

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

THIS AGREEMENT, made on this 22<sup>nd</sup> day of July, 2003, by and between the **COUNTY OF EL DORADO**, a political subdivision of the State of California, hereinafter referred to as "County", and **HOLLOW OAK, LLC, a Delaware limited liability company**, hereinafter referred to as "Owner", concerning **Hollow Oak, Unit No. 1, TM94-1290**, hereinafter referred to as "Subdivision", the Final Map of which was filed with the Board of Supervisors of El Dorado County on the 22<sup>nd</sup> day of July, 2003.

**RECITALS**

Owner is vested with fee title to the Subdivision, a tract of land located in the County of El Dorado, State of California, and described as **Hollow Oak, Unit No. 1, TM94-1290** 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 the County 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 ("County Code") and shown or described in the improvement plans, specifications and cost estimates entitled **Hollow Oak Off-site Road / Units 1 and 2, TM94-1290** which were approved by the Director, Department of Transportation, on **January 30, 2002**.

Make or cause to be made, in addition, all those public improvements as identified under Phase 1 of the draft "Bass Lake Hills Public Facilities Financing Plan", dated July 23, 2003, inclusive of those shown or described in Schedule "B" of Off-Site Improvements attached hereto and incorporated by reference herein, and specifically listed as follows:

- a. Reconstruct and Realign Bass Lake Road from Hollow Oak Road to Northern Alignment of existing Bass Lake Road. Provide underground utilities as required.
- b. Construct bike lane and sidewalk along Bass Lake Road from Hollow Oak Road to Serrano Parkway.
- c. Provide shoulder widening to existing Bass Lake Road between Hwy 50 and Hollow Oak Road to achieve a minimum of 32-foot pavement width.

Such public improvements referred to in the paragraphs hereinabove are described on the schedules attached to this Agreement, which schedules are by this reference incorporated herein.

Owner shall retain a Civil Engineer licensed to practice in the State of California to prepare the Plans Specifications and Final Engineers Cost Estimates ("Plans and Specifications") for improvements identified in Section 1, items [a],[b] and [c] above. Complete Plans and Specifications shall be submitted to the County Department of Transportation for review and approval no later than 6 months from the date of the filing of the Subdivision Final Map.

Prior to commencing construction, Owner shall be responsible for obtaining all necessary environmental clearances, acquiring any necessary right of way, and obtaining any necessary permits from any outside agencies.

2. Complete said improvements within two (2) years from the date that the Subdivision Final Map is filed with the Board of Supervisors of El Dorado County. In addition, no more than nineteen (19) building permits shall be issued prior to commencement of construction activity for improvements to Bass Lake Road identified by Section 1, items [a], [b], and [c] above and no more than fifteen (15) certificates of occupancy shall be issued until all such Bass Lake Road public improvements are substantially completed as determined by the Director of Transportation.
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 Director of Transportation to ensure compliance with the Clean Water Act, the Statewide General Permit and the County of El Dorado, Grading Erosion and Sediment Control Ordinance. 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 County Code. In the event that the posted securities are subsequently downgraded to a rating unacceptable to the County in its sole discretion, the Owner shall, upon 20 days written notice by County, post replacement securities that are acceptable to the County in its sole discretion.
5. Provide and cover the costs of related civil engineering services, including the costs of inspection and utility relocation when required, and attorneys' fees, costs, and expenses of legal services.
6. Have as-built plans prepared by a civil engineer and filed with the County Department of Transportation as provided in Section 16.16.060 of the County Code.

7. Repair at Owner's sole cost and expense, any hidden defects, in workmanship or materials, which appear in the work within one (1) year following acceptance of the work by County.
8. To the fullest extent allowed by law, 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, or any other economic or consequential losses, which are claimed to or in any way arise out of or are connected with the 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 the County, the Owner, 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 Owner to indemnify and hold County harmless includes the duties to defend set forth in California Civil Code section 2778.

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

9. Enter into another agreement with County for all road improvements to be performed on County property. Such agreement shall 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. Said insurance requirements are attached hereto as Exhibit A and incorporated by reference herein.
10. 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.
11. 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.
12. Acquire the property for the school site as identified in the Bass Lake Hills Specific Plan.
13. Pay Thirteen Thousand Six Hundred and Twenty Dollars (\$13,620) per unit at the time of issuance of each building permit for infrastructure required under the Bass Lake Hills Specific Plan, or pay the fee in effect at the time of the issuance of any building permit, less any credits for non TIM or RIF eligible improvements installed or bonded for as provided in this Agreement. Credits will be granted in the amount that was used to derive the \$13,620 amount regardless of the actual cost of the project. The components of the

\$13,620 are provided on the attached schedules identified as Tables 9-14. This obligation is in addition to any RIF or other established county or special district fee obligations in place at the time of building permit issuance.

