

**RESOLUTION NO. 2003-253**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE  
AUTHORIZING THE EXECUTION OF A MEMORANDUM OF UNDERSTANDING  
WITH BEAZER HOMES HOLDINGS CORPORATION RELATED TO ELLIOT RANCH  
EAST CONDITION OF APPROVAL FOR ROADWAY MAINTENANCE FUNDING**

**WHEREAS**, on June 18, 2003, the City Council approved Tentative Map No. EG-02-357 (the "Tentative Map") for the Elliot Ranch East Subdivision. The Tentative Map sets forth Conditions of Approval that must be met before a Final Subdivision Map for the Elliot Ranch East Subdivision will be approved. These conditions include a requirement that Beazer Homes Holdings Corporation, a Delaware Corporation (the "Property Owner") provide an acceptable financing mechanism for roadway maintenance services; and

**WHEREAS**, the Property Owner has submitted a Final Subdivision Map application for the Elliot Ranch East Subdivision; and

**WHEREAS**, the City Council has duly considered the contents of the draft Memorandum of Understanding between the City and the Property Owner, a copy of which is on file with the City Clerk, which would set forth their mutual understanding concerning the satisfaction of the Condition of Approval relating to roadway maintenance funding and the steps to be taken to ensure consummation of the levy of special benefit assessments on properties within the Elliot Ranch East Subdivision, all in connection with the City Council's consideration of the proposed Final Subdivision Map for the Elliot Ranch East Subdivision.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Elk Grove that:

**Section 1. Recitals.** The foregoing recitals are true and correct and the City Council so finds and determines.

**Section 2. Authorization of Officers to Execute and Deliver Memorandum of Understanding.** The City Council hereby authorizes and directs the Mayor, the City Manager, and the City Clerk, and each of them individually (the "Designated Officers"), for and in the name of and on behalf of the City, to execute and deliver the Memorandum of Understanding in substantially the form of the draft presented to this meeting, which Memorandum of Understanding is hereby approved, with such changes, insertions, revisions, corrections, or amendments as shall be approved by the Designated Officer or Officers executing the Memorandum of Understanding for the City. The execution of the Memorandum of Understanding by a Designated Officer or Officers of the City shall constitute conclusive evidence of such officer's or officers' and the City Council's approval of the Memorandum of Understanding and any such changes, insertions, revisions, corrections, or amendments.

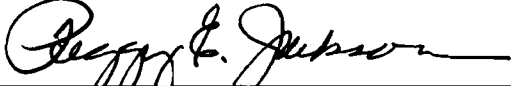
**Section 3. General Authorization.** The Designated Officers and other officers of the City, and each of them individually, are hereby authorized and directed, for and in the name of and on behalf of the City, to do any and all things and take any and all actions that may be necessary or advisable, in their discretion, in order to effect the purposes of this resolution. All actions heretofore taken by officers, employees, and agents of this City that are in conformity with the purposes and intent of this resolution are hereby approved, confirmed, and ratified.

**Section 4. Effective Date.** This resolution shall take effect immediately upon its passage.

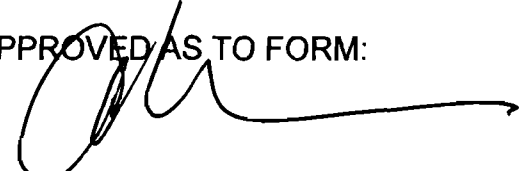
**PASSED AND ADOPTED** by the City Council of the City of Elk Grove this 17<sup>th</sup> day of December 2003.

  
\_\_\_\_\_  
SOPHIA SCHERMAN, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

  
\_\_\_\_\_  
PEGGY E. JACKSON, CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
ANTHONY B. MANZANETTI,  
CITY ATTORNEY

**CERTIFICATION  
ELK GROVE CITY COUNCIL RESOLUTION NO. 2003-253**

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

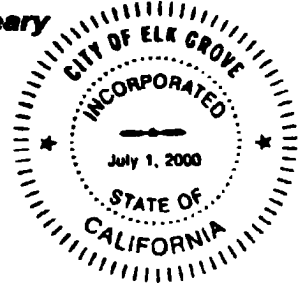
***I, Peggy E. Jackson, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on the 17<sup>th</sup> day of December 2003 by the following vote:***

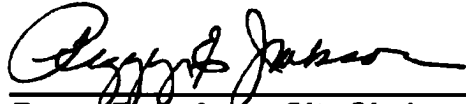
**AYES 4:    COUNCILMEMBERS:    Scherman, Soares, Briggs, Leary**

**NOES 0:   COUNCILMEMBERS:**

**ABSTAIN 0: COUNCILMEMBERS:**

**ABSENT 1: COUNCILMEMBERS:   Cooper**



  
\_\_\_\_\_  
**Peggy E. Jackson, City Clerk  
City of Elk Grove, California**

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is entered into as of December 17, 2003, by and between the City of Elk Grove (the “City”) and Beazer Homes Holdings Corporation, a Delaware corporation (the “Property Owner”).

### RECITALS

A. On June 18, 2003, the City Council approved Tentative Map No. EG-02-357 (the “Tentative Map”) for the Elliot Ranch East Subdivision. The Tentative Map sets forth conditions of approval that must be met before a Final Subdivision Map for the Elliot Ranch East Subdivision will be approved. These conditions include a requirement that Property Owner provide an acceptable financing mechanism for roadway maintenance services.

