

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

County of El Dorado
330 Fair Lane
Placerville, CA 95667
Attn: Clerk of the Board of Supervisors

EXEMPT FROM RECORDING FEES
PER GOVERNMENT CODE §27383

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

COMMUNITY BENEFIT AND DEVELOPMENT AGREEMENT

By and Between

COUNTY OF EL DORADO

AND

SERRANO ASSOCIATES, LLC

**FOR THE DEVELOPMENT KNOWN AS
THE CENTRAL EL DORADO HILLS SPECIFIC PLAN**

Effective Date: _____, 2022

**Community Benefit and Development Agreement
Between the County of El Dorado and
Serrano Associates, LLC
For the Development Known as
Central El Dorado Hills Specific Plan**

This Community Benefit and Development Agreement (hereinafter “**Agreement**”) is made and entered into this __ day of _____, 2022, by and between the **County of El Dorado** (hereinafter “**County**”) and **Serrano Associates, LLC**, (hereinafter “**Developer**”), pursuant to the authority of Sections 65864 through 65896.5 of the California Government Code and Chapter 130.58 of the County's Ordinance Code relating to development agreements.

Recitals

This Agreement is entered into based on the following facts and circumstances, among others:

A. The County of El Dorado, a semi-rural County located in the Sacramento metropolitan region, prides itself on providing a high quality of life to its residents. The County strives to balance the need for a healthy, diverse economy, including a wide variety of commercial and retail opportunities, and adequately financed and maintained infrastructure, with a healthy, sustainable, natural environment.

B. Developer is in the business of developing residential communities in Northern California. The Developer owns approximately 336 acres of real property which is commonly known as the Central El Dorado Hills Specific Plan property (the “**Property**”). The Property is located within the El Dorado Hills area of the County on both sides of El Dorado Hills Boulevard, north of U.S. Highway 50 and immediately west of the existing Serrano Project. The Property is located within an area of the County designated as a Community Region in the County’s General Plan.

C. The El Dorado Hills area has been identified by the County for many years as one of the primary areas affording an opportunity for providing residential development to serve the County’s current and future growth. The Project is ideally located to take advantage of existing infrastructure and adjacent services and to minimize vehicle miles traveled. The Project area is identified as an Established Community within SACOG’s regional planning documents and the Project, as proposed, is consistent with SACOG’s Metropolitan Transportation Plan/Sustainable Communities Strategy (the MTP/SCS).

D. The Project includes the design and construction of a key element in the County’s transportation plan (CIP Project #36105007) consisting of the installation of the segment of Country Club Drive from Silva Valley Parkway to Serrano Parkway. (“**Country Club Drive Improvements**”). These improvements will provide increased connectivity and parallel capacity to Highway 50. The Project also includes certain improvements to parks, open space, trails and a contribution toward a pedestrian overcrossing (the “**Recreational Improvements**”). Additionally, the Project includes the payment to the County of a community benefit fee in connection with each building permit, with limited exceptions as

described herein (the “**Community Benefit Fee**”). The parties enter into this agreement in part to provide assurances as to the timing of construction of the Country Club Drive Improvements and the Recreational Improvements and the means of financing such construction, and to establish the mechanisms by which the Community Benefit Fee shall be paid and allocated.

E. The Project will provide neighborhood, community and County-wide benefits, as more fully detailed in this Agreement, including:

1. Fiscally neutral impacts on County services (Section 3.9 and FIA);
2. Fiscally neutral impacts on EDHCSD and EDHFIRE (Section 3.9 and FIA);
3. Community Benefit Fee of \$4,174.00 per unit, with limited exceptions (Section 3.2.4);
4. Dedication of parkland in excess of requirement (Section 3.2.6);
5. Establishment of park maintenance funding mechanisms (Section 3.2.9);
6. Dedication/restriction of public open space and construction of publicly-accessible and interconnected trails (Section 3.2.8);
7. Establishment of open space and trail maintenance mechanism (Section 3.2.8);
8. Voluntary, no-cost dedication of Country Club Drive right-of-way (Section 3.2.1);
9. Advanced construction of Country Club Drive (Section 3.2.2);
10. Significant monetary contribution toward environmental review and permitting of the trail-connected El Dorado Hills Blvd. freeway pedestrian overcrossing (Section 3.2.10);
11. The opportunity for a range of housing types and densities;
12. Direct roadway and pedestrian/bicycle connections between housing and adjacent office/retail/services; and
13. Significant County TIF contributions without triggering any new roadway improvements.
14. Consistency with SACOG’s Metropolitan Transportation Plan/Sustainable Communities Strategy.
15. Contribution to the County’s Affordable Housing Fund with limited exceptions (Section 3.10).
16. Contribution to the County’s Intelligent Transportation System project, with limited exceptions (Section 3.11).

17. Significant net positive contribution to County’s TIF Program (\$20,000,000.00 plus).
18. Provision of one hundred (100) units of Workforce Housing.

F. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risks of development, the Legislature of the State of California adopted Sections 65865 et seq. of the California Government Code enabling a County and an applicant for a development project to enter into a development agreement establishing with certainty what zoning standards and land use regulations of the County will govern the construction and implementation of the development project from beginning to completion.

G. In November, 2015, El Dorado County released the Central El Dorado Hills Specific Plan (“CEDHSP”) Environmental Impact Report (“**Draft EIR**”) (SCH# 2013022044). Numerous comment letters were received, two Recirculated Draft EIRs were prepared, comments received and responded to, and the CEDHSP Final EIR was certified on _____ 2022.

H. On _____, 2022, the Board of Supervisors introduced Ordinance No. ___ approving this Agreement and authorizing its execution, and adopted such Ordinance on _____, 2022, with the Effective Date as set forth in Section 1.2.

Definitions

The following words or phrases used in this Agreement shall have the meanings set forth in this Section. All words not specifically defined shall be deemed to have their common meaning and/or the meaning generally given to such words in the parlance of the planning and development of real property in the State of California.

- A. “Agreement” means this Community Benefit and Development Agreement.
- B. “Applicable General Plan” means the County’s General Plan, adopted on July 19, 2004, as amended through the Effective Date of this Agreement.
- C. “CEDHSP Financing Plan” means the Central El Dorado Hills Specific Plan Public Facilities Financing Plan, as it may be amended.
- D. “CFD” has the meaning described in Section 3.9.
- E. “CIP” means that list of projects contained within the County of El Dorado Capital Improvement Program, as adopted by the Board of Supervisors and as may be updated and amended from time to time by the Board.
- F. “Civic/Limited Commercial” is that certain 11-acre parcel designated within the Specific Plan for quasi-governmental or limited commercial uses.
- G. “Community Benefit Fee” has the meaning described in Section 3.2.4.

