

TOLLING AGREEMENT

This Tolling Agreement ("Agreement") is made and entered into by and between the County of El Dorado ("County") and Winn Ridge Investments, LLC, a California limited liability company, ("Landowner"). In this Agreement, County and Landowner may be referred to separately herein as "Party" and collectively as the "Parties."

RECITALS

1. Landowner is the owner of undeveloped real property at the south end of the El Dorado Hills Business Park in the unincorporated area of County with approximately 180.49 acres on Assessor's Parcel Number ("APN") 117-010-032 and approximately 52.33 acres on APN 117-010-031 (collectively, "Property") that is zoned and has a General Plan land use designation of Research and Development.
2. In 2020, Landowner submitted an application to rezone the Property to allow development of a residential housing subdivision.
3. In 2021, a third party obtained an option to purchase a significant portion of the Property and submitted an application for a large warehouse and distribution project at the Property, which the third party withdrew on May 11, 2023.
4. After the third party withdrew the large warehouse and distribution project, Landowner re-evaluated potential projects for the Property and began meeting with members of the surrounding community to better understand the type of development community members felt would be most compatible with the surrounding residential communities and school.
5. On June 12, 2023, the El Dorado County Planning and Building Department Director issued a Director's Determination - Fulfillment Center/Heavy Distribution/Parcel Hub Uses ("Director's Determination"), and Landowner timely appealed the Director's Determination on June 23, 2023.
6. Landowner desires to continue to collaborate with members of the community as well as County to potentially advance a project that the County and surrounding community could support.
7. The Parties disagree about the enforceability of the Director's Determination, but recognize that resolution of that disagreement is unnecessary if Landowner obtains approval of a project that would preclude any use identified in the Director's Determination. The Parties further agree that allowing time for public outreach regarding future uses of the Property is beneficial for the Parties and community.

8. The Parties therefore enter into this Agreement to provide additional time for Landowner to work with the community and potentially advance a project that could preclude the future use of the Property for any use identified in the Director's Determination without impairing either Party's rights or remedies related to the Director's Determination during the additional time provided for in the Agreement.

AGREEMENT

Now, therefore, in consideration of the following mutual promises and agreements, and in order to protect their best interests, the Parties hereby agree as follows:

1. **Incorporation of Recitals.** The Parties agree that the Recitals constitute the factual basis upon which the Parties have entered into this Agreement. The Parties acknowledge the accuracy of the Recitals and agree that the Recitals are incorporated into this Agreement as though fully set forth at length.
2. **Tolling Period Defined.** The time within which Landowner may prosecute the appeal of or assert any claim or cause of action arising out of, or otherwise related to, the Director's Determination shall be tolled until the Termination Date of this Agreement ("Tolled Period").
 - a. The running of time during the Tolled Period shall not be raised by County to prejudice Landowner in the administrative appeal of the Director's Determination or by County as a defense or bar to claims or causes of action asserted by Landowner arising out of, or otherwise related to, the Director's Determination.
 - b. County shall not support any motion or argument by a third party asserting that the running of time during the Tolled Period is a defense or bar to Landowner's appeal, claims, or causes of action arising out of, or otherwise related to, the Director's Determination.
3. **Restrictions on Landowner.** During the Tolled Period, Landowner shall not submit an application with County for a use that County reasonably determines is "fulfillment center, heavy distribution, or parcel hub" under the Director's Determination for the Property.
4. **Restrictions on County.** During the Tolled Period, County shall not pursue any action to codify or amend the Zoning Code consistent with the Director's Determination, including but not limited to an amendment to the Zoning Code pursuant to Section 130.20.030(A)(3)(a) to incorporate the "fulfillment center, heavy distribution, or parcel hub" uses identified in the Director's Determination or uses substantially similar to those described in the Director's Determination. For purposes of this section, "pursuing any action" includes (1) an agenda action before the Planning Commission or Board of Supervisors or (2) the commencement of public environmental review, by way of issuance of a Notice of

Preparation of an EIR (14 CCR 15082) or a Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration (14 CCR 15072), for any action covered by this Section 4.

5. **Notice to Landowner.** If the Director intends to issue a new determination or interpretation affecting allowed uses on Research and Development zoned property or an amendment to the Zoning Code affecting allowed uses on Research and Development zoned property is proposed, County agrees to give Landowner written notice at least ten (10) business days in advance of such potential action.
6. **Waiver of 30-day Appeal Hearing.** The Parties agree consistent with Zoning Code section 130.52.090(C) that Landowner's appeal will not be calendared before the Planning Commission during the Tolled Period and the 30-day time limitation therein for appeals is hereby extended by mutual consent during the Tolled Period.
7. **Termination by Either Party.** Following an initial period of 90 calendar days after execution of this Agreement, this Agreement shall terminate the earlier of (1) written agreement by both Parties to terminate the Agreement; (2) upon advance written 60-day notice by either Party of termination; or (3) upon County's approval of a development project that includes substantially all of the developable acreage of APN 117-010-032. In the event of termination, Landowner's appeal shall be set before the Planning Commission within 30 days of termination, unless the Parties mutually agree to extend the time to hear the appeal consistent with Zoning Code section 130.52.090(C) or Landowner's appeal is deemed withdrawn consistent with this Agreement.
8. **Automatic Termination.** In the event County approves a development project that includes substantially all of the developable acreage of APN 117-010-032, this Agreement shall automatically terminate, Landowner's appeal shall be deemed withdrawn, and Landowner shall waive any rights, claims, causes of action, and damages related to, or arising out of, the Director's Determination.
9. **No Admission.** With respect to any claim or cause of action arising out of, or otherwise related to, the Director's Determination: (a) neither the existence nor the terms of this Agreement shall constitute an admission of any kind by any Party, except with respect to the timeliness of a claim or cause of action subject to this Agreement or equitable principles; and (b) this Agreement shall be admitted into evidence solely for the purpose of determining such timeliness.
10. **Notice.** Any written notice required to be given by this Agreement shall be delivered (a) by hand, overnight delivery, or United States mail; and (b) email. Such notice shall be given as follows:

