

**MEMORANDUM
DEPARTMENT OF FACILITY SERVICES
COUNTY OF PLACER**

To: **BOARD OF SUPERVISORS**

Date: **MAY 13, 2008**

From: *AS* **JAMES DURFEE / ALBERT RICHIE** *AS*

Subject: **DRY CREEK COMMUNITY PARK — OAK TREE MITIGATION**

ACTION REQUESTED / RECOMMENDATION: Approve the attached Agreement of Satisfaction of Obligations Relating to Oak Tree Mitigation Completion Agreement (Satisfaction Agreement) with the Dry Creek West Placer Community Facilities District No. 2001-1 participating property owners (Developer) and authorize the Chairman to execute the Agreement providing for payment to the County in the amount of \$115,523.00.

BACKGROUND: On February 20, 2003, the County and Developer entered into the Oak Tree Mitigation Completion Agreement (Mitigation Agreement) pertaining to implementation of mitigation measures to mitigate for the impacts of the construction of various improvements financed through the Dry Creek West Placer Community Facilities District (CFD) No. 2001-1. To date, the Developer has completed approximately 60% of its planting and monitoring obligation under the Mitigation Agreement. Planning and Facility Services staff have reviewed the cost estimates and determined the value of remaining planting and monitoring obligations under the Mitigation Agreement to be \$115,523.00.

Under the Mitigation Agreement, the oak trees yet to be planted were sited for outlying areas of the Dry Creek Community Park site. As originally envisioned, the mitigation plantings would utilize the irrigation system installed during construction of Dry Creek Community Park. However, with an uncertain schedule for construction of the park pending identification of sufficient funding, staff cannot at this time estimate with certainty when an irrigation system for the mitigation trees might be constructed. Moreover, there is a lack of available and suitable mitigation area for planting additional oak trees with the boundaries of the Dry Creek CFD.

Given these circumstances, the attached Satisfaction Agreement provides for an in-lieu payment of \$115,523.00 to Placer County to satisfy the Developer's remaining oak mitigation obligation. The money will be placed in the Oak Tree Mitigation Fund for use in like kind oak conservation/mitigation as the opportunity arises.

ENVIRONMENTAL CLEARANCE: An environmental impact report and addendum were prepared for the approval of the West Placer Community Facilities District No. 2001-1. Approval of this Agreement implements mitigation measures 4.4-20 and 4.4-21 contained within those documents.

FISCAL IMPACT: Approval of the Satisfaction Agreement provides for payment of \$115,523.00 to Placer County Oak Tree Mitigation Fund. This action does not create any new fiscal impact to the County.

ATTACHMENT: AGREEMENT

JD:AR:DB

CC: COUNTY EXECUTIVE OFFICE

T:\FAC\BSMEMO2008\OAK MITIGATION SATISFACTION AGMT MEMO SHF4-21-08.DOC

139

DRY CREEK-WEST PLACER CFD #2001-1
AGREEMENT OF SATISFACTION OF OBLIGATIONS
RELATING TO OAK TREE MITIGATION COMPLETION AGREEMENT

THIS Agreement of Satisfaction of Obligations Relating to the Oak Tree Mitigation Completion Agreement (“Satisfaction Agreement”) is made and entered into by and between the County of Placer, a political subdivision of the State of California (“County”), and the Dry Creek West Placer Community Facilities District No. 2001-1 (“CFD”) participating property owners, Morgan Creek Residential L.L.C.; Riolo Greens Partnership; Doyle Family Trust; and Forecast Group, L.P., (hereinafter collectively referred to as “Developer”).

WITNESSETH

WHEREAS, on February 20, 2003, the County and Developer entered into the Oak Tree Mitigation Completion Agreement (“Oak Tree Mitigation Agreement”) pertaining to its implementation of mitigation measures to mitigate for the impacts of the construction of certain improvements financed through the Dry Creek West Placer Community Facilities District No. 2001-1, and

WHEREAS, County agrees Developer has fulfilled a majority of its obligations under the Oak Tree Mitigation Agreement by planting and maintaining oak trees as required under that Agreement, and Developer has proposed to fulfill the remainder of its obligations through the payment of funds to County for deposit into County’s Tree Preservation Fund, and

WHEREAS, County and Developer wish to memorialize in this Satisfaction Agreement their agreement as to the payment due to County for the remainder of the work required under the Oak Tree Mitigation Agreement,

NOW, THEREFORE, it is hereby agreed between the parties:

AGREEMENT

1. **Incorporation of Recitals.** The foregoing recitals are hereby incorporated by reference.

