

AGREEMENT TO MAKE SUBDIVISION IMPROVEMENTS
FOR CLASS 1 SUBDIVISION
BETWEEN COUNTY AND OWNER

THIS AGREEMENT, made and entered into by and between the COUNTY OF EL DORADO, a political subdivision of the State of California, (hereinafter referred to as "County"), and TOLL LAND XXIII Limited Partnership, a California Limited Partnership, duly qualified to conduct business in the State of California, whose principal place of business is 250 Gibraltar, Horsham, PA 19044 and whose local office address is 4451 Chancery Lane, Dublin, CA 94568 (hereinafter referred to as Owner); concerning THE PROMONTORY VILLAGE NO. 5 – UNIT 2 (hereinafter referred to as "Subdivision"); the Final Map of which was filed with the El Dorado County Board of Supervisors on the 25 day of April, 2006

RECITALS

Owner is vested with fee title to Subdivision; a tract of land located in the County of El Dorado, State of California, and described as THE PROMONTORY VILLAGE NO. 5 - UNIT 2. Owner desires to construct on said property certain public improvements as hereinafter described, in connection with the Subdivision.

In consideration for the complete construction and dedication of all the public improvements specified in this Agreement, the approval and acceptance by County's Board of Supervisors, and the Final Map to be filed and recorded, the parties agree as follows:

AGREEMENT

OWNER WILL:

1. Make or cause to be made all those public improvements in Subdivision required by Section 16.16.010 of the El Dorado County Ordinance Code (hereinafter referred to as "Code") and shown or described in the improvement plans, specifications and cost estimates entitled THE PROMONTORY, VILLAGE 5 UNIT 2 which were approved by the County Engineer, Department of Transportation, on August 15, 2005. Attached hereto are Exhibit A, marked "Schedule of Street Improvements," Exhibit B, marked "Schedule of Water Improvements," Exhibit C, marked "Schedule of Sewer Improvements," and Exhibit D, marked "Schedule of Underground Power And Telephone Improvements," all of which are incorporated herein and made by reference a part hereof. The Exhibits describe quantities, units and costs associated with the improvements to be made.

2. Complete said improvements within two (2) years from the date that the Subdivision Final Map is filed with the El Dorado County Board of Supervisors.

3. Install or cause to be installed, modify or cause to be modified, any and all erosion and sediment control features, whether temporary or permanent, deemed necessary by the County Engineer to ensure compliance with the Clean Water Act, the Statewide General Permit, and the County of El Dorado, Grading, Erosion and Sediment Control Ordinances. Failure to comply with this provision shall constitute a material breach of this Agreement.

4. Post security acceptable to County as provided in Section 16.16.050 of the Code. In the event that the posted securities are subsequently downgraded to a rating unacceptable to County in its sole discretion, Owner shall, upon twenty (20) days written notice by County, post replacement securities that are acceptable to County.

5. Provide for and pay the costs of related civil engineering services, including the costs of inspection and utility relocation when required, and attorney fees, costs, and expenses of legal services.

6. Provide deposit for and pay to County all costs of construction oversight, inspection, administration and acceptance of the work by County in accordance with the County Engineer Fee Schedule adopted by Resolution of the Board of Supervisors of El Dorado County.

7. Have as-built plans prepared by a civil engineer and filed with County's Department of Transportation as provided in Section 16.16.060 of the Code.

8. Repair at Owner's sole cost and expense, any defects, in workmanship or materials, which appear in the work within one (1) year following acceptance of the work by County.

9. To the fullest extent allowed by law, 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 other economic or consequential losses, which are claimed to or in any way arise out of or are connected with Owner's work, operation, construction of the improvements, or performance of this Agreement, regardless of the existence or degree of fault or negligence on the part of County, Owner, any Contractor(s), Subcontractor(s) and employee(s) of any of these, except for the sole, or active negligence of County, its officers and employees, or as expressly provided by statute. This duty of Owner to indemnify and save County harmless includes the duties to defend set forth in California Civil Code section 2778.

This duty to indemnify is separate and apart from any insurance requirements and shall not be limited thereto.

10. Enter into another agreement with County for all road improvements to be performed on County property. Such agreement shall also include a requirement that Owner furnish insurance that complies with the standard County insurance requirements in amounts stated, or to be approved by the County Risk Manager.

11. Provide continuous, sufficient access to Owner's successors, assigns, including but not limited to its surety and surety's agents, to the Subdivision to enable the public improvements to

be constructed and completed. Access shall be continuous until completion of said public improvements, and release by County of the security underlying this Agreement.

