BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF YUBA

RESOLUTION AUTHORIZING EXECUTION)
OF FEE DEPOSIT AND REIMBURSEMENT)
AGREEMENTS)

RESOLUTION NO. 2021-054

WHEREAS, the Three Rivers Levee Improvement Authority (the "Authority"), a joint exercise of powers authority of which the County of Yuba (the "County") and Reclamation District 784 ("RD 784") are the members, formed two Mello-Roos Community Facilities Districts (CFD's) in April 2007 and entered into agreements with various landowners in the Southern area of the County, to secure local funding for the levee improvements; and

WHEREAS, on May 16, 2006, Yuba County adopted Ordinance No. 1372 imposing the Three Rivers Levee Impact Fee and on November 18, 2008, Yuba County adopted Ordinance No. 1465 updating the Three Rivers Levee Impact Fee which established the funding obligation for new development in the Plumas Lake Area for levee improvements (Levee Fees).

WHEREAS, in April 2007, pursuant to the terms of the Second Funding Agreement for Advance Funding and Reimbursement of Costs for Levee Improvements, to allow the landowners party to that agreement to finance their obligation for levee improvements, TRLIA issued approximately $23.6 million in Builder Bonds which were sold directly to landowner participants in the funding agreements; and

WHEREAS, in June 2009, TRLIA approved Resolution 2009-11 approving seven Development Agreements that provided the terms and conditions related to the issuance of refunding bonds to participating developers, released the developers from their obligations under the prior funding agreements and establish terms associated with refunding the builder bonds to participating developers once levee improvements are complete; and

WHEREAS, in June 2009, the Board of Supervisors approved the seven Development Agreements that included the TRLIA terms and conditions related to the issuance of refunding bonds; and

WHEREAS, on July 21, 2020 TRLIA approved an Agreement between the Yuba Water Agency, Yuba County and TRLIA related to levee impact fees and levee financing mechanisms entitled the Plumas Lake CFD Workout Plan Agreement (Work Out Agreement); and

WHEREAS, Pursuant to that Work Out Agreement, TRLIA is working with developers in the Plumas Lake Area and owners of the Builder Bond to redeem the outstanding Builder Bonds through the issuance of refunding bonds; and,

WHEREAS, TRLIA through the issuance of refunding bonds, can use a portion of the bond proceeds to pay the Levee Fees applicable to a development project, however, due to the timing of the bond issuance, the bond proceeds may not be available to pay such Levee Fees before they are due; and,

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WHEREAS, to allow for the payment of Levee Fees with the proceeds from a refunding bond issuance for a project, TRLIA and the County wish to execute Fee Deposit and Reimbursement Agreements in the form attached hereto as **Exhibit A** with developers that have remaining fee obligation and projects located within the TRLIA CFD's.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Yuba as follows:

1) The form of attached Fee Deposit and Reimbursement Agreement attached as Exhibit A is approved for use.

2) The County Administrator of Yuba County is hereby authorized to execute the attached Fee Deposit and Reimbursement Agreement and any subsequent agreements substantially in conformance with the terms of the attached agreement and subject to review and conforming changes by County Counsel.

PASSED AND ADOPTED this 27 day of April 2021, by the Board of Supervisors of the County of Yuba, by the following vote:

AYES: Supervisors Vasquez, Blaser, Fuhrer, Bradford,Fletcher

NOES: None

ABSENT: None

ABSTAIN: None

Chair

ATTEST: RACHEL FERRIS
Clerk of the Board of Supervisors

Mary Pasillas, Board Clerk

APPROVED AS TO FORM:
MIKE CICCOZZI, COUNTY COUNSEL

By:

FEE DEPOSIT AND REIMBURSEMENT AGREEMENT

by and between

COUNTY OF YUBA,

THREE RIVERS LEVEE IMPROVEMENT AUTHORITY

and

LENNAR HOMES OF CALIFORNIA, INC.

relating to

THREE RIVERS LEVEE IMPROVEMENT AUTHORITY
COMMUNITY FACILITIES DISTRICT NOS. 2006-1

COUNTY FEE DEPOSIT AND REIMBURSEMENT AGREEMENT

THIS FEE DEPOSIT AND REIMBURSEMENT AGREEMENT (the "**Agreement**") is entered into effective as of the 27 day of April, 2021, by and among the COUNTY OF YUBA, a political subdivision of the State of California ("County"), THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, a joint powers authority ("**TRLIA**"), and LENNAR HOMES OF CALIFORNIA, INC. ("**Landowner**"), and relates to TRLIA Community Facilities District Nos. 2006-1 (the "**CFD**") formed pursuant to the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the California Government Code.