2. **Satisfaction of Mitigation Requirement.** County acknowledges that Developer has satisfied in excess of sixty percent (60%) of the oak tree planting obligations as required in the Oak Tree Mitigation Agreement to mitigate for impacts to oak trees arising out of the construction of certain improvements financed through the Dry Creek West Placer Community Facilities District No. 2001-1. Due to the lack of readily available and suitable mitigation area for planting additional replacement oak trees within the boundaries of the Dry Creek CFD at the present time, County is willing to allow Developer to satisfy the balance of its obligations by payment of funds into the County’s Tree Preservation Fund for use by County within the boundaries of the Dry Creek CFD and/or elsewhere within the Dry Creek Community Plan as and when suitable mitigation areas become feasible and are available. Developer shall

pay to County and County agrees to accept the sum of One Hundred and Fifteen Thousand Five Hundred Twenty-Three Dollars (\$115,523.00) in satisfaction of the remainder of Developer's mitigation obligations under the Oak Tree Mitigation Agreement. County agrees that upon receipt of the funds required to be paid by Developer under this Section 2, the Developer will have satisfied its obligation to mitigate for impacts to oak trees as required under Section 2 of the Oak Tree Mitigation Agreement.

3. **Security.** County agrees that upon receipt of the funds required to be paid by Developer under Section 2, above, the Security required under Section 3 of the Oak Tree Mitigation Agreement may be released.

4. **Other Project Obligations.** This Satisfaction Agreement shall pertain only to the obligations of Developer under the Oak Tree Mitigation Agreement. This Satisfaction shall not satisfy, amend or change in any way any condition of approval or relieve any other party from any other obligation pertaining to the planting or maintenance of oak trees or other landscaping for any other project, including but not limited to the project referred to as the "Silver Creek Planned Development--PSUB20060389", regardless of reference to the Oak Tree Mitigation Agreement in any such condition.

5. **Indemnification.** Developer agrees to defend, save harmless and indemnify County, its officers, agents and employees from every claim, lawsuit, damages or judgment for monies or other damages which may arise out of any activities undertaken by Developer in furtherance of fulfillment of its obligations under the Oak Tree Mitigation Agreement, including but not limited to claims arising out of any contract for oak tree planting, monitoring or restoration executed by Developer.

6. **Notice.** Any notice to this Agreement, including change of address of either party shall be in writing and may be personally served, or sent by prepaid first class mail to, the respective parties as follows:

COUNTY
Planning Department
3091 County Center Drive
Auburn, CA 95603
Attn: Loren Clark

DEVELOPER
Dry Creek-West Placer CFD Owners
c/o Dave Cook
Towne Consulting, LLC
1512 Eureka Road, Suite 205
Roseville, Ca 95661

7. **Entire Agreement.** This Agreement and any attachments hereto constitute the sole, final, complete, exclusive and integrated expression and statement of the terms and conditions of this Agreement among the parties concerning the subject matter addressed herein, and supersedes all prior negotiations, representations or agreements, oral or written, that may be related to the subject matter of this Agreement.

8. **Construction and Interpretation.** It is agreed and acknowledged by the parties that the provisions of this Agreement have been arrived at through negotiation, and that each of the parties has had a full and fair opportunity to revise the provisions of this Agreement and to

have such provisions reviewed by legal counsel. Therefore, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Agreement.

9. **Severability.** The invalidity, illegality, or unenforceability of any provision of this Agreement shall not render the other provisions unenforceable, invalid or illegal.

10. **Successors and Assigns.** This Agreement shall bind and inure to the benefit of the respective successors and assigns of the parties.

11. **Authority to Execute Agreement.** Each party represents that it has the legal authority to enter into this Agreement and to perform its obligations hereunder.

12. **Counterpart.** This Agreement may be signed in counterpart and all counterparts together constitute one document.

