



090-F1310

**Funding Agreement No. 002D-F-12/13-PA
between the
County of El Dorado and Real Returns, LLC
for
Preparation of a Focused Environmental Impact Report
for the Tilden Park Development Project**

COUNTY FILE NUMBERS A08-0015, Z08-0039, PD08-0025, TM08-1485

THIS FUNDING AGREEMENT made and entered by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County"), and Real Returns, LLC; a California limited liability company, (hereinafter referred to as "Applicant") whose principal place of business is located at 875-B Washington Street, Raleigh, NC 27605.

W I T N E S S E T H

WHEREAS, Applicant is proposing to develop certain real property in El Dorado County described as Assessor Parcel Numbers 070-280-59 and 070-280-60 and has submitted application for a proposed development project known as Tilden Park; the subject of pending application number(s) A08-0015, Z08-0039, PD08-0025, TM08-1485; and

WHEREAS, County has determined that a Focused Environmental Impact Report (hereinafter to as "EIR") is clearly required for the processing of the aforementioned project to CEQA Guidelines Section 15064; and

WHEREAS, the California Environmental Quality Act, Section 21082.1 authorizes County to enter into agreements to prepare environmental assessments for a proposed project including the preparation of an EIR and Mitigation Monitoring Program; and

WHEREAS, the California Environmental Quality Act, Section 21089 authorizes the County to collect fees to recover the costs for the preparation and processing of environmental documents.

NOW, THEREFORE, County and Applicant mutually agree as follows:

ARTICLE I

Purpose: The purpose of this Agreement is to provide a mechanism for Applicant to reimburse County for the costs incurred in the preparation of an EIR for the aforementioned project. Both County and Applicant make this Agreement with full knowledge of the requirements of the California Environmental Quality Act (CEQA) of 1970 (Public Resources Code, §21000 et seq.) and the State CEQA Guidelines (California Administrative Code, Title 14, Division 6, §15000 et seq.) adopted pursuant thereto. This agreement is subject to all other applicable laws, regulations, and ordinances including those of the County of El Dorado relating to payment of monies for services rendered.

ARTICLE II

Project: The project is the consideration of applications to amend the general plan ie. zone the property and process a tentative map and development plan to allow development of a residential subdivision, the subject of pending application number(s) A08-0015, Z08-0039, PD08-0025, TM08-1485 on that real property described as Assessor's Parcel Numbers: 070-280-59 and 070-280-60.

ARTICLE III

Employment of Consultant as Independent Contractor: County, in furtherance of this Agreement, shall engage a consultant ("Consultant"), as an independent contractor, to provide planning assistance to coordinate and support the preparation of a legally and technically adequate Environmental Impact Report (hereinafter referred to as "EIR") for the development of the Tilden Park project located Shingle Springs in El Dorado County, California.

The EIR shall be prepared for County in fulfillment of the obligations of County as the public agency having primary responsibility for discretionary actions involved in said project (Public Resources Code, §21082). Accordingly, Consultant shall prepare said report so as to be as accurate and objective as reasonably possible. It is further agreed that in all matters pertinent to this Application, Consultant shall act solely as Consultant to County and shall not act, in any capacity as consultant to, representative of, or agent of Applicant. Applicant shall not engage in communications or contact with Consultant without prior written authorization of County.

ARTICLE IV

Funding for this Agreement: Funding of this Agreement is provided entirely by Applicant, who shall make a deposit of 30% of the total funding amount and maintain deposit amount funds with County to pay the cost of the consulting services. Applicant, upon execution of this Agreement, shall deposit with County the sum of **Twelve Thousand Three Hundred Eighty Dollars and 00/100 (\$12,380.00)** as compensation for Consultant to be engaged by County for the preparation of the EIR. The amount on deposit with the County shall be maintained at \$12,380. Funds shall be replenished within 15 (fifteen) days of notice from the County of expenditure until the balance remaining on the agreement falls below the deposit amount; at which time the deposit will be drawn down zero.

The total amount of this Agreement **SHALL NOT EXCEED Forty One Thousand Two Hundred Sixty Six Dollars and 00/100 (\$41,266.00)**.

