

RESOLUTION NO. 2021-

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROCKLIN
APPROVING THE FINAL MAP OF
LOS CERROS PHASE 2 SUBDIVISION (SD-2013-09)
AND APPROVING AND AUTHORIZING EXECUTION
OF A SUBDIVISION IMPROVEMENT AGREEMENT

The City Council of the City of Rocklin does resolve as follows:

Section 1. The City Council of the City of Rocklin hereby finds as follows:

A. A tentative subdivision map for a subdivision known as LOS CERROS PHASE 2/(SD-2013-09) (the "Subdivision") and submitted by Los Cerros Community L.P., which was subsequently sold to BHEG Los Cerros LLC, a Delaware limited liability company (the "Owner"), was approved subject to certain conditions;

B. Toll West Coast LLC, a Delaware limited liability company, (the "Subdivider") is developing the Subdivision and has represented that it maintains a contractual right and option to purchase the Subdivision from the Owner;

C. The Subdivider has fully satisfied all said conditions, except for certain subdivision improvements, if any, that have not been completed and accepted, and as to those improvements Subdivider has executed and provided security for a Subdivision improvement agreement obligating Subdivider to complete the improvements within a specified period of time. Subdivider now desires to record a final map for the Subdivision;

D. The City Engineer has reviewed the final map for the Subdivision and has determined that it substantially conforms to the approved tentative map and all conditions and requirements of that approval, and now recommends approval of the final map.

Section 2. The City Council hereby approves the final map for the Subdivision and accepts on behalf of the public the dedication of the streets and easements shown and offered on the final map for the Subdivision, subject to improvement of said streets and easements and acceptance thereof by the City. The City Council hereby further accepts on behalf of the public the dedication of the following:

LOT "A" AND "B" FOR OPEN SPACE PURPOSES

Section 3. The Subdivision Improvement Agreement attached hereto as Exhibit "A" and by this reference incorporated herein is hereby approved and the City Manager is authorized and directed to execute the Agreement on behalf of the City.

Section 4. The City Clerk is hereby authorized and directed to record the final map for the Subdivision, and all related documents referred to in this Resolution, in the Office of the Placer County Recorder when fully executed and notarized.

PASSED AND ADOPTED this 26th day of January, 2021, by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

ABSTAIN: Councilmembers:

Jill Gayaldo, Mayor

ATTEST:

Hope Ithurnburn, City Clerk

EXHIBIT A

Recording Requested by
and Return to:

City Clerk
City of Rocklin
3970 Rocklin Road
Rocklin, CA 95677

No Fee Per Gov't Code §27383

Subdivision Name: LOS CERROS PHASE 2

Subdivision No.: SD-2013-09

Recorded at: Book ____ of Maps, at Page____,
Placer County Recorder

Owner: BHEG Los Cerros LLC, a Delaware limited liability company

Principal: Toll West Coast LLC, a Delaware limited liability
company

Effective Date: _____

SUBDIVISION IMPROVEMENT AGREEMENT

This Subdivision Improvement Agreement ("Agreement") is entered into by and between the City of Rocklin, hereinafter called "City," BHEG Los Cerros LLC, a Delaware limited liability company, hereinafter called "Owner," and Toll West Coast LLC, a Delaware limited liability company, hereinafter called "Principal," on the 26th day of January, 2021.

RECITALS

1. Principal has received approval from City of a tentative Subdivision Map commonly known as LOS CERROS PHASE 2 ("the Subdivision").
2. Principal and Owner wish to have filed for record a final Subdivision Map, ("the Map"), in substantial conformity with the approved tentative Map. A copy of the Map is attached hereto as **Exhibit 1** and by this reference incorporated herein.
3. City has approved the Map, subject to the execution of this Agreement.
4. Principal and Owner are willing to execute this Agreement as a condition precedent to the recording of the Map.

5. The authority for this Agreement is set forth in the Subdivision Map Act ("the Map Act") (Government Code section 66410 et seq.) and Title 16 of the Rocklin Municipal Code ("Title 16").

AGREEMENT

6. **Acceptance of Rights of Way.** City hereby accepts on behalf of the public all lands, rights of way, and easements offered for dedication on the Map, in accordance with the conditions hereinafter set forth.

7. **Improvements.** Principal agrees to complete all the works of improvement ("the Improvements") required for the Subdivision as shown on the final improvement plans for the Subdivision submitted to and approved by the City Engineer and on file in the office of the City Engineer, in accordance with the requirements of the Map Act, Title 16, and the Standard Specifications of City in effect at the time of the installation of the Improvements. Such work will be completed within **twelve (12)** months of the date of this Agreement.

8. **Acceptance of Improvements upon Completion.** Upon satisfactory completion of the Improvements in accordance with the approved improvement plans, the Standard Specifications and the conditions of approval of the tentative Subdivision Map, City agrees to accept for maintenance the Improvements and any off-site easements accepted by City, subject to the provisions of Paragraph 10 hereof.

9. **Notice Regarding Construction.** Principal shall notify the City Engineer 48 hours prior to commencement of construction of the Improvements.

