

**IMPLEMENTATION AGREEMENT REGARDING
PROCESSING OF SET ASIDE PORTION OF PRE-PAID
EL DORADO HILLS TIM FEES
(West Valley, LLC)**

THIS IMPLEMENTATION AGREEMENT (the “**Agreement**”) is entered into by and between the County of El Dorado, a political subdivision of the State of California (“**County**”) and West Valley, LLC, a California limited liability company (“**Developer**”), concerning the accounting and processing of certain prepaid traffic impact mitigation fees for the 2004 General Plan Traffic Impact Mitigation Fee Program (“**EDH TIM Fees**”) as more particularly described herein.

RECITALS

WHEREAS, on January 22, 2004, Developer obtained approval of the tentative map, TM99-1359, subsequently amended on July 7, 2004 as TM 99-1359R, West Valley Village project now commonly referred to as “Blackstone” (and referenced to herein as the “**Blackstone Project**”);

WHEREAS, Developer submitted an application to County requesting that County initiate and conduct proceedings for establishment of a community facilities district pursuant to the Mello-Roos Community Facilities Act of 1982 (the “**Mello-Roos Act**”) to be known as “Community Facilities District No. 2005-1 (Blackstone), County of El Dorado, State of California (“**CFD No. 2005-1 Blackstone**”) and to issue and sell special tax bonds of the County on behalf of CFD No. 2005-1 (the “**Bonds**”) pursuant to the Mello-Roos Act upon the security of the unpaid special tax obligation recorded as a lien against the taxable property in CFD No. 2005-1 to finance the cost and expense of acquiring, constructing and installing certain public facilities and pre-paying a portion of the EDH TIM Fees;

WHEREAS, pursuant to the Resolution of Formation of Community Facilities District No. 2005-1(Blackstone) adopted by the Board of Supervisors for County and, as authorized with the vote of the property owners in favor thereof, a special tax was levied on all taxable parcels within the District and the Bonds were issued;

WHEREAS, County and Developer entered into that certain Funding, Credit and Reimbursement Agreement, with an effective date of November 21, 2005 (the “**Funding Agreement**”). Section 9 of the Funding Agreement required Developer to prepay a portion of the EDH TIM Fees through the use of the Bond proceeds provided by CFD No. 2005-01 Blackstone. All capitalized terms not otherwise defined herein shall have the meanings assigned thereto in the Funding Agreement;

WHEREAS, pursuant to the Funding Agreement, proceeds from the Bond sales for the CFD No. 2005-1 Blackstone were subsequently utilized to prepay a portion of the EDH TIM Fees (referenced herein as the “**Non-Set Aside Prepaid EDH TIM Fees**”) in order for County to construct the Latrobe Road projects as described in the Funding Agreement and Conditions of Approval for the Blackstone Project;

WHEREAS, Developer and the County previously entered into an Implementation Agreement in July of 2008 to implement a procedure as security for payments by builders to Developer of Non-Set Aside Prepaid EDH TIM Fees whereby the Developer would acknowledge such payment and the County would then reduce the amount of the full EDH TIM Fees otherwise payable by such builders when obtaining building permits for their developments by the amount of the Non-Set Aside Prepaid EDH TIM Fees (the **“Non-Set Aside EDH TIM Fees Implementation Agreement”**);

WHEREAS, the County has approved a construction project known as the U.S. 50/Silva Valley Parkway Interchange – Phase I, Project #71328 (the **“Interchange Project”**);

WHEREAS, Developer is obligated under Section 6 of the Funding Agreement and Condition of Approval No. 26 for the Blackstone Project to deposit with the County in cash funds the difference between the cost of construction of the Interchange Project and the amount that has been collected in the Silva Valley Parkway Interchange Set Aside Account (the **“Set Aside Account”**);

WHEREAS, the County currently estimates the shortfall to construct the Interchange Project to be Twenty Million Five Hundred Thirty-Five Thousand Three Hundred Ninety-Four Dollars (\$20,535,394.00) (the **“Shortfall”**);