12. Agree that said agreement to provide continuous, sufficient access is irrevocable and shall run with the land and shall be binding upon and inure to the benefit of the heirs, successors, assigns and personal representatives of Owner.

COUNTY WILL:

13. Upon execution of this Agreement and receipt of a good and sufficient security as required by Section 16.16.050 of the Code, and upon compliance with all requirements of law, including all County statutes, approve the Final Map of the Subdivision.

14. Upon receipt of a Certificate from County's Director of the Department of Transportation stating that a portion of the public improvements agreed to be performed herein has been completed describing generally the work so completed and the estimated total cost of completing the remainder of the public improvements agreed upon to be performed herein, accept new security as provided in Section 16.16.040 of the Code.

15. Release the security posted in accordance with Sections 16.16.040 and 16.16.052 of the Code.

16. Require Owner to make such alterations, deviations, additions to, or deletions from, the improvements shown and described on the plans, specifications, and cost estimate as may be deemed by County's Director of the Department of Transportation to be necessary or advisable for the proper completion or construction of the whole work contemplated, provided the amount of such changes in the improvements does not exceed ten percent (10%) of the total estimated cost of the public improvements.

17. Require Owner to maintain, and to make such alterations, deviations, additions to, or deletions from, the project erosion control features shown and described on the plans, specifications and cost estimate and the Storm Water Pollution Prevention Plan (SWPPP) as may be deemed necessary by County's Director of Transportation to be necessary or advisable for compliance with the Clean Water Act, Statewide General Permit requirements and County's Grading, Erosion and Sediment Control Ordinances.

18. Upon completion of the public improvements agreed to be performed herein, adopt a resolution accepting or rejecting the streets of said Subdivision into County's road system for maintenance.

19. Retain a portion of the security posted in the amount of ten percent (10%) of the estimated cost of all of the improvements for one (1) year following acceptance of the work by County to secure the repair of any hidden defects in workmanship or materials, which may appear.

20. Require Owner to pay County for costs, expenses and reasonable attorney fees to be paid by the Owner should County be required to commence an action to enforce the provisions of this Agreement, to enforce the security obligations provided herein, and all attorneys fees, costs, and

expenses of litigation incurred by County even if Owner subsequently proceeds to complete the work.

ADDITIONAL PROVISIONS:

21. The estimated cost of installing all of the improvements is SEVEN MILLION SEVEN HUNDRED FOURTEEN THOUSAND TWO HUNDRED THIRTY AND 80/100 dollars (\$7,714,230.80).

22. Owner shall conform to and abide by all Federal, State and local building, labor and safety laws, ordinances, rules and regulations. All Work and materials shall be in full accordance with the latest rules and regulations of the State Fire Marshall, safety orders of the Division of Industrial Safety, California Electrical Code, California Building Code, California Plumbing Code, and any and all other applicable laws and regulations. Nothing in this Agreement, including but not limited to the improvement plans and specifications and cost estimates, is to be construed to permit work not conforming to these codes.

24. Inspection of the work and/or materials or statements by any officer, agent, or employee of County indicating that the work or any part thereof complies with the requirements of this Agreement, or acceptance of the whole or any part of said work and/or materials, or payments therefore, or any combination or all of these acts, shall not relieve Owner of its obligation to fulfill this Agreement as prescribed; nor shall County be stopped from bringing any action for damages arising from the failure to comply with any terms and conditions hereof.

23. 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.

24. Neither this Agreement, nor any part thereof may be assigned by Owner without the express written approval of County.

25. 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.: Jim Ware,
Acting Supervising Civil Engineer

County Of El Dorado
Department Of Transportation
2850 Fairlane Court
Placerville, CA 95667
Attn.: Tim Prudhel,
Contract Services Officer

or to such other location as County directs.

Notices to Owner shall be addressed as follows:

TOLL LAND XXIII LIMITED PARTNERSHIP
4451 Chancery Lane
Dublin, California 94568
Attn.: Mark O. Davis

or to such other location as Consultant directs.

26. The County officer or employee with responsibility for administering this Agreement is Jim Ware, Acting Supervising Civil Engineer, Department of Transportation, or successor.

27. Any action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California. Owner waives any removal rights it might have under Code of Civil Procedure section 394.

28. 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.

29. 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.

