

REPLACED

RELEASE OF CLAIMS AND SETTLEMENT AGREEMENT

This Release of Claims and Settlement Agreement ("Settlement Agreement") is made by and between SERRANO ASSOCIATES, LLC, a Delaware limited liability company ("Serrano"), and the COUNTY OF EL DORADO, a political subdivision of the State of California ("County"), on the following terms and conditions:

RECITALS

1. On or about August, 2009, Serrano filed with County a claim for refund of taxes pursuant to Revenue and Taxation Code Section 5096, *et seq.* (the "2000-2009 Claim"), alleging that certain portions of special taxes levied by or on behalf of County's Community Facilities District No. 1992-1 (El Dorado Hills Development) ("CFD 1992-1") imposed upon the Serrano project from fiscal year 2000-2001 through fiscal year 2008-2009 were erroneously calculated, levied and collected under the terms of CFD 1992-1's rate and method of apportionment of special taxes, the Indenture pursuant to which bonds have been issued on behalf of CFD 1992-1 (the "Indenture") and other applicable documents, resulting in an accumulation of funds in excess of those needed to pay current debt service on the bonds and the cost of currently planned improvement (the "Surpluses"). On or about December, 2010, a separate claim was submitted for fiscal year 2009-2010 asserting similar error (the "2009-2010 Claim"). Serrano has the potential to file, and has threatened to file, a separate claim asserting similar error for fiscal year 2010-2011, but has not yet filed such claim (the "Potential 2010-2011 Claim"). The 2000-2009 Claim, the 2009-2010 Claim, and the Potential 2010-2011 Claim are hereinafter collectively referred to as "the Claim." County disputes that errors were made in collecting such taxes. The parties disagree on the meaning and/or application of various provisions of the documents governing the levy and collection of such taxes and whether alternative interpretations or applications were available to County to reduce the amount of taxes levied, and on whether the County properly administered the Indenture (the "Disputed Matters").

2. Serrano has presented to County an accounting analysis tracing the sources of tax payments that produced the Surpluses. The parties agree that Serrano has presented evidence that certain of the Surpluses can be traced to Serrano payments.

3. County considered the 2000-2009 Claim for refund of taxes and, at its meeting of October 5, 2010, the County Board of Supervisors rejected 2000-2009 Claim. The County has not yet acted with respect to the 2009-2010 Claim.

4. Revenue and Taxation Code Section 5140, *et seq.*, provides that an action to recover the refund of property taxes alleged to have been erroneously collected must be filed within six (6) months from the date that the applicable Claim is rejected. Serrano has indicated an intention to institute such an action in the absence of an alternative resolution and the parties have heretofore entered a Tolling Agreement preserving Serrano's right to institute such an action pending alternative resolution.

5. Serrano and County have now negotiated the terms of an acceptable resolution of the Claim and desire to settle all aspects of the Claim and to release each other from all possible liability, known and unknown, in connection therewith pursuant to the full and timely performance of the following conditions in the manner described herein.

In consideration of the mutual terms contained herein and the valuable consideration reflected in those terms, the parties agree as follows:

TERMS AND CONDITIONS

1. Release of claims.

In consideration of the performance of the terms described in Paragraph 2, by or on behalf of County, Serrano, its heirs, executors, administrators, agents, representatives, predecessors and successors in interest, partners, members, owners, officers, principals, employees, shareholders, subsidiaries, affiliates, insurers and assigns hereby release and forever discharge County and its administrators, agents, representatives, predecessors and successors in interest, partners, members, owners, officers, principals, employees, shareholders, subsidiaries, affiliates, insurers and assigns from any and all past, present or future claims, liabilities, losses, demands, obligations, actions or causes of action, at law or in equity, whether arising by statute, common law or otherwise, whether for compensatory or punitive damages, of whatever kind or nature including, without limitation, claims which are known or unknown, claims for known or unknown damages, claims for expected or unexpected consequences of damages (collectively "Claims") on account of, arising out of, or in any way related to, any act, transaction, practice or conduct of County, or that relate in any way or arise out of the Disputed Matters or the Claim. Serrano acknowledges and agrees that the release and discharge set forth above is a general release, and is intended to be as broad and far-reaching as possible, and specifically includes a full release of all Claims and each and every claim, demand and matter set forth in the Claim. All such claims and demands, and any further or future claims and demands related to the payment by Serrano of special taxes levied by or on behalf of CFD 1992-1 for fiscal years 2010-2011 and earlier, are deemed fully and completely satisfied or are expressly waived by Serrano, without further recourse or claim against County, unless specifically set forth in this Settlement Agreement. Serrano expressly waives and assumes the risk of any and all claims which exist as of this date, but which it does not know or suspect to exist, whether through lack of awareness, oversight, error, negligence or otherwise, and which, if known, would materially affect Serrano's decision to enter into this Settlement Agreement. Serrano further agrees that it accepts the performances and payments by County specified herein as a complete compromise of matters involving disputed issues of law and fact, and assumes the risk the facts or law may be other than it believes.