RECITALS

WHEREAS, the property depicted in Exhibit "A" hereto (the "Property") is within the boundaries of the CFD.

WHEREAS, Landowner is currently developing the Property for residential purposes and has obtained or intends to obtain the necessary development approvals to construct approximately 432 residential units on the Property, as such development may be modified from time to time (the "Project").

WHEREAS, the Project will require the payment of the Three Rivers Levee Fee (the "Levee Fees" as more particularly defined below) pursuant to the land use entitlements, conditions of approval, and existing County ordinances and resolutions applicable to the Property and the Project.

WHEREAS, TRLIA intends to use a portion of the Bond Proceeds (defined below) to pay the Levee Fees applicable to the Project, but such Bond Proceeds may not be available to pay such Levee Fees before the same are due.

WHEREAS, in conjunction with the recording of the final subdivision map(s) for the Project applicable to issuance of grading permits and/or the issuance of building permits for the construction of homes within the Project, Landowner, or its successors or assigns, may elect to provide a security deposit to County to cover the Levee Fees (the "Deposit") before any Bond Proceeds are available to pay the Levee Fees. In such case, Landowner shall be entitled to reimbursement of such Deposit by County, but only in the amount of the payments made to County by TRLIA from Bond Proceeds in respect of the Levee Fees which would otherwise be due in conjunction with the Project, all as further described herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties hereto agree as follows:

Section 1. Recitals. Each of the above recitals is incorporated herein and is true and correct.

Section 2. Definitions. The terms defined in this Section shall, for all purposes of this Agreement, have the meanings herein specified.

(a) "Authorized Facilities" shall mean the Levee Fees eligible for payment from Bond Proceeds.

(b) "Bond Proceeds" shall mean those proceeds of the sale of Bonds available for payment of costs of Authorized Facilities in accordance with this Agreement.

(c) "Bonds" shall mean special tax bonds issued by TRLIA on behalf of the CFD, proceeds of which are used, in part, to refund the Three Rivers Levee Improvement Authority Community Facilities District No. 2006-01 (South County Area) Special Tax Bonds, Series 2007-A, Tax Zone 4.

(d) "Deposit" means the Initial Deposit, together with any subsequent deposits deposited with County by Landowner as security for payment of the Levee Fees and which are eligible for refund by County upon the issuance of Bonds.

(e) "Initial Deposit" is the initial amount deposited with County by Landowner as security for payment of the Levee Fees and which are eligible for refund by County upon the issuance of Bonds.

(f) "Levee Fees" means the fees payable in respect of property located in the CFD for flood control improvements described in Exhibit A to the Resolution of Intention, a copy of which is attached hereto as Exhibit "B".

(g) "Party" or "Parties" shall mean any one or all of the parties to this Agreement.

(h) "Resolution of Intention" means Resolution No 07-05 adopted by the Board of Supervisors of County on February 27, 2007.

(i) "State" means the State of California.

Section 3. The Deposit, Application and Return Thereof. Landowner has delivered to County the Initial Deposit in the amount of $100,000 to be used as security for payment of the Levee Fees in respect of the Project. The Initial Deposit, together with any subsequent Deposit, may be comingled with other funds of County for the purposes of investment and safekeeping, but County shall at all times maintain records of the Deposits and the related building permits for residential units in the Project that have been issued in consideration of the Deposit.