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: James R. Sweeney
JAMES R. SWEENEY, Chairman
Board of Supervisors
"County"

Dated: 4/25/06

Attest:
Cindy Keck
Clerk of the Board of Supervisors

By: Debbie Tyler
Deputy Clerk

Dated: 4/25/06

-- TOLL LAND XXIII Limited Partnership --

**TOLL LAND XXIII Limited Partnership,
A California Limited Partnership**

By: **TOLL CA GP Corp.,
A California Corporation
General Partner**

By: Mark O. Davis
Mark O. Davis
Vice President

Dated: 10-19-05

STATE OF CALIFORNIA

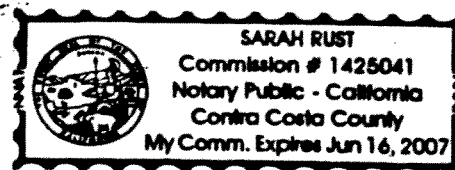
COUNTY OF ~~EL DORADO~~ Contra Costa

On this 19th day of October, 2005, before me a Notary Public, personally appeared Mark O. Davis, personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person(s) whose name is subscribed to this instrument, and acknowledged that he (~~she or they~~) executed it.

WITNESS my hand and official seal.

Sarah Rust

Notary Public in and for said County and State



Toll Land XXIII Limited Partnership

Exhibit A

Schedule of Street Improvements

Owner agrees to improve all streets and roads for dedication upon the final map of **The Promontory, Village 5 Unit 2** Subdivision required by the El Dorado County Subdivision Ordinance in accordance with the plans and specifications thereof approved by the County Engineer, and as set forth in the following Schedule of Street Improvements:

Item Description	Quantity	Units	Unit Cost	Total Cost
Clear and Grub	33.7	AC	\$2,500.00	\$84,250.00
Excavation	181,963	CY	\$5.00	\$909,815.00
Rockery Retaining Walls	85,432	SF	\$25.00	\$2,135,800.00
3" AC, 8" AB	153,794	SF	\$2.80	\$430,623.20
Type 1 Curb & Gutter	9,779	LF	\$15.00	\$146,685.00
Type 2 Curb & Gutter	2,508	LF	\$15.00	\$37,620.00
Type3 Curb	28	LF	\$15.00	\$420.00
4" P.C.C. Sidewalk	22,928	SF	\$5.00	\$114,640.00
6" A.B. Sewer Access Road	12,226	SF	\$1.30	\$15,893.80
Sidewalk Ramps	4	EA	\$1,000.00	\$4,000.00
Sawcut Existing Pavement	120	LF	\$30.00	\$3,600.00
Street Sign Installation	2	EA	\$500.00	\$1,000.00
Stop Sign and Pavement Markings	2	EA	\$750.00	\$1,500.00
Street Barricade with Gate	1	EA	\$2,500.00	\$2,500.00
Street Barricade without Gate	2	EA	\$1,000.00	\$2,000.00
Remove Existing Barricade and Gate	5	EA	\$1,000.00	\$5,000.00
Entrance Gate w/intercom & Knox key	1	EA	\$200,000.00	\$200,000.00
Landscaping	9,360	SF	\$2.25	\$21,060.00
12" HDPE Storm Drain Pipe	202	LF	\$35.00	\$7,070.00
18" HDPE Storm Drain Pipe	1,212	LF	\$45.00	\$54,540.00
24" HDPE Storm Drain Pipe	822	LF	\$55.00	\$45,210.00
30" HDPE Storm Drain Pipe	1,988	LF	\$65.00	\$129,220.00

18" RCP Storm Drain Pipe	157	LF	\$45.00	\$7,065.00
48" Storm Drain Manhole	24	EA	\$3,000.00	\$72,000.00
36" O.C.P.	6	EA	\$2,000.00	\$12,000.00
48" O.C.P.	4	EA	\$3,500.00	\$14,000.00
Type B Drain Inlet	7	EA	\$2,000.00	\$14,000.00
Type GO Drain Inlet	15	EA	\$2,500.00	\$37,500.00
Graded V-Ditch w/Fabric Liner	9,848	LF	\$5.00	\$49,240.00
Shotcrete Lined Ditch	305	LF	\$10.00	\$3,050.00
TV Storm Drain Pipe	4,381	LF	\$2.00	\$8,762.00
Erosion Control	1	LS	\$200,000.00	\$200,000.00

Total Street Improvements Cost

\$4,770,064.00

Toll Land XXIII Limited Partnership

Exhibit B

Schedule of Water Improvements

Owner agrees to install the water supply and distribution system in The Promontory, Village 5 Unit 2 Subdivision required by the El Dorado County Subdivision Ordinance in accordance with the plans and specifications thereof approved by the County Engineer, and as set forth in the following Schedule of Water Improvements:

Item Description	Quantity	Units	Unit Cost	Total Cost
8" PVC C-900	5,953	LF	\$40.00	\$238,120.00
8" Gate Valve	7	EA	\$1,200.00	\$8,400.00
2" Blow Off	1	EA	\$2,000.00	\$2,000.00
1" Air Release Valve	1	EA	\$2,000.00	\$2,000.00
Fire Hydrant Assembly	13	EA	\$3,000.00	\$39,000.00
3/4" Water Service	58	EA	\$850.00	\$49,300.00
1" Irrigation Service	1	EA	\$1,000.00	\$1,000.00
4" PVC Sleeves	264	LF	\$10.00	\$2,640.00
Remove existing B.O.	5	EA	\$500.00	\$2,500.00

Total Water Improvements Cost

\$344,960.00

Toll Land XXIII Limited Partnership

Exhibit C

Schedule of Sewer Improvements

Owner agrees to install the sewer collection and disposal system in The Promontory, Village 5 Unit 2 Subdivision required by the El Dorado County Subdivision Ordinance in accordance with the plans and specifications thereof approved by the County Engineer, and as set forth in the following schedule of Sewer Improvements:

Item Description	Quantity	Units	Unit Cost	Total Cost
6" PVC SDR-26	3,289	LF	\$56.00	\$184,184.00
6" PVC SDR-35	4,063	LF	\$56.00	\$227,528.00
48" Sewer Manhole	26	EA	\$3,500.00	\$91,000.00
60" Sewer Manhole	4	EA	\$5,000.00	\$20,000.00
4" Gravity House Service	59	EA	\$1,300.00	\$76,700.00
Backwater Valves	44	EA	\$500.00	\$22,000.00
Remove Existing C.O.	2	EA	\$500.00	\$1,000.00
Clean Out to Grade	1	EA	\$1,000.00	\$1,000.00
TV Sewer Pipe	7,352	LF	\$2.00	\$14,704.00

Total Sewer Improvements Cost

\$638,116.00

Exhibit D

Schedule of Underground Power And Telephone Improvements

That Subdivider agrees to install the utility improvements in The Promontory, Village 5 Unit 2 Subdivision required by the El Dorado County Subdivision Ordinance in accordance with the plans and specifications thereof approved by the County Engineer, and as set forth in the following schedule of Schedule of Underground Power and Telephone Improvements

Item Description	Quantity	Units	Unit Cost	Total Cost
Joint Trench/Utilities	60	Lot	\$8,000.00	\$480,000.00

Total Underground Utilities Improvements Cost

\$480,000.00

Certificate Of Partial Completion Of Subdivision Improvements

I hereby certify that the following improvements in the The Promontory, Village 5 Unit 2 Subdivision have been completed, to wit:

	<u>Total Amount</u>	<u>Percent Complete</u>	<u>Remaining Amount</u>
Street Improvements	4,770,064.00	0%	4,770,064.00
Water Improvements	344,960.00	0%	344,960.00
Sewer Improvements	638,116.00	0%	638,116.00
Power/Telephone Improvements	480,000.00	0%	480,000.00
Construction Staking and Engineering	632,314.00	0%	632,314.00
Dust Control	40,000.00	0%	40,000.00
Implement SWPPP	50,000.00	0%	50,000.00
Project Admin	126,462.80	0%	126,462.80
Contingency	632,314.00	0%	632,314.00
Totals	7,714,230.80		7,714,230.80

I estimate the total cost of completing the remainder of the improvements, agreed to be performed by the Owner to be SEVEN MILLION SEVEN HUNDRED FOURTEEN THOUSAND TWO HUNDRED THIRTY AND 80/100 dollars (\$7,714,230.80).

The Performance Bond is for the amount of SEVEN MILLION SEVEN HUNDRED FOURTEEN THOUSAND TWO HUNDRED THIRTY AND 80/100 dollars (\$7,714,230.80). (100% of Remaining Amount Total, Column 3)

The Labor and Materials Bond is for the amount of THREE MILLION EIGHT HUNDRED FIFTY SEVEN THOUSAND ONE HUNDRED FIFTEEN AND 40/100 dollars (\$3,857,115.40). (50% of the Total Amount, Column 1)

DATED: 10/17/05



[Signature]
 David D. Sagan, RCE 60506
 C.T.A. / R.E.Y., Inc.
 105 Lake Forest Way, Suite C
 Folsom, CA 95630

ACCEPTED BY THE COUNTY OF EL DORADO

DATED: 2/16/06

[Signature]
 Richard W. Shepard, RCE 35439
 County Engineer
 Department of Transportation
 El Dorado County