- H. “Community Park” means the 15.3-acre active park located adjacent to Highway 50 in the south portion of the Project.
- I. “Conditions of Approval” mean the requirements placed on the Project Approvals as conditions to development of the Project. A copy of the Conditions of Approval is attached as Exhibit 2.
- J. “County” means the County of El Dorado.
- K. “Developer” means Serrano Associates, LLC, or its successors in interest.
- L. “EDHCSD” means the El Dorado Hills Community Services District.
- M. “EDHFD” means the El Dorado Hills Fire Department.
- N. “Effective Date” has the meaning described in Section 1.2.
- O. “EIR” means Final Program Environmental Impact Report for the Central El Dorado Hills Specific Plan, State Clearinghouse No. 2013022044, certified by the Board of Supervisors in _____, 2022.
- P. “EPS” has the meaning described in Section 3.9
- Q. “FIA” has the meaning described in Section 3.9.
- R. “ITS project” means the Intelligent Transportation System project undertaken by El Dorado County Department of Transportation.
- S. “LLAD” means the Landscape and Lighting Assessment District described in Section 3.2.9.
- T. “Mitigation Measures” mean the requirements placed on the Property to cure or lessen the environmental impacts of the Project as identified in the analysis of the Project done in the EIR.
- U. “PFFP” has the meaning described in Section 2.1.4.
- V. “Planned Densities” shall mean the densities described in the Specific Plan, subject to reduction as described in Section 2.5.1.
- W. “Project” means the Specific Plan and related entitlements as described in the Recitals.
- X. “Project Approvals” mean the development approvals and entitlements set forth in Section 2.1.
- Y. “Property” means the property commonly known as the Central El Dorado Hills Specific Plan, currently identified as El Dorado County Assessor’s Parcels Nos.

120-050-01-100, 120-050-05-100, 121-040-20-100, 121-040-29-100, 121-040-31-100, 121-160-05-100, and a portion of 121-120-24-100. A map showing the location and boundaries of the Property is attached as Exhibit 3, and the legal description describing the Property is attached as Exhibit 4.

- Z. “Term” shall have the meaning described in Section 1.3.
- AA. “Traffic Impact Fee” or “TIF” means that program wherein “TIF” are charged by the County on new development for the purpose of funding the construction of road improvements identified in the County CIP.
- BB. “Workforce Housing” means the one hundred (100) units of housing included within the Pedegral multi-family site and required by deed restriction to be affordable to specified incomes as more fully detailed in Section 3.2.5 hereinafter. The entire two hundred unit multi-family project is sometimes referred to herein as the Workforce Housing Project.

SECTION 1. - GENERAL PROVISIONS

1.1. All Exhibits Deemed Incorporated by Reference. Unless specifically stated to the contrary, the reference to an exhibit by a designated letter or number shall mean that the exhibit is made a part of this Agreement.

1.2. Agreement to be Recorded; Effective Date. When fully executed, this Agreement will be recorded in the Official Records of El Dorado County, pursuant to Government Code Section 65868.5. The effective date of this Agreement shall be the later of (a) the date that is thirty (30) days after the date that Ordinance enacting this Agreement is adopted, or (b) the date this Agreement is fully executed by the Parties (c) in the event of litigation challenging the Project approval, the date of entry of a final judgment or final court order upholding the Project approvals, or (d) in the event of a referendum, the date upon which the election results upholding the Project approvals is certified. (“**Effective Date**”). The Effective Date is inserted at the beginning of this Agreement. The Parties acknowledge that section 65868.5 of the Development Agreement Statute requires this Agreement to be recorded in the Official Records no later than ten (10) days after the County enters into this Agreement.

1.3. Term. The Term of this Agreement is twenty (20) years, commencing on the Effective Date. The expiration date for any subsequently approved tentative maps for the Project shall be extended for the Term of this Agreement. The Term shall be automatically extended for a period of time commensurate with any period of time during which a moratorium is in effect or a challenge to the Project Approvals or the validity of this Development Agreement is pending.

1.4. Termination. This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

- 1.4.1. Expiration of the twenty (20) year term;

1.4.2. Entry of a final court judgment or issuance of a final court order directed to the County to set aside, withdraw, or abrogate the County's approval of this Agreement or any material part of the Project Approvals and which reinstates the previously applicable General Plan and zoning designations; or

1.4.3. Certification of election results sustaining a referendum challenging the Project approvals.

1.4.4. The Effective Date of a party's election to terminate the Agreement as provided in Section 5.2 of this Agreement.

1.4.5. As to a single residential lot or multi-family residential parcel within the Project, upon building permit final inspection and the conveyance of such lot or parcel to a bona fide good faith purchaser. Such termination shall be automatic without any further action by either party or the need to record any further documents.

1.4.6 As to the C/LC Parcel, upon building permit final inspection and issuance of a Certificate of Occupancy.

1.5. Interest of Developer. Developer represents that it has a fee simple interest in the Property and is bound by this Agreement.

1.6. Covenants Running With the Land. Any successors in interest to the County or Developer shall be subject to the provisions set forth in Government Code Sections 65865.4 and 65868.5. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do, or refrain from doing, some act with regard to the development of the Property (a) is for the benefit of and is a burden upon the Property; (b) runs with the Property and every portion thereof; and (c) is binding upon each Party and each successor in interest during ownership of the Property or any portion thereof. Nothing herein shall waive or limit the provisions of Section 2.4, and no successor owner of the Property, any portion of it, or any interest in it shall have any rights except those assigned to the successor by Developer in writing pursuant to Section 1.7.

1.7. Right to Assign; Non-Severable Obligations.

1.7.1. Except as otherwise provided, and provided that Developer is not in default of this Agreement pursuant to Section 5 herein, Developer shall have the right to assign this Agreement as to the Property, or any portion thereof, in connection with the sale, transfer or conveyance thereof to a third party during the term of this Agreement, provided prior written notice of such assignment is given to County. Provided such assignment is done in writing and the assignee assumes all of Developer's obligations hereunder, Developer shall be released from any further liability or obligation from this Agreement related to the Property, or the portion thereof so conveyed and the assignee shall thereafter be the "Developer" with all rights and obligations related thereto, with respect to such conveyed property. The form of assignment agreement is attached as Exhibit 13 hereto.

1.7.2. The obligations and conditions set forth in this Agreement are not severable, and any sale of the Property, in whole or in part, or assignment of this Agreement, in whole or in part, which attempts to sever the obligations and/or conditions shall be a nullity and shall have no force or effect. In the event of a foreclosure of all or part of the Property, the Project Approvals shall have no force and effect until any subsequent owner seeking to develop under the Project Approvals executes a written agreement, in a form acceptable to the County, assuming all rights and obligations under this Agreement.

1.8. Amendment of Agreement. This Agreement may be amended from time to time by mutual consent of the County and Developer, as provided in Government Code Section 65868. The cost to the County in processing such a proposed amendment shall be paid by the requesting party.

1.9. Whole Agreement. This Agreement, together with any subsequent amendments, shall constitute the entire agreement of the Parties as to the development of the Property. All prior agreements of the Parties related to development of the Property, whether written or oral, are of no further force and effect.

1.10. Modification to the Project Approvals. Developer may apply, in writing, to modify the Project Approvals. Such modification may be processed without any amendment to this Agreement, if the County, in its sole discretion, determines that the requested modification (1) is consistent with this Development Agreement, (2) does not alter this Agreement's term, provisions for reservation and dedication of land, or monetary contributions, (3) does not substantially alter the permitted uses, substantially increase the density or intensity of use, and (4) is consistent with the Applicable General Plan. If the County determines that the requested modification is inconsistent with this Agreement, alters its term or substantially alters its uses, the modification will not be processed without processing a concurrent amendment to this Agreement in accordance with Section 1.8. An amendment to the CEDHSP Financing Plan as required in the Conditions of Approval shall not require an amendment to this Agreement.

1.11. Waivers. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

1.12. Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, or unenforceable, in whole or in part for any reason, the remaining terms and provisions of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement would be defeated by loss of the invalid or unenforceable provisions, in which case either Party may terminate this Agreement by providing written notice thereof to the other Parties. In the event of such termination, the provisions of Section 1.4 relating to termination of this Agreement by mutual written consent shall apply. Without limiting the generality of the foregoing, no judgment determining that a portion of this Agreement is unenforceable or invalid shall release Developer from its obligations to indemnify the County under this Agreement.