2. Settlement of Claims/Amendment of Indenture/Application of Funds.

In consideration of the release and the promises of Serrano as set forth in this Settlement Agreement, and in settlement of all Claims, County and Serrano agree as follows:

A. Amendment to Indenture. The Board of Supervisors of the County shall consider, concurrently with approval of this Settlement Agreement, a Resolution amending the Indenture in the form attached hereto as **Exhibit "A."** If the Resolution is adopted, this Settlement Agreement shall be effective pursuant to its terms. If the Board fails to adopt the Resolution, then this Settlement Agreement shall be of no force and effect. The parties intend that such amendment shall eliminate the future accumulation of excess special tax proceeds which led to the existing dispute and claim. To the extent reasonably feasible, County, as a courtesy to Serrano, shall provide to Serrano by July 31st in each fiscal year, in advance of County's adoption thereof, a copy of County's proposed CFD 1992-1 budget, the calculation of Annual Costs and the proposed apportionment of special taxes for Serrano's review and comment. Failure to do so shall not invalidate any proceeding to levy and assess the tax.

B. Application of Amended Indenture to Fiscal Year 2010/2011. County and Serrano intend for the Amended Indenture to apply retroactively to Fiscal Year 2010/2011. Retroactive application is intended to allow for refund of TWO HUNDRED THIRTY THREE THOUSAND FIVE HUNDRED FORTY FIVE DOLLARS AND EIGHTY SIX CENTS (\$233,545.86) in special taxes paid by Serrano pertaining to undeveloped parcels (the "2010/2011 Taxes"), to reduce the accumulated surplus. County and Serrano shall cooperate to prepare and submit to the El Dorado Superior Court, at the earliest possible time, a request for validation of County's intended retroactive application of the Amendment to Indenture. Within thirty (30) days of the Court's ruling becoming final if no appeal is filed, or within thirty (30) days of a dispositive ruling on appeal, the County shall take one of the following actions:

1. In the event that the Court approves of the retroactive application of the Amended Indenture, County shall commence processing, and process to completion, a refund to Serrano in the amount of TWO HUNDRED THIRTY THREE THOUSAND FIVE HUNDRED FORTY FIVE DOLLARS AND EIGHTY SIX CENTS (\$233,545.86), pursuant to the procedures for refunding taxes, recognizing that other taxpayers in the CFD may be entitled to refunds and that Serrano's refund will be processed along with the other refunds; or

2. In the event the Court disapproves of the intended retroactive application of the Amended Indenture, County shall cooperate with Serrano to implement the Contingency Plan for Application of 2010/2011 Taxes as set forth in subsection D, below.

