

AGREEMENT FOR FUNDING
OF RIGHT OF WAY ACQUISITION COSTS
LENNAR WINNCREST, LLC

THIS AGREEMENT FOR FUNDING OF RIGHT OF WAY ACQUISITION COSTS is entered into on the date set for below by the **COUNTY OF EL DORADO**, a political subdivision of the State of California (hereinafter referred to as “County”), and **LENNAR WINNCREST, LLC**, a Delaware limited liability company duly qualified to conduct business in the State of California, whose principal place of business is 1420 Rocky Ridge Drive, Suite 320, Roseville, California 95661 (hereinafter referred to as “Developer”).

RECITALS

WHEREAS, the Developer has applied to develop the Bell Ranch, Bell Woods and Hawk View projects located in the Bass Lake Hills area of El Dorado County, for residential development; and

WHEREAS, the County approved Tentative Maps and Community Benefit and Development Agreements (“Development Agreements”), for Bell Ranch (TM96-1321), Hawk View (TM00-1371), and Bell Woods (TM01-1380), to allow such development; and

WHEREAS, Condition No. 22 of TM96-1321, Condition No. 24 of TM00-1371, and Condition No. 25 of TM01-1380 thereof require Developer to realign Country Club Drive (aka Tierra De Dios, aka City Lights Drive), hereinafter referred to as “Project”; and

WHEREAS, Condition No. 21 of TM96-1321, Condition No. 15 of TM00-1371, Condition No. 24 of TM01-1380, and Section 3.2.2 of the Development Agreements provide that if Developer does not have or cannot obtain certain interests in property necessary to allow Developer to make required off-site improvements, the County may acquire the necessary rights by negotiation or through other proceedings, including eminent domain; and

WHEREAS, California Government Code Section 66462.5 authorizes acquisition of such off-site rights by a County to permit completion of required off-site improvements; and

WHEREAS, Developer has been unable to acquire the necessary property interests to complete road improvements pursuant Condition No. 22 of TM96-1321, Condition No. 24 of TM00-1371, and Condition No. 25 of TM01-1380, and has requested the County to acquire such rights and to initiate eminent domain proceedings, if required; and

WHEREAS, the County has considered the request of Developer and finds that the completion of the referenced off-site improvements and the acquisition of the necessary real property interests would be in the public interest.

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

1. **Acquisition Costs.** The Developer shall fund and reimburse the County for the costs and expenses of acquiring the property needed for the Project, as estimated in Exhibit A attached hereto, including, but not limited to, the following: County personnel time, survey costs, appraisal costs, costs for title searches and guarantees, consultant and expert fees, attorney fees, court costs, costs for preparation of the acquisition agreement(s), costs of public notice, and actual compensation to the property owner(s) for purchase of the properties themselves and interest thereon (hereinafter referred to as “Costs”).

2. **Deposit.** Developer, upon execution of this Agreement, shall deposit with the County the sum of **Two Hundred Fifty-Six Thousand One Hundred Dollars and Zero Cents (\$256,100.00)**, representing the estimated compensation for purchase of all properties together with the initial estimate of all County Costs associated with the County’s efforts to acquire the property needed for the Project. The County shall place Developer’s deposits under this Agreement into a separate fund. The fund shall not bear interest. If Costs are incurred in excess of deposits made hereunder, Developer shall deposit such additional funds as required by County upon notice thereof in accordance with Section 3 herein.

3. **Additional Deposit.** By deposit of the above-referenced funds, and by execution hereof, Developer agrees that County may utilize the funds deposited pursuant to Paragraph 2 herein to fund and/or reimburse the County Costs associated with the acquisition of the real property for the Project. County shall provide Developer with monthly invoices of Costs incurred and funds disbursed. Upon written request of the County, Developer shall, within ten (10) calendar days following such request, deposit such additional funds as the County deems necessary to cover the Costs. In the event Developer fails to make any such additional deposit in a timely manner, County may, after providing a written notice of said failure, cease further work acquiring real property for the Project. Developer may also, at any time, ask the County in writing to cease further work to acquire the real property for the Project, provided Developer shall remain obligated to reimburse any Costs then incurred as of the County’s receipt of such notice in excess of the deposits made hereunder.

