

COUNTY OF SANTA CLARA  
LAND DEVELOPMENT AGREEMENT

(Parcel Maps)

Project Identification: 3515-82-25-06  
Name of Developer: Western Highland Mortgage Fund I, LLC  
Address: 3170 Highway 50, Ste 10, South Lake Tahoe, Ca  
Type (s) of Improvements: Street and Drainage

THIS IS AN AGREEMENT between the COUNTY OF SANTA CLARA, State of California (hereinafter called County), and the developer named above (hereinafter called Developer), setting forth the requirements for construction of certain land development improvements.

1. Approval of Plans, etc.

The County hereby approves the improvement plans and specifications prepared for the aforesaid described project by MH engineering Co., dated Oct. 21, 2010. A true copy of said plans and specifications is on file in the Office of the County Surveyor and the same are incorporated herein by reference as though set out in full. Said plans and specifications shall be referenced herein as "the Plans," and the work to be done under the Plans shall be referenced as "the Work." The Work shall include the setting of construction stakes, the adjustments or setting of monument boxes, and the setting of survey monuments or resetting of monuments disturbed or removed during the course of construction. All work performed in connection with setting monuments shall be done by persons legally qualified to perform such work.

2. Installation of the Work

(a) The Developer shall install and complete the Work prior to occupancy of any new building or additions to existing buildings resulting from County approval of subject project, but not later than two years from the date of this agreement. The County Surveyor may, upon receipt of an application for an extension of time and submission of satisfactory evidence that the specified time limits are not appropriate or practical, give written authorization of an extension of time for one year and modify requirements for occupancy. An application fee as prescribed by the Board of Supervisors in effect at the time the application is made must be submitted with all extension of time applications. (NOTE: As of June 10, 1986 the Board of Supervisors established this fee at \$500 but this is subject to change.)

In the event the Developer fails or refuses to complete the Work within the specified period of time, the County, at its sole option, shall be authorized to complete the Work in whatever manner the County shall decide. In the event the County completes the work, the

County may recover any and all costs incurred thereby from the Developer or the Developer's surety, or both. Developer hereby grants County, its employees, contractors and subcontractors right of entry to Developer's land to inspect or perform Work as provided herein.

(b) The Developer shall install and complete the Work in a good and workmanlike manner and in accordance with the standards and specifications of the County for such Work. The decision of the County shall be final as to whether any material or workmanship meets the standards and specifications of the County. Any special investigations, tests and reports done at County expense pursuant to provisions of the Santa Clara County Ordinance Code, or any retesting of compaction or materials due to failure to comply with plan specifications, shall be paid by Developer prior to final approval of the Work and release of any performance bond. In the event that Work is not proceeding in a good and workmanlike manner, the County Surveyor may order suspension of Work pending corrective action.

(c) The Developer hereby certifies that the plans conform to the tentative map or development plan previously approved by the County. Developer agrees to cooperate with other property owners, contractors, the County, and public agencies that may be affected by the construction work.

3. Guarantee

Developer hereby guarantees all Work performed hereunder for a period of one year from the date of completion and construction acceptance by County. All discrepancies in workmanship and materials and damage therefrom appearing within said period shall be corrected by Developer at his expense, ordinary wear and tear excepted.

4. Maintenance of the Work

The Developer shall maintain the Work until all deficiencies in the Work are corrected to conform to the plans and the County's standards and specifications for the Work. In the event the Work is not to be maintained by a public agency, Developer agrees to notify any purchaser of his responsibilities for continued proper maintenance of Improvements in a manner consistent with the purposes of the County approval.

5. Notice of Commencing the Work

The Developer agrees to notify, or shall require his contractor to notify the County Surveyor at least 48 hours prior to the date the construction and installation of the Work will commence.

6. Bonds

(a) Prior to, or concurrent with, the execution of this agreement, Developer shall execute and deliver to the County Surveyor a faithful performance bond and a labor and materialmen's bond, each by one or more duly authorized corporate sureties. The faithful performance and labor and materialmen's bonds each shall be in an amount equal to 100% of the

total estimated cost of the improvements and in addition to the face amount shall secure the payment of any costs and expenses incurred by County in enforcing this agreement.