1.13. Choice of Law; Venue. This Agreement shall be interpreted according to the laws of the State of California. The venue for any litigation concerning its meaning shall be the Superior Court of El Dorado County, California.

1.14. Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the principal offices of the County and Developer or Developer's assigns and successors. Notice shall be effective on the date delivered in person, or the date when the postal authorities indicate that the mailing was delivered to the address of the receiving party indicated below:

Notice to the County: County of El Dorado
2850 Fairlane Court
Placerville, CA 95667
Attn: Director of Planning and Building Dept.

Notice to Developer: Serrano Associates, LLC
4525 Serrano Parkway, Suite 100
El Dorado Hills, CA 95762
Attn: William R. Parker

1.15. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. No other person shall have any right of action based upon any provision in this Agreement.

1.16. List of Exhibits.

Exhibit 1: Specific Plan
Exhibit 2: Conditions of Approval
Exhibit 3: Property Map
Exhibit 4: Property Legal Description
Exhibit 5: Fiscal Impact Analysis
Exhibit 6: Public Facilities Financing Plan
Exhibit 7: Country Club Drive Conceptual Alignment and Phasing
Exhibit 8: Parkland Dedication Grant Deed
Exhibit 9: C/LC Parcel Dedication Grant Deed
Exhibit 10: Open Space Easement
Exhibit 11: Potential Park Relocation Site
Exhibit 12: ITS Project Limits/Study Area
Exhibit 13: Assignment Agreement

1.17. Counterparts. This 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.

1.18. Signatures. Developer and County represent and warrant that the individuals executing this Agreement have the right, power, legal capacity, and authority to enter into

and to execute this Agreement on behalf of the respective legal entities of Developer and County.

SECTION 2. - DEVELOPMENT OF THE PROPERTY

2.1. Project Approvals. The Property shall be developed in accordance with the Project Approvals identified in this subsection 2.1. The permitted uses of the Property, the density and intensity of use, and the maximum height and size of proposed buildings, and the provisions for reservation or dedication of land for public purposes shall be those set forth in the Project Approvals. The Project Approvals shall consist of:

2.1.1. A General Plan Amendment, Rezone, Planned Development Overlay, Large Lot Final Map and Amendment to the El Dorado Hills Specific Plan, all approved _____, 2022;

2.1.2 The CEDHSP, approved _____, 2022;

2.1.3. The Conditions of Approval;

2.1.4. The CEDHSP Public Facilities Financing Plan, dated April, 2017; and;

2.1.5. The Mitigation Monitoring and Reporting Program adopted with the Project.

2.2. Consistency with the General Plan. The County finds that the provisions of this Agreement and the development of the Property are consistent with and conform to the 2004 General Plan of the County of El Dorado, as amended through the Effective Date of this Agreement (“**Applicable General Plan**”).

2.3. Vested Rights of the Developer. Developer shall have the vested right to develop the Property in accordance with the Project Approvals described in Section 2.1 above and in conformity with the County rules, regulations, policies, standards, specifications and ordinances, including the zoning ordinance, in effect on the Effective Date of this Agreement, provided that Developer is not in default under this Agreement. If County rules, regulations, policies, standards, specifications and ordinances are subsequently amended, Developer shall have the option, but not the obligation, to comply with such subsequently amended rules, regulations, policies, standards, specifications and ordinances. The vested right to proceed with the Project shall be subject to any subsequent discretionary approvals required in order to complete the Project provided that any conditions, terms, restrictions, and requirements for such subsequent discretionary approvals shall not prevent development of the land for the uses and to the density or intensity of development or rate or timing of development set forth in this Agreement and the Project Approvals. To the extent that Developer, prior to execution of this Agreement, possess vested rights under the authority of the Subdivision Map Act or common law with respect to the Property, Developer expressly waives any and all rights thereto, and agree that any claim to a vested right is defined solely by this Agreement. Any tentative subdivision maps approved within the

Project shall have a term coincident with the remaining term of this Agreement, or three (3) years, whichever is longer, as authorized by Government Code Section 66452.6(a)(1). Applications for subsequent discretionary approvals, including but not limited to tentative subdivision maps and planned development permits, that are deemed complete prior to the expiration of this Agreement shall be considered abandoned by Developer and automatically withdrawn if not finally acted upon by the County within twenty-four (24) months after expiration of this Agreement, provided that County has, expended its best efforts to process the application and schedule the matter for necessary hearings.

2.4. Rights Retained by the County. Notwithstanding any other provisions of this Agreement, including the vesting granted by Sections 2.1 and 2.3, the following regulations and provisions shall apply to the development of the Property:

2.4.1. Application fees and charges of every kind and nature imposed by the County to cover the actual costs to the County of processing development applications or for monitoring compliance with any land use entitlements granted or issued.

2.4.2. Procedural regulations related to hearing bodies, applications, notices, findings, hearings, reports, appeals and any other matter of procedure, provided such procedures are uniformly applied on a county-wide basis to all substantially similar types of development projects and properties.

2.4.3. Regulations governing construction standards and specifications, including, without limitations, the County's building code, plumbing code, mechanical code, electrical code and grading code and all other uniform construction codes then applicable in the County at the time of permit application.

2.4.4. New County laws or regulations that are mandated by state or federal law.

2.4.5. Nothing herein shall be construed to limit the County's general police power to implement, based upon appropriate and adequate findings, specific measures necessary to alleviate legitimate and bona fide harmful and noxious uses, or protect against real, actual, and dangerous threats to the health and safety of County residents, in which event any rule, regulation or policy imposed on the development of the Property shall be done to the minimum extent necessary to correct such bona fide harmful and noxious uses or protect against any such real, actual and dangerous threats to the health and safety of County residents.

2.4.6. Any fees, taxes, assessment, and charges which are in effect and collected at the time of the approval of a subsequent entitlement or the issuance of a Building Permit, as provided in this Agreement or as generally applicable throughout the County, including but not limited to impact fees, provided that such fees, taxes and assessments apply to all similar private projects within the County and are reasonably related to the cost of the facility or service for which the fee or assessment is imposed. For any fees that are assessed by zone or area, "similar private projects" will mean projects in the same zone or area as the Project.

2.5. Revisions to Project Approvals. Developer may apply, in writing, to revise the Project Approvals. If the Director of Planning and Building Department, or his/her designee, determines, in his sole discretion, that the requested revision is (1) a minor change to the Project considered as a whole; (2) does not increase the density or intensity of the use approved in the Project Approvals; (3) is consistent with this Agreement; (4) is consistent with the Applicable General Plan; and (5) does not change the analysis contained in the EIR, the Director of Planning and Building Department or his/her designee may approve the requested revision without public hearing. The notice and appeal process for such a revision shall be the same process as for any other Director of Planning and Building Department approval at the time of the action requested. If the Director of Planning and Building Department determines the application does not comply with the above, then it shall be processed with all applicable public hearing and notice provisions then in effect.

2.5.1. Reduction in Planned Densities. To provide an opportunity to develop a variety of housing types and a range of affordability, the Developer proposed, and the CEDHSP allows in certain areas of the Project, the development of a range of housing types and densities. Submitted applications which are consistent with the permitted uses identified in the Specific Plan shall be considered consistent with this Agreement. Submitted projects shall be approved for such sites in accordance with the provisions of the Specific Plan, and density (or lack thereof) shall not be a basis upon which any such submitted map may be denied. The parties acknowledge that as the Property develops and tentative subdivision maps are approved and final subdivision maps are recorded, the actual densities realized for some of the parcels may be more or less than the planned densities set forth therefor in the CEDHSP (the “**Planned Densities**”), consistent with applicable Specific Plan provisions. County and Developer acknowledge and agree that Developer may reduce planned densities below the minimum number authorized by the Specific Plan (but may not increase above planned maximums), at its discretion, subject only to maintaining a minimum buildout density within the overall CEDHSP of 3.8 residential units per developable acre to maintain consistency with SACOG’s MTP/SCS.

