer is required to initiate a Planning Study and to prepare preliminary designs for alternate connections between Latrobe Road, south of White Rock Road and US Highway 50, west of the El Dorado Hills Boulevard Interchange (the "Alternate Connection"). The parties acknowledge and agree that Developer shall not be entitled to reimbursement for its costs incurred in connection with the initiation or preparation of the studies/designs referenced in this Section unless and until the Alternate Connection is included within the TIM CIP. In the event that the Alternate Connection is included within the TIM CIP, then the Developer shall be entitled to reimbursement for its costs incurred for such studies/designs pursuant to the reimbursement Guidelines in effect at the time the Alternate Connection is added to the TIM CIP and CIP.

**8. US Highway 50 Improvements:** Condition 28 as set forth on Exhibit B requires Developer to pay the difference between the cost of construction of certain improvements to US Highway 50, less the total fees paid from the Project into the Interim 2004 General Plan Traffic Impact Mitigation Fees Program, Highway 50 component ("Highway 50 TIM") for Highway 50 improvements (the "Payment"). Developer shall be entitled to credits against the Highway 50 TIM in the amount of the Payment. If credits exceed the total amount of fees to be paid for remaining units, the balance shall be repaid through the Reimbursement Pool described in section 12 below. Consistent with the structure of the current fee program, fifty percent of costs for the Condition 28 improvements shall be funded through the EDH TIM as a reimbursement to the Highway 50 TIM.

**9. Funding of Obligations:** Funding of Developer's obligations shall be through a Community Facilities District and/or cash. County has formed that certain Community Facilities District No. 2005-01, Blackstone ("The CFD") and sold approximately Thirty-three Million Seven Hundred Thousand Dollars (\$33,700,000.00) in CFD Bonds of which approximately Twenty Nine Million Dollars (\$29,000,000.00) has been deposited into the County's Construction Fund for road improvement projects, road impact fees and other eligible facilities. Developer and County agree that part of this Twenty Nine Million Dollars (\$29,000,000.00) shall be used, consistent with the governing documents of the CFD, to prepay a portion of those 2004 El Dorado Hills TIM ("EDH TIM") fees in effect at the time cash advance is required. Developer and County acknowledge and agree that such prepayment of EDH TIM shall apply only to that portion of the EDH TIM exclusive of the Silva Valley Parkway Interchange Set Aside Fund (the "Set Aside Fund") and exclusive of a cash payment of \$1,000.00 per unit, or One Million One Hundred and Forty Three Thousand Dollars (\$1,143,000.00). In the event that the EDH TIM is increased to an amount equal to or greater than \$21,250.00 at the time the cash advance is payable, the \$1,000.00 cash payment will not be required and this amount can be applied as a credit where Developer may prepay the entire 70% portion of the fee in effect at that time provided such amount does not exceed the cash advance required for the improvements.

The amount of partial prepayment toward the EDH TIM shall be calculated using the formula depicted on the Formula for Calculation of Fee Credits, attached hereto and incorporated by reference as Exhibit "E". The County shall continue to collect the portion of the EDH TIM dedicated to the Set Aside Fund (which is thirty percent (30%) of the EDH TIM) and the Highway 50 TIM at the time of issuance of building permit. County and Developer agree that prepayment of such fees shall be applied first to those projects where Developer has a funding obligation under Condition 25 (a) and (b).

**10. Traffic Impact Mitigation Fee Increases:** County reserves the right to approve increases in such fees from time to time in accordance with applicable laws. The fee in effect when a building permit is issued, less the amount of partial prepayment derived as described in Section 9 above, shall be due for each unit within the Blackstone project.

**11. Additional Funding:** In the event Developer's funding obligation exceeds the amount of such partial fee prepayment, Developer acknowledges its responsibility to provide the balance of such funding obligation in cash or with CFD proceeds to County at the time and on the terms set forth in Exhibit B. To the extent that Developer is required to provide the County with cash funding in excess of the partial fee prepayments as described in Section 9 hereinabove, County agrees to reimburse Developer for project related costs pursuant to the Reimbursement Pool process described in Section 12 herein below except for those improvements discussed in sections 6 and 8 where reimbursement terms are specifically described.

**12. Reimbursement Pool:** Cash Payments for reimbursement of eligible projects, excluding section 6 and 8 improvements, shall be made on an annual basis from the Reimbursement Pool, no later than March 1<sup>st</sup> as follows:

(a) Eligible project costs include costs for those projects that have been accepted as complete by the County Board of Supervisors prior to December 31<sup>st</sup> of each year and are included in both the TIM CIP and the CIP.

