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County of El Dorado  
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**2021-0060349**

El Dorado

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Recorder-Clerk

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**COMMUNITY BENEFIT AND DEVELOPMENT AGREEMENT**

**BY AND BETWEEN**

**COUNTY OF EL DORADO AND**

**CARSON CREEK EL DORADO, LLC AND**

**LENNAR HOMES OF CALIFORNIA, INC.**

**FOR THE DEVELOPMENT KNOWN AS**

**HERITAGE CARSON CREEK VILLAGE 11**

**Effective Date: September 21, 2021**

**Community Benefit and Development Agreement**  
**By and Between County of El Dorado and Carson Creek El Dorado, LLC and**  
**Lennar Homes of California, Inc.**  
**For the Development Known as Heritage Carson Creek Village 11**

This Community Benefit and Development Agreement (hereinafter “**Agreement**”) is made and entered into this 21st day of September, 2021, by and between the **County of El Dorado** (hereinafter “**County**”) and **Carson Creek El Dorado, LLC** (hereinafter “**CCED**”) and **Lennar Homes of California, Inc.** (hereinafter “**Lennar**”), pursuant to the authority of Sections 65864 through 65896.5 of the California Government Code and Chapter 130.58 of the County’s Ordinance Code relating to development agreements. County and Developers are hereinafter sometimes collectively referred to as the “**Parties**” and singularly as “**Party**.” CCED and Lennar are hereinafter sometimes collectively referred to as “**Developers**” and singularly as “**Developer**.”

**Recitals**

This Agreement is entered into based on the following facts and circumstances, among others:

A. County, a semi-rural county located in the Sacramento metropolitan region, prides itself on providing a high quality of life to its residents. The County strives to balance the need for a healthy, diverse economy and adequately financed and maintained infrastructure and multimodal connectivity, with a healthy, sustainable, and natural environment and residential communities offering unique experiences for all stages of life.

B. Developers are in the business of developing residential communities in Northern California. Developers each own portions of the Property, which is located within the El Dorado Hills area of the County.

C. The El Dorado Hills area has been identified by the County for many years as one of the primary areas affording an opportunity for providing residential development to serve the County’s current and future growth. The Project is ideally located to take advantage of existing infrastructure and adjacent services.

D. The Project includes the payment to the County of a Community Benefit Fee, Intelligent Transportation System (“**ITS**”) Project Fee, and Affordable Housing Fee in connection with each building permit, the proceeds from each of which shall be utilized to enhance community amenities and services, as more fully described hereinafter. This Agreement also provides for a Supplemental Tax to mitigate for the estimated annual County General Fund shortfall from the Project and a Supplemental Ambulance Services Tax for ongoing ambulance services. The Parties enter into this Agreement in part to establish the mechanisms by which these fees and the supplemental taxes shall be paid and allocated.

E. The Project will provide neighborhood, community, and County-wide benefits, as more fully detailed in this Agreement, including:

1. Fiscally neutral impacts on County services accomplished in part through a Supplemental Tax to mitigate an annual shortfall to the County General Fund from the Project (Section 3.8 and FIA);

2. Community Benefit Fee of Four Thousand One Hundred and Seventy-Four Dollars (\$4,174.00) per dwelling unit, including an annual adjustment (Section 3.2.1);

3. ITS Project Fee of Two Hundred Eighty-Five Dollars (\$285.00) per dwelling unit, including an annual adjustment (Section 3.2.4);

4. Affordable Housing Fee of Five Hundred Dollars (\$500.00) per dwelling unit, including an annual adjustment (Section 3.2.3); and

5. Supplemental Ambulance Services Tax in the amount of Fifty Dollars (\$50.00) for ongoing ambulance services, including an annual adjustment (Section 3.8.3).

F. To strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risks of development, the Legislature of the State of California adopted Sections 65865 et seq. of the California Government Code enabling a County and an applicant for a development project to enter into a development agreement establishing with certainty what zoning standards and land use regulations of the County will govern the construction and implementation of the development project from beginning to completion.

G. In May 1996, the County circulated the draft Carson Creek Specific Plan Environmental Impact Report (“EIR”) (SCH# 94072021) for public review. Numerous comment letters were received, and the County initially certified the final EIR on September 24, 1996, recertified the final EIR a second time on March 4, 1997, and then adopted a modified Specific Plan and recertified the final EIR on September 28, 1999. On August 10, 2021, the County adopted an Addendum to the EIR, which further analyzed the environmental impacts associated with the Project and this Agreement.