If Bonds are issued by TRLIA for the CFD, TRLIA shall remit to County an amount in respect of the Levee Fees attributable to the Project from available Bond Proceeds to be used to make payments on bonds issued by the Yuba Levee Financing Authority in 2017, proceeds of which refunded bonds issued by the Yuba Levee Financing Authority in 2008, proceeds of which 2008 bonds were used to pay costs of flood control improvements authorized to be funded by the CFD as described in Exhibit B, and County shall reimburse Landowner, without interest, the Deposit, up to an amount equal to the Bond Proceeds received from TRLIA for the payment of the Levee Fees. Bond Proceeds, if any, in excess of the amount required for payment of the Levee Fees shall be used as provided in the documents pursuant to which the Bonds are issued.

The issuance of Bonds is a condition to the reimbursement to Landowner of the Deposit advanced by Landowner pursuant hereto. If Bonds are not issued by TRLIA for the CFD within twelve (12) months of the date of the Deposit, such Deposit will be applied to pay the Levee Fees attributable to the Project, and shall no longer be reflected as a deposit on the accounts of County. If Bonds are not issued within the required timeline, County shall have no obligation to repay Landowner any portion of the Deposit being used as security for the Levee Fees paid with the Deposit except as provided in the next paragraph.

Notwithstanding the foregoing, TRLIA may remit special taxes levied on property in the CFD received by TRLIA and not needed for other purposes of the CFD to make transfers to the County to pay for flood control improvements described in the Resolution of Intention, and upon receipt of any such funds, the County shall reimburse the Landowner a portion of the Deposit; and if amounts transferred to the County are in excess of the Deposit, the excess will be credited to any Levee Fee thereafter due from Landowner not to exceed in any event the total Levee Fees due with respect to the Project.

Section 4. No Obligation to Issue Bonds. This Agreement shall in no way obligate TRLIA to issue any Bonds.

Section 5. Indemnification. Landowner shall assume the defense of, indemnify and save harmless, County, TRLIA, and the CFD, their respective officers and employees, and each and every one of them, from and against all actions, damages, claims, losses or expenses of every type and description to which they may be subjected or put, by reason of, or resulting from, any act or omission of Landowner with respect to this Agreement; provided, however, that Landowner shall not be required to indemnify any person or entity as to damages resulting from gross negligence or willful misconduct of such person or entity or their officers, agents or employees.

Section 6. Amendment and Assignment. This Agreement may be amended at any time but only in writing signed by each party hereto. This Agreement may be assigned, in whole or in part, by Landowner to the purchaser of any parcel of land within the Property; provided, however, that this Agreement may only be so assigned in part to no more than five (5) purchasers of land within the Property and the Landowner shall provide written notice of any such assignment to the County and TRLIA. In the event of any such assignment in part, the County in its discretion shall determine the specific amount to be reimbursed among the Landowner and any such assignee or assignees in respect of Bond Proceeds or special taxes remitted to it by TRLIA.

Section 7. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the matters provided for herein and supersedes all prior agreements and negotiations between the parties with respect to the subject matter of this Agreement.

Section 8. Notices. Any notice, payment or instrument required or permitted by this Agreement to be given or delivered to either party shall be deemed to have been received when personally delivered or seventy-two hours following deposit of the same in any United States Post Office in California, registered or certified, postage prepaid, addressed as follows:

County:	County of Yuba 915 8th Street, Suite 103 Marysville, CA 95901-4187 Attn: Treasurer and Tax Collector
Landowner:	Lennar Homes of California, Inc. 1025 Creekside Ridge Drive, Suite 240 Roseville, CA 95678 Attention: Larry Gualco
TRLIA:	Three Rivers Levee Improvement Authority 114 Yuba Street, Suite 218 Marysville, CA 95901 Attn: Paul G. Brunner, Executive Director

Each party may change its address for delivery of notice by delivering written notice of such change of address to the other party hereto.

Section 9. Attorneys' Fees. In the event of the bringing of any action or suit by any Party against any other Party arising out of this Agreement, the Party in whose favor final judgment shall be entered shall be entitled to recover from the losing Party all costs and expenses of suit, including reasonable attorneys' fees.

Section 10. Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

Section 11. Governing Law. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California applicable to contracts made and performed in California.