(b) In lieu of the requirements of subdivision (a) of this paragraph, Developer may deposit with the County Surveyor cash or a certificate of deposit with a financial institution or an instrument of credit from one or more financial institutions, subject to state or federal regulation, pledging that the funds necessary to carry out the terms of this agreement are on deposit and guaranteed for payment. Deposits made pursuant to this subdivision shall be in an amount of 100% of the total estimated cost of improvements and an additional amount of 10% of the total estimated cost to secure the payment of any costs and expenses incurred by County in enforcing this agreement. 50% of the total amount deposited shall represent security for the faithful performance of the Work hereunder, and 50% shall represent security for payment to the contractor, his subcontractors and to persons furnishing labor, materials, or equipment to them.

(c) In addition to the requirements of subdivisions (a) and (b), Developer shall provide security to County guaranteeing the payment of the cost of setting all monuments shown on the parcel map. Such security may be in the form of a cash bond or other form acceptable to the County Surveyor.

7. Release of Bonds

(a) Corporate Surety. In the event that performance and labor and materialmen's bonds are provided by Developer pursuant to the provisions of paragraph 6(a), said bonds may be released as follows:

(i) Security given for faithful performance may be released by the County Surveyor upon completion and acceptance of the Work to be performed hereunder, in whole or in part; provided that a partial release shall not be in an amount less than 25% of the total security amount and that no more than 75% of the total security amount shall be released prior to final completion and acceptance of the Work hereunder.

(ii) Security for the payment to the contractor, his subcontractors and to persons furnishing labor, materials or equipment to them may, ninety (90) days after completion and acceptance of the Work, be reduced to an amount not less than the total of all claims on which an action has been filed and notice thereof given in writing to the Board of Supervisors, and if no such actions have been filed, the security may be released by the County Surveyor.

(b) Cash or Other Deposit. In the event that security is deposited pursuant to the provisions of paragraph 6(b), the amount securing faithful performance may be released by the County Surveyor upon completion or acceptance of the Work, in whole or in part; provided that a partial release shall not be in an amount less than 25% of the total security amount for faithful performance. (As an example, if a deposit of \$1,000 were made pursuant to paragraph 6(b), a partial release could not be in an amount less than \$250.)

Security securing the payment to the contractor, his subcontractors and to persons furnishing labor, materials or equipment may, ninety (90) days after completion and acceptance of the Work, be reduced to an amount not less than the total of all claims in which an action has been filed and notice thereof give, and if no such actions have been filed, the security may be released in full. (As an example, if a deposit of \$1,000 were made pursuant to paragraph 6(b), an amount of \$500 would be retained for a period of ninety (90) days after completion of the Work.)

(c) Security for the setting of monuments may be released after notice of the final setting of monuments has been given by the engineer or surveyor and evidence is submitted that the engineer or surveyor has been paid.

8. Indemnity and Insurance

(a) Developer shall indemnify and hold harmless the County, its officers, agents and employees, from any and all liabilities and claims for damages and/or suits for or by reason of any death or deaths of or any injury or injuries to any person or persons or damages to property of any kind whatsoever arising out of or occasioned by the Work performed hereunder, except for liabilities or claims arising out of the sole negligence of County, its officers, agents or employees. Indemnification hereunder shall include all costs and expenses including counsel fees incurred in defending against any claim or suit or in enforcing the terms of this agreement.

(b) Throughout the period of this agreement Developer shall maintain public liability and property damage insurance providing coverage for all Work performed hereunder. The County of Santa Clara, its officers and employees shall be named as additional insureds. Such insurance shall provide coverage in the following minimum amounts: For bodily injury, \$300,000 for each occurrence; for property damage, \$50,000 on account of one occurrence and an aggregate limit of \$200,000. Evidence of such insurance may be required at any time during the term of this agreement.

9. Term of Agreement

This Agreement does not terminate until all of the improvements have been completed accepted by the County, and all lien periods have expired.

10. Acceptance or Approval

Nothing contained in this agreement shall be construed as acceptance by County of any offer of dedication of any interest in real property, unless and until the Board of Supervisors adopts and records in the Office of the County Recorder a resolution of acceptance of the offered dedication.

11. Annexation

Upon annexation into any city, Developer agrees to fulfill all the terms of this agreement upon demand by such city as though Developer had contracted with such city originally. Any annexing city shall have the rights of a third party beneficiary.

11/09/10

IN WITNESS WHEREOF, the parties hereto have executed this agreement on  
~~November 8, 2010~~

COUNTY OF SANTA CLARA

*Joseph R. Fato*

By \_\_\_\_\_  
Senior Civil Engineer

*Adnan S. Nassef*

\_\_\_\_\_  
Developer