

TOLLING AGREEMENT

This Tolling Agreement (“Agreement”) is made and entered into by and between the County of El Dorado, a political subdivision of the State of California (“County”), and Green Valley Road Benefits, LLC, a California limited liability company, Lennar Homes of California, LLC, a California limited liability company, North State Building Industry, a California nonprofit corporation, Promontory Construction Company, LLC, a California limited liability company, Serrano Associates, LLC, a Delaware limited liability company, Toll West Coast, LLC, a Delaware limited liability company, Valley View Improvement Company, a California limited liability company, and Winn Ridge Investments, LLC, a California limited liability company (collectively, “Developers”) with an effective date of January 28, 2025. In this Agreement, County and Developers may be referred to separately herein as “Party” and collectively as the “Parties.”

RECITALS

- A. On December 3, 2024, the County adopted the Traffic Impact Fee (“TIF”) Nexus Study for the 2024 Major Update to the Traffic Impact Fee Program in Resolution 213-2024 (“TIF Nexus Study”) and updated the Highway 50 and Local Roads TIF Schedules (“TIF Fees”). TIF Fees adopted pursuant to Resolution 213-2024 will become effective February 1, 2025.
- B. Prior to the hearing on December 3, 2024, Developers raised concerns regarding the legality of the TIF Nexus Study and TIF Fees and continue to dispute whether the TIF Nexus Study and TIF Fees comply with the Mitigation Fee Act and constitutional and statutory limitations on such exactions.
- C. The Parties recognize that, if the County considers and adopts revised TIF fees (“Revised TIF Fees”) and those Revised TIF Fees are applied, Developers’ legal dispute of the TIF Fees may be resolved and any legal challenge may be unnecessary. The Parties further recognize that providing the County with the opportunity to consider Revised TIF Fees would be mutually beneficial to the Parties.
- D. Code of Civil Procedure section 360.5 recognizes the ability to waive a statute of limitations in writing and courts have upheld the use of tolling agreements to extend a statute of limitations, recognizing that, “[i]f all parties directly involved in a controversy . . . are disposed to seek a mutually acceptable means of resolving the controversy and agree to toll the period for commencing litigation, the interests of both those parties and the public are promoted by permitting the settlement discussions to proceed without the distraction of litigation.” (*Salmon Protection & Watershed Network v. County of Marin* (2012) 205 Cal.App.4th 195, 202; see also *Esprit One LLC v. County of Los Angeles* (Nov. 29, 2007, No. B194464) 2007 Cal. App. Unpub. LEXIS 9612, at *10 [resolving a challenge under the Mitigation Fee

Act after recognizing the parties had executed a tolling agreement to extend the statute of limitations for the challenge].)

- E. The Parties have met and conferred regarding the issues and recognize that an actual dispute has arisen, but desire to resolve this matter without litigation, if possible. Accordingly, and in order to provide sufficient time for the County to evaluate Developers' concerns, the Parties desire to toll any applicable statutes of limitations relating to any action challenging the validity of Resolution 213-2024, the TIF Nexus Study, or TIF Fees. At the same time, the Parties wish to preserve all of their rights and defenses relating to potential litigation regarding the TIF Fees.

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. **Tolled Period Defined.** As of the Effective Date of this Agreement, the Parties hereby toll the running of time of any and all legal or equitable statutes of limitations, statutes of repose, periods of limitation, laches, waiver, estoppel, delay, or any other statutory or equitable time limitations (collectively "Statutes of Limitations") relating to any action by one or more Developers challenging the validity of or seeking to attack, review, set aside, void, or annul Resolution No. 213-2024, the TIF Nexus Study, or TIF Fees under any legal, equitable, statutory, or constitutional theory, including the Takings Clause of the Fifth Amendment, up to and including **January 28, 2026** (the "Tolled Period"). This includes, but is not limited to, a facial challenge under Government Code section 66022 or an as-applied challenge when TIF Fees are paid under protest under Government Code section 66020. This Agreement shall remain in effect through January 29, 2026, which shall be the "Termination Date."
 - a. This Tolling Agreement shall be applicable for purposes of any and all Statutes of Limitations during the Tolled Period and shall preclude any and all defenses based upon the lapse of time occurring during the Tolled Period. The running of time during the Tolled Period shall not be raised by County to prejudice any Developer as a defense or bar to claims or causes of action arising out of or otherwise related to Resolution 213-2024, the TIF Nexus Study, or TIF Fees. The Parties agree that, as a result of the Tolling Agreement, the Tolled Period shall not be counted for any purpose in

determining the amount of time that has elapsed before the filing of judicial proceedings. The 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 a payment under protest consistent with Government Code section 66020, appeal, claims, or causes of action arising out of, or otherwise related to Resolution 213-2024, the TIF Nexus Study, or TIF Fees by a Developer.