C. Application of Funds in Facilities Account/Credits. County agrees that a portion of the Surpluses in or required by the Indenture to be deposited in the Facilities Account ("Facilities Account") shall be applied in the following manner:

1. The amount of FOUR HUNDRED SEVENTEEN THOUSAND FIVE HUNDRED NINETY-NINE DOLLARS AND NINETY TWO CENTS DOLLARS (\$417,599.92) shall be applied to costs incurred by County in connection with design of the expansion of a segment of Silva Valley Road, which the parties acknowledge and agree is an eligible facility under CFD-1992-1. County shall cause the amount of FOUR HUNDRED SEVENTEEN THOUSAND FIVE HUNDRED NINETY-NINE DOLLARS AND NINETY-TWO CENTS (\$417,599.92) to be disbursed from the Facilities Account to the County's Transportation Impact Mitigation Fee Program ("TIM fee") within thirty (30) days of adoption of this Settlement Agreement. Serrano shall thereafter be entitled to FOUR HUNDRED SEVENTEEN THOUSAND FIVE HUNDRED NINETY NINE DOLLARS AND NINETY-TWO CENTS (\$417,599.92) worth of credits against the Zone 8 County TIM fee, which credits may be applied, dollar for dollar, against any and all Zone 8 County TIM fees payable by Serrano (or any other party to which Serrano has assigned such credits), subject only to the limitation that Serrano may not utilize such credits against the thirty percent (30%) portion of such fees attributable to the Silva Valley Interchange (the "Silva Valley Interchange Set Aside").

2. The amount of ONE MILLION TWO HUNDRED AND SEVEN THOUSAND TWO HUNDRED TWENTY-EIGHT DOLLARS AND FOURTEEN CENTS (\$1,207,228.14) shall be applied to engineering feasibility and environmental studies for the Recycled Water Master Plan and Seasonal Storage Basis of Design Report costs incurred by the El Dorado Irrigation District in connection with its reclaimed water system, which the parties acknowledge and agree is an eligible facility under CFD 1992-1. County shall cause the amount of ONE MILLION TWO HUNDRED AND SEVEN THOUSAND TWO HUNDRED TWENTY-EIGHT DOLLARS AND FOURTEEN CENTS (\$1,207,228.14) to be disbursed from the Facilities Account to the El Dorado Irrigation District (EID) within thirty (30) days of

certification by EID that they have, in fact, expended said moneys on the project. With the exception of that certification, Serrano and EID have submitted to County acceptable documentation establishing the nature of the work performed and the costs incurred. Thereafter, pursuant to a separate agreement between Serrano and EID, Serrano expects that it will be entitled to an equivalent amount of credits against EID's water, wastewater and recycled water facilities connection charges (FCCs) payable by Serrano (or any other party to which Serrano has assigned such credits), on a dollar for dollar basis, until such credits have been exhausted. The agreement between Serrano and EID is mentioned herein simply for reference purposes. The County is not a party to that agreement and did not participate in the negotiation of that agreement. County is not responsible for the validity or enforceability of that agreement. This Settlement Agreement is independent of the agreement between Serrano and EID.

D. Contingency Plan for Application of 2010/2011 Taxes. In the event that the validation action contemplated by the parties and described in subsection B above is unsuccessful, the parties wish to provide an alternative means by which Serrano may beneficially utilize the 2010/2011 Taxes. Accordingly, if (and only if) the validation action is for any reason unsuccessful and the cash refund contemplated in subsection B above does not occur, then County agrees that, in lieu of the tax refund that would occur if the validation action were successful, the amount of TWO HUNDRED THIRTY THREE THOUSAND FIVE HUNDRED FORTY FIVE DOLLARS AND EIGHTY SIX CENTS (\$233,545.86), from the Facilities Account shall be applied to additional EID facilities. Specifically, the amount of TWO HUNDRED THIRTY THREE THOUSAND FIVE HUNDRED FORTY FIVE DOLLARS AND EIGHTY SIX CENTS (\$233,545.86), shall be applied to costs incurred by EID in connection with facilities at Bass Lake, including the Bass Lake Booster Station, which the parties acknowledge and agree are eligible facilities under CFD 1992-1. County shall cause the amount of TWO HUNDRED THIRTY THREE THOUSAND FIVE HUNDRED FORTY FIVE DOLLARS AND EIGHTY SIX CENTS (\$233,545.86), to be disbursed from the Facilities Account to the El Dorado Irrigation District after the Court's final ruling (either at the trial court or on appeal) in the validation action. Serrano and EID have submitted to County documentation acceptable to County establishing the nature of the work performed and the costs incurred on said project, except for certification that EID has, in fact, expended said moneys on the project, which certification shall be submitted before disbursement of the moneys. Thereafter, pursuant to a separate agreement between Serrano and EID, Serrano expects that it will be entitled to an equivalent amount of credits against EID's water, wastewater and recycled water FCCs payable by Serrano (or any other party to which Serrano has assigned such credits), on a dollar for dollar basis, until such credits have been exhausted. The agreement between Serrano and EID is mentioned herein simply for reference purposes. The County is not a party to that agreement and did not participate in the negotiation of that agreement. County is not responsible for the validity or enforceability of that agreement. This Settlement Agreement is independent of the agreement between Serrano and EID.