H. On August 10, 2021, the Board of Supervisors introduced Ordinance No. 5148 approving this Agreement and authorizing its execution, and adopted such Ordinance on August 10, 2021, with the Effective Date as set forth in Section 1.2.

### **Definitions**

The following words or phrases used in this Agreement shall have the meanings set forth in this Section. All words not specifically defined shall be deemed to have their common meaning and/or the meaning generally given to such words in the parlance of the planning and development of real property in the State of California.

1. “Addendum” means the addendum to the EIR adopted by the County on August 10, 2021, which further analyzed the environmental impacts associated with the Project and this Agreement.

2. “Adopted ITS Fee” shall have the meaning described in Section 3.2.4.

3. “Affordable Housing Fee” shall have the meaning described in Section 3.2.3.
4. “Agreement” means this Community Benefit and Development Agreement.
5. “Applicable General Plan” means the County’s General Plan, adopted on July 19, 2004, as amended through the Effective Date.
6. “CCED Property” means that certain real property legally described in Exhibit A-1 and depicted on Exhibit A-2.
7. “CFD” has the meaning described in Section 3.6.
8. “Community Benefit Fee” has the meaning described in Section 3.2.1.
9. “Conditions of Approval” mean the requirements placed on the Tentative Map.
10. “County” means the County of El Dorado.
11. “CPI” means the Consumer Price Index (all items) for the San Francisco-Oakland-Hayward area. Any CPI adjustment provided for in this Agreement shall be made on January 1 of each year, commencing January 1, 2022. In the event the CPI is no longer published, the County shall, in its reasonable discretion, select a similar index to calculate the annual adjustment.
12. “Developers” mean Carson Creek El Dorado, LLC, or its successors in interest, and Lennar Homes of California, Inc., or its successors in interest.
13. “DPFG” has the meaning described in Section 3.8.
14. “Effective Date” has the meaning described in Section 1.2.
15. “EIR” means the Final Environmental Impact Report for the Carson Creek Specific Plan, State Clearinghouse No. 94072021, certified by the Board of Supervisors on September 28, 1999.
16. “FIA” has the meaning described in Section 3.8.1.
17. “Financing Plan” means the Carson Creek Specific Plan Amendment Heritage at Carson Creek Public Facilities Financing Plan dated April 28, 2021, as it may be amended.
18. “Lennar Property” means that certain real property legally described in Exhibit B-1 and depicted on Exhibit B-2.
19. “ITS Project” means the Intelligent Transportation System project undertaken by County’s Department of Transportation.
20. “ITS Project Fee” shall have the meaning described in Section 3.2.4.

21. “Mitigation Measures” mean the requirements placed on the Property to cure or lessen the environmental impacts of the Project as identified in the analysis of the Project done in the EIR and Addendum.

22. “Project” means the Specific Plan and related entitlements as described in the Recitals and Section 2.1.

23. “Project Approvals” mean the development approvals and entitlements set forth in Section 2.1.

24. “Property” means the CCED Property and the Lennar Property.

25. “Specific Plan” shall mean the Carson Creek Specific Plan as amended by the Project Approvals.

26. “Supplemental Ambulance Services Tax” shall have the meaning described in Section 3.8.3.

27. “Supplemental Tax” shall have the meaning described in Section 3.8.1.

28. “Tentative Map” shall mean the tentative subdivision map described in Section 2.1.

29. “Term” shall have the meaning described in Section 1.3.

## **SECTION 1. GENERAL PROVISIONS**

1.1 All Exhibits Deemed Incorporated by Reference. Unless specifically stated to the contrary, the reference to an exhibit by a designated letter or number shall mean that the exhibit is made a part of this Agreement.

1.2 Agreement to be Recorded; Effective Date. When fully executed, this Agreement will be recorded in the Official Records of El Dorado County, pursuant to Government Code Section 65868.5. The effective date of this Agreement shall be the later of (a) the date that is thirty (30) days after the date that Ordinance enacting this Agreement is adopted, or (b) the date this Agreement is fully executed by the Parties (“**Effective Date**”). The Effective Date is inserted at the beginning of this Agreement. The Parties acknowledge that Section 65868.5 of the Development Agreement Statute requires this Agreement to be recorded in the Official Records no later than ten (10) days after the County enters into this Agreement.

1.3 Term. The Term of this Agreement is twenty (20) years, commencing on the Effective Date. The expiration date for any subsequently approved tentative maps for the Project shall be extended for the Term of this Agreement. The Term shall be automatically extended for a period of time commensurate with any period of time during which a challenge to the Project Approvals or the validity of this Agreement is pending.

