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**REIMBURSEMENT AGREEMENT FOR WHITE ROCK ROAD WIDENING PROJECT  
STA. 63+25 TO STA. 115+25 BETWEEN THE COUNTY AND THE DEVELOPER**

**THIS 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, (hereinafter referred to as "County"), and **K. HOVNIANIAN FORECAST HOMES, INC.**, a corporation duly qualified to conduct business in the State of California, whose principal place of business is 3536 Concours Street, Suite 320, Ontario, California 91764 and whose local office address is 1375 Exposition Boulevard, Suite 300, Sacramento, California 95815; (hereinafter referred to as "Developer"), concerning the construction of road improvements for the **WHITE ROCK ROAD WIDENING PROJECT STA: 63+25 to STA: 115+25** (hereinafter referred to as "Project");

**RECITALS**

**WHEREAS**, the Revised and Renumbered Conditions of Approval for Developer's tentative map for Euer Ranch, TM96-1317, 96-1317-7, and TM04-1389 required Developer to construct the Project; ;

**WHEREAS**, Developer entered into subdivision improvement agreements for TM96-1317, 96-1317-7, and TM04-1389, together with a road improvement agreement which more fully describe the Project and the obligations of the Developer;

**WHEREAS**, Developer contracted for improvement plans titled "*IMPROVEMENT PLANS FOR WHITE ROCK ROAD WIDENING PROJECT STA. 63+25 TO STA. 115+25*" prepared by Cooper, Thorne and Associates, Inc., civil engineers, as well as the associated cost estimates and contract documents for the construction of the Project, that were approved by the County Engineer in accordance with the Developer's obligations;

**WHEREAS**, an amendment effective December 6, 2005 was made to the road improvement agreement , that provided that the Developer would construct an extended length of a Con-Span structure (hereinafter referred to as Additional Work) and be reimbursed separately under the amendment for that work such that the Additional Work was previously reimbursed and has not been included in this Agreement;

**WHEREAS**, the Project is identified as Project Number 72360 and is included as a reimbursement in the Department of Transportation Five-Year Capital Improvement Program, 2008 as a reimbursement from the Local Road Component of Fee Zone Number 8 of the 2004 General Plan TIM Fee Program (hereinafter referred to as EDH TIM) with payments programmed as ten (10) equal annual payments;

**WHEREAS**, County has adopted "County of El Dorado Department of Transportation Guidelines for Road Impact Fee/Traffic Impact Mitigation Fee Reimbursement Projects" (hereinafter referred to as "Guidelines") that identify requirements for pre-construction procedures, bid/proposal procedures, project award, construction, reimbursement and cost reimbursement policies, 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 a part hereof as though fully set forth;

**NOW, THEREFORE,** it is the intent of the parties hereto that the performance of this Agreement shall be in conformity with all applicable state and local laws, rules and regulations and the parties hereto in consideration of the recitals, terms, and conditions herein, do hereby agree as follows:

**ARTICLE I: OBLIGATION TO BID**

Developer acknowledges and agrees that to be eligible for reimbursement, the Project must be competitively bid in accordance with all applicable provisions of the California Public Contract Code, the California Labor Code prevailing wage requirements, County competitive bidding requirements, state licensing regulations and County policies. Further, the design and construction of the improvements must be performed in accordance with the plans and specifications, change orders and itemized cost estimates approved by County and shall be in accordance with all applicable state and local rules, regulations and ordinances.

**ARTICLE II: REIMBURSEMENT**

- A. County agrees to reimburse Developer for costs incurred related to Project pursuant to Guidelines, excluding section 7.0 (suspended by the Board of Supervisors on May 20, 2003) as pertains to the EDH TIM (formerly entitled the El Dorado Hills/Salmon Falls Road Impact Fee Program) only (hereinafter referred to the "Eligible Reimbursement Cost").
- B. Cost for Additional Work will not be considered a part of Eligible Reimbursement Cost for the purposes of this Agreement.
- C. Eligible Reimbursement Cost shall be reimbursed only from the EDH TIM where cash payments shall be made on a ten-year basis without interest except as provided in section D of this Article. Annual payments shall be 10% of the Eligible Reimbursement Cost. The annual payment date shall be the anniversary date of Project acceptance by County: July 18, 2006, except the initial payment shall be made upon completion of the acquisition process as described in Guidelines and after consent of assignment from design engineer is provided, as required in Article III, A of this Agreement. The initial payment shall include the three (3) annual payments scheduled for July 2006, July 2007 and July 2008. The ability of County to fully reimburse Eligible Reimbursement Cost is dependent upon the amount of uncommitted funds available in the EDH TIM fund.
- D. The initial payment for years 2006, 2007 and 2008 as described above shall not include interest. If in any given year there are insufficient funds in the EDH TIM fund to make scheduled payments, any unpaid residual shall bear interest at the Treasurer's pooled rate of funds, computed annually from the date of the