(b) Reimbursement Pool - the Reimbursement Pool (Pool) amount is the balance in the EDH TIM after priority expenditures have been satisfied. Priority expenditure include:

- (1) existing debt obligations of the fund
- (2) maintenance of a \$1 million dollar reserve
- (3) accumulation of cash in amounts sufficient to construct County sponsored projects.

(c) Disbursements from the Pool will be made to each developer participating in the Pool in proportion to the balance due on each respective advance. Unpaid balances will roll over to the following year and be pooled with any additionally eligible reimbursements. This process will continue until all obligations of the fund are satisfied.

(d) Notwithstanding the foregoing, where the balance for a reimbursement is less than or equal to \$100,000 in total, County may, at its sole discretion, elect to make full reimbursement to the Developer at any time following the date of acceptance of the improvement by the Board of Supervisors.

**13. Engineering Services:** Developer shall be responsible for arranging and causing to be delivered to the County all engineering services called for under the Conditions, in accordance with all of the requirements under the Conditions and all applicable laws, statutes, orders and Guidelines. Developer shall provide proof of adequate professional liability insurance for the engineers providing said services which runs to the County, and shall provide for the complete assignment of ownership of all plans and specifications to the benefit of the County.

**14. Right of Way, Permits, Utility Relocation:** Under certain conditions of approval set forth in Exhibit "B", Developer is required to secure right-of-way, permits, utility relocations, and other matters. Developer shall enter into acquisition funding agreements for offsite condemnations, and any other agreements deemed necessary and required by County in order to comply with the Conditions.

**15. Indemnification:** To the fullest extent allowed by law, Developer(s) shall defend, indemnify and hold the County harmless against and from any and all claims, suits, losses, damages, and liability for damages of every name, kind, and description, including attorneys' fees and costs incurred, brought for, or on account of, injuries to or death of any person including, but not limited to, workers, County employees, and the public, or damage to property, which are claimed to or in any way arise out of or are connected with the Developer's design work prepared and delivered to the County pursuant to the terms of Exhibit B, regardless of the existence or degree of fault or negligence on the part of the County, the Developer, any Contractor(s), Subcontractor(s), and employee(s) of any of these, except for the sole or active negligence of the County, its officers and employees, or as expressly prescribed by statute. This duty of Developer to indemnify and hold the County harmless includes the duties to defend set forth in California Civil Code Section 2778.

**16 Attorney Fees:** In the event that any action is brought by either party to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

**17. Interest:** With regard to reimbursements from the Pool as described in section 12 above, in the event that the Board of Supervisors approves a reimbursement policy that provides for interest to be paid to the party entitled to reimbursement, Developer shall be entitled to receive interest prospectively from the date of the Board of Supervisors' action on remaining amounts to be reimbursed from the Reimbursement Pool.

**18. Modifications:** The County is currently in the process of completing a comprehensive update of the County's various fee impact programs which may substantially alter or increase the existing impact fee programs, and nothing contained herein shall alter or affect the County's ability to modify said fee programs. The Developer shall be responsible to pay fees associated with all impact fee programs in effect at the time building permits are issued.

19. **Source of Funds:** Developer acknowledges and agrees that Developer shall look to all applications of credits and repayment of reimbursement obligations only from the applicable fee program identified for that respective obligation under this Agreement, and that the County shall not be required to fund reimbursements from any other funds or revenues, including but not limited to, the County General Fund, in the event the fees generated within the respective fee program are insufficient to fully fund the reimbursement obligation.

20. **Insufficiency or Funds/No Acceleration:** In the event that the funds in a respective fee program is insufficient to the reimbursement obligation called for under that program within the time frame allotted herein, such insufficiency alone shall not be deemed an event of default by the County hereunder and shall not entitle Developer to accelerate any payment or payments under this Agreement or to look for alternate sources of repayment. Notwithstanding any other provision to the contrary, in no event shall Developer be entitled to accelerate any payment or payments under this Agreement, whether for insufficient funds or otherwise.

21. **Exclusive Remedies:** The parties may exercise the following respective remedies which shall be deemed to be the sole and exclusive remedies under this Agreement for the failure of a party to undertake any action under this Agreement that it is obligated to take:

(a) In the event that County fails to make any otherwise available cash reimbursements or credit applications to Developer as and when provided in this Agreement where such failure continues for a period of thirty (30) calendar days after delivery of written notice of such default from Developer to County, Developer may initiate legal and/or equitable action, including specific performance, to secure the set-aside, accounting or prioritization;

(b) In the event that Developer fails to make any of the advances or other funding required under the Conditions, County may, at its discretion take one or more of the following actions including (i) initiate an action for specific performance, and/or (ii) withhold issuance of building permits or certificates of occupancy for the period of time that the funding payment remains due and outstanding.