1.4 Termination. This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

1.4.1 Expiration of the twenty (20) year term;

1.4.2 Entry of a final court judgment or issuance of a final court order directed to the County to set aside, withdraw, or abrogate the County's approval of this Agreement or any material part of the Project Approvals; or

1.4.3 The Effective Date of a Party's election to terminate this Agreement as provided in Section 5.2 of this Agreement.

1.4.4 As to a single residential lot within the Project, upon building permit final inspection and the conveyance of such lot or parcel to a bona fide good faith purchaser. Such termination shall be automatic without any further action by either Party or the need to record any further documents.

1.5 Interest of Developers. CCED has a legal or equitable interest in that certain real property legally described in Exhibit A-1 and depicted on Exhibit A-2 ("**CCED Property**") sufficient to enter into this Agreement with County. Lennar has a legal or equitable interest in that certain real property legally described in Exhibit B-1 and depicted on Exhibit B-2 ("**Lennar Property**").

1.6 Covenants Running With the Land. Any successors in interest to the County or Developers or subsequent owners of the Property shall be subject to the provisions set forth in Government Code Sections 65865.4 and 65868.5. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land against any and all subsequent owners regardless of how ownership is obtained, including but not limited to a foreclosure sale. Each covenant to do, or refrain from doing, some act with regard to the development of the Property (a) is for the benefit of and is a burden upon the Property; (b) runs with the Property and every portion thereof; and (c) is binding upon each Party and each successor in interest or subsequent owner during ownership of the Property or any portion thereof. Nothing herein shall waive or limit the provisions of Section 2.4, and no successor owner of the Property, any portion of it, or any interest in it shall have any rights except those assigned to the successor by the applicable Developer in writing pursuant to Section 1.7 or, in the event of a foreclosure, assumed by the successor in a form acceptable to the County.

1.7 Right to Assign; Non-Severable Obligations.

1.7.1 Except as otherwise provided, and provided that Developers are not in default of this Agreement pursuant to Section 5 herein, Developers shall have the right to assign this Agreement as to the CCED Property and/or Lennar Property, as applicable, or any portion thereof, in connection with the sale, transfer, or conveyance thereof to a third party during the term of this Agreement, provided prior written notice of such assignment is given to County. Provided such assignment is done in writing and the assignee assumes all of the applicable Developer's obligations hereunder, the applicable Developer shall be released from any further liability or obligation from this Agreement related to the CCED Property and/or Lennar Property,

as applicable, or the portion thereof so conveyed and the assignee shall thereafter be the “Developer” with all rights and obligations related thereto, with respect to such conveyed property. The form of assignment agreement is attached as Exhibit C hereto.

1.7.2 The obligations and conditions set forth in this Agreement are not severable, and any sale of the Property, in whole or in part, or assignment of this Agreement, in whole or in part, which attempts to sever the obligations and/or conditions shall be a nullity and shall have no force or effect. In the event of a foreclosure of all or part of the Property, the Project Approvals shall have no force and effect until any subsequent owner seeking to develop under the Project Approvals executes a written agreement, in a form acceptable to the County, assuming all rights and obligations under this Agreement.

1.8 Amendment of Agreement. This Agreement may be amended from time to time by mutual consent of the County and Developers (and/or any successor owner of any portion of the Property, to the extent subject to or affected by the proposed amendment), as provided in Government Code Section 65868. If the proposed amendment affects less than the entire Property, then such amendment need only be approved by the owner(s) in fee of the portion(s) of the Property that is subject to or affected by such amendment. The cost to the County in processing such a proposed amendment shall be paid by the applicable Developer.

1.9 Whole Agreement. This Agreement, together with any subsequent amendments, shall constitute the entire agreement of the Parties as to the development of the Property. All prior agreements of the Parties related to development of the Property, whether written or oral, are of no further force and effect.

1.10 Modification to the Project Approvals. Developers may apply, in writing, to modify the Project Approvals. Such modification may be processed without any amendment to this Agreement if the County, in its sole discretion, determines that the requested modification (1) is consistent with this Agreement, (2) does not alter this Agreement’s term, provisions for reservation and dedication of land, or monetary contributions, (3) does not substantially alter the permitted uses or substantially increase the density or intensity of use, and (4) is consistent with the Applicable General Plan. If the County determines that the requested modification is inconsistent with this Agreement, alters its term or substantially alters its uses, the modification will not be processed without processing a concurrent amendment to this Agreement in accordance with Section 1.8. An amendment to the Financing Plan shall not require an amendment to this Agreement.