2.5.2 Parties Required to Amend. Where a portion of Developer’s rights or obligations have been transferred, assigned, and assumed in accordance with this Agreement, the signature of the person or entity to whom such rights or obligations have been assigned shall not be required to effectuate a revision or amendment of this Agreement unless such amendment would materially alter the rights or obligations of such assignee, provided thirty (30) days’ prior written notice of any amendment is provided to such person or entity by the amending parties. In no event shall the signature or consent of any non-assuming assignee be required to amend this Agreement. The consent of Developer shall be required to any amendment to this Agreement only to the extent that such an amendment relates to or affects any portion of the Property which Developer still owns in fee.

2.6 Priority of Enactment. In the event of conflict between this Agreement, the Project Approvals, and any County ordinance, resolution, or policy, the Parties agree that the following sequence of approvals establishes the relative priority of the approvals, each approval superior to the approvals listed thereafter: (1) this Agreement; (2) the Project Approvals; and (3) any County ordinance, resolution, or policy. In the event of a conflict between two or more of the foregoing documents, the language of that document which is superior in priority as provided above shall govern.

2.7 Waiver of Claims. Developer waives, as to the Property only, any and all existing claims they may have against the County, its agents, employees, and consultants arising out of the adoption of this Agreement or the Project Approvals and all of the proceedings, acts, or determinations related thereto.

2.8 Obligation and Rights of Mortgage Lenders. The holder of any mortgage, deed of trust, or other security instrument with respect to the Property, or any portion thereof, shall not be obligated under this Agreement to construct or complete improvements or to guarantee such construction or completion, but, in the event said holder takes title to the Property through foreclosure of a mortgage or a deed of trust, or deed-in-lieu of such foreclosure, said holder shall be bound by all of the terms and conditions of this Agreement that pertain to the Property or such portion thereof in which it holds an interest. Any such holder who comes into possession of the Property, or any portion thereof, pursuant to a foreclosure of a mortgage or a deed of trust, or deed in lieu of such foreclosure, shall take the Property, or such portion thereof, subject to any pro rata claims for payments or charges against the Property, or such portion thereof, which accrue prior and subsequent to the time such holder comes into possession. Nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Property, or any portion thereof, to any uses, or to construct any improvements thereon, other than those uses and improvements provided for or authorized by this Agreement, subject to all of the terms and conditions of this Agreement.

SECTION 3. - OBLIGATIONS OF THE PARTIES

3.1. Property Development. The Property shall be developed in accordance with the Project Approvals described in Section 2.1.

3.2. Developer Obligations Conferring County-Wide Benefit. The following obligations of Developer are provided as consideration for County entering into this Agreement and are considered county-wide benefits.

3.2.1. Dedication of Country Club Drive Right-of-Way. Notwithstanding the County having included within its current TIF Program budget approximately 3.4 Million Dollars (\$3,400,000.00) for acquisition of Country Club Drive Right-of-Way between Silva Valley Parkway and Serrano Parkway, Developer will dedicate to County in lieu of condemnation and with no compensation to Developer, those segments of right-of-way owned and/or controlled by Developer in order to minimize cost to County. The Project, and the Environmental Impact Report prepared therefor, provide the County with two alternative connection points for the Country Club Drive extension, either through the westerly-adjacent commercial parcel to El Dorado Hills Blvd or to Serrano Parkway east of El Dorado Hills Blvd. County has determined its preferred alignment is to connect at Serrano Parkway. As a result, the alignment through the westerly-adjacent commercial center shall be constructed as an emergency vehicle access (EVA). Dedication of the portion of right-of-way located within the Project shall occur upon completion of the roadway improvements and acceptance by the County, or on such other schedule as mutually agreed by County and Developer. Dedication of the portion of off-site right-of-way through the adjacent Serrano Project shall occur on or prior to the date upon which construction of Phase 1 of Country Club Drive is completed and accepted by the County,

unless otherwise mutually agreed by and between the County and Developer. The parties acknowledge that the precise alignment for the off-site portion of Country Club Drive may change upon completion of final design and engineering. Accordingly, if the final alignment has not been determined at the time Developer is required to dedicate the off-site right-of-way through the adjacent Serrano Project, Developer's offer of dedication shall be based on the conceptual alignment as shown on Exhibit 7 hereto. At such time as the County accepts the offer of dedication, the resolution accepting the offer of dedication will contain the final description of the right-of-way area. Any excess right-of-way not necessary for Country Club Drive shall be vacated in accordance with California Government Code section 7050. The negotiated dedication obligation set forth herein is in lieu of condemnation, as County has communicated the necessity and intention to acquire the Country Club Drive segment through condemnation, if necessary, to facilitate construction as contemplated by County's Capital Improvement Program.

3.2.2. Construction of Country Club Drive. Developer shall be responsible for the construction of Country Club Drive in phases, subject to credits and/or reimbursement as provided for hereinafter. Phase 1 shall consist of the segment commencing at Serrano Parkway, through the development and terminating at the eastern Project boundary. The EVA shall also be considered and constructed as part of Phase 1. Phase 2 shall consist of the segment commencing at the eastern Project boundary and continuing eastward to a connection point with Silva Valley Parkway. The phasing is depicted in Exhibit 7.

Construction of Phase 1 shall be commenced prior to the first building permit issued south of Serrano Parkway, exclusive of model homes. Construction of Phase 2, which is not necessary to serve the Project but which provides very important parallel capacity and connectivity, shall commence, weather permitting, within one hundred eighty days (180) after the following conditions have been satisfied: (1) all wetland and other regulatory permits necessary to construction of Phase 2 have been secured by County pursuant to Section 3.6.1 hereof, (2) County has developed and approved and provided to Developer, construction plans and specifications in bid-ready format, together with a notice to bid, and (3) Developer and County have entered into a credit and reimbursement agreement pursuant to Section 3.3 hereinafter, and Developer has received the credits provided hereunder, applicable dollar for dollar, in an aggregate amount equal to the total construction cost of Phase 1 of Country Club Drive, inclusive of typical "soft costs" and a construction management fee, together with any and all permitting costs incurred by Developer in connection with processing and securing permits necessary to construction of Phase 2. Once each Phase of construction has commenced, it shall thereafter be completed as quickly as possible utilizing commercially reasonable efforts common to such construction projects. Developer shall be entitled to credits and/or reimbursements of all costs incurred in connection with construction of Phase 2, as described in Section 3.3 hereinafter. Developer shall be limited to five hundred (500) building permits within the Project (exclusive of the Workforce Housing Project located upon the Pedegral multi-family site, which shall not count against the 500 unit cap), unless and until Developer has commenced construction of Phase 2 of Country Club Drive. For purposes of this Agreement, construction shall be deemed to have commenced when the County has approved and signed the improvement plans and Developer has caused any required security ensuring completion thereof to be posted.