WHEREAS, the County has agreed that Two Million Eight Hundred Thirty-Two Thousand Thirty-Four Dollars (\$2,832,034.00) of the Shortfall attributable to County internal staffing costs for project management, surveying, material testing, inspection, and the like (the **“County Staff Cost Amount”**) may be reimbursed to the County from the collection of EDH TIM Fees as set forth herein and the Developer will be obligated to deposit the initial estimated Shortfall, less the **County Staff Costs Amount**, in cash in the amount of Seventeen Million Seven Hundred Three Thousand Three Hundred Sixty Dollars (\$17,703,360.00) (the **“Developer Shortfall Payment”**);

WHEREAS, Developer has deposited the Developer Shortfall Payment in cash to the County;

WHEREAS, due to Developer’s payment of the Developer Shortfall Payment, Developer shall be considered to have prepaid its thirty percent (30%) portion of all EDH TIM Fees (the **“Set Aside Fees”**) for the entire Blackstone Project with credits to be available against the Set Aside Fees for the Blackstone Project only as set forth hereinbelow (the amount of Set Aside Fees prepaid by the delivery of the Developer Shortfall Payment shall be referenced herein as the **“Prepaid Set Aside Fees”**);

WHEREAS, Developer’s purchase agreements with its builders discounted the purchase price by the amount of the Prepaid Set Aside Fees and provided a time frame for payment of that discounted amount by the builders to Developer coordinated with the issuance of building permits;

WHEREAS, Developer’s purchase agreements with its builders contemplated that Developer and its builders would coordinate applications for building permits so that the builders

would pay to Developer an amount equal to the amount of the Prepaid Set Aside Fees attributable to the authorized units before issuance of building permits;

WHEREAS, pursuant to the Developer's purchase agreement with its builders, Developer and the builders agreed that the Developer and County would develop and implement a procedure, as security for payments by builders to Developer of such Prepaid Set Aside Fees, whereby upon payment of amounts due to Developer, Developer would acknowledge such payment on a form approved by the County, and County would then reduce the amount of the full EDH TIM Fees otherwise payable by such builders when obtaining building permits for their developments by the amount of the Prepaid Set Aside Fees;

WHEREAS, County is willing to cooperate with the Developer and its builders to develop and implement a procedure to account for the Prepaid Set Aside Fees strictly as security for payment for Developer in accordance with the purchase agreements.

NOW, THEREFORE, the parties hereto in consideration of the recitals, terms and conditions herein, do hereby agree as follows:

1. Deposit of Developer Shortfall Payment.

The County acknowledges that the Developer has deposited the estimated Developer Shortfall Payment in cash with the County and the County shall deposit said Developer Shortfall Payment into the Set Aside Account. As a result of Developer's payment of the estimated Developer Shortfall Payment as provided above, the Developer shall be deemed to have prepaid all Set Aside Fees for the entire Blackstone Project with credits to be available against the Set Aside Fees for the Blackstone Project only as set forth in Section 4 hereinbelow.

2. Reimbursement of County Staff Cost Amount.

County acknowledges that the County Staff Cost Amount represents the cost of in-house County staff costs for project management inclusive of surveying, inspection and material testing associated with the Interchange Project which are out-of-pocket costs to the County. The County shall be reimbursed for the County Staff Cost Amount from the County's collection of the Set Aside Fees from projects other than the Blackstone Project.

3. Reimbursement of Developer's Prepayment of Set Aside Fees In Excess of Blackstone Project Obligation.

County acknowledges that as a result of Developer's payment of the estimated Developer Shortfall Payment the Developer has prepaid Set Aside Fees in excess of the Set Aside Fee obligation for the Blackstone Project with such excess prepayment being referenced herein as the "**Excess Prepayment.**" Developer shall be reimbursed for the Excess Prepayment from the County collection of Set Aside Fees from projects other than the Blackstone Project pursuant to Section 6 of the Funding Agreement; provided, however, that the Developer shall not be entitled to any such reimbursement unless and until the County is fully reimbursed for the County Staff Cost Amount from the collection of Set Aside Fees from projects outside the Blackstone Project.