- b. If this Agreement and the Tolled Period have not been further extended as provided in Section 5 of this Agreement, any and all applicable Statutes of Limitations begin to run again from the Termination Date as they existed on the Effective Date. For any Statutes of Limitations that have not begun to run as of the Effective Date and would begin to run during the Tolled Period absent this Agreement, including but not limited to the Statutes of Limitations applicable to payment of TIF Fees paid under protest during the Tolled Period or the adoption of Revised TIF Fees during the Tolled Period, those Statutes of Limitations shall begin to run on the Termination Date, provided that this Agreement shall not be applied to shorten any such Statute of Limitations.
 - c. This Agreement does not affect any defense available to any party as of the Effective Date of this Agreement, nor does this Agreement revive the Statutes of Limitations for any claims or defenses that may have already expired prior to the Effective Date of this Agreement. In addition, nothing in this Agreement shall be construed to limit or relieve any Party of any applicable duty to exhaust its administrative remedies in connection with any litigation brought relating to the TIF Fees, including, but not limited to, the requirement to file a notice of protest within the timeframes required by Government Code section 66020.
3. **No Legal Action**. As of the effective date of this Agreement, the Parties agree not to commence any litigation or other proceeding arising out of the adoption of Resolution No. 213-2024, the TIF Nexus Study, or TIF Fees between the Effective Date of this Agreement and the earlier of the Termination Date or termination under Section 5.
4. **Refund if Revised TIF Fees Adopted During Tolled Period**. In the event the County adopts Revised TIF Fees prior to the Termination Date of this Agreement, the County will provide a refund to the Builder, as defined below, of the difference between the TIF Fees paid by the Builder under protest and, if lower, the Revised TIF Fees that the Builder would have paid if the County had adopted the Revised TIF Fees at the time the TIF Fees were originally paid.

- a. Any refund made under this Section 4 shall bear interest actually accrued (at a rate not to exceed the County's pooled investment return rate for the applicable period) by the County from the date of payment of the TIF Fees under protest to the date of the refund.
 - b. Any refund due under this Section 4 shall be made within thirty (30) days of the effective date of a revised or new resolution adopting Revised TIF Fees and shall be made payable to the Builder that originally paid the subject fee.
 - c. For purposes of this Agreement, "Builder" includes any Developer that is a Party to this Agreement or any individual or entity that obtains a building permit during the Tolled Period and pays the TIF Fees under protest consistent with Government Code section 66020 even though that individual or entity is not a Party to this Agreement. It is the intent of the Parties that a Builder who is not a Party to this Agreement may be eligible to receive a refund consistent with this Section 4, but is not eligible for any rights granted, or duties imposed, under any other Section of this Agreement.
 - d. The Parties further agree that the right to a refund under this Section 4 would apply to Revised TIF Fees that are adopted during the Tolled Period but do not take effect until after the Termination Date or any earlier termination under Section 5. Under such circumstances, the Parties agree that this Section 4 would survive the termination and be automatically extended to provide the same rights to a refund as if the Revised TIF Fees became effective prior to the Termination Date or an earlier termination under Section 5.
 - e. The right to and acceptance of a refund under this Section 4 shall not be construed as acceptance of the resolution adopting or nexus study supporting the Revised TIF Fees or a waiver of any rights to challenge the Revised TIF Fees that would otherwise exist absent this Agreement.
5. **Termination.** This Agreement shall terminate automatically on the date specified in Section 2 above, unless extended in writing by the Parties or earlier terminated as set forth herein. The Parties to this Tolling Agreement may agree, in a signed writing, to extend or terminate the provisions of this Tolling Agreement. If extended, the terms of this Tolling Agreement will receive legal effect beyond the original termination date, as agreed upon by the Parties. Additionally, following an initial period of 120 calendar days after execution of this Agreement, any Party may terminate this Agreement by providing 60-days advance written notice of termination to the other Parties provided that any such termination will not affect

the right to a refund under Section 4 that would otherwise occur absent the unilateral termination.