Upon completion and County acceptance of each Phase of Country Club Drive, the County will include within its next update of the TIF program and Capital Improvement Plan the actual costs of construction of such phase and shall also reflect the reduction in right-of-way acquisition costs associated with the voluntary dedication of the underlying rights-of-way for Country Club Drive, as provided for in Section 3.2.1 hereinabove. In the event County is prevented from proceeding, or elects at any time not to proceed, with construction of Phase 2 of Country Club Drive due to permitting obstacles (in particular, the necessary permit to fill wetlands and the related Section 401 Water Quality Certification), financing issues or otherwise, the building permit and construction limitations set forth in the preceding paragraph shall be considered null and void and Developer shall have no building permit nor construction limitations thereafter.

3.2.3 Off-site Right-of-Way. A number of off-site improvements for the Project, including but not limited to portions of Country Club Drive, will require the acquisition of rights-of-way not owned by Developer including, without limitation, the right-of-way through the westerly-adjacent commercial property, whether for the Country Club Drive extension or for the EVA through the westerly-adjacent commercial center. Developer has had preliminary conversations with adjacent owners to acquire the necessary right-of-way and will continue to use its good faith, reasonable efforts to acquire the necessary right-of-way. However, if Developer is unable to acquire the necessary right-of-way through good faith negotiation at or near the appraised value of the interests being acquired, the County agrees that it will commence proceedings to authorize it to exercise its power of eminent domain to acquire the needed property rights. The County's agreement to commence proceedings to utilize the eminent domain process is a reflection of the importance of the Country Club Drive Improvements to the County's overall circulation and CIP and is not intended as a means to aid the Project as a private undertaking. Should Developer require the County's intervention to acquire the necessary right-of-way, the Parties shall enter into a separate agreement for the funding and reimbursement of any acquisition costs.

3.2.4. Community Benefit Fee. Developer agrees that a fee shall be collected by the County at the time of the issuance of each residential building permit within the Project ("**Community Benefit Fee**"), as set forth in this paragraph. The County may use these funds for any purpose benefiting the community, as determined in the sole discretion of the Board of Supervisors. The Community Benefit Fee shall be collected upon building permit issuance in the amount of Four Thousand One Hundred Seventy-Four Dollars (\$4,174.00) per dwelling unit. This fee will be updated annually on January 1 of each year, commencing January 1, 2023, based upon increases or decreases in the Consumer Price Index, San Francisco, all wage earners. In the event the referenced CPI is no longer published, the County shall, in its reasonable discretion, select a similar index to calculate the annual adjustment. This one-time fee shall apply only to the first building permit and shall not apply to remodels or secondary units on a single parcel. The Community Benefit Fee shall be inapplicable to the one hundred units of deed restricted, Workforce Housing within the Pedregal multifamily site required by Section 3.2.5 hereinbelow and shall be applied at a fifty percent (50%) (i.e., \$2,087.00 per unit) rate to all other market-rate multifamily units contained within the Pedregal multifamily site.

3.2.5. Developer Provision of Workforce Housing. Developer shall include within the multifamily zoned portion of the Pedregal site one hundred (100) units of Workforce Housing consisting of fifty (50) units with rents affordable to persons/families earning eighty percent (80%) of Area Median Income (AMI) and fifty (50) units with rents affordable to persons/families earning one hundred percent (100%) of AMI. This commitment will be enforced through a deed restriction, the form and content of which shall be acceptable to both County and Developer, and which shall be recorded against the Pedregal multifamily site prior to the recordation of the first small lot residential subdivision map anywhere within the CEDHSP project. Construction of Workforce Housing is a County priority. Accordingly, Developer will exercise commercially reasonable efforts to market the Pedregal multifamily site to builders experienced in such projects with a goal of construction commencement within three (3) years from and after the Effective Date, subject to County processing delays, acts of God, government imposed moratoria and other factors beyond Developer's control. If construction has not commenced within three (3) years from and after the Effective Date and significant progress toward that goal has not been made, in the reasonable opinion of County, County shall have the right to request dedication of the multi-family zoned portion of the Pedregal site to the County, free of the deed restriction. In the event County makes such a request, Developer, within sixty (60) days of receiving such request, shall (i) cause the deed restriction to be removed from title and (ii) shall thereafter deed the property to the County. Dedication of the property shall completely fulfill Developer's obligation pursuant to this provision.

3.2.6 Dedication of Parkland in Excess of Obligation. Developer hereby commits to provide to the community, in full satisfaction of any and all Quimby parkland dedication obligations, 16.3 acres of parkland, comprised of 15.3 acres of dedicated, active, Community Park and a privately owned and maintained 1-acre neighborhood park. Based upon the County's Parkland Dedication Ordinance, and assuming full build-out of the potential 1,000 Project dwelling units, the maximum required acreage would be 13.3 acres. Developer anticipates that actual buildout may result in fewer than seven hundred fifty (750) units, which would result in 11.58 acres of required parkland. Notwithstanding the significant excess parkland included within the Project, Developer shall dedicate the entire 15.3 acres of Community Park, so long as the approved Project includes a minimum of 700 units. If the approved Project contains less than 700 units, the required dedication acreage shall be adjusted downward to meet Quimby Act requirements. Developer shall be required to dedicate the entire park parcel within sixty days of receipt of EDHCSD's written determination whether to accept the Community Park Site or the Potential Relocation Park Site, as more fully detailed in Section 3.2.12 hereinbelow. The Community Park design shall accommodate the planned pedestrian overcrossing and related trail connections. The parties intend that the Community Park be maintained in perpetuity as a public park. Consistent with that intent, the Grant Deed conveying the Community Park property shall include a reversionary interest retained by Developer, which shall provide that in the event the Owner ceases to maintain the property for park purposes or attempts to transfer ownership thereof, the property shall, at the option of Developer, revert to Developer. The form of Grant Deed is attached hereto as Exhibit 8.

3.2.7 Dedication to County of 11-Acre Civic/Limited Commercial Parcel. In addition to the parkland dedications described above in excess of Developer's parkland

dedication obligations, Developer shall also offer to dedicate to EDHFD the 11-acre parcel zoned Civic/Limited Commercial and located immediately north of Wilson Boulevard and immediately east of El Dorado Hills Blvd. Through this offer, Developer intends to provide an opportunity for EDHFD or other public or quasi-public entity to develop a senior citizens center, emergency operations center or recreational amenity on this 11-acre parcel situated between two existing public facilities. To the extent additional area is available after the senior facility and emergency operations center are built, EDHFD shall cooperate with EDHCSD to allow utilization of the excess land for recreational purposes by the EDHCSD. This Dedication of the C/LC parcel shall be made subject to the EDHFD holding the property in trust for the benefit of the community on terms mutually agreeable to Developer and EDHFD, which shall be memorialized in a Dedication Agreement developed jointly by Developer and EDHFD. EDHFD shall be free to retain the property for itself, or to offer the Property to any public or quasi-public agency for the benefit of the community with the first priority use a senior citizens center or similar facility dedicated to senior citizen needs. Dedication shall occur prior to the issuance of the 250th building permit within the Project, exclusive of any building permits issued for the Workforce Housing Project. The grant deed conveying the Civic/Limited Commercial property shall contain a reversionary interest retained by Developer, which shall provide that in the event that the EDHFD, or another public agency selected by County, has not commenced construction of a senior citizens center or similar public facility within ten (10) years after acceptance of dedication, the Civil/Limited Commercial property shall, at the option of Developer, revert to Developer. The form of Grant Deed is attached as Exhibit 9.