4. **Legal Descriptions.** Developer shall provide to the County an accurate and sufficient legal description prepared by a civil engineer or land surveyor of all rights of way, easements or other property interests needed to construct the access improvement contemplated by the approval of TM96-1321, TM00-1371, and TM01-1380. Each legal description shall be accompanied by a map showing the property to be acquired. To the extent applicable, separate legal descriptions shall be provided for the rights of way which fall within any currently existing, non-exclusive road easement and for rights of way which fall outside any such easement of record.

5. **Return of the Deposit.** Upon acquisition of all real property needed for the Project or termination of this Agreement, the County shall promptly return to the Developer the difference between the County’s Costs, as set forth above, and the amount in deposit, if any.

6. **Eminent Domain.** The parties acknowledge that in order to acquire the real property needed for the Project, it may be necessary for the County to exercise its power of

eminent domain. Nothing in this Agreement shall be deemed to restrict the County in carrying out its legal obligations, nor shall anything herein be deemed to require the County to exercise its discretion or judgment in any particular manner, other than in conformance with law, or to take any actions unless all legally required findings can be made and actions taken pursuant to the independent exercise of judgment by the County. The County will not be required to initiate any eminent domain proceedings unless it is determined by the County that the proposed acquisition is consistent with applicable law and the conditions placed on Developer's development application approval.

7. **Funding for Eminent Domain Costs.** In addition to such costs set forth in Paragraph 1 herein, Developer shall be responsible for payment of all Costs, attorneys' fees, and expenses reasonably incurred by the County in each eminent domain action filed by the County. Such Costs shall include all costs incurred by the County to acquire the necessary rights-of-way pursuant to Title 7, Part III of the Code of Civil Procedure, commencing with Section 1230.010 and shall include, but not be limited to, any other costs ordered by the court to be borne by the County in the acquisition of the property, including any property owner's attorney's fees and/or expert witness costs, if awarded. If such eminent domain proceedings are abandoned, then Developer shall be responsible for payment of the property owner's litigation expenses, costs, attorneys' fees, and damages proximately caused by the proceeding and its dismissal, if awarded.

8. **Outside Counsel.** The County shall be entitled, at its sole discretion, to utilize attorneys in the Office of the County Counsel or to retain outside counsel to perform the acquisition legal work, inclusive of eminent domain, the cost of which shall be fully funded by Developer to the County. In the event the County determines to retain outside counsel, the County shall notify Developer regarding the selection of counsel and provide Developer the opportunity to comment thereon.

9. **County Discretion.** The County shall be solely responsible for the prosecution of the eminent domain actions, if any, and shall make all decisions regarding the manner to proceed therein. If, in the opinion of the County, it becomes legally impractical or infeasible to proceed with any such action or the continuation of any such action is not in the best interests of the County, the County shall so notify Developer, and the County may thereafter take any action thereon which it deems fit. In the event the County fails to obtain the necessary rights-of-way for any reason whatsoever, Developer shall not be entitled to the return of any monies required to be paid hereunder except for the return of any unused deposits.

10. **No Assurances.** The County does not represent or warrant by execution hereof any particular final result of any action filed by it, but simply that it will exercise its lawful authority and power in a fair and reasonable manner to accomplish the purposes of this Agreement, considering all of the circumstances. County Counsel acts as attorney for the County only. No attorney-client relationship between Developer and County Counsel or outside counsel, if retained, is created by this Agreement or funding relationship.

11. **Indemnity.** Developer shall defend, indemnify and hold the County, its officers, agents and employees, harmless from any and all claims, liability, lawsuits and damages arising out of any counterclaim or independent action filed by any property owner against whom an

action is commenced by the County under this Agreement, unless such claims arise from the sole negligence or willful misconduct of the County, its officers, agents or employees.

