

## RESOLUTION NO. 2024-172

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE AUTHORIZING THE CITY MANAGER TO EXECUTE THE PAYMENT AGREEMENT FOR STREET AND SEWER IMPROVEMENT FEE BY AND BETWEEN THE CITY OF ELK GROVE AND BEAZER HOMES HOLDING, LLC, A DELAWARE LIMITED LIABILITY COMPANY, IN THE AMOUNT OF \$143,577 FOR THE FAIR SHARE COSTS TOWARDS THE DESIGN AND/OR CONSTRUCTION COSTS OF NEW GROWTH AREA PROJECTS FOR THE BACKER PHASE 1 SUBDIVISION (SUBDIVISION NO. 10-020.06.01) AND BACKER PHASE 2 SUBDIVISION (SUBDIVISION NO. 10-020.06.02) PROJECTS(CEQA EXEMPT)**

**WHEREAS**, the City of Elk Grove (City) Planning Commission approved the Tentative Subdivision Map (TSM) for the Madeira South Subdivision Project on November 16, 2006, and subsequently approved amendments to the TSM conditions of approval in 2007, 2010, and 2018; and

**WHEREAS**, the Madeira South Subdivision Project is now known as the Backer Subdivision Project (Subdivision No. 10-020.06.01 and Subdivision No. 10-020.06.02); and

**WHEREAS**, Condition of Approval No. 13 for the Project authorizes the City to recover the costs associated with the roadway and sewer improvements for Big Horn Boulevard, which were installed with the City's New Growth Area (NGA) Project prior to construction of the Backer Phase 1 and Backer Phase 2 Projects and;

**WHEREAS**, staff has determined the costs for the Big Horn Boulevard improvements and the fair share costs towards the Sewer Lift Station are based on the actual costs incurred by the City to design and deliver the NGA Project and;

**WHEREAS**, payment of the fees will satisfy the obligations under Condition of Approval No. 13.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Elk Grove hereby finds that no further environmental review is required under the California Environmental Quality Act for the Project pursuant to State CEQA Guidelines Section 15061(b)(3) based upon the following findings:

California Environmental Quality Act (CEQA)

Finding: Approval of the proposed agreement is exempt from environmental review under the California Environmental Quality Act pursuant to State CEQA Guidelines Section 15061(b)(3).

Evidence: The California Environmental Quality Act (Section 21000, et seq., of the California Public Resources Code - hereinafter CEQA) requires analysis of agency approvals of discretionary "projects." A "project," under CEQA, is defined as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (CEQA Guidelines, § 15378.)

Staff has reviewed the approval of the proposed agreement to determine the required level of review under CEQA. Approval of the proposed agreement is exempt from CEQA under State CEQA Guidelines Section 15061(b)(3) (Common Sense Exemption). Section 15061(b)(3) of the CEQA Guidelines states that an activity is covered by the Common Sense Exemption that CEQA only applies to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA review. The Payment Agreement will authorize the City to recover costs associated with the roadway and sewer improvements for Big Horn Boulevard that have previously been installed by the City's New Growth Area (NGA) Project; therefore, the execution of the Payment Agreement will not bring about any physical change to the environment and will not have any potential for causing a significant effect on the environment.

**AND BE IT FURTHER RESOLVED** that the City Council of the City of Elk Grove hereby authorizes the City Manager to execute the Payment Agreement for In-Lieu Fee for Big Horn Boulevard by and between the City of Elk Grove and Beazer Homes Holdings, LLC, a Delaware limited liability company, in substantially the form attached as Exhibit A and incorporated by reference;

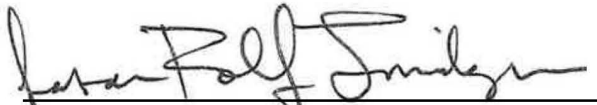
**AND BE IT FURTHER RESOLVED** that the City Council of the City of Elk Grove does hereby direct the City Clerk to cause the Payment Agreement to be recorded with the Sacramento County Recorder.