3.2.8 Developer to Provide Publicly-Accessible/Private Maintained Open Space and Approximately 7,800 Linear Feet of Bicycle/Pedestrian Trails. Developer has included within the Project significant open space land which is in excess of the County General Plan requirement of thirty percent (30%). Additionally, Developer hereby commits to install approximately 7,800 linear feet of pedestrian and bicycle trails within the open space areas east of El Dorado Hills Blvd., as conceptually depicted in the Specific Plan, including the relocation to east of the creek of the existing pedestrian path along the eastern edge of El Dorado Hills Blvd. Trail construction shall be subject to standard County review and approval of processes, which may include EDHCSD review and comment. Developer shall establish an owners association to regulate the use of and maintain both the open space areas (trash collection, fire prevention, etc.) and to maintain and repair the trail systems. Developer may elect to establish separate homeowner's associations for the Project areas east and west of El Dorado Hills Blvd., respectively. Notwithstanding these private maintenance mechanisms, the trails shall be accessible to the public. Developer shall record an open space and/or trails easement to ensure the open space areas are preserved in perpetuity, remain publicly accessible, where feasible, and provide the Developer and successors with indemnity against liability, in the form attached as Exhibit 10 hereto, when the open space areas are finally defined by development of the adjacent development areas, which will likely occur late in the Project's development.

3.2.9 Developer to Construct 1-Acre Neighborhood Park and Form a Funding Mechanism for Maintenance of All Project Parks. Developer shall commence construction of the 1-acre neighborhood park (which may include a Homeowner's Association building), at its sole expense, prior to issuance of the one hundred fiftieth

(150th) building permit within the Project and north of Serrano Parkway, exclusive of any building permits issued for the Workforce Housing Project. Developer shall establish an owners association which shall be responsible for maintenance of the neighborhood park. The 15.3 acre Community Park shall be maintained by its owner, as approved by the County, through a Landscape and Lighting Assessment District (“LLAD”) or other financing mechanism to be established for the Project prior to issuance of the first certificate of occupancy within the Project. The LLAD or other financing mechanism shall impose upon the Project the Project’s fair share of maintenance costs, as reasonably determined by either (1) agreement between Developer and County consistent with other Community Park LLADs, or (2) in the event the parties are unable to agree, based upon the updated Fiscal Impact Analysis required by Section 3.9 hereinafter.

3.2.10 Developer Contribution to Pedestrian Overcrossing. Not later than the date of issuance of the one hundred fiftieth (150th) residential building permit within the Project, Developer shall make a contribution to the County to be utilized for construction drawings and the environmental review and necessary state or federal permitting of the pedestrian overcrossing. The amount of the contribution shall be the lesser of actual costs expended by County on construction drawings, required environmental review, and permitting or Five Hundred Thousand Dollars (\$500,000.00). The Developer contribution shall be made prior to, and as a condition of, the issuance of the one hundred fiftieth (150th) building permit within the Project. In the event County has not completed its environmental review and permitting efforts by that point, County may request, and Developer shall deposit, the entire Five Hundred Thousand Dollars (\$500,000.00) which County shall utilize in connection with its ongoing permitting efforts, until done. County will provide quarterly financial updates to Developer, documenting the amounts on deposit. County shall refund to Developer any unused amounts upon securing the necessary environmental approvals and/or permits.

3.2.11 Contribution to Grading of the Civil/Limited Commercial Site. Developer shall contribute up to One Million Dollars (\$1,000,000.00) to the cost of grading the 11 acre Civic/Limited Commercial site provided that the site development includes a “senior center” or similar facility dedicated to the needs of senior members of the community. This contribution shall be made directly to the public entity to which this property is dedicated within thirty (30) days of that entity’s request therefor, provided the entity has signed a contract for such grading, detailing the costs thereof, a copy of which shall accompany the request.

3.2.12 Option For EDHCSD to Relocate Park Facilities. Developer will refrain from development of an approximately 11 acre site located immediately south of the existing fire station as depicted on Exhibit 11 attached hereto (the Potential Park Relocation Site) for a period of one year from and after the Effective Date to allow the EDHCSD time sufficient to analyze the feasibility of developing a nine-hole golf course and related facilities (the Golf Project) upon the Potential Park Relocation Site. If the EDHCSD determines that the Golf Project is feasible and desirable, EDHCSD shall have the right, exercisable by a written notification delivered to both County and Developer prior to the expiration of one year from and after the Effective Date, of its election to decline dedication of the 15 - acre park site adjacent to highway 50 and instead accept dedication of up to 11 acres comprised of the Potential Park Relocation Site. The Potential Park

Relocation Site, if selected by the EDHCSD, will be dedicated by Developer to the EDHCSD only if and when the necessary Specific Plan Amendment is approved by the County allowing (i) the golf course development on the Potential Park Relocation Site and (ii) the development of the former parkland acreage with Commercial, Multifamily or other residential uses. Thereafter, dedication shall occur within sixty (60) days of EDHCSD request therefor. In the event that dedication of the 11 acre site is not sufficient to satisfy Developer's Quimby Act obligations, any shortfall shall be made up through payment of in-lieu fees. In the event EDHCSD makes this election, EDHCSD and Developer will, within one hundred twenty (120) days of such election, jointly apply to the County for a Specific Plan Amendment to rezone the Potential Park Relocation Site for recreational purposes allowing a golf course development, together with a rezone of the then former park site for development by Developer for Commercial, multi-family or other residential uses, as determined by Developer. Processing of the future Specific Plan Amendment will be subject to normal County processing and CEQA review and all parties acknowledge the risk that such approvals may be denied. In that event, neither party shall have any further obligation under this provision, the fifteen (15) acre park site will be dedicated by Developer to EDHCSD, each party shall proceed with development of its respective property and this provision shall have no further force or effect.

3.3. TIF Credits/ Reimbursements. With respect to the Country Club Drive Improvements and any other offsite roadway improvements undertaken by Developer that are included in the County's TIF Program, the Parties will enter into a credit and/or reimbursement agreement for such improvements consistent with the terms of this Agreement.

3.3.1 Calculating Credits and Reimbursements. The "**Country Club Drive Improvements Costs**" include actual construction costs, offsite right-of-way costs (but no on-site right-of-way costs, nor costs for Serrano project right-of-way), design, engineering, environmental permitting and mitigation, construction management and other costs typically funded by the TIF Program. The Developer shall receive credits against the local improvement portion, less the Silva Valley Interchange set aside amount (if any) of the TIF payable at the time of issuance of building permits, up to the total amount of the Country Club Drive Improvement Costs incurred for Phase I of Country Club Drive and for any and all environmental and wetland permitting costs incurred by Developer in securing permits necessary to the construction of Phase II. All other Phase 2 Country Club Drive Improvement Costs shall be reimbursed to Developer through the County standard reimbursement agreement over a five (5) year period from and after County acceptance of Phase 2. County shall not be required to issue credits pursuant to this section if doing so would impair the County's ability to meet its contractual obligation to make payments pursuant to reimbursement commitments existing as of the effective date of this Agreement.

3.4. Timing of Development. The Parties acknowledge that Developer cannot at this time predict when or the rate at which phases of the Property will be developed. Such decisions depend upon numerous factors which are not within the control of Developer, such as the timing of construction of the roadway improvements, market orientation and demand, interest rates, absorption, competition and other similar factors. Since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Ca1.3d 465, that the failure of the parties therein to provide for the timing of development resulted

in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that Developer shall have the right to develop the Property in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment, subject only to any timing or phasing requirements set forth in this Agreement with respect to roadway improvements.

3.5. Connection to Public Improvements. County shall cooperate with Developer to connect, through the issuance of appropriate encroachment permits or cooperation with other agencies providing services, any improvements constructed as part of the Project to existing or newly constructed public improvements, provided the costs of such connections are borne by Developer.