**COUNTY WILL:**

14. Upon execution of this Agreement and receipt of a good and sufficient security as required by Section 16.16.050 of the County Code and upon compliance with all requirements of law, including all County statutes, approve the Final Map of the Subdivision.
15. Upon receipt of a certificate from the County 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 a new security as provided in Section 16.16.040 of the County Code.
16. Release the security posted in accordance with Sections 16.16.040 and 16.16.052 of the County Code.
17. Require Owner to make such alterations, deviations, additions to, or deletions from, the improvements shown and described on the Plans and Specifications as may be deemed by the County 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. The cost of any such change orders required by the County will first be paid out of any unused contingency line item shown on the attached schedules and will not increase the improvement costs to the extent of such unused contingency.
18. 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) deemed necessary by the Director of Transportation to comply with the Clean Water Act, Statewide General Permit requirements and the County of El Dorado Grading, Erosion and Sediment Control Ordinance, provided the amount of such changes in the project erosion control features does not exceed 5% of the total estimated cost of the public improvements per year for the duration of this agreement. The cost of any such erosion controls required by the County will first be paid out of any unused erosion control or contingency line item shown on the attached schedules and will not increase the improvement costs to the extent of such unused line items.

19. Upon completion of the public improvements agreed to be performed herein, adopt a resolution accepting the streets of the Subdivision into the County road system for maintenance.
20. 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 the County to secure the repair of any hidden defects in workmanship or materials which may appear.
21. Be entitled to 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 the Agreement, to enforce the security obligations provided herein, and all attorneys' fees, costs, and expenses of litigation incurred by the County even if Owner subsequently proceeds to complete the work.

**ADDITIONAL PROVISIONS:**

22. The estimated cost of installing all of the improvements is **Seven Million One Hundred Seventy Four Thousand Nine Hundred Seventy Dollars and Fifty-five cents (\$7,174,970.55)**. Owner acknowledges responsibility for construction of said improvements regardless of actual cost.
23. An itemized account of estimated costs of improvements is set forth on sheets attached to and made a part of this Agreement. As acknowledged in Section 1 above, the Plans and Specifications and estimates for items [a],[b] and [c] have not been prepared. Owner agrees to post a bond rider or other appropriate additional security acceptable to the County to augment the security posted concurrently with the execution of this Agreement to cover any increased costs identified in the final engineers cost estimate.
24. Inspection of the work and/or materials or statement by any officer, agent, or employee of the County indicating 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 the Owner of his obligation to fulfill this Agreement as prescribed; nor shall the County be estopped from bringing any action for damages arising from the failure to comply with any terms and conditions hereof.
25. 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.

26. 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.
27. Costs related to shoulder widening to Bass Lake Road between Hwy 50 and Hollow Oak Road (item [c]) are not subject to reimbursement.
28. Owner is eligible for reimbursement for the cost for reconstruction and realignment of Bass Lake Road from Hollow Oak Road to northern alignment of existing Bass Lake Road (item [a]) from the Road Impact Fee (RIF) and/or the Traffic Impact Mitigation (TIM). Which fee program(s) will be used to reimburse Owner shall be determined by the County in its sole discretion. Reimbursement to Owner shall be paid from unobligated funds at a rate of twenty percent (20%) per year in years eleven through fifteen after completion of improvements, subject to availability of funds after prior set asides and applicable reimbursement agreements inclusive of a set aside to fund the El Dorado Hills Boulevard Interchange Phase I improvements, and conditioned upon the improvements being completed in accordance with the public Contract and Labor Codes, and County policies. No interest will accrue on unpaid balance.
29. County will administer reimbursements as described in the draft Bass Lake Hills Public Facilities Finance Plan dated July 23, 2003, pages 45 through 47. Funding for reimbursements shall be from any other projects within the Bass Lake Hills Specific Plan that develop after the Hollow Oak project, and such reimbursement will be made only if and pursuant to any final Bass Lake Hills Public Facilities Financing Plan adopted by the County. In accordance with any such final Bass Lake Hills Public Facilities Financing Plan, the County will calculate any reimbursements due to Owner for subsequent development projects and collect such reimbursements at the time of issuance of building permits. The County will have no direct responsibility for reimbursements except as described in section 28.
30. All fees in effect at the time of issuance of building permit, to include Road Impact Fees (RIF), apply to the lots within the subdivision. No credits will be applied toward RIF fees paid. RIF fees paid by subsequent development in the Specific Plan will not be obligated in any way through the terms of this agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties, hereinbefore named, the day and year first above written.

By: [Signature]  
COUNTY OF EL DORADO  
Chairman, Board of Supervisors  
**HELEN K. BAUMANN** 7/22/03

ATTEST:  
DIXIE L. FOOTE, County Clerk  
Board of Supervisors Clerk

By: [Signature]  
Deputy Clerk  
7/22/03

OWNER  
HOLLOW OAK, LLC  
a Delaware limited liability company

By: **Lafferty Homes at Hollow Oak,  
A California Limited Partnership**  
a California limited partnership  
its managing member

By: **Lafco Investments, Inc.**  
a California Corporation  
its General Partner

By: [Signature]  
Richard S. Lafferty, President  
3130 Crow Canyon Place, Suite 255  
San Ramon, CA 94583

STATE OF CALIFORNIA  
COUNTY OF Contra Costa

On this 18<sup>th</sup> day of July, 2003, before me a Notary Public, personally appeared Richard S. Lafferty, 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.



[Signature]  
Notary Public in and for said County and State

Agreement to Make Subdivision Improvements for  
Class 1 Subdivisions Between County and Owner  
Hollow Oak, Unit No. 1 - TM94-1290