E. Refund of Overpayment Due to Misclassified Property. County shall refund to Serrano in cash within thirty (30) days of mutual execution hereof the amount of THIRTY-TWO THOUSAND ONE HUNDRED FIFTY-THREE DOLLARS (\$32,153.00) in prior overpayments made by Serrano as a result of misclassification of certain Final Use Parcels owned by Shea Homes in fiscal years 2006-2007 as undeveloped. This error resulted in payment by Serrano of THIRTY-TWO THOUSAND ONE HUNDRED FIFTY-THREE DOLLARS (\$32,153.00) more than should have been assessed. Documentation demonstrating this error has been separately provided to County and the refund contemplated hereby is approved based upon such documentation.

F. Disposition of Remaining Funds in Facilities Account. A portion of the Surpluses will remain in the Facilities Account after all of the aforementioned has occurred. County shall determine the appropriate disposition of such funds; and Serrano shall, from and after full implementation of this Settlement Agreement, make no claim for refund of such funds nor demand the application of such funds to any particular facility, provided that Serrano shall be treated consistently with similarly situated property owners in the event additional refunds are made, bonds are redeemed, or special taxes are reduced. Serrano acknowledges that such funds may, at County's election, be utilized to redeem bonds or to fund additional eligible facilities (if any), or may simply be maintained in the Facilities Account until otherwise determined by County.

G. No General County Liability. All obligations to pay, disburse or reimburse any moneys under this agreement shall be satisfied solely out of available funds of CFD 1992-1. County shall have no obligation to pay any moneys due under this Settlement Agreement out of the County's general fund or out of any other fund of the County other than CFD 1992-1 funds.

3. Full and Final Settlement.

It is specifically understood and agreed that this Settlement Agreement is intended to be the full and final settlement of all Claims and Disputed Matters between County and Serrano. Serrano expressly relinquishes and waives any right to reopen or object to this Settlement Agreement, and accepts the performances by and amounts to be paid by County set forth herein in full satisfaction of any and all Claims, obligations, liabilities, losses, demands, damages, causes or causes of action of any kind whatsoever, which had heretofore arisen and which may hereinafter arise against County. Serrano expressly states that it relinquishes and waives the provisions of California Civil Code section 1542, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him, must have materially affected his settlement with the debtor.

Serrano represents that they have been advised by their legal counsel of the significance of their waiver of Civil Code section 1542, and further represent that their waiver is an essential and material term of this Settlement Agreement.

Serrano Initials

4. Claims Not Affected by This Settlement Agreement.

To the maximum extent permitted by law, this Settlement Agreement and the release stated herein shall not prejudice, release or otherwise affect claims Serrano has or may have against the County unrelated to the levy and collection of CFD 1992-1 special taxes for fiscal years 2010-2011 and earlier.

5. Each Party Responsible for Own Costs.

Each party shall pay its own costs, including legal fees and court costs, incurred in this matter.

6. No Admissions of Liability.

It is specifically agreed that this Settlement Agreement is entered into for the purpose of avoiding the costs and uncertainty of litigation, and to resolve all Claims and Disputed Matters. County does not admit any liability to Serrano, and the execution of this Settlement Agreement shall not be construed as an admission of liability for any purpose.

7. Applicable Law and Venue.

This Settlement Agreement is contractual and shall be construed and interpreted in accordance with the laws of the State of California. Litigation involving any dispute arising out of or related to the terms, interpretation or performance of this Settlement Agreement, shall be filed and tried in the Superior Court of the County of El Dorado, notwithstanding the provisions of Section 393 of the California Code of Civil Procedure.