regularly scheduled payment to a maximum of ten (10) years from the scheduled date for each annual payment. In the event that there are insufficient funds to provide the scheduled reimbursement in any year after 2008, Developer may elect to utilize the amount of the insufficiency as credits against EDH TIM fees, exclusive of the 30% Silva Valley Interchange set-aside, said election to identify the parcel(s) to which it applies. Developer shall make election to utilize insufficiency for credits within 60 days of being notified by County that the annual payment will be reduced to an amount less than the amount scheduled. The credits shall be applied by County at time of Developer's application for building permit(s) against the mitigation fees in existence at the time of building permit application. Any insufficiency not applied to use as credits shall continue to earn interest until paid as provided for in this Agreement. Nothing contained in this Agreement shall preclude the County, in County's sole discretion, from including this same credit provision related to insufficient payment amounts in subsequent agreements entered into with third parties for reimbursement for developer advanced projects within the EDH TIM area on an equal pro-rata basis.

- E. Developer acknowledges and agrees that the sole source of funds that Developer shall look to for the repayment of the Eligible Reimbursement Cost shall be the unobligated EDH TIM fund, exclusive of the 30% portion reserved for the Silva Valley Interchange set-aside, and that the County shall not be required to fund the Eligible Reimbursement Cost from any other funds or revenues, including but not limited to, the County General Fund. In the event that the cash reimbursements generated by the EDH TIM fund are insufficient to fully fund the Eligible Reimbursement Cost, 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. 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.
- F. Nothing contained herein shall affect the County's ability to modify the El Dorado Hills Traffic Impact Mitigation Fee program as required by law, or as required in conjunction with other land use decisions such as modification of the General Plan. The foregoing shall not be construed as obligating the County to, or precluding the County in its sole discretion from, increasing, decreasing, or adjusting the amounts of its fee programs.

### **ARTICLE III: ASSIGNMENT AND ASSUMPTION OF PLANS AND SPECIFICATIONS**

- A. As of the Effective Date of this Agreement, Developer, as Assignor, assigns to County, as Assignee, all of its right, title and interest in, to and under the Plans and Specifications entitled "*IMPROVEMENT PLANS FOR WHITE ROCK ROAD WIDENING PROJECT STA. 63+25 TO STA. 115+25*" signed and stamped on June 30, 2004 by David R. Crosariol, a licensed registered professional engineer employed by Cooper, Thorne & Associates, Inc. and Developer will obtain and provide to County Cooper Thorne & Associates, Inc.'s consent of the

assignment prior to the Effective Date. County accepts this assignment of ownership of the assigned Plans and Specifications.

- B. Nothing by way of this Article will obligate County to provide payment or compensation to Cooper, Thorne & Associates, Inc. The payment obligation lies solely with the Developer.

#### **ARTICLE IV: INDEMNITY**

to the fullest extent allowed by law, Developer 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 Developer or Developer's contractors, subcontractors, consultants, agents, or representative's design, work, operation and/or construction of the Project improvements, or performance of this Agreement, regardless of the existence or degree of fault or negligence on the part of the County, Developer, 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 Developer to indemnify and hold County harmless includes the duties to defend set forth in California Civil Code Section 2778.

#### **ARTICLE IV: VENUE**

This Agreement has been executed in California, and shall be governed by and construed in accordance with the laws of the State of California.

#### **ARTICLE V: WAIVER**

Waiver by one party of the performance of any covenant, condition, or promise shall not invalidate this Agreement, nor shall it be considered to be a waiver by such party of such matters in the future or of any other covenant, condition, or promise hereunder. Any waiver, to be effective, shall be expressed and in writing and shall be delivered to the other party.

#### **ARTICLE VI: CONSTRUCTION**

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 review and participate 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.