1.11 Waivers. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

1.12 Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, or unenforceable, in whole or in part for any reason, the remaining terms and provisions of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement would be defeated by loss of the invalid or unenforceable provisions, in which case either Party may terminate this Agreement by providing written notice thereof to the other Party. In the

event of such termination, the provisions of Section 1.4 relating to termination of this Agreement by mutual written consent shall apply. Without limiting the generality of the foregoing, no judgment determining that a portion of this Agreement is unenforceable or invalid shall release Developers from their obligations to indemnify the County under this Agreement.

1.13 Choice of Law; Venue. This Agreement shall be interpreted according to the laws of the State of California. The venue for any litigation concerning its meaning shall be the Superior Court of El Dorado County, California.

1.14 Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the principal offices of the County and Developers or Developers' assigns and successors. Notice shall be effective on the date delivered in person, or the date when the postal authorities indicate that the mailing was delivered to the address of the receiving Party indicated below:

Notice to the County: County of El Dorado  
2850 Fairlane Court  
Placerville, CA 95667  
Attn: Director of Planning and Building Dept.

Notice to CCED: Carson Creek El Dorado, LLC  
1025 Creekside Drive, Suite 240  
Roseville, CA 95678  
Attn: Larry Gualco

Notice to Lennar: Lennar Homes of California, Inc.  
1025 Creekside Drive, Suite 240  
Roseville, CA 95678  
Attn: Larry Gualco

1.15 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the Parties and their successors and assigns. No other person shall have any right of action based upon any provision in this Agreement.

1.16 List of Exhibits.

Exhibit A-1: Legal Description of CCED Property  
Exhibit A-2: Depiction of CCED Property  
Exhibit B-1: Legal Description of Lennar Property  
Exhibit B-2: Depiction of Lennar Property  
Exhibit C: Form of Assignment

1.17 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.



1.18 Signatures. Developers and County represent and warrant that the individuals executing this Agreement have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developers and County.

## SECTION 2. DEVELOPMENT OF THE PROPERTY

2.1 Project Approvals. The Property shall be developed in accordance with the Project Approvals identified in this subsection 2.1. The permitted uses of the Property, the density and intensity of use, and the maximum height and size of proposed buildings, and the provisions for reservation or dedication of land for public purposes shall be those set forth in the Project Approvals. The Project Approvals shall consist of:

2.1.1 The Applicable General Plan;

2.1.2 The Carson Creek Specific Plan Amendment, adopted by Ordinance No. 5147, dated August 10, 2021;

2.1.3 A tentative subdivision map (“**Tentative Map**”) for the Property approved on August 10, 2021 and the associated conditions of approval;

2.1.4 The Financing Plan, dated April 28, 2021, and Fiscal Impact Analysis, dated April 27, 2021, and any updates and amendments thereto;

2.1.5 The Mitigation Monitoring and Reporting Program adopted with the Project; and

2.1.6 Ordinance No. 5148, dated August 10, 2021, adopting this Agreement.

2.2 Consistency with the General Plan. The County finds that the provisions of this Agreement and the development of the Property are consistent with and conform to the Applicable General Plan and Specific Plan as amended by the Project Approvals.

2.3 Vested Rights of Developers. Developers shall have the vested right to develop the Property in accordance with the Project Approvals described in Section 2.1 above and in conformity with the County rules, regulations, policies, standards, specifications, and ordinances, including the zoning ordinance, in effect as of the Effective Date provided that Developers are not in default under this Agreement. To the fullest extent allowed by law, any change in, or addition to, the County rules, regulations, policies, standards, specifications, and ordinances, including, without limitation, any change in the Applicable General Plan, County Code, or other rules and policies adopted or becoming effective after the Effective Date, including, without limitation, any such change by ordinance, County Charter amendment, initiative, referendum (other than a referendum that specifically overturns the County’s approval of the Project Approvals), resolution, policy, or moratorium, initiated or instituted for any reason whatsoever and adopted by the Board of Supervisors, or by the electorate, as the case may be, which would, absent this Agreement, otherwise be applicable to the Project and which would conflict with or be more restrictive than, or impose obligations on the Project greater or more stringent than the Project Approvals, shall not be applied to the Project. The vested right to proceed with the Project shall be subject to any

subsequent discretionary approvals required in order to complete the Project provided that any conditions, terms, restrictions, and requirements for such subsequent discretionary approvals shall not prevent development of the land for the uses and to the density or intensity of development or rate or timing of development set forth in this Agreement and the Project Approvals. Any tentative subdivision maps approved within the Project shall have a term coincident with the remaining term of this Agreement, or two (2) years, whichever is longer, as authorized by Government Code Section 66452.6(a)(1). Applications for subsequent discretionary approvals, including but not limited to tentative subdivision maps, that are deemed complete prior to the expiration of this Agreement shall be considered abandoned by the applicable Developer and automatically withdrawn if not finally acted upon by the County within twenty-four (24) months after expiration of this Agreement, provided that County has expended its best efforts to process the application and schedule the matter for necessary hearings. To the extent that Developers, prior to execution of this Agreement, possess vested rights under the authority of the Subdivision Map Act or common law with respect to the Property, Developers expressly waive any and all rights thereto, and agree that any claim to a vested right is defined solely by this Agreement.