4. Accounting Procedure for Prepaid Set Aside Fees.

County agrees to implement the following procedure for accounting for the Prepaid Set Aside Fees:

A. Developer shall use the Certificate of Prepaid Set Aside Fees in the form attached hereto as Exhibit A (a “**Certificate of Prepaid Fees**”), to certify payment has been made for a specified amount of Prepaid Set Aside Fees by a builder within the Blackstone Project. As noted in the form of the Certificate of Prepaid Fees, based on the Developer Shortfall Payment and for ease of administration, the amount of Prepaid Set Aside that can be allocated by Developer is \$7,002 per single family unit, \$4,572 per multifamily unit, \$2,661 per single family senior unit, \$1,737 per multifamily senior unit, and \$2.295 per square foot of commercial space (up to the first 60,000 square feet of commercial space);

B. If and when a builder within the Blackstone Project applies for building permit(s), the County shall ask the builder if it has a signed Certificate of Prepaid Fees from the Developer for these requested permits.

(i) If a signed Certificate of Prepaid Fees is provided, then the County shall reduce the amount of the Set Aside Fees to be paid by the builder for such permit(s) by the amount of Prepaid Set Aside Fees acknowledged to have been paid by the builder in such Certificate of Prepaid Fees.

(ii) If a signed Certificate of Prepaid Fees is not provided with the building permit application, then the County will offer the builder to hold the building permit application for five (5) business days to provide an opportunity to for builder to obtain from Developer a Certificate of Prepaid Fees for the permit(s) related to such application, or make other arrangements as set forth herein. The builder may: (1) obtain a Certificate of Prepaid Fees from Developer for such permit(s) which shall reduce the amount of the Set Aside Fees to be paid by the builder for such permit by the amount of Prepaid Set Aside Fees acknowledged to have been paid; (2) provide evidence that it has made payment for such Prepaid Set Aside Fees to Developer (by presentation of a canceled check, evidence of a wire transfer, etc.) and five (5) business days have elapsed and no Certificate of Prepaid Fees has been provided by Developer, in which case, with five (5) business days written notice to Developer of presentation of such evidence by builder, County may reduce the amount of the Set Aside Fees to be paid by the builder by the applicable amount in accordance with Section 4.A. hereinabove; or, (3) pay the full amount of the Set Aside Fees associated with issuance of its building permits, and that portion equivalent to the applicable amount of Prepaid Set Aside Fees in accordance with Section 4.A. hereinabove will be held by County in trust until such time as: i) builder provides a Certificate of Prepaid Fees, in which case the fees in trust will be released to builder, (ii) County issues a certificate of occupancy for any building for which the building permit was issued, in which case the fees in trust for said permit would be released to Developer, or (iii) builder or Developer provide written direction

signed by both of them or a court order authorizing the release of all or a portion of the fees paid by builder to the party designated therein. Release of such funds to Developer shall constitute payment by the builder of its obligation to pay said amount under the purchase agreement.

C. Developer acknowledges that County policy generally may allow builders to relinquish building permits unused, or allow them to expire, and receive a refund of EDH TIM Fees paid in connection therewith. The parties hereby acknowledge and agree that aside from the portion of the Prepaid Set Aside Fees constituting the Excess Prepayment, which Express Prepayment shall be reimbursed to Developer pursuant to Section 3 above, the remaining Prepaid Set Aside Fees paid from the Developer Shortfall Payment are not refundable to West Valley, LLC, its successors and/or its builders as they have been used to satisfy the conditions of approval for the Blackstone Project. Nothing in this Agreement shall be deemed to render them refundable. If a builder returns building permits for which a Certificate of Prepaid Fees was provided, then the County may refund, in accordance with its policy, the EDH TIM Fees actually paid by builder to the County, as reduced by the Prepaid Set Aside Fees, and the Prepaid Set Aside Fees shall remain as a credit against future Set Aside Fees required to be paid. If a builder returns building permits for which no Certificate of Prepaid Fees was provided and for which the builder paid the full amount of the Set Aside Fees without offset, then, absent written direction signed by Developer and the builder or court order as set forth hereinabove, County may, in accordance with its policy, refund the full amount of the Set Aside Fees paid by such builder and the County shall have no obligation to release said funds, or any portion thereof, to the Developer. If the County has released said funds to the Developer and the builder thereafter makes a claim for a refund, which claim is upheld by a court, Developer shall refund such moneys to County within ten (10) days of demand therefor.