10. **Warranty.** Principal agrees to remedy any defects in the Improvements arising from faulty or defective design or construction of said Improvements occurring within twelve (12) months after acceptance thereof has been given in writing by the City Council.

11. **Indemnity and Hold Harmless.** Principal and Owner agree to and shall defend, indemnify and hold harmless City, its officers, employees, agents and volunteers (collectively, the "Indemnified Parties") from and against all claims, damages, losses and expenses, including attorneys fees and litigation costs and expenses, arising out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of Principal or Owner, any subcontractor of Principal or Owner, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence or willful misconduct of the Indemnified Parties. Lack of insurance coverage does not negate Owner's or Principal's obligation under this paragraph or this Agreement.

12. **Delay.** If the construction of the Improvements shall be delayed without fault of Principal or Owner, the time for completion thereof may be extended by City for such period of time as City may deem reasonable.

13. **Security.** Principal shall furnish to City security to ensure the faithful performance of all duties and obligations of Principal herein contained. Such improvement security shall be in a form acceptable to the City Attorney. Such security shall be either a corporate surety bond, a letter of credit or other instrument of credit issued by a banking institution subject to regulation by the State or Federal government and pledging that the funds necessary to carry out this Agreement are on deposit and guaranteed for payment, or a cash deposit made either directly with the City or deposited with a recognized escrow agent for the benefit of the City. Such security shall be in the following amounts for the following purposes:

(a) **Performance:** One hundred percent (100%) of the estimated cost of the outstanding Improvements securing performance of this Agreement, which estimated cost is in the amount of: NINE HUNDRED NINETEEN THOUSAND SEVEN HUNDRED SIXTEEN dollars (\$919,716.00).

(b) **Payment of Labor and Materials:** One hundred percent (100%) of the estimated cost of the Improvements, as set forth in Paragraph (a) immediately preceding, securing payment to the contractor of Improvements, to his subcontractors, and to persons furnishing labor, materials, or equipment to them.

(c) **Warranty:** The amount of TWO HUNDRED SEVENTY TWO THOUSAND THREE HUNDRED EIGHTEEN dollars (\$272,318.00). The above amount represents 20% of the cost of the Improvements to guarantee and warrant the Improvements for a period of one (1) year following the completion and acceptance of the Improvements against any defects in the improvement design, the work, or the labor done, or defects in materials furnished. This security need not be furnished prior to completion of the Improvements, but must be provided prior to their acceptance.

(d) **Survey Monumentation:** One hundred percent (100%) of the estimated cost of the installation of the survey monuments, which estimated cost is in the amount of THREE THOUSAND SEVEN HUNDRED FIFTY dollars (\$3,750.00).

14. **Irrevocability of Security.** The improvement security furnished pursuant to Paragraph 13 shall be irrevocable, shall not be limited as to time (except as to the 1-year period specified in Paragraph 10), and shall provide that it shall be released, in whole or in part, only upon the written approval of the City Engineer or delegate.

15. **Actions.** At City's option, any action by any party to this Agreement, or any action concerning the security furnished pursuant to Paragraph 13, shall be brought in the appropriate court of competent jurisdiction within the County of Placer, notwithstanding any other provision of law which may provide that such action may be brought in some other location.

16. **Inspection; Release of Security For Faithful Performance.** Principal may, from time to time, request the City Engineer to inspect the Improvements as they progress. The City Engineer may, if the work is found by City Engineer to be in accordance with the Standard Specifications, choose to accept so much of that work as is completed, and authorize a release pro tanto of the security provided pursuant to Paragraph 13(a); provided, however, that in no event shall the release of more than eighty (80%) of the improvement security be authorized until all the work has been completed and accepted.

17. **Release of Remaining Security For Faithful Performance: Warranty.** At the conclusion of the construction of the Improvements, and upon written acceptance of them by the City Council and approval of a Notice of Completion, the City Engineer shall authorize the release of the security provided pursuant to Paragraph 13(a) upon the furnishing of the warranty security as required by Paragraph 13(c).

18. **Release of Security Where Other Agency Approval Required.** Notwithstanding paragraphs 16 and 17, where any portion of the Improvements is subject to approval by another agency, no release of security equal to the value of those Improvements shall be made until the work is completed to the satisfaction of such other agency. Such other agency shall have two (2) months after completion of the performance of the obligation in which to register satisfaction or dissatisfaction. If at the end of that period it has not registered satisfaction or dissatisfaction, it shall be conclusively deemed that the performance of the obligation was done to its satisfaction.

19. **Release of Labor and Materials Security.** Ninety (90) days after a notice of completion is filed with respect to the Improvements, the City Engineer may authorize the release of the security given to secure payment for labor and materials as provided in Paragraph 13(b) of this agreement, in the event that no claims have been filed against said security. In the event that claims or actions are filed against the security, the City Engineer may release so much of such security as is in excess of the total of the claims made against it.

20. **Insurance.** Principal and Owner shall each procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Principal, its agents, representatives, or employees. Any insurance required to be procured and maintained by Principal under this Agreement shall also be required to be procured and maintained by Owner.

A. Minimum Scope and limit of Insurance

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate

limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Principal has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.