3.6. County Cooperation and Processing. County, through its officers, agents and employees, shall exert good faith efforts and cooperate with Developer and support the Project as necessary: (a) to issue approvals of improvement plans, encroachment permits, tentative maps which are consistent with the CEDHSP, final maps and other ministerial approvals in a timely manner, to form the necessary Community Facilities Districts contemplated hereby, and (b) to obtain other permits or approvals required from other government agencies to effectuate the development of the Property. In particular, County agrees to expedite its review and processing of the Country Club Drive improvements to facilitate the parties' mutual desire to achieve the benefits of the improvements as soon as practically possible.

In an effort to increase the diversity of housing types and address the County's desire for Workforce Housing, Developer and County shall cooperate in good faith over the initial twelve months of this agreement to develop Specific Plan provisions whereby Planned Development Permits for Townhome and Condominium projects which adhere in all respects to all of the development standards in the RM-1 and RM-2 Zones may be approved ministerially. These provisions would thereafter be incorporated through a Specific Plan amendment process adhering to the timelines set forth above.

3.6.1 Wetland Permitting. County agrees to submit, as the applicant, any applications for wetlands permits necessary for the construction of the road improvements offsite of the Project property, specifically including, without limitation, the Country Club Drive, Phase 2 Improvements. County shall exert its best efforts to timely secure all necessary permits. Developer agrees to assist with processing County's applications utilizing Developer's project team and consultants, if and to the extent County requests such assistance, provided that any and all costs incurred shall be eligible for credits against TIFs, as contemplated by Section 3.3.1 above.

3.7. Public Financing. County agrees to cooperate with Developer in the formation and implementation of public financing districts or areas of benefit, such as, a Community Facilities District or Statewide Community Infrastructure Program districts, as provided in the CEDHSP Financing Plan, as may be amended. County and Developer acknowledge and agree that facilities eligible to be financed through the CFD shall include, without limitation, Country Club Drive, the trails, wetlands and open space amenities, grading of the C/LC site, a recycled water line for EID, if necessary, a sewer line upgrade and,

potentially, the pedestrian overcrossing construction drawings, environmental review and permitting costs, EID fees and any and all development impact fees applicable to the Project. County and Developer shall use their best efforts to cause to be formed any such financing district(s) provided that such formation is consistent with the criteria set forth in the CEDHSP Financing Plan and applicable County ordinances or adopted policies regulating such matters. County agrees that any credits or reimbursements owed to Developer shall not be affected or reduced because improvements for which credits or reimbursements are due were financed with any special taxes or bond proceeds.

3.8. Funding and Construction of Public Improvements. Nothing in this Agreement shall be construed as obligating the County to fund, design or construct any specific projects or improvements at any specific time. The County shall not be obligated to expend monies from its general fund or from any source not identified in this Agreement to design or construct any improvements necessary for the development of the Property.

3.9 Protection Against Negative Fiscal Impacts. Consistent with County policy, the Developer has provided to County a Fiscal Impact Analysis (“**FIA**”) dated December, 2016, and prepared by Economic and Planning Systems (“**EPS**”). This FIA was based upon project build-out at maximum density. The FIA determined that the proposed project would have a net neutral fiscal impact upon the El Dorado Hills County Water District and the El Dorado Hills Community Services District and a net negative fiscal impact upon the County General Fund and County Road Fund. Developer and County shall form a community facilities district (“**CFD**”) or other mutually acceptable financing mechanism to generate annual revenues to the County sufficient to eliminate the identified negative fiscal impact to both the County General Fund and the County Road Fund. To ensure that the most current and accurate information reflecting actual project build-out expectations are utilized in calculating fiscal impacts, Developer shall cause EPS (or other consultants acceptable to County) to prepare an updated FIA not later than submittal of the first small lot tentative map for the Project, which FIA shall reflect then anticipated densities, then projected assessed values, and the then current County fiscal year budget. The negative annual fiscal impact, if any, shall be determined based upon the updated FIA utilizing the same methodology previously utilized by EPS. Any negative fiscal impact identified therein shall be mitigated through an annual payment in the then identified amount made through the CFD to the County General Fund and County Road Fund, respectively. The one hundred units of Workforce Housing shall not be included in the FIA and shall not be subject to any fees, taxes or assessments to cover any identified shortfall. County and Developer shall cooperate, utilizing best efforts, to form the CFD prior to, and as a condition to, recordation of the first small lot final map for the Project. The updated Fiscal Impact Analysis may also include, in the event Developer and County are not otherwise able to reach agreement pursuant to Section 3.2.9 hereinabove, a determination of the Project’s fair share maintenance obligation for the Community Park which shall be funded through a Project-wide LLAD or other financing mechanism.

3.10 Contribution to County’s Affordable Housing Trust Fund. The Project shall be subject to a Five Hundred Dollar (\$500.00) per unit contribution to the County’s Affordable Housing Trust Fund program, payable in connection with issuance of each building permit within the Project. The Affordable Housing Trust Fund contribution shall

be inapplicable to any development of the Pedregal multifamily site which is consistent with the requirements of Section 3.2.5 hereinabove.

3.11 Contribution to County's Intelligent Transportation System Project. The proposed Project shall pay its fair share of the El Dorado Hills Intelligent Transportation System project ("**ITS project**"). The ITS project limits and study area, including intersections, are shown in Exhibit 12. The roadway facilities proposed for the El Dorado Hills ITS project include El Dorado Hills Boulevard/Latrobe Road from Serrano Parkway to Golden Foothill Parkway and White Rock Road from Four Seasons Drive to Clarksville Crossing. The total estimated cost is \$5,200,000. The ITS fee shall be inapplicable to the one hundred (100) units of Workforce Housing.

With the first small lot tentative map, the Project proponent shall submit a transportation analysis documenting the Project fair share of fee towards the El Dorado Hills ITS project. The fair share fee shall be calculated based on the Project's proportional share of traffic using the study roadway facilities under cumulative conditions and imposed as a per building permit fee basis.

The County shall use its best efforts to require other projects to pay their fair share, using the methodology outlined above. The proceeds paid for the El Dorado Hills ITS project shall be kept in an account dedicated for the El Dorado Hills ITS project. In the event that the El Dorado Hills ITS project is not constructed, in whole or in part, within twenty (20) years of the Effective Date of this Agreement, the proceeds collected shall be returned to the Developer.

3.12 Density Limitation (Intentionally Deleted).

3.13. Changes in State or Federal Law. In the event of changes in County law, based on changes to state or federal law, prevent or preclude, or render substantially more expensive or time consuming, compliance with one or more provisions of this Agreement, County and Developer shall meet and confer in good faith in order to determine whether such provisions of this Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary to comply with such changes in the law. County shall reasonably cooperate with Developer, at Developer's expense, in Developer's effort to obtain any permits, approvals, or entitlements that may be required as a result of modifications or suspensions made pursuant to this Section. Nothing in this Agreement shall preclude County or Developer from contesting by any available means (including administrative or judicial proceedings) the applicability to the Project of any such changes in the law. If changes in the law preclude or substantially prevent or preclude, or render substantially more expensive or time consuming, performance of this Agreement in a manner that makes the Project economically infeasible, Developer, in its sole and absolute discretion, may terminate this Agreement by providing written notice thereof to County.