12. **Administrator.** The County officer or employee with responsibility for administering this Agreement is Andrew S. Gaber, Deputy Director, Development/ROW/Environmental, Community Development Services, Department of Transportation, or successor.

13. **Notices and Correspondence.** 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
Community Development Services
Department of Transportation
2850 Fairlane Court
Placerville, CA 95667

Attn.: Andrew S. Gaber, P.E.
Deputy Director
Development/ROW/Environmental

County of El Dorado
Community Development Services
Department of Transportation
2850 Fairlane Court
Placerville, CA 95667

Attn.: Adam Bane, P.E.
Senior Civil Engineer

or to such other location as County directs.

To Developer:

Lennar Winncrest, LLC
1420 Rocky Ridge Drive, Suite 320
Roseville, CA 95661
Attn: George Carpenter

or to such other location as Developer directs.

14. **Amendments.** No amendment of this Agreement shall be valid or binding unless made in writing, signed, and duly authorized on behalf of both parties.

15. **Assignment.** This Agreement shall be binding upon the successors-in-interest and assigns of Developer.

16. **Other Obligations.** This Agreement shall not be deemed to supersede any of the conditions of approval of TM96-1321, TM00-1371, or TM01-1380 nor shall it relieve Developer of its obligation to construct any and all improvements which may be required by TM96-1321, TM00-1371, or TM01-1380. Moreover, nothing herein shall affect Developer's ability to obtain

credits and/or reimbursement for eligible costs in accordance with Section 3.3 of the Development Agreements.

17. **Entire Agreement.** Except as otherwise provided in the Development Agreements, this Agreement incorporates the entire agreement between the parties with respect to the acquisition of rights of way for the Project.

18. **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.

Requesting Division and Contract Administrator Concurrence:

By: _____

Andrew S. Gaber, P.E.
Deputy Director
Development/ROW/Environmental
Community Development Services
Department of Transportation

Dated: _____

Requesting Department Concurrence:

By: _____

Rafael Martinez, Director
Community Development Services
Department of Transportation

Dated: _____

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year last below written.

- - COUNTY OF EL DORADO - -

By: _____

Dated: _____

Board of Supervisors
"County"

Attest:
James S. Mitrison
Clerk of the Board of Supervisors

By: _____

Dated: _____

Deputy Clerk

- - LENNAR WINNCREST, LLC - -
a Delaware limited liability company

By: Lennar Homes of California, Inc.
a California Corporation
a Managing Member

By: _____

Dated: _____

Larry Gualco, Vice President
"Developer"

EXHIBIT A

**Bell Ranch, Hawk View, and Bell Woods Offsite Improvements
Country Club Drive Realignment Project
Estimated Right of Way Acquisition Costs**

Item #	Item	Type/Quantity	Estimated Costs
1	Compensation to Owner(s):		
	1.1) APN 119-080-12 M. H. Mohanna	Fee & TCE	\$28,600.00
	1.2) APN 119-080-21 M. H. Mohanna	N/A	
	1.3) APN 119-080-23 M. H. Mohanna	Fee, PSE, TCE	<u>\$76,500.00</u>
	Total Compensation to Owner(s)		\$105,100.00
2	County Staff Time	125 hrs. X \$160.00/hr.	\$20,000.00
3	Appraisal Costs (County Staff Preliminary Estimates)	N/A	\$0.00
4	Title and Escrow Fees	\$3,000.00 X 2	\$6,000.00
5	Consultant Service Fees (Outside legal counsel)	\$350.00/hr.	\$100,000.00 (estimate)
6	Legal Fees/Court Costs for Condemnation (Initiation Fee/Deposit)	\$2,500.00 X 2	\$5,000.00
7	County Counsel Staff Time	105 hrs. X \$190.00/hr.	\$20,000.00
		Total Estimated Costs (see Note 1 below)	\$256,100.00

Notes:

1. The Total Estimated Costs are estimates only, and costs may vary thereby requiring additional deposits as set forth in the Agreement for Funding of Right of Way Acquisition Costs, Lennar Winncrest, LLC.