**PASSED AND ADOPTED** by the City Council of the City of Elk Grove on this 25<sup>th</sup> day of September 2024




BOBBIE SINGH-ALLEN, MAYOR of the  
CITY OF ELK GROVE

ATTEST:



JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:



JONATHAN P. HOBBS,  
CITY ATTORNEY

**NO FEE DOCUMENT**

Government Code §6103  
RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

CITY OF ELK GROVE  
8401 Laguna Palms Way  
Elk Grove, CA 95758  
Attn: City Clerk

Project Name: Backer Phase 1 (EG-10-020.06.01)

Address: Big Horn Blvd south of Poppy Ridge Road

A.P.N: 132-0050-168-0000

The Above Space For Recorder's Use Only

**PAYMENT AGREEMENT FOR IN-LIEU FEE FOR BIG HORN BOULEVARD**

THIS AGREEMENT ("Agreement") is made and entered into this 9<sup>th</sup> day of September, 2024 ("Effective Date"), by and between the City of Elk Grove, a California municipal corporation (the "City"), and Beazer Homes Holdings, LLC, a Delaware limited liability company ("Applicant").

**WHEREAS**, the Applicant is developing property within the City at Big Horn Boulevard, south of Poppy Ridge Road (APN 132-0050-168) ("Property") by dividing the Property into a total of Ninety-Four (94) single-family residential lots (the "Development"); and

**WHEREAS**, Phase 1 of the Development includes 75 lots located MADEIRA SOUTH ("Phase 1") and Phase 2 includes 19 lots located MADEIRA SOUTH ("Phase 2"); and VILLAGES 6 & 7

**WHEREAS**, Development Condition of Approval No. 13 requires Applicant to install certain sewer and roadway improvements to Big Horn Boulevard, or, in the alternative, to reimburse the City for installation of such improvements if the City has already constructed the improvements; and

**WHEREAS**, the City constructed the required sewer and roadway improvements to Big Horn Boulevard that Applicant would have otherwise been required to construct pursuant to Condition of Approval No. 13; and

**WHEREAS**, the parties now desire to provide for Applicant's reimbursement to the City of Applicant's fair share costs of such construction.

**NOW, THEREFORE**, the parties hereto agree as follows:

Section 1. The recitals are true and correct and incorporated into this Agreement.

**Section 2.** The Applicant agrees to pay, and the City agrees to accept, the amount of One Hundred Fourteen Thousand Five Hundred Fifty-Six Dollars and Twelve Cents Dollars (\$114,556.12) for the Applicant's fair share cost associated with Phase 1 of the Big Horn Boulevard roadway improvements and Sewer Lift Station improvements, collectively based on the actual costs incurred by the City for designing and delivering the New Growth Area (NGA) Projects in advance of adjacent developments ("Phase 1 Fee"). Payment of the Phase 1 Fee shall be made to the Finance Department of the City within five (5) business days of the Effective Date. The City agrees that payment of the Phase 1 Fee shall constitute satisfaction of the Applicant's obligation of a fair-share of the cost towards the design and/or construction costs of Big Horn Boulevard and the Sewer Lift Station under Condition of Approval No. 13 for Phase 1. The Applicant agrees that this payment represents the Applicant's financial obligation arising from Phase 1 of the Development for the installation of a portion of Big Horn Boulevard and the Sewer Lift Station as specified in Condition of Approval No. 13 for Phase 1.

**Section 3.** Prior to improvement plan approval for Phase 2 or within one year (1) year of the Effective Date, whichever comes first, the Applicant agrees to pay, and City agrees to accept, the amount of Twenty-Nine Thousand and Twenty Dollars and Eighty-Eight Cents (\$29,020.88) for the Applicant's fair share cost associated with Phase 2 of the Big Horn Boulevard roadway improvements and Sewer Lift Station improvements, collectively based on the actual costs incurred by the City for designing and delivering the New Growth Area (NGA) Projects in advance of adjacent developments ("Phase 2 Fee"). Payment shall be made to the Finance Department of the City. The City agrees that payment of the Phase 2 Fee shall constitute satisfaction of the Applicant's obligation of a fair-share of the cost towards the design and/or construction costs of Big Horn Boulevard and the Sewer Lift Station under Condition of Approval No. 13 for Phase 2. The Applicant agrees that this payment represents the Applicant's financial obligation arising from Phase 2 of the Development for the installation of a portion of Big Horn Boulevard and the Sewer Lift Station as specified in Condition of Approval No. 13 for Phase 2. Until the Phase 2 Fee has been paid, the Applicant understands and agrees that no construction is authorized for Phase 2 and no improvement plans or building permits may be approved for Phase 2.