3.14. Estoppel Certificate. Developer or its lender may, at any time, and from time to time, deliver written notice to County requesting County to certify in writing that: (a) this Agreement is in full force and effect; (b) this Agreement has not been amended or modified or, if so amended or modified, identifying the amendments or modifications; and (c) Developer is not in default of the performance of its obligations, or if in default, to describe

there the nature and extent of any such defaults. Developer shall pay, within thirty (30) days following receipt of County's invoice, the actual costs borne by County in connection with its review of the proposed estoppel certificate, including the costs expended by the County Counsel's Office in connection therewith. The Director of Planning and Building Department shall be authorized to execute any certificate requested by Developer hereunder. The form of estoppel certificate shall be in a form reasonably acceptable to the County Counsel. The Director of Planning and Building Department shall execute and return such certificate within thirty (30) days following Developer's request therefor. Developer and County acknowledge that a certificate hereunder may be relied upon by tenants, transferees, investors, partners, bond counsel, underwriters, bond holders, and mortgagees. The request shall clearly indicate that failure of County to respond within the thirty (30)-day period will lead to a second and final request. Failure to respond to the second and final request within twenty (20) days of receipt thereof shall be deemed approval of the estoppel certificate.

SECTION 4. - ANNUAL REVIEW

4.1. Annual Review. During the term of this Agreement, the County shall, once every calendar year, review the extent of good faith compliance by Developer with the terms of this Agreement. Such periodic review shall be limited in scope to compliance with the terms and conditions of this Agreement pursuant to California Government Code section 65865.1. This review shall be conducted pursuant to Section 130.58 of the County Ordinance Code. Developer shall pay the established fee for this annual review as established in the Planning and Building Department Fee Schedule at the time of each annual review. Upon not less than thirty (30) days' written notice by the Director of the Planning and Building Department, Developer shall provide such information as may be reasonably requested by the Director and deemed by the Director to be required in order to ascertain compliance with this Agreement. Developer's failure to provide the requested information within thirty (30) days of the Director's request shall constitute a default of this Agreement in accordance with Section 5 herein.

SECTION 5. - DEFAULT, ENFORCEMENT AND REMEDIES

5.1. Application of Section. The Parties agree that the following provisions shall govern the availability of remedies should any of the Parties breach any of its obligations under this Agreement.

5.2. Default. Failure or delay by either party to perform any term or provision of this Agreement shall constitute a default, provided, however, the default by any successor in interest of Developer to whom Developer has assigned development rights pursuant to Section 1.7, shall not be considered a default by Developer or by any other successor in interest of Developer. The County may institute proceedings pursuant to this Section against any individual defaulting party. In the event of alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party not less than sixty (60) days' notice in writing specifying the nature of the alleged default and the manner in which said default may be satisfactorily cured. During any sixty (60) day period, the party charged shall not be considered in default for purposes of termination or institution of legal proceedings.

After notice of expiration of the sixty (60)-day period, the party alleging default, at its option, may institute legal proceedings pursuant to Section 5.3 of this Agreement or give notice of intent to terminate the Agreement pursuant to California Government Code section 65868 or may pursue such other administrative remedies as may be appropriate. Following notice of intent to terminate, the matter shall be scheduled for a hearing before the County Board of Supervisors to consider and review the matter within sixty (60) calendar days. Following consideration of the evidence presented in the review, if no resolution of the matter is reached, either party alleging the default by the other party may give written notice of termination of this Agreement to the other party.

5.3. Remedies. In the event of an uncured default, the Parties' remedies under this Agreement are as follows:

5.3.1. An action for specific performance of an obligation of a Party, after giving that Party the opportunity to cure a default as provided in Section 5.2.

5.3.2. An action for injunctive relieve to preserve the physical or legal status quo of the development of the Project pending a judicial determination of the rights of the Parties in the event of a dispute between the Parties as to their rights and obligations under this Agreement.

5.3.3. An action for declaratory relief to determine the rights and obligations of the Parties under this Agreement.

5.3.4. Developer understands and agrees that the County would not be willing to enter into this Agreement if it created any monetary exposure for the County for damages (whether actual, compensatory, consequential, punitive or otherwise) in the event of a breach by the County. Developer specifically acknowledges that it may not seek monetary damages of any kind, and Developer, and its successors, hereby waive, relinquishes and surrenders any right to any monetary remedy. Developer, and its successors, hereby agrees to indemnify, defend, and hold the County harmless for any cost, loss, liability, expense or claim, including attorneys' fees, arising from or related to any claim brought by Developer, and its successors, inconsistent with the foregoing waiver.

SECTION 6 – HOLD HARMLESS AND INDEMNIFICATION

6.1. No Joint Venture or Partnership. County and Developer hereby renounce the existence of any form of joint venture or partnership between the County and Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating a partnership, joint venture, or other legal entity between them.

In entering into this Agreement, the County is acting under the statutory and police powers that it holds as a political subdivision of the State of California which authorize it to regulate the development of land within its boundaries and to provide for the general health, safety and welfare.

In entering into this Agreement, Developer is acting in a purely private capacity as the owner of real property in the County of El Dorado, which property is subject to the jurisdiction of the County.

6.2. No Liability for Acts of Developer.

6.2.1. It is expressly understood that the development of the Project is an undertaking that may create for Developer liability to third parties including, but not limited to, assignees of all or part of this Agreement, buyers and lessees of buildings, building contractors and subcontractors, and suppliers. Developer understands and agrees that the County would not execute this Agreement if, in so doing, it created for the County any liability to any third party. Consequently, Developer, and its successors, heirs and assigns agree to defend, indemnify and hold harmless the County, and its officers, agents, and employees from any claim or injury to person or property arising out of or relating to this Agreement or the operations of Developer in the development of the Project under the terms of this Agreement.

6.2.2. Developer and all successors also agree to and shall hold County and its appointed councils, boards, commissions, officers, agents and employees harmless from any liability, including costs and attorneys' fees, for any challenge to the Agreement, damages or claims for damage for personal injury, including death, and from claims for property damage which may arise from any act or omission of Developer, of its assigns, successors in interest, or its agents, employees, contractors or sub-contractors, pursuant to this Agreement.

6.2.3. Notwithstanding anything in Section 6.3 to the contrary, the County shall have any remedy available to it at law or in equity to enforce the provision of, or to collect damages for, any breach of this Section.

6.3. Duty to Defend Challenges to this Agreement.

6.3.1. The Parties recognize that there may be third party challenges to this Agreement, relative to the procedure used to adopt it or the contents of it.

6.3.2. Developer shall defend the County and its elective and appointive councils, boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damage caused by reason of the aforesaid operations under this Agreement.

6.3.3. The County shall have the right, at its sole discretion, to select its own attorneys to defend the County in any action brought by a third party, and Developer hereby agrees to pay the fees and expenses of the attorneys selected.

6.3.4. The County agrees to cooperate in good faith in the defense of any action or proceeding brought to challenge this Agreement or the ordinance adopting it.

6.3.5. Should a court, in any action challenging this Agreement or the Ordinance adopting it, award attorneys' fees, costs, or other litigation expenses against the County,

Developer shall be responsible for the payment of those fees, costs, and expenses and shall hold the County harmless from any claim thereto.

IN WITNESS WHEREOF, the parties have duly signed this Agreement as of the date first written above.

DEVELOPER:

SERRANO ASSOCIATES, LLC,
a Delaware limited liability company

By: Parker Development Company,
a California corporation,
Managing Member

By: _____
William R. Parker, President

COUNTY:

EL DORADO COUNTY

By: _____

Its: _____

ATTEST:

By: _____

APPROVED AS TO FORM:

By: _____
County Counsel