

LENNAR COMMUNITIES BAKERSFIELD LAND DIVISION
AIR QUALITY MITIGATION AGREEMENT

This Air Quality Mitigation Agreement (“Agreement”) is made and entered into this _____ day of November 2005, by and between the SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT (hereafter “DISTRICT”), a unified air pollution control district formed pursuant to California Health and Safety Code section 40150, et. Seq. and LENNAR COMMUNITIES BAKERSFIELD LAND DIVISION (hereafter “LENNAR”). LENNAR and the District may be referred to individually as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, the District is classified as a nonattainment area for ozone, and Reactive Organic Gases ROG is a precursor to ozone; and

WHEREAS, the DISTRICT is the Responsible Agency for Air Quality under the California Environmental Quality Act (“CEQA”) and comments on CEQA projects, District has limited CEQA authority and performs analyses as needed to determine the impact of development projects on air quality in the San Joaquin Valley Air Basin; and

WHEREAS, the DISTRICT, in a letter dated May 12, 2003, conducted a review of the Air Quality Impact Study for Tentative Tract 6184 (PROJECT); and

WHEREAS, the proposed PROJECT is 100.54 acres of real property in the northwestern part of the City of Bakersfield, and

WHEREAS, the City of Bakersfield has incorporated DISTRICT recommended mitigation measures as conditions of approval for the PROJECT, and

WHEREAS, the City of Bakersfield has approved the PROJECT for development, and

WHEREAS, LENNAR has proposed the payment of an air quality mitigation fee to be used for the air quality benefit programs within the San Joaquin Valley, and particularly the Southern Region within or near the City of Bakersfield.

NOW, THEREFORE, in exchange for their mutual promises, covenants, and conditions, the parties hereby agree as follows:

1. DISTRICT ACCEPTANCE OF AIR QUALITY MITIGATION FEE

Subject to the term set forth in the paragraph below, LENNAR agrees to contribute to the DISTRICT the sum of sixteen thousand eight hundred dollars (\$16,800.00) to reduce ROG emissions by 1.12 tons per year, and to provide an air quality benefit in the vicinity of the project (the “Air Quality Mitigation Fee”). LENNAR

agrees to pay the Air Quality Mitigation Fee to the DISTRICT within thirty (30) days after the execution of this agreement.

2. PAYMENT OF ADMINISTRATIVE FEES TO DISTRICT

LENNAR agrees to pay to DISTRICT, within thirty (30) days following LENNAR's receipt of DISTRICT's invoice, administrative fees to reimburse DISTRICT for DISTRICT's administration of this Agreement, including review, verification and preparation of documents, and staff time relating to the performance of DISTRICT's obligations hereunder, based on a time and materials basis at DISTRICT's average weighted labor rates. These fees shall be in addition to the air quality mitigation fee identified in paragraph 1 above.

3. USE OF AIR QUALITY MITIGATION FEE

The DISTRICT agrees to use the Air Quality Mitigation Fee exclusively to establish and implement specific programs that create contemporaneous air quality benefits within the DISTRICT; the final mitigation projects will be selected by the DISTRICT from candidate programs including, but not limited to, Heavy Duty Engine Retrofit/Replacement and Agricultural Engine Replacement, other measures set forth in the attainment demonstration plans and any other program deemed by the DISTRICT as appropriate to reduce the emissions of air contaminants in the San Joaquin Valley Air Basin that will provide a localized air quality benefit. The DISTRICT will create sufficient air quality benefits so that the reduction specified in paragraph 1 is met.

4. COOPERATION

The Parties agree to cooperate with each other with respect to any requests or actions related to this Agreement from the Environmental Protection Agency, the California Air Resources Board, and/or any opponents in the Metropolitan Bakersfield 2010 General Plan and the Western Rosedale Specific Plan, and to do or cause all things necessary, proper or advisable to help consummate and make effective the transaction contemplated by this Agreement.

5. GOVERNING LAW

Venue for any action arising out of or relating to this Agreement shall only be in Kern County, California. The rights and obligations of the parties and all interpretation and performance of this Agreement shall be governed in all respects by the laws of the State of California.

6. AUTHORITY

Each Party acknowledges and agrees that it has the full right, power and authority to execute this Agreement, and to perform its obligations hereunder.

11. ENTIRE AGREEMENT

This Agreement, including all attached exhibits and documents which are referred to and incorporated herein, constitutes the entire agreement between LENNAR and the DISTRICT with respect to the subject matter hereof and supersedes all previous negotiations, proposals, commitments, writings, advertisements, publications and understandings of any nature whatsoever unless expressly included in this Agreement.

12. JOINT EFFORT

The Parties acknowledge and agree that each Party and its counsel have read this Agreement in its entirety, fully understand it, and accept its terms and conditions. Accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party is not applicable and therefore shall not be employed in the interpretation of this Agreement or any amendment of it.

13. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement.

14. TERM

This Agreement shall be effective upon the date first written above, and shall terminate upon DISTRICT's meeting its obligation to implement projects that provide necessary emissions reductions to mitigate the project's net air quality criteria pollutant impact below the District's threshold of significance as defined in the assessment used for the approved negative declaration adopted by the City of Bakersfield (the "**Term**"). LENNAR may, at any time prior to the approval of the Project by all applicable Governmental Authorities, by written notice to DISTRICT, terminate this Agreement, whereupon, (i) DISTRICT shall acknowledge in writing to the lead agency that LENNAR has mitigated the project's ROG impacts to the extent specified in paragraph 1 and in the types and quantities brought about by Funding Agreements theretofore funded by the Air Quality Mitigation Fee (or any other amount in accordance with paragraph 1 above) and (ii) neither LENNAR nor DISTRICT shall have any further rights or obligations under this Agreement.

15. MODIFICATION

Any matters of this Agreement may be modified from time to time by the written consent of all the parties without, in any way, affecting the remainder.

16. INDEMNIFICATION

Developer agrees to indemnify, defend and hold harmless District for, from and in connection with any third party claims, losses and/or liabilities arising from or in

connection with District's performance of this Agreement, excluding only such claims, losses and/or liabilities which result from or in connection with District's sole negligence, act or omission.

17. SEVERABILITY

In the event that any one or more provisions contained in this Agreement shall for any reason be held to be unenforceable in any respect by a court of competent jurisdiction, such holding shall not affect any other provisions of this Agreement, and the Agreement shall then be construed as if such unenforceable provisions are not a part hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first hereinabove.

LENNAR COMMUNITIES BAKERSFIELD LAND DIVISION

By: _____
Tom Dee
Division President

DISTRICT

San Joaquin Valley Unified Air Pollution Control District

By: _____
Supervisor Thomas W. Mayfield, Chair
Governing Board
San Joaquin Valley Unified APCD

Recommended for approval:

San Joaquin Valley Unified Air Pollution
Control District

Approved as to legal form:

San Joaquin Valley Unified Air
Pollution Control District

David L. Crow

Philip M. Jay

Executive Director/APCO

District Counsel

Approved as to accounting form:

For accounting use only:

San Joaquin Valley Unified Air Pollution
Control District

Program: _____

Account No.: _____

Roger W. McCoy
Director of Administrative Service