2.4 Rights Retained by the County. Notwithstanding any other provisions of this Agreement, including the vesting granted by Sections 2.1 and 2.3, the following regulations and provisions shall apply to the development of the Property:

2.4.1 Application fees and charges of every kind and nature imposed by the County to cover the actual costs to the County of processing development applications or for monitoring compliance with any land use entitlements granted or issued.

2.4.2 Procedural regulations related to hearing bodies, applications, notices, findings, hearings, reports, appeals, and any other matter of procedure, provided such procedures are uniformly applied on a county-wide basis to all substantially similar types of development projects and properties.

2.4.3 Regulations governing construction standards and specifications, including, without limitations, the County's building code, plumbing code, mechanical code, electrical code, grading code, and all other uniform construction codes then applicable in the County at the time of permit application.

2.4.4 New County laws or regulations that are mandated by state or federal law.

2.4.5 Nothing herein shall be construed to limit the County's general police power to implement, based upon appropriate and adequate findings, specific measures necessary to alleviate legitimate and bona fide harmful and noxious uses, or protect against real, actual, and dangerous threats to the health and safety of County residents, in which event any rule, regulation, or policy imposed on the development of the Property shall be done to the minimum extent necessary to correct such bona fide harmful and noxious uses or protect against any such real, actual, and dangerous threats to the health and safety of County residents.

2.4.6 Any fees, taxes, assessments, and charges adopted by the County in accordance with the Mitigation Fee Act or other applicable law that are in effect and collected at the time of the approval of a subsequent entitlement or the issuance of a building permit, as

provided in this Agreement or as generally applicable throughout the County, provided that such fees, taxes, assessments, and charges are reasonably related to the cost of the facility or service for which they are imposed, applied to all similar private projects within the County, and in effect at the time of the issuance of a requested building permit. For any fees, taxes, assessments, or charges adopted by the County that are assessed by zone or area, "similar private projects" will mean projects in the same zone or area as the Project. For existing fees, taxes, assessments, and charges, Developers shall pay, without protest or without challenge, the amounts in effect at the time of the issuance of a requested permit or entitlement, including any that are solely attributable to annual inflationary adjustments tied to a published index. Developers agree to pay any new fee, tax, assessment, or charge adopted by the County in accordance with the Mitigation Fee Act or other applicable law that is applied uniformly on a county-wide or a regional basis and is in effect at the time of the issuance of a requested building permit. Developers shall retain the right to challenge any new or increased fees, taxes, assessments, and charges adopted or increased after the Effective Date as permitted by law, except for any increases to fees, taxes, assessments, and charges in existence as of the Effective Date of this Agreement solely attributable to annual inflationary adjustments tied to a published index.

2.5 Revisions to Project Approvals. Developers may apply, in writing, to revise the Project Approvals. If the Director of Planning and Building Department, or his/her designee, determines, in his/her sole discretion, that the requested revision is (1) a minor change to the Project considered as a whole; (2) does not increase the density or intensity of the use approved in the Project Approvals; (3) is consistent with this Agreement; (4) is consistent with the Applicable General Plan; and (5) does not change the analysis contained in the EIR or Addendum, the Director of Planning and Building Department or his/her designee may approve the requested revision without public hearing. The notice and appeal process for such a revision shall be the same process as for any other Director of Planning and Building Department approval at the time of the action requested. If the Director of Planning and Building Department determines the application does not comply with the above, then it shall be processed with all applicable public hearing and notice provisions then in effect.

2.5.1 Parties Required to Amend. Where a portion of Developers' rights or obligations have been transferred, assigned, and assumed in accordance with this Agreement, the signature of the person or entity to whom such rights or obligations have been assigned shall not be required to effectuate a revision or amendment of this Agreement unless such amendment would materially alter the rights or obligations of such assignee, provided thirty (30) days' prior written notice of any amendment is provided to such person or entity by the amending parties. In no event shall the signature or consent of any non-assuming assignee be required to amend this Agreement. The consent of Developers shall be required to any amendment to this Agreement only to the extent that such an amendment relates to or affects any portion of the Property which Developers still own in fee.