It is understood that the deposit, or deposits, made by Applicant to fund this Agreement are the only source of funding for this Agreement and the Agreement contemplated between County and its Consultant. By deposit of the above-referenced funds and by execution hereof, Applicant agrees that County may utilize said funds to compensate its Consultant to do the necessary work.

ARTICLE V

Deposit: County shall place Applicant deposit under this Agreement into a separate fund. The deposit shall not bear interest.

ARTICLE VI

Reimbursement: Upon completion of the EIR or termination of this Agreement, County shall reimburse Applicant for the difference between County's costs to fund its Consultant, as set forth above, and the amount deposited if the total costs are less than the amount deposited by Applicant.

ARTICLE VII

Conformity with Statutes, Decisions, Guidelines, and Ordinances: The EIR shall be prepared in conformity with all applicable State statutes including but not limited to the California Environmental Quality Act (CEQA) of 1970 (Public Resources Code, §21000 et

seq.), the State CEQA Guidelines (California Administrative Code, Title 14, Division 6, §15000 et seq.) adopted pursuant thereto, the Environmental Guidelines (objective, criteria, and procedures pursuant to CEQA) last adopted by the County of El Dorado, and in the format prescribed by County. The execution of this Agreement shall not constitute a representation or assurance by County that the EIR shall be certified or that the project will be approved.

ARTICLE VIII

Interest of Applicant and Consultant: Applicant covenants that it shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with Consultant's services hereunder. Applicant covenants that it will notify the County if the County engages, or attempts to engage, a Consultant who has performed any work or provided any services under contract or agreement directly with the project or any part of the project herein described or who has performed work or provided services for Applicant on any other development project within the preceding five (5) years.

ARTICLE IX

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 addressed as follows:

COUNTY OF EL DORADO
DEVELOPMENT SERVICES DEPARTMENT
2850 FAIRLANE COURT
PLACERVILLE, CA 95667
ATTN: ROGER P. TROUT, DEVELOPMENT SERVICES DIRECTOR

Or to such other location as the County directs.

Notices to Consultant shall be addressed as follows:

REAL RETURNS, LLC
875-B WASHINGTON STREET
RELEIGH, NC 27605
ATTN: MIKE KHORRAN

Or to such other location as the Applicant directs.

ARTICLE X

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.

ARTICLE XI

Administrator: The County officer or employee with responsibility for administering this Agreement is Roger Trout, Director, Development Services Department, or successor.

ARTICLE XII

Termination: Either County or Applicant may terminate this Agreement by presentation to the other party hereto of written notice of said termination fifteen (15) days prior to effective date of said termination. In the event of termination by either party, County shall retain fees from the funds deposited in an amount equal to all consultant fees and other costs incurred prior to the effective date of said termination. The balance of funds deposited by Applicant shall be reimbursed to Applicant.

ARTICLE XIII

Assignment: This Agreement shall be binding upon the successors-in-interest and assigns of Applicant.

ARTICLE XIV

Agreement Negotiated: It is agreed and understood by the parties hereto that this Agreement has been arrived at through negotiation and that neither party is to be deemed the party which prepared this Agreement within the meaning of Civil Code Section 1654.

ARTICLE XV

Entire Agreement: This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

ARTICLE XVI

Indemnity: Applicant shall defend, indemnify, and hold 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, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with Applicant's obligations and performance under this Agreement regardless of the existence or degree of fault or negligence on the part of County, Applicant, Consultant, subconsultant(s) and employee(s) of any of these, except for the sole, or active negligence of County, its officers and employees, or as expressly prescribed by statute. This duty of Applicant to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

Requesting Contract Administrator Concurrence:

By: _____
Roger Trout, Director
Development Services Department

Dated: _____

Requesting Department Head Concurrence:

By: _____
Roger Trout, Director
Development Services Department

Dated: _____

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

-- COUNTY OF EL DORADO --

By: _____

Terri Daly, Purchasing Agent
Chief Administrative Office
"County"

Dated: _____

- - APPLICANT - -

By: _____

Mike Khorran
"Applicant"

Dated: _____