B. The Property Owner has submitted a Final Subdivision Map application for the Elliot Ranch East Subdivision.

C. The City and the Property Owner now wish to set forth their mutual understanding concerning the satisfaction of the condition of approval relating to roadway maintenance funding and the steps to be taken to ensure consummation of the levy of special benefit assessments on properties within the Elliot Ranch East Subdivision, all in connection with the City Council’s consideration of the proposed Final Subdivision Map for the Elliot Ranch East Subdivision.

### AGREEMENT

#### 1. The Obligations of the Property Owner and the City.

1.1 Property Owner’s Obligations. In order to satisfy the requirement to provide a funding mechanism for roadway maintenance, as set forth in Condition 29 of the Tentative Map, the Property Owner shall:

1.1.1 Cast a ballot approving the levy of special benefit assessments on its property shown on the Tentative Map and not withdraw or change such ballot; provided that such assessments do not exceed \$250 per equivalent dwelling unit.

1.1.2 Not transfer title to any of the property shown on the Tentative Map until after certification that the results of the balloting authorize the City to levy the street maintenance assessments on that property.

#### 1.2 City Obligations. The City shall:

1.2.1 Take the actions necessary to levy special benefit assessments on the property shown on the Tentative Map for roadway maintenance funding.

1.2.2 Not withhold approval of final maps for the Elliot Ranch East Subdivision on the grounds that the special benefit assessments for roadway maintenance funding have not yet been levied.

1.2.3 Withhold approval of any building permits for construction on the property shown on the Tentative Map until after the Property Owner's ballot approving the street maintenance assessments is received by the City.

2. Building Permits. The Property Owner hereby consents to the City's withholding approval of any building permits for construction on the property shown on the Tentative Map until after the Property Owner's ballot approving the street maintenance assessments is received by the City. The Property Owner hereby consents to the City's unsealing the ballot prior to the conclusion of the public hearing on the assessments and waives any rights it may have under Government Code 53753 to concealment of the ballot.

3. Purpose and Effect of Memorandum of Understanding. The purpose of this MOU is to document certain understandings reached by the Property Owner and the City. The Property Owner and the City acknowledge that additional binding documents (resolutions, ballot, etc.) are necessary to implement the terms of this MOU, and that such additional documents will be subject to substantive review and approval by the Property Owner and the City. Nevertheless, both parties intend that this MOU create enforceable obligations, and each party understands that the other party will be undertaking certain actions in reliance on the enforceability of this MOU.

4. Term. This MOU shall continue until all of the actions required by either party have been completed, at which time this MOU shall terminate. The parties agree that time is of the essence.

5. Not Entire Agreement. The parties hereto have endeavored in this MOU to set forth their understanding and intent with respect to the matters addressed herein. This MOU is not, however, intended to set forth in full detail the terms and conditions under which the parties are to proceed in regard to the Elliot Ranch East Subdivision.

6. Notices. Any notices to be delivered on matters pertaining to this MOU shall be addressed as follows:

If to the Property Owner:

Beazer Homes Holdings Corporation  
3721 Douglas Boulevard, Suite 100  
Roseville, CA 95661  
Attention: Stan Samiec

If to the City:

City of Elk Grove  
8400 Laguna Palms Way  
Elk Grove, CA 95758  
Attention: Finance Administrator

7. Amendment to MOU. This MOU may be amended only by a written instrument signed by the parties. The Property Owner shall bear all costs of amendments to this MOU that are requested by the Property Owner.

8. Waiver. The waiver by either party of a breach by the other of any provision of this MOU shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this MOU.

9. Attorney's Fees. In the event any legal action is brought to enforce or interpret this MOU, the prevailing party shall be entitled to an award of reasonable attorney fees, in addition to any other relief to which it may be entitled.

10. Construction and Interpretation. It is agreed and acknowledged by the Property Owner that the provisions of this MOU have been arrived at through negotiation, and that the Property Owner has had a full and fair opportunity to revise the provisions of this MOU 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 MOU.

11. Severability. The provisions of this MOU are severable. If any portion of this MOU is held invalid by a court of competent jurisdiction, the remainder of the MOU shall remain in full force and effect unless amended or modified by mutual written consent of the parties.

12. Actions. Any action by either party to this MOU shall be brought in the appropriate court of competent jurisdiction within the County of Sacramento, State of California, notwithstanding any other provision of law that may provide that such action may be brought in some other location. The law governing this MOU is the law of the State of California.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding as of the date first referenced above.

CITY OF ELK GROVE

By: \_\_\_\_\_  
Sophia Scherman, Mayor


Attest:

\_\_\_\_\_  
Peggy E. Jackson, City Clerk

Approved as to form:

  
\_\_\_\_\_  
Anthony B. Manzanetti, City Attorney

BEAZER HOMES HOLDINGS CORP., a Delaware corporation

By:   
\_\_\_\_\_  
Name: Steve [unclear]  
Title: VP Technology

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }  
County of Placer } ss.

On December 11, 2003, before me, Marlayna Harney Notary Public,  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Skay Serrano,  
Name(s) of Signer(s)

- personally known to me
- 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.

WITNESS my hand and official seal.  
Marlayna Harney  
Signature of Notary Public

Place Notary Seal Above

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another 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

- Signer's Name: \_\_\_\_\_
- Individual
  - Corporate Officer — Title(s): \_\_\_\_\_
  - Partner —  Limited  General
  - Attorney in Fact
  - Trustee
  - Guardian or Conservator
  - Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