2.6 Priority of Enactment. In the event of conflict between this Agreement, the Project Approvals, and any County ordinance, resolution, or policy, the Parties agree that the following sequence of approvals establishes the relative priority of the approvals, each approval superior to the approvals listed thereafter: (1) this Agreement; (2) the Project Approvals; and (3) any County ordinance, resolution, or policy. In the event of a conflict between two or more of

the foregoing documents, the language of that document which is superior in priority as provided above shall govern.

2.7 Waiver of Claims. Developers waive, as to the Property only, any and all existing claims they may have against the County, its agents, employees, and consultants arising out of the adoption and/or application of development requirements and standards, impact fees except as provided in Section 2.4.6, the adoption of this Agreement or the Project Approvals, and all of the proceedings, acts, or determinations made prior thereto. The Parties agree that this Section expressly includes a waiver of any claims Developers may have related to any claim for reimbursement for construction of Carson Crossing Drive.

2.8 Obligation and Rights of Mortgage Lenders. The holder of any mortgage, deed of trust, or other security instrument with respect to the Property, or any portion thereof, shall not be obligated under this Agreement to construct or complete improvements or to guarantee such construction or completion, but, in the event said holder takes title to the Property through foreclosure of a mortgage or a deed of trust, or deed-in-lieu of such foreclosure, said holder shall be bound by all of the terms and conditions of this Agreement that pertain to the Property or such portion thereof in which it holds an interest. Any such holder who comes into possession of the Property, or any portion thereof, pursuant to a foreclosure of a mortgage or a deed of trust, or deed in lieu of such foreclosure, shall take the Property, or such portion thereof, subject to any pro rata claims for payments or charges against the Property, or such portion thereof, which accrue prior and subsequent to the time such holder comes into possession. Nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Property, or any portion thereof, to any uses, or to construct any improvements thereon, other than those uses and improvements provided for or authorized by this Agreement, subject to all of the terms and conditions of this Agreement.

### **SECTION 3. OBLIGATIONS OF THE PARTIES**

3.1 Property Development. The Property shall be developed in accordance with the Project Approvals described in Section 2.1.

3.2 Developers' Obligations Conferring County-Wide Benefit. The following obligations of Developers are provided as consideration for County entering into this Agreement and are considered county-wide benefits.

3.2.1 Community Benefit Fee. The Project shall be subject to a one-time Four Thousand One Hundred Seventy-Four Dollars (\$4,174.00) per dwelling unit fee to be utilized for any purpose benefiting the community, as determined in the sole discretion of the Board of Supervisors ("**Community Benefit Fee**"), payable in connection with issuance of each residential building permit within the Project and subject to annual adjustment based on the percentage changes in the CPI.

3.2.2 Dedication of Parkland. The Project includes privately owned recreation facilities and the County shall consider in good faith whether Developers will receive a credit against Developers' parkland dedication obligations in accordance with County Code Section

120.12.090(G). Developers shall satisfy their remaining state Quimby and County parkland dedication obligations through dedication of land and/or payment of in lieu fees, or a combination thereof. County and Developers shall use their best efforts and cooperate in good faith to determine the manner in which Developers' parkland dedication obligations will be satisfied prior to recordation of the first final small lot subdivision map for the Property. County and Developers shall also use their best efforts to clarify certain provisions in the Specific Plan relating to the "30-acre Regional Park" located in the southernmost portion of the site and identified in the Specific Plan.

3.2.3 Contribution to County's Affordable Housing Trust Fund. The Project shall be subject to a one-time Five Hundred Dollars (\$500.00) per dwelling unit fee, subject to annual adjustment based on the percentage changes in the CPI, for the County's Affordable Housing Trust Fund program ("**Affordable Housing Fee**"), payable in connection with issuance of each building permit within the Project.