6. **No Admission.** No admission is made by any Party as a result of the execution or performance of this Tolling Agreement. Nothing in this Agreement, or in the circumstances that gave rise to this Agreement, shall constitute or be construed as an admission by any party that any claim could properly be asserted against it by the other Party or that any such claim would have any basis in law or in fact. Neither this Tolling Agreement, nor any action taken pursuant to this Agreement, shall be construed as an admission by any Party of any liability to the other Party, or be construed as a waiver, retraction, or modification of the positions of the Parties, or received in any action or proceeding as an admission of liability or wrongdoing by any other Party or for any other purpose, except as expressly provided herein.
7. **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:

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

For Developers:

Chad Roberts
Hefner Law
2150 River Plaza Drive, Suite 450
Sacramento, CA 95833
croberts@hsmlaw.com

With copies to:

Mike Cook
Hefner Law
2150 River Plaza Drive, Suite 450
Sacramento, CA 95833
mcook@hsmlaw.com

Breann 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.

8. **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 consider Developers' concerns with the TIF Nexus Study and 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**. Except as extended to a Builder as defined and provided for in Section 4, this Agreement is limited to the Parties to the Agreement and no third party may claim any rights or benefits under this Agreement other than the Parties.

- 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 supersedes 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.

[Signatures on following page.]

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

FOR COUNTY:

FOR DEVELOPERS:

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

GREEN VALLEY ROAD BENEFITS, LLC,
a California limited liability company

By: [Signature]
George Turnboo, Chair

By: _____

Name: _____

Title: _____

Dated: 1/29/25

Dated: _____

ATTEST:

LENNAR HOMES OF CALIFORNIA, LLC,
a California limited liability company

By: [Signature]
Kim Dawson, Clerk of the Board

By: _____

Name: _____

Title: _____

Dated: 1/29/25

Dated: _____

APPROVED AS TO FORM:

**NORTH STATE BUILDING INDUSTRY
ASSOCIATION,**
a California nonprofit corporation

By: [Signature]
David A. Livingston, County Counsel

By: _____

Name: _____

Title: _____

Dated: 1/29/25

Dated: _____

**PROMONTORY CONSTRUCTION COMPANY,
LLC,**

a California limited liability company
By: AKT Investments, Inc.
Its: Manager

By: _____

Name: _____

Title: _____

Dated: _____

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

FOR COUNTY:

FOR DEVELOPERS:

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

GREEN VALLEY ROAD BENEFITS, LLC,
a California limited liability company

By: _____
George Turnboo, Chair

By: _____
Name: Aldon Barry
Title: Authorized Agent

Dated: _____

Dated: 1-29-2025

ATTEST:

LENNAR HOMES OF CALIFORNIA, LLC,
a California limited liability company

By: _____
Kim Dawson, Clerk of the Board

By: _____
Name: _____
Title: _____

Dated: _____

Dated: _____

APPROVED AS TO FORM:

**NORTH STATE BUILDING INDUSTRY
ASSOCIATION,**
a California nonprofit corporation

By: _____
David A. Livingston, County Counsel

By: _____
Name: _____
Title: _____

Dated: _____

Dated: _____

**PROMONTORY CONSTRUCTION COMPANY,
LLC,**
a California limited liability company
By: AKT Investments, Inc.
Its: Manager

By: _____
Name: _____
Title: _____

Dated: _____

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

FOR COUNTY:

FOR DEVELOPERS:

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

GREEN VALLEY ROAD BENEFITS, LLC,
a California limited liability company

By: _____
George Turnboo, Chair

By: _____
Name: _____
Title: _____

Dated: _____

Dated: _____

ATTEST:

LENNAR HOMES OF CALIFORNIA, LLC,
a California limited liability company

By: _____
Kim Dawson, Clerk of the Board

By: _____
Name: Larry Gualco
Title: Vice President

Dated: _____

Dated: 1/29/25

APPROVED AS TO FORM:

**NORTH STATE BUILDING INDUSTRY
ASSOCIATION,**
a California nonprofit corporation

By: _____
David A. Livingston, County Counsel

By: _____
Name: _____
Title: _____

Dated: _____

Dated: _____

**PROMONTORY CONSTRUCTION COMPANY,
LLC,**
a California limited liability company
By: AKT Investments, Inc.
Its: Manager

By: _____
Name: _____
Title: _____

Dated: _____

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

FOR COUNTY:

FOR DEVELOPERS:

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

GREEN VALLEY ROAD BENEFITS, LLC,
a California limited liability company

By: _____
George Turnboo, Chair

By: _____
Name: _____

Dated: _____

Title: _____

Dated: _____

ATTEST:

LENNAR HOMES OF CALIFORNIA, LLC,
a California limited liability company

By: _____
Kim Dawson, Clerk of the Board

By: _____

Dated: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

Dated: _____

By: _____
David A. Livingston, County Counsel

**NORTH STATE BUILDING INDUSTRY
ASSOCIATION,**
a California nonprofit corporation

Dated: _____

By:  _____

Name: Timothy A. Murphy

Title: President & CEO

Dated: January 29, 2025

**PROMONTORY CONSTRUCTION COMPANY,
LLC,**

a California limited liability company
By: AKT Investments, Inc.
Its: Manager

By: _____

Name: _____

Title: _____

Dated: _____

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

FOR COUNTY:

FOR DEVELOPERS:

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

GREEN VALLEY ROAD BENEFITS, LLC,
a California limited liability company

By: _____
George Turnboo, Chair

By: _____
Name: _____
Title: _____

Dated: _____

Dated: _____

ATTEST:

LENNAR HOMES OF CALIFORNIA, LLC,
a California limited liability company

By: _____
Kim Dawson, Clerk of the Board

By: _____
Name: _____
Title: _____

Dated: _____

Dated: _____

APPROVED AS TO FORM:

**NORTH STATE BUILDING INDUSTRY
ASSOCIATION,**
a California nonprofit corporation

By: _____
David A. Livingston, County Counsel

By: _____
Name: _____
Title: _____

Dated: _____

Dated: _____

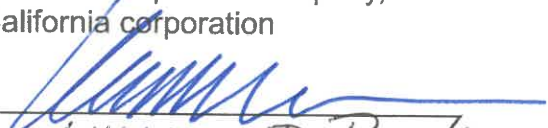
**PROMONTORY CONSTRUCTION COMPANY,
LLC,**

a California limited liability company
By: AKT Investments, Inc.
Its: Manager

By: R. Bertolina
Name: RON BERTOLINA
Title: VICE PRESIDENT

Dated: 1-30-25

SERRANO ASSOCIATES, LLC,
a Delaware limited liability company
By: Parker Development Company,
a California corporation

By: 
Name: William R. Parker
Title: President

Dated: _____

TOLL WEST COAST, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

Dated: _____

VALLEY VIEW IMPROVEMENT COMPANY,
a California limited liability company

By: _____
Name: _____
Title: _____

Dated: _____

WINN RIDGE INVESTMENTS, LLC,
a California limited liability company

By: _____
Name: _____
Title: _____

Dated: _____

SERRANO ASSOCIATES, LLC,
a Delaware limited liability company
By: Parker Development Company,
a California corporation

By: _____
Name: _____
Title: _____

Dated: _____

TOLL WEST COAST, LLC,
a Delaware limited liability company

By: ^{Signed by:} Scott Esping
Name: Scott Esping
Title: Division President

Dated: 01-29-2025

VALLEY VIEW IMPROVEMENT COMPANY,
a California limited liability company

By: _____
Name: _____
Title: _____

Dated: _____

WINN RIDGE INVESTMENTS, LLC,
a California limited liability company

By: _____
Name: _____
Title: _____

Dated: _____

SERRANO ASSOCIATES, LLC,
a Delaware limited liability company
By: Parker Development Company,
a California corporation

By: _____

Name: _____

Title: _____

Dated: _____

TOLL WEST COAST, LLC,
a Delaware limited liability company

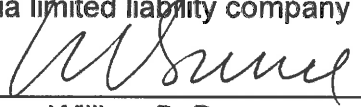
By: _____

Name: _____

Title: _____

Dated: _____

VALLEY VIEW IMPROVEMENT COMPANY,
a California limited liability company

By:  _____

Name: William B. Bunce

Title: President

Dated: January 29, 2025

WINN RIDGE INVESTMENTS, LLC,
a California limited liability company

By: _____

Name: _____

Title: _____

Dated: _____

SERRANO ASSOCIATES, LLC,
a Delaware limited liability company
By: Parker Development Company,
a California corporation

By: _____
Name: _____
Title: _____

Dated: _____

TOLL WEST COAST, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

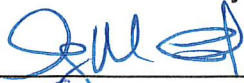
Dated: _____

VALLEY VIEW IMPROVEMENT COMPANY,
a California limited liability company

By: _____
Name: _____
Title: _____

Dated: _____

WINN RIDGE INVESTMENTS, LLC,
a California limited liability company

By:  _____
Name: George M. Carpenter, Jr.
Title: Vice President

Dated: 1/29/2025