D. This allocation procedure shall apply only to applications for building permits by Developer or its builders made after the effective date of this Agreement.

E. In consideration of County cooperating with Developer in preparing and implementing this procedure to account for and process the Prepaid Set Aside Fees with Developer's builders, Developer and each of its individual members, shall execute and deliver to County concurrently herewith an Indemnity Agreement in the form attached hereto as Exhibit B.

5. Effect of Agreement.

Except for the reimbursement of the Excess Payment to Developer pursuant to Section 3 above, nothing by way of this Agreement shall be construed to require County to refund any Prepaid Set Aside Fees to Developer, its successors or its builders. Developer acknowledges that additional cash advance payments may be required pursuant to Section 6 of the Funding Agreement. Nothing by way of this Agreement shall be construed to amend, modify or replace the Funding Agreement or the Non-Set Aside EDH TIM Fees Implementation Agreement.

6. Counterparts.

This Agreement may be executed in counterparts.

7. Notices.

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, with a copy thereof sent by electronic transmission to the email addresses provided below. Notices to County shall be in duplicate and addressed as follows:

County of El Dorado
Community Development Agency
Transportation Division
2850 Fairlane Court
Placerville, CA 95667
Attn: Transportation Division Director
E-mail: bard.lower@edcgov.us , or successor

with a copy to:

County of El Dorado
Board of Supervisors

330 Fair Lane
Placerville, CA 95667
Attn: Clerk of the Board

and a copy to:

County of El Dorado
County Counsel
330 Fair Lane
Placerville, CA 95667
Attn: County Counsel

or to such other location as the County directs.

Notices to Developer shall be addressed as follows:

West Valley, LLC
c/o AKT Development Corp.
7700 College Town Drive, Suite 101
Sacramento, CA 95826
Attn: Angelo Tsakopoulos, Chairman
E-mail: angelo@aktinvestments.com

and

Lennar Communities, Inc.
1420 Rocky Ridge Drive, Suite 320
Roseville, CA 95661
Attn: Larry Gualco, Vice President
E-mail: Larry.Gualco@Lennar.com

with a copy to:

Hefner, Stark & Marois, LLP
2150 River Plaza Drive, Suite 450
Sacramento, CA 95818
Attn: Timothy Taron and Martin Steiner
E-mail: ttaron@hsmlaw.com; msteiner@hsmlaw.com

or to such other location and/or to such other attention as Developer directs.

8. Changes to Agreement.

This Implementation 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. The parties acknowledge that they previously entered into negotiations for Developer to provide County with a letter of credit for part of the Developer Shortfall payment but those negotiations did not result in any agreement. In the event those negotiations are renewed and result in agreement, the parties agree to amend this Implementation Agreement as necessary at that time. Nothing by way of this provision shall be deemed to obligate County to accept a letter of credit in lieu of the deposited Developer Shortfall Payment.

9. Contract Administrator.

The County officer or employee with responsibility for administering this Implementation Agreement is the Transportation Division Director, or successor.

10. Authorized Signatures.

The parties to this Implementation Agreement represent that the undersigned individuals executing this Implementation Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties the obligations set forth herein.

11. Construction.

This Implementation 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 Implementation Agreement to which they pertain. Each party hereto acknowledges and agrees that each has had independent counsel review and participated in the drafting of this Implementation Agreement, and each party 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.

12. Governing Law.

This Implementation Agreement and the legal relations between the parties shall be governed by and construed in accordance with the laws of the State of California.