8. Indemnity.

Serrano shall indemnify, defend and hold harmless the County, its officers, employees and agents, and Community Facilities District No. 1992-1, against and from any and all claims, suits, losses and liability for damages of every name, kind and description, including attorney's fees and costs incurred, which are claimed to or in any way arise out of or are connected with this Settlement Agreement, including, but not limited to, claims that the Settlement Agreement or the Resolution referred to in Section 2A of the Settlement Agreement is invalid or unenforceable in whole or in part. This duty of Serrano to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778. This duty to indemnify and save harmless County, its officers, employees and agents shall survive performance of this Settlement Agreement.

9. Attorneys' Fees.

In the event of any arbitration, action or other proceeding arising out of or related to this Settlement Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and expenses.

10. Time is of the Essence. The performances required hereunder are time sensitive.

11. Warranty of Comprehension of Terms.

In entering this Settlement Agreement, the parties represent that they have considered the advice of their respective attorneys, who are attorneys of their own choice, and that the terms of this Settlement Agreement have been read and completely explained to them by their own attorneys, and that those terms are fully understood and voluntarily accepted by them. Except for the express provisions of this Settlement Agreement, none of the parties have made any statement or representation regarding any fact, matter or thing relied upon in entering into this agreement, and none of the parties is relying upon any such statement, representation or promise by any other party in executing this Settlement Agreement.

12. Warranty of Authority

Each party to this Settlement Agreement represents and warrants that he or she has the full right and authority to enter into this agreement and to bind the party for whom the agreement is signed. Each party warrants that all persons necessary to the enforceability of this Agreement, and all persons necessary to the timely implementation of all aspects of this Agreement have been advised of its provisions.

13. Warranty of No Assignment.

Each of the parties to this Settlement Agreement represents and warrants that there has been no assignment, sale or transfer, by operation of law or otherwise, of any claim, right, demand, obligation, liability, interest, cause or cause of action released by any of them as provided in this agreement.

14. Partial Invalidity.

If any provision of this Settlement Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way. Notwithstanding the above, the Settlement contemplated hereby is entered into based upon the parties' expectation that the release provisions of Article 1 hereof, and the financial provisions set forth in Article 2 hereof, will be implemented. In the event that any portion of either Article 1 or Article 2 is invalidated, the parties will work in good faith to develop an alternative, enforceable approach by which the provisions of Article 1 or Article 2 can be effectuated. In the case of invalidity of Article 1, such approach may include, but is not limited to, execution of a separate release. In the case of invalidity of Article 2, such approach may include ways through which an equivalent amount of eligible facilities funding may be accomplished. (For example, if the funding of EID facilities or studies set forth in Section 2(c)(2) is for any reason invalidated, the parties will endeavor to allocate the amount contemplated therein to other eligible facilities such that the contemplated facilities funding and corresponding credits may be otherwise realized).

15. Amendment of Agreement.

This Settlement Agreement may be amended only by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officer of the parties hereto.

16. County Administrator.

The County officer or employee with responsibility for administering this Settlement Agreement is Joe Harn, County Auditor-Controller, or successor.

17. Execution by Counterpart.

This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

18. Complete Agreement.

The terms of this Settlement Agreement are intended by the parties as a final expression of their agreement and understanding with respect to such terms as are included herein.

19. Assignment.

Neither party shall assign or delegate its interest in this Settlement Agreement without prior written consent of the other party.

20. Notice to Parties.

All notices to be given by the parties hereto shall be in writing and served by depositing the same in the United States Post Office, postage prepaid and return receipt requested.

Notices to the County shall be addressed as follows:

or to such other location as the County directs.

Notices to Serrano shall be addressed as follows:

or to such other location as Serrano directs.

SERRANO:

SERRANO ASSOCIATES, LLC,
a California limited liability company

Dated: _____, 2011.

By: _____
Its: _____

Dated: _____, 2011.

By: _____
Its: _____

COUNTY:

COUNTY OF EL DORADO,
a political subdivision of the State of California

Dated: _____, 2011.

By: _____
Its: _____

EXHIBIT "A"
RESOLUTION