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

23. **Notice to Parties:** All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be in duplicate and addressed as follows:

County of El Dorado  
Department of Transportation  
2850 Fairlane Court  
Placerville, CA 95667  
Attn: Richard W. Shephard, Director of Transportation

or to such other location as County directs.

Notices to Developer shall be addresses as follows:

Lennar Communities  
1075 Creekside Ridge Drive  
Suite 110  
Roseville, CA 95678

and

West Valley, LLC  
c/o AKT Development Corp  
7700 College Town Drive, Suite 101  
Sacramento, CA 95826

**24. Contract Administrator:** The County officer or employee with responsibility for administering this Agreement is the Director of the Department of Transportation.

**25. Assignment:** Developer shall have the right to assign all or a portion of its interest in the credits and reimbursements herein upon written notice to County as provided in Section 25. In this regard, Developer shall have the right to transfer all or a portion of the credits to which it is entitled under this Agreement to one or more builders within the Project, provided it provides written notice of such transfers to the County as provided in Section 25.

**26. Time of Essence:** Time is of the essence of this Agreement and all of the funding obligations provided for herein and in the Conditions.

**27. Integration:** This Agreement, together with the exhibits attached hereto and matters incorporated by reference, contains the complete and entire agreement of the parties hereto, and supersedes any prior written or oral agreements between them concerning the subject matter contained herein. This Agreement may be modified only by a writing signed by all of the parties hereto.

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

**29. Entire Agreement:** This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties, and they incorporated or supersede all prior written or oral agreements or understandings.

**30. Counterparts:** This Agreement may be executed in counterparts.

**31. Construction:** As used in this Agreement, the masculine, feminine, or neuter gender and the singular or plural numbers shall each be deemed to include the other whenever the context so indicates. This Agreement shall be construed as a whole, the captions being for the convenience of the parties only and not intended to describe



or define the provisions in the portions of the Agreement to which they pertain. Each party hereto, acknowledges and agrees that each has had independent counsel and review and participated in the drafting of this Agreement, and each hereby fully waives the application of any law, statute or rule of construction or interpretation to the effect that any ambiguities are to be resolved against the drafting party.

**32. Severability:** If any term of this Agreement, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent allowed by law.

**33. Calendar Days for Performance:** Unless otherwise expressly stated, all time periods referred to herein shall be deemed to mean calendar days. In the event any date for performance by either party or any obligation hereunder required to be performed by such party falls on a Saturday, Sunday or holiday recognized in the State of California, the time for performance of such matter shall be deemed extended until the next business day immediately following such date.

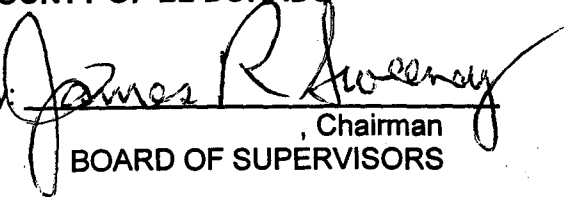
**Requesting Department Concurrence:**

By:   
Department of Transportation

Dated: 11/9/05


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

**COUNTY OF EL DORADO**

By:   
Chairman  
BOARD OF SUPERVISORS

Dated: 10/08/05

Attest:  
(Name)  
Clerk of the Board of Supervisors

By:   
Deputy Clerk

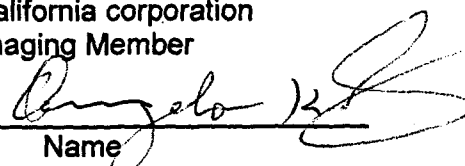
Dated: 11/08/05

[Signatures continued on next page]

**WEST VALLEY, LLC**

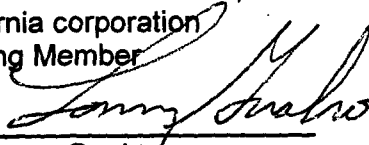
By: AKT WEST VALLEY INVESTORS, LLC, a  
California limited liability company

By: AKT DEVELOPMENT CORPORATION,  
a California corporation  
Its: Managing Member

By:   
Name  
Title: \_\_\_\_\_ Dated: \_\_\_\_\_

By: LENNAR WEST VALLEY, LLC, a  
California limited liability company

By: LENNAR RENAISSANCE, INC.  
a California corporation  
Its: Managing Member

By:   
Larry Gualco  
Title: Vice President

Dated: 11/21/05