IN WITNESS WHEREOF, the parties have executed this Agreement effective on the date and year executed by County.

“DEVELOPER”

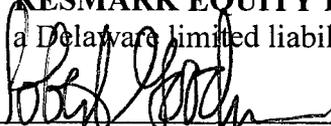
MORGAN CREEK RESIDENTIAL, LLC

a Delaware limited liability company

By: **OMCR MANAGER, LLC**
a Delaware limited liability company, its manager

By: **ORA CALIFORNIA II, LLC**
a Delaware limited liability company, its manager

By: **RESMARK EQUITY PARTNERS, LLC**
a Delaware limited liability company, its manager

By: 
Robert N. Goodman
President

Dated: April 8, 2008

RIOLO GREENS PARTNERSHIP

By: **TOWNE DEVELOPMENT OF SACRAMENTO, INC.**
a California corporation, its successor in interest

By: _____
Jeff Pemstein, General Manager

Dated: _____

have such provisions reviewed by legal counsel. Therefore, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Agreement.

9. **Severability.** The invalidity, illegality, or unenforceability of any provision of this Agreement shall not render the other provisions unenforceable, invalid or illegal.

10. **Successors and Assigns.** This Agreement shall bind and inure to the benefit of the respective successors and assigns of the parties.

11. **Authority to Execute Agreement.** Each party represents that it has the legal authority to enter into this Agreement and to perform its obligations hereunder.

12. **Counterpart.** This Agreement may be signed in counterpart and all counterparts together constitute one document.

IN WITNESS WHEREOF, the parties have executed this Agreement effective on the date and year executed by County.

“DEVELOPER”

MORGAN CREEK RESIDENTIAL, LLC
a Delaware limited liability company

By: **OMCR MANAGER, LLC**
a Delaware limited liability company, its manager

By: **ORA CALIFORNIA II, LLC**
a Delaware limited liability company, its manager

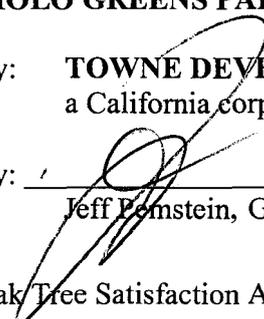
By: **RESMARK EQUITY PARTNERS, LLC**
a Delaware limited liability company, its manager

By: _____
Robert N. Goodman
President

Dated: _____

RIOLO GREENS PARTNERSHIP

By: **TOWNE DEVELOPMENT OF SACRAMENTO, INC.**
a California corporation, its successor in interest

By:  _____
Jeff Feinstein, General Manager

Dated: 2-8-08

DOYLE FAMILY TRUST, THOMAS E. DOYLE, ROBERT DOYLE, AND KATHERINE SREDNICK, TENANTS IN COMMON

By: Kirk Doyle, Attorney in fact Dated: 2/11/08
Kirk Doyle
Attorney in Fact

FORECAST GROUP, LP

By: **K HOVANIAN FORECAST HOMES NORTHERN, INC.**
a California corporation

By: _____ Dated: _____
Richard Balestreri
Senior Vice President

"COUNTY"

PLACER COUNTY BOARD OF SUPERVISORS

_____ Dated: _____
Jim Holmes, Chair, Board of Supervisors

APPROVED AS TO FORM

_____ Dated: _____
Deputy County Counsel

DOYLE FAMILY TRUST, THOMAS E. DOYLE, ROBERT DOYLE, AND KATHERINE SREDNICK, TENANTS IN COMMON

By: _____
Kirk Doyle
Attorney in Fact

Dated: _____

FORECAST GROUP, LP

By: **K HOVANIAN FORECAST HOMES NORTHERN, INC.**
a California corporation

By:  _____
Richard Balestreri
Senior Vice President

Dated: March 19, 2008

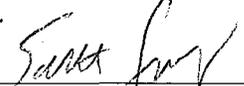
"COUNTY"

PLACER COUNTY BOARD OF SUPERVISORS

Jim Holmes, Chair, Board of Supervisors

Dated: _____

APPROVED AS TO FORM

 _____
Deputy County Counsel

Dated: 4-15-08