**Section 4.** Nothing herein shall relieve the Applicant from the obligation to pay additional impact fees that may become due in the future in accordance with the provisions of the City's Municipal Code. Nothing herein shall preclude the City from seeking and/or imposing additional fees should Applicant change the Development to a different and/or more intense development project than the Development described herein. Nothing herein shall preclude Applicant from contesting the imposition of such additional fees.

**Section 5.** Any notice or other communication to be given to either party pursuant to this Agreement shall be given by delivering same in writing to the parties at the addresses set forth below:

Applicant: Beazer Homes Holdings, LLC  
2990 Lava Ridge Court, Suite 110  
Roseville, CA 95661  
Attn: Russ Whipple, VP of Land Development

City: Development Services, Engineering  
City of Elk Grove  
8401 Laguna Palms Way  
Elk Grove, CA 95758

Such notice shall be deemed given when deposited into the United States mail, postage prepaid, addressed to the parties at the addresses above. Nothing herein shall preclude the giving of personal notice.

Section 6. The Applicant waives any defense against the enforcement of its obligation hereunder to the extent such defense is related in whole or in part to the validity of this Agreement. Should any term, paragraph, provision, covenant, condition, or any other part of this Agreement be held by a court of competent jurisdiction to be invalid, void or unenforceable, in any respect, the remainder of this Agreement shall remain in full force and effect and shall in no way be invalidated or affected.

Section 7. Modifications or amendments affecting the terms and conditions contained in this Agreement shall not be valid unless they are in writing and executed by all parties.

Section 8. The Applicant, by execution of this Agreement, specifically agrees to assume the defense of, indemnify, and hold harmless the City and its officers, employees, consultants, and agents from and against all liabilities, actions, damages, claims, losses or expenses of every type and description, including attorneys' and consultants' fees and expenses (collectively, "Liabilities"), to which they may be subjected or put, by reason of, or resulting from this Agreement, except Liabilities arising from the sole negligence or willful misconduct of the City, as determined by a Court or competent jurisdiction. Unless and until such judicial determination is made, or as otherwise agreed to by the Parties. The Applicant shall remain obligated to defend, indemnify, and hold harmless City, its officers, employees, consultants, and agents pursuant to this Agreement. This indemnification shall extend to Liabilities occurring after this Agreement is terminated, as well as while it is in force.

Section 9. This Agreement constitutes the entire agreement and understanding between the City and Applicant concerning the payment of the above-mentioned fee.

Section 10. This Agreement shall bind and inure to the heirs, devisees, assignees, and successors-in-interest of Applicant and to the successors-in-interest of the City in the same manner as if such parties had been expressly named herein.

Section 11. Applicant and City agree and acknowledge that the provisions of this Agreement have been arrived at through negotiation and that each party has had a full and fair opportunity to revise the provisions of this Agreement and to have such provisions reviewed by legal counsel. Therefore, any ambiguities in construing or interpreting this Agreement shall not be resolved against the drafting party.

Section 12. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

Section 13. The Agreement shall be recorded in the Office of the Recorder of Sacramento County and shall constitute a covenant running with the land. Applicant hereby represents and warrants that Applicant and KL LB BUY 2 LLC, a Delaware limited liability company are the current owners of the Property. Attached hereto as Exhibit A is a consent of KL LB BUY 2 LLC authorizing the recordation of this Agreement against title to the Property in the official records of Sacramento County.

Section 14. This Agreement shall be deemed to be made in, and the rights and liabilities of the parties, and the interpretation and construction of the Agreement governed by and construed in accordance with the laws of the State of California. Any legal action arising out of this Agreement shall be filed in and adjudicated by a court of competent jurisdiction in the County of Sacramento, State of California.

Section 15. The waiver at any time by any party of any of its rights with respect to a default or other matter arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent default or other matter.