Section 12. Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party hereto, or the failure by a party to exercise its rights upon the default of another party, shall not constitute a waiver of such party's right to insist and demand strict compliance by such other party with the terms of this Agreement thereafter.

Section 13. No Third Party Beneficiaries. No person or entity other than the CFD shall be deemed to be a third-party beneficiary hereof, and nothing in this Agreement (either express or implied) is intended to confer upon any person or entity, other than County, TRLIA, the CFD, and Landowner (and, subject to the provisions in Section 6 hereof, their respective successors and assigns, exclusive of individual homebuyers), any rights, remedies, obligations or liabilities under or by reason of this Agreement.

Section 14. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute but one instrument.

Section 15. Accounting. County shall provide Landowner with a written accounting of the amount of the Deposit advanced by Landowner and the amount of any Levee Fees paid or credited pursuant to this Agreement within ten (10) business days of receipt by the County Treasurer of a written request therefore submitted by Landowner. No more than one accounting will be provided in any calendar month and the cost of providing the accounting shall be charged to the Deposit.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year written above.

COUNTY OF YUBA,
a political subdivision of the State of California

Date: April 27, 2021

By: ______________________
Kevin Mallen
County Administrator

Attest:
Mary Pasillas
Rachel Ferris
Clerk of the Board of Supervisors
Mary Pasillas, Board Clerk

Approved as to form:

By: ______________________
~~County~~ Counsel

THREE RIVERS LEVEE
IMPROVEMENT AUTHORITY

Date: 4/8, 2021

By: Paul G. Brunner
Paul Brunner
Executive Director

Attest:
Mary Pasillas, Board Clerk
Board of Secretary

Approved as to form:
Andrea P. Clark
General Counsel Andrea P. Clark

LENNAR HOMES OF CALIFORNIA, INC.

By: ______________________

Name: Larry Gualco

Title: VP

COUNTY OF YUBA,
a political subdivision of the State of California

Date: ______________, 2021

By: ________________________________
Kevin Mallen
County Administrator

Attest:

____
Rachel Ferris
Clerk of the Board of Supervisors

Approved as to form:

____
County Counsel

THREE RIVERS LEVEE
IMPROVEMENT AUTHORITY

Date: ___________, 2021

By: ________________________________
Paul Brunner
Executive Director

Attest:

____
Board of Secretary

Approved as to form:

____
General Counsel

LENNAR HOMES OF CALIFORNIA, INC.

By: ________________________________

Name: Larry Gualco

Title: VP

EXHIBIT B

Flood Control Improvements

THREE RIVERS LEVEE IMPROVEMENT AUTHORITY
COMMUNITY FACILITIES DISTRICT NO. 2006-1
(SOUTH COUNTY AREA)

DESCRIPTION OF FACILITIES ELIGIBLE TO BE FUNDED BY THE DISTRICT

FACILITIES

The District may finance all or a portion of the costs of the following:

The construction, repair and/or rehabilitation of flood control improvements, including but not limited to levee system and drainage improvements, and any necessary habitat mitigation incident to any improvements.

The Facilities shall include the acquisition of land, the costs of design, engineering and planning, the costs of any environmental or other studies, surveys or other reports, the cost of any required environmental mitigation measures, landscaping, soils testing, permits, plan check and inspection fees, insurance, legal and related overhead costs, coordination and supervision and any other costs or appurtenances related to any of the foregoing.

OTHER

The District may also finance any of the following:

1. Bond related expenses, including underwriter's discount, reserve fund, capitalized interest, bond and disclosure counsel and all other incidental expenses.