**ARTICLE VII: CHANGES TO AGREEMENT**

This Agreement may be amended by mutual consent of the parties hereto to become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

**ARTICLE VIII: 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:

To County:

With a Copy to:

County Of El Dorado  
Department Of Transportation  
2850 Fairlane Court  
Placerville, CA 95667

County Of El Dorado  
Department Of Transportation  
2850 Fairlane Court  
Placerville, CA 95667

Attn.: Diana Buckley,  
Deputy Director of Administration

Attn.: Tim Prudhel,  
Contract Services Officer

or to such other location as County directs.

Notices to K. Hovnanian Forecast Homes, Inc. shall be addressed as follows:

K. Hovnanian Forecast Homes, Inc.  
A California corporation  
1375 Exposition Boulevard, Suite 300  
Sacramento, CA 95815  
Attn: Richard J. Balestreri, Division Vice President

or to such other location as directed.

**ARTICLE IX: CONTRACT ADMINISTRATOR**

The County officer or employee with responsibility for administering this Agreement is Diana Buckley, Deputy Director of Administration, Department of Transportation, or successor.

**ARTICLE X: ASSIGNMENT**

Neither this Agreement, nor any part thereof, or any monies due or to become due hereunder, may be assigned by Developer without the written approval of County.

**ARTICLE XI: 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.


**ARTICLE XII: 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 permitted by law.

**ARTICLE XIII: RECORD DRAWINGS**

Developer shall have an engineer prepare Record Drawings describing the finished work. The Record Drawings shall be submitted to the Department at the completion of the work, but in no event later than the execution of the Agreement.

**Requesting Department Concurrence:**

By:   
\_\_\_\_\_  
Richard W. Shepard, P.E.  
Director of Transportation

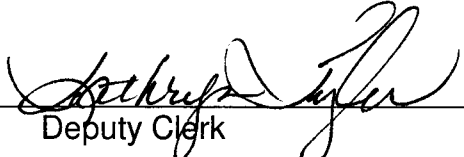
Dated: 8/11/08

**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**

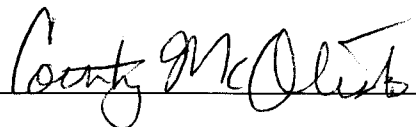
By:  Dated: 8/26/08  
**RUSTY DUPRAY**  
Board of Supervisors  
"County"

Attest:  
Cindy Keck  
Clerk of the Board of Supervisors

By:  Dated: 8/26/08  
Deputy Clerk

**K. HOVNIANIAN FORECAST HOMES, INC.**

By:  Dated: July 29, 2008  
Richard J. Balestreri  
Division Vice President  
"Developer"

By:  Dated: July 29, 2008  
Corporate Secretary

**DEVELOPER**

**ACKNOWLEDGMENT**

State of California

County of Sacramento

On July 29<sup>th</sup>, 08 before me, R. Campbell  
(here insert name and title of the officer)

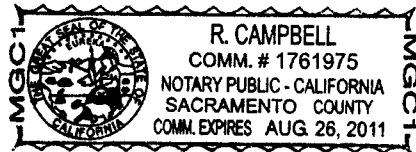
personally appeared Richard J. Balestreri

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature R. Campbell



(Seal)



**DEVELOPER**

**ACKNOWLEDGMENT**

State of California

County of Sacramento

On July 29<sup>th</sup> 2008 before me, R. Campbell  
(here insert name and title of the officer)

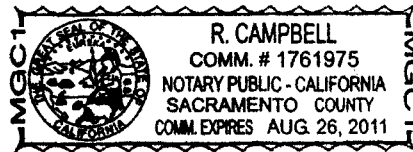
personally appeared Courtney Mcalister

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature R Campbell



(Seal)

**CONSENT TO ASSIGNMENT OF PLANS AND SPECIFICATIONS**

The undersigned consents to the assignment in the "REIMBURSEMENT AGREEMENT FOR WHITE ROCK ROAD WIDENING PROJECT STA. 63+25 TO STA. 115+25 BETWEEN THE COUNTY AND THE DEVELOPER" on the express condition that this consent will not be deemed consent to any subsequent assignment, but rather any subsequent assignment will require the written consent of Cooper, Thorne & Associates, Inc..

**COOPER, THORNE & ASSOCIATES,  
INC.  
a California Corporation**

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

Name: David R. Crosariol

Title: President

Date: \_\_\_\_\_

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

Corporate Secretary

Date: \_\_\_\_\_