**SEE SIGNATURES ATTACHED NEXT PAGE**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

**CITY OF ELK GROVE**

**APPLICANT:** Beazer Homes Holdings, LLC, a Delaware limited liability company

By: \_\_\_\_\_  
Jason Behrmann, City Manager

By:   
\_\_\_\_\_  
Lucas C. Wissmann, President Divisional – Northern California

\_\_\_\_\_  
Date:

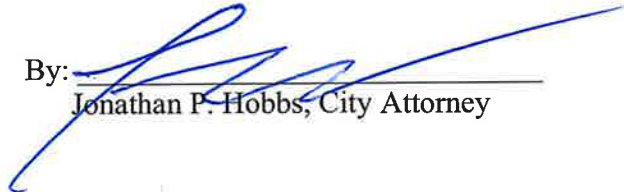
9/9/24  
Date:

**ATTEST:**

By: \_\_\_\_\_  
Jason Lindgren, City Clerk

\_\_\_\_\_  
Date:

**APPROVED AS TO FORM:**

By:   
\_\_\_\_\_  
Jonathan P. Hobbs, City Attorney

**CALIFORNIA ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }  
County of Placer }

On September 9, 2024 before me, Susan Miyasato, Notary Public  
Date Here Insert Name and Title of the Officer  
personally appeared Luke Wissmann  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal and/or Stamp Above

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Susan Miyasato  
Signature of Notary Public

**OPTIONAL**

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

Corporate Officer – Title(s): \_\_\_\_\_

Partner –  Limited  General

Individual  Attorney in Fact

Trustee  Guardian or Conservator

Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

Corporate Officer – Title(s): \_\_\_\_\_

Partner –  Limited  General

Individual  Attorney in Fact

Trustee  Guardian or Conservator

Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_



EXHIBIT A  
CURRENT OWNER CONSENT TO RECORDATION

The undersigned, KL LB BUY 2 LLC, a Delaware limited liability company (“Owner”), hereby certifies that it is the owner of A.P.N. 132-0050-168 (“Property”). Owner hereby consents to the recordation of the following agreement against title to the Property in the official records of Sacramento County: Payment Agreement for Street and Sewer Improvement Fee, by and between City and Beazer Homes Holdings LLC, a Delaware limited liability company.

**Owner Signature:**

KL LB BUY 2 LLC, a Delaware limited liability company

By: Nathan Holt  
Nathan Holt, Authorized Signatory


9/9/24  
Date

Exhibit A to Payment Agreement for In-Lieu Fee  
Backer Ranch

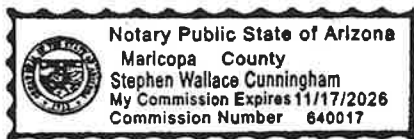
STATE OF ARIZONA                    )  
  )  
COUNTY OF MARICOPA            )

I, ~~STEPHEN WALLACE CUNNINGHAM~~ Notary Public for Maricopa County and the State aforesaid, do hereby certify that Nathan Holt, Authorized Signatory of KL LB BUY 2 LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the limited liability company.

Witness my hand and official stamp or seal, this 9 day of SEPTEMBER 2024.

  
\_\_\_\_\_  
Notary Public  
My Commission Expires: 11/17/26

[OFFICIAL SEAL]



**CERTIFICATION**  
**ELK GROVE CITY COUNCIL RESOLUTION NO. 2024-172**

STATE OF CALIFORNIA       )  
COUNTY OF SACRAMENTO    )       ss  
CITY OF ELK GROVE         )

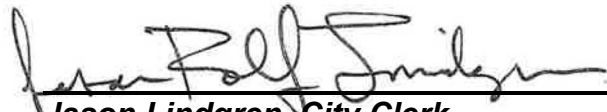
*I, Jason Lindgren, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on September 25, 2024 by the following vote:*

**AYES:           COUNCILMEMBERS:       Singh-Allen, Brewer, Robles, Spease, Suen**

**NOES:           COUNCILMEMBERS:       None**

**ABSTAIN:       COUNCILMEMBERS:       None**

**ABSENT:        COUNCILMEMBERS:       None**

  
\_\_\_\_\_  
**Jason Lindgren, City Clerk**  
**City of Elk Grove, California**