3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease. ***(Not required if Principal provides written verification it has no employees)***

B. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured Status.** The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Principal or Owner including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Principal's and Owner's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

2. **Primary Coverage.** For any claims related to this contract, the Principal's insurance coverage shall be primary with coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, or volunteers, and shall be excess of the Principal's insurance and shall not contribute to it. In the event that Principal fails to satisfy the requirements of this subsection, Owner's insurance coverage shall be primary with coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, or volunteers, and shall be excess of the Owner's insurance and shall not contribute to it.

3. **Notice of Cancellation.** Each insurance policy required above shall not be canceled, except with notice to the City.

4. **Waiver of Subrogation.** Principal and Owner hereby grant to City a waiver of any right to subrogation which any insurer of said Principal or Owner may acquire against the City by virtue of the payment of any loss under such insurance. Principal and Owner agree to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

5. **Self-Insured Retentions.** Self-insured retentions must be declared to and approved by the City. The City may require the Principal and/or Owner to provide proof of

ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

6. **Acceptability of Insurers.** Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

7. **Claims Made Policies.** If any of the required policies provide coverage on a claims made basis:

- i. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
- ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
- iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the respective Owner or Principal must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

8. **Verification of Coverage.** Principal and Owner shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and copies of the Declarations and Endorsement Pages of the CGL policy listing all policy endorsements to the City before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Principal's or Owner's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

9. **Subcontractors.** Principal and Owner shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Principal and Owner shall ensure that City is an additional insured on insurance required from subcontractors.

10. **Special Risks or Circumstances.** City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

21. **Monuments.** Principal agrees to install, on or before **December 31, 2021**, such survey monuments as may be required by the City Engineer. Upon the installation of such

monuments, and their acceptance by the City Engineer, the security provided therefor shall be released.

22. **Failure of Performance.** In the event Principal fails to perform one or more of the conditions herein, Owner hereby grants to City and its agents the irrevocable right to enter upon the Subdivision to construct the Improvements required to be built under this Agreement. In the event Principal or Owner fails to perform one or more of the conditions herein, City shall have recourse to the security given to guarantee the performance of such acts. City shall have recourse against so much of the security as is necessary to discharge the responsibility of Principal or Owner hereunder. City shall have recourse against Principal and Owner for any and all amounts necessary to complete the obligations of Principal or Owner in the event the security therefore is insufficient to pay such amounts. All administrative costs incurred by the City, in addition to the costs of the Improvements, shall be a proper charge against the security and/or Principal and/or Owner.

23. **Attorney's Fees.** If the services of any attorney are required by any party to secure the performance of this Agreement or otherwise upon the breach or default of another party, or if any judicial remedy or arbitration is necessary to enforce or interpret any provisions of this Agreement or the rights and duties of any person in relation to this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and other expenses, in addition to any other relief to which such party may be entitled. Prevailing party includes (a) a party who dismisses an action in exchange for sums allegedly due; (b) the party that receives performance from the other party of an alleged breach of covenant or a desired remedy, if it is substantially equal to the relief sought in an action; or (c) the party determined to be prevailing by a court of law.

Whenever provision is made in this Agreement for the payment of attorney's fees, such fees shall be payable whether the legal services are rendered by a salaried employee for the party or by independent counsel and shall include such fees as are incurred in connection with any pretrial proceeding, trial or appeal of the action.

Any award of damages following judicial remedy or arbitration as a result of the breach of this Agreement or any of its provisions shall include an award of prejudgment interest from the date of the breach at the maximum amount of interest allowed by law.

24. **Agreement Binding on Successors, Etc.** This Agreement shall be binding upon all the heirs, successors, and assigns of all parties, and the same shall be recorded in the office of the Recorder of Placer County upon its execution, and shall be a covenant running with the land and equitable servitude upon the parcel or parcels of real property subdivided by the Map.

25. **Subdivision Map Act Controlling.** To the extent any provision of this Agreement conflicts with any provision of the Map Act, the applicable provision of such Act shall control, and no action taken pursuant to this Agreement which conflicts with any provision of the Map

Act shall relieve the person taking such action from compliance with the provisions of the Map Act.

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

WHEREFORE, the parties hereto have executed this Agreement on the day and in the year first above written.

[Signatures on the next page]

CITY OF ROCKLIN

By: _____
Aly Zimmermann, City Manager

OWNER

BHEG Los Cerros LLC, a Delaware limited liability company

By: _____
(Signature)

(Type Name)

(Type Title)

PRINCIPAL

Toll West Coast LLC, a Delaware limited liability company

By: _____
(Signature)

(Type Name)

(Type Title)

APPROVED AS TO FORM:

Sheri Chapman, City Attorney

ATTEST:

Hope Ithurnburn, City Clerk

**ATTACH CURRENT NOTARY
ACKNOWLEDGEMENT FORM
FOR CITY OF ROCKLIN**

**ATTACH CURRENT NOTARY
ACKNOWLEDGEMENT FORM
FOR PRINCIPAL**

**ATTACH CURRENT NOTARY
ACKNOWLEDGEMENT FORM
FOR OWNER**

EXHIBIT 1

FINAL MAP