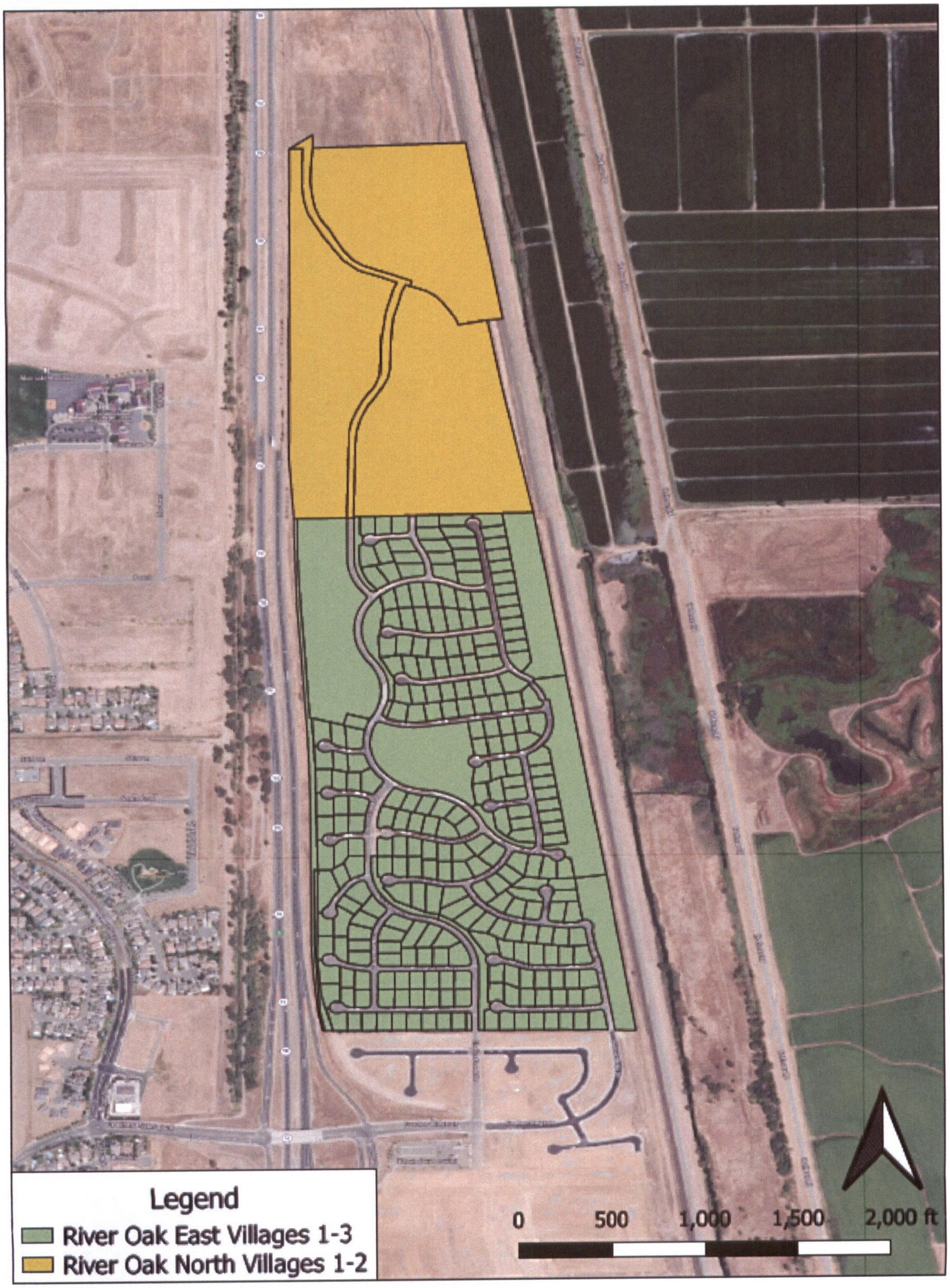
2. Administrative fees of the Authority, the County of Yuba (the "County") and the bond trustee or fiscal agent related to the District and any bonded indebtedness of the District.

3. Reimbursement of costs related to the formation of the District advanced by the Authority, the County, Reclamation District No. 784 or any other governmental agency, or any landowner or developer within the District, as well as reimbursement of any costs advanced by the Authority or any related entity, or any landowner or developer within the District, for facilities, fees or other purposes or costs of the District.

EXHIBIT A

Depiction of Property

TRLIA CFD 2006-1 Tax Zone 4 - River Oaks - Lennar



Prepared by: Larsen Wurzel & Associates 3/30/21