3.2.4 Contribution to County's Intelligent Transportation System Project. Except as provided herein, the Project shall be subject to a one-time Two Hundred Eighty-Five Dollars (\$285.00) per dwelling unit fee, subject to annual adjustment based on the percentage changes in the CPI, for the El Dorado Hills Intelligent Transportation System project ("**ITS Project Fee**"), payable in connection with issuance of each building permit within the Project. The County shall use its best efforts to require other projects to pay their fair share to the ITS Project. The Parties acknowledge that the County is currently seeking to establish an ITS development impact fee program that will be brought to the Board of Supervisors for adoption of an ITS fee in accordance with the Mitigation Fee Act ("**Adopted ITS Fee**") that would apply to all development within the boundaries established for that program. The Parties agree that if an ITS program is established and the Adopted ITS Fee is adopted by the Board of Supervisors before issuance of any remaining building permits for the Project, Developers' obligations pursuant to this Section 3.2.4 shall terminate and Developers shall instead pay the Adopted ITS Fee at issuance of those remaining building permits, which Adopted ITS Fee may be lower or higher than the \$285.00 per dwelling unit fee provided for in this Agreement and will be subject to inflationary adjustments as set forth in the ITS program. All contributions paid for the El Dorado Hills ITS Project shall be kept in an account dedicated for the El Dorado Hills ITS Project and, if an Adopted ITS Fee is established, the contributions shall be placed in the fund for that program. In the event that the County does not (a) establish an ITS program and an Adopted ITS Fee; or (b) construct the ITS Project within twenty (20) years of the Effective Date of this Agreement, the contributions collected from Developers hereunder shall be returned to Developers.

3.3 Timing of Development. The Parties acknowledge that Developers cannot at this time predict when or the rate at which phases of the Property will be developed. Such decisions depend upon numerous factors that are not within the control of Developers, such as the timing of construction of the roadway improvements, market orientation and demand, interest rates, absorption, competition, and other similar factors. Since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that Developers shall have the

right to develop the Property in such order and at such rate and at such times as Developers deem appropriate within the exercise of its subjective business judgment, subject only to any timing or phasing requirements set forth in this Agreement with respect to roadway improvements.

3.4 Connection to Public Improvements. County shall cooperate with Developers to connect, through the issuance of appropriate encroachment permits or cooperation with other agencies providing services, any improvements constructed as part of the Project to existing or newly constructed public improvements, provided the costs of such connections are borne by Developers.

3.5 County Cooperation and Processing. County, through its officers, agents, and employees, shall exert good faith efforts and cooperate with Developers and support the Project as necessary: (a) to issue approvals of improvement plans, encroachment permits, tentative maps that are consistent with the Specific Plan, final maps, and other ministerial approvals in a timely manner, (b) to form Community Facilities Districts contemplated hereby, and (c) to obtain other permits or approvals required from other government agencies to effectuate the development of the Property. County, through its officers, agents, and employees, shall cooperate with Developers and support the Project as necessary to obtain other permits or approvals required from other government agencies to effectuate the development of the Property.

3.6 Public Financing. County agrees to cooperate with Developers in the formation and implementation of public financing districts or areas of benefit, such as a Community Facilities District (“CFD”) or Statewide Community Infrastructure Program District, as provided in the Financing Plan, as may be amended. County and Developers acknowledge and agree that facilities eligible to be financed through the CFD may include, without limitation, off-site road and intersection improvements required in the Project Approvals as well as any and all development impact fees applicable to the Project. County and Developers shall use their best efforts to cause to be formed any such financing district(s) provided that such formation is consistent with the criteria set forth in the Financing Plan and applicable County ordinances or adopted policies regulating such matters. County agrees that any credits or reimbursements owed to Developers shall not be affected or reduced because improvements for which credits or reimbursements are due were financed with any special taxes or bond proceeds.

3.7 Funding and Construction of Public Improvements. Nothing in this Agreement shall be construed as obligating the County to fund, design, or construct any specific projects or improvements at any specific time. The County shall not be obligated to expend monies from its general fund or from any source not identified in this Agreement to design or construct any improvements necessary for the development of the Property.

3.8 Protection Against Negative Fiscal Impacts and Supplemental Taxes.

3.8.1 Fiscal Impact Analysis and Supplemental Tax. Consistent with County policy, Developers have provided to County a Fiscal Impact Analysis (“FIA”) dated April 27, 2021, and prepared by Development Planning & Financing Group, Inc. (“DPFG”). The FIA determined that the Project would have an annual shortfall to the County General Fund of Two Hundred and Eighty-Six Dollars and Forty Cents (\$286.40) per unit. The FIA also determined that the Project would have a positive fiscal impact on the County Road Fund. The projected