For County:

Karen L. Garner, Director
El Dorado County
Planning and Building Department
2850 Fairlane Court, Building C
Placerville, CA 95667
karen.l.garner@edcgov.us

With a copy to:

David A. Livingston, County Counsel
County Counsel's Office
El Dorado County
330 Fair Lane
Placerville, CA 95667

For Landowner:

Winn Ridge Investments, LLC
Attn: George M. Carpenter, Jr., Vice
President
555 University Avenue, Suite 180
Sacramento, CA 95825
georgemcarpenter@comcast.net

With a copy to:

Breann M. Moebius
Hefner Law
2150 River Plaza Drive, Suite 450
Sacramento, CA 95833
bmoebius@hsmlaw.com

Any Party may change its address for notice purposes by sending a written notice of address change to the other Party pursuant to the notice procedures in this paragraph.

11. **Miscellaneous.**

- a. **Contract Administrator.** The County officer or employee with the responsibility for administering this Agreement is David A. Livingston, County Counsel, or successor.
- b. **Good Faith.** The Parties agree to cooperate in good faith to carry out the provisions and intent of this Agreement. The Parties agree to meet and confer in good faith to try to resolve any conflicts arising under this Agreement prior to bringing any actions in court to enforce the Agreement.
- c. **Governing Law; Choice of Forum.** This Agreement shall be governed by the law of the State of California and any action to enforce this Agreement shall be brought in the Superior Court in and for the County of El Dorado.
- d. **Headings.** The headings preceding the text of the paragraphs and subparagraphs hereof are inserted solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction, or effect.
- e. **Counterpart Execution.** This Agreement may be executed in several counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument. Facsimile or e-mailed PDF signatures to this Agreement shall be binding upon the Parties.

- f. **Severability**. If any provision, part, sentence, or word of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions, parts, sentences, or words will continue in full force and effect without being impaired or invalidated in any way unless enforcement of this Agreement without the invalidated provision, part, sentence, or word would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement. If any provision, part, sentence, or word of this Agreement is determined to be invalid or unenforceable and the effect thereof is to deprive a Party hereof of an essential benefit of its bargain hereunder, then such Party so deprived shall have the option to terminate this entire Agreement from and after such determination.
- g. **Third Party Liability**. This Agreement is limited to the Parties to the Agreement and no third party may claim any rights or benefits under this Agreement.
- h. **Drafted by All Parties**. This Agreement shall be interpreted as if drafted by all Parties. No provision of this Agreement shall be interpreted or construed against any Party because such Party or its counsel was the sole or principal drafter of the Agreement or any provision thereof.
- i. **Entire Agreement; Amendments**. This Agreement sets forth all of the promises, covenants, agreements, conditions, and undertakings between the Parties hereto with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements and understandings, inducements, or conditions, express or implied, oral or written, except as contained herein. This Agreement may not be changed orally but only by an agreement in writing, duly executed by the Parties.
- j. **Binding on Successors**. This Agreement shall be binding upon and shall operate in favor of the successors and assigns of each Party.
- k. **Attorneys' Fees**. If there is any legal action or proceeding between the Parties hereto arising from or related to this Agreement, the unsuccessful party to such action or proceeding shall pay to the prevailing party all costs and expenses, including reasonable attorneys' fees and disbursements incurred by the prevailing party in such action or proceeding and in any appeal in connection therewith, and such costs, expenses, attorneys' fees, and disbursements shall be included in and as part of such judgment.
- l. **Waiver**. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

m. **Authority.** Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement for or on behalf of the applicable Party to this Agreement. Each Party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such Party's obligations hereunder have been duly authorized.

IN WITNESS WHEREOF, the Parties do affix their signatures as follows:

FOR COUNTY:

**COUNTY OF EL DORADO
AND ITS BOARD OF SUPERVISORS**

By: Wendy Thomas
Wendy Thomas, Chair

Dated: 9-7-23

FOR LANDOWNER:

WINN RIDGE INVESTMENTS, LLC,
a California limited liability company

By: George M. Carpenter, Jr.
George M. Carpenter, Jr., Vice President

Dated: 8/30/2023

ATTEST:

By: Kim Dawson
Kim Dawson, Clerk of the Board

Dated: 9-7-23

APPROVED AS TO FORM:

By: David A. Livingston
David A. Livingston, County Counsel

Dated: 9/5/23