13. Breach of Contract; Limitation on Damages.

County will adopt reasonable procedures to ensure that Blackstone properties will be flagged for compliance with this Implementation Agreement. However, no negligent act or omission by the County or any employee which results in a breach of the Implementation

Agreement shall give rise to monetary damages. Without limiting the foregoing, no negligent failure of the County to require a Certificate of Prepaid Fees or, in the alternative, to require payment of the full Set Aside Fee, shall give rise to a claim against the County for the amount of prepaid fees that were due to the Developer. Similarly, a negligent miscalculation in the amount of prepaid fees for which a Certificate of Prepaid Fees is needed shall not result in any liability on behalf of the County for the fees not paid to Developer. In the event such breach results in the non-collection of prepaid fees, County shall use its best efforts to collect such fees from the subject builder or, in the alternative, shall assign any rights it may have against such builder to Developer.

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.

Requesting Department Concurrence:

By: Bard Lower

Community Development Agency, Transportation Division Director, *Bard Lower*

Dated: 10/22/13

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

By: *[Signature]*
RON BRIGGS, Chairman
BOARD OF SUPERVISORS

Dated: 10-22-13

Attest:
(Name) James P. Mitrising
Clerk of the Board of Supervisors

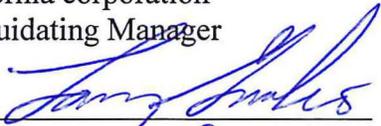
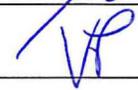
By: *[Signature]*
Deputy Clerk

Dated: 10-22-13

Signatures Continue on Next Page

WEST VALLEY, LLC

By: Lennar Communities, Inc.
A California corporation
Its: Liquidating Manager

By: 
Name: 
Title: _____

Dated: 10/16/13

EXHIBIT A

**CERTIFICATE OF PAYMENT OF SET ASIDE PORTION OF
PREPAID 2004 EL DORADO HILLS TIM FEES
(WEST VALLEY, LLC)**

This Certificate of Payment is made and delivered pursuant to and in accordance with the terms of the Implementation Agreement Regarding Processing of Set Aside Portion of Pre-Paid El Dorado Hills TIM Fees (West Valley, LLC), dated _____, 2013 (the "Agreement"). All capitalized terms not otherwise defined herein shall have the meanings assigned thereto in the Agreement.

For valuable consideration, receipt of which is hereby acknowledged, Developer hereby certifies that builder indicated below has paid to Developer, West Valley, LLC, an amount of Prepaid Set Aside Fees, all as indicated below:

Builder's Legal Name: _____

Builder's Name of Subdivision or Development Project: _____

Final Map Name: _____

Per Lot/Unit/Sq.Ft. Amount of Prepaid Set Aside Fees subject to allocation:

Single family lots	\$7,002 per lot
Multifamily units	\$4,572 per multifamily unit
Single family senior units	\$2,661 per single family senior unit
Multifamily senior units	\$1,737 per multi family senior unit
Commercial sq. ft.	\$2.295 per sq. ft., up to 60,000 sq. ft.

Number of Lots/MF Units/Commercial Sq. Ft. for which Prepaid Set Aside Fees are being allocated by Developer to Builder:

_____ lots	Attach list of lots and copy of final map
_____ multifamily units	Attach list of units and copy of site plan
_____ single family senior units	Attach list of units and copy of site plan
_____ multifamily senior units	Attach list of units and copy of site plan
_____ commercial sq. ft.	Attach list of buildings and copy of site plan

Total Prepaid Set Aside Fees hereby acknowledged to have been paid by builder to Developer¹:
\$ _____

1. Based on the total number of lots/multifamily units/commercial sq. ft. covered by this Certificate times the corresponding per lot/unit/sq.ft. amount(s) of Prepaid Set Aside Fees allocable thereto

DEVELOPER:

WEST VALLEY, LLC,
a California limited liability company

By: Lennar Communities, Inc.,
a California corporation,
its Liquidating Manager

By: _____
Name: _____
Title: _____
Dated: _____

Developer Contact:

Name: _____
Telephone: _____
E-mail: _____

HOME BUILDER:

a _____

By: _____
Name: _____
Title: _____
Date: _____

Home Builder Contact:

Name: _____
Telephone: _____
E-mail: _____