negative fiscal impact to the County General Fund identified in the FIA of Two Hundred and Eighty-Six Dollars and Forty Cents (\$286.40) per unit shall be mitigated through an annual payment in excess of any payments provided for in this Agreement through the CFD to the County General Fund (“**Supplemental Tax**”). The Supplemental Tax will be adjusted annually based on the percentage changes in the CPI or appropriate inflationary index as may be required by the enabling legislation for the Supplemental Tax. Unless the County, in its sole discretion, agrees in writing in advance of approval of the first final small lot subdivision map, County and Developers shall cooperate, utilizing best efforts, to form the CFD prior to or concurrent with approval of the first final small lot subdivision map, and the County may withhold approval of any final small lot subdivision map until such CFD is formed. Any written agreement under this subsection to allow for approval and recordation of a final small lot subdivision map before formation of the CFD does not require an amendment to this Agreement. The Supplemental Tax shall be limited to services and facilities authorized by the enabling legislation for the CFD and, subject to the provisions of Section 3.6, the County shall retain discretion as to the services and facilities to be funded by the Supplemental Tax. To ensure that the most current and accurate information reflecting actual project build-out expectations are utilized in calculating fiscal impacts, for any portion of the Project for which a final small lot subdivision map has not been filed within three (3) years of the Effective Date of this Agreement, the County, in its sole discretion, may request an updated FIA prior to approving such final small lot subdivision map(s) and, if requested, Developers shall cause DPF (or other consultants acceptable to County) to provide an updated FIA. The date a final small lot subdivision map is considered filed under this subsection for purposes of determining whether an updated FIA is required shall be the date the County determines, in its sole discretion, that the submitted final small lot subdivision map is in substantial compliance with the Subdivision Map Act and all of the required filings identified in County Code Section 120.28.050(A) are submitted and complete. The County may not request an updated FIA if any updated FIA was completed within three (3) years of the date of Developers’ filing, as defined above, of a final small lot subdivision map. An updated FIA shall utilize the same methodology previously utilized by DPF and be consistent with the County’s adopted Fiscal Impact Analysis and Public Facilities Financing Plan Process Manual and Guidelines (“FIA/PFFP Guidelines”), as amended from time to time. The County, in its sole discretion, may elect to obtain peer review of any updated FIA, and Developers shall reimburse the County for the cost of a third-party consultant of the County’s selection to perform the peer review. In the event of a conflict between the methodology previously utilized by DPF and the FIA/PFFP Guidelines, the FIA/PFFP Guidelines shall control. The Supplemental Tax shall be increased by the amount of any increased negative fiscal impact identified in any updated FIA, provided such increase shall be applied to only those portions of the Project for which a final small lot subdivision map has not already been approved. If an updated FIA requires an increase in the Supplemental Tax as provided herein, County and Developers shall cooperate, utilizing best efforts, to increase the Supplemental Tax prior to approval of any remaining final small lot subdivision map(s), and the County may withhold approval of any remaining final small lot subdivision map(s) until the Supplemental Tax is increased. The County, in its sole discretion, may agree in writing and in advance of approval of a final small lot subdivision map to provide a different deadline for the increase of the Supplemental Tax and any such written agreement does not require an amendment to this Agreement. In requesting an updated FIA under this Section, the County may also request an

updated Financing Plan and, at the County's request, the Developer shall prepare an updated Financing Plan consistent with Section 3.8.2.

3.8.2 Public Facilities Financing Plan. Consistent with County policy, Developers also provided to County the Financing Plan dated April 28, 2021 and prepared by DPFG. At the time of executing this Agreement, the Financing Plan does not include costs associated with parkland dedication because, consistent with Section 3.2.2 of this Agreement, the precise manner in which Developers' Quimby and County parkland dedication obligations will be satisfied are not yet determined. The Conditions of Approval for the Project also require formation of a funding mechanism for maintenance of parks, maintenance of open space, landscaping, lighting, fencing, trails, walkways, corridors, signage, sound walls, entry monuments, and other common or public areas, but the associated costs are not yet determined. Within ninety (90) days of the determination of (i) the precise manner in which Developers will satisfy their Quimby and County parkland dedication obligations and (ii) the aforementioned funding mechanism required in the Conditions of Approval, Developers shall cause DPFG (or other consultants acceptable to County) to provide an updated Financing Plan utilizing the same methodology previously utilized by DPFG and consistent with the County's adopted FIA/PFFP Guidelines, as amended from time to time. The County, in its sole discretion, may elect to obtain peer review of such updated Financing Plan, and Developers shall reimburse the County for the cost of a third-party consultant of the County's selection to perform the peer review. In the event of a conflict between the methodology previously utilized by DPFG and the FIA/PFFP Guidelines, the FIA/PFFP Guidelines shall control.

3.8.3 Supplemental Ambulance Services Tax. Notwithstanding the foregoing, each residential unit in the Property will be subject to a special tax to pay for ambulance services. The base year special tax for ambulance services shall be Fifty Dollars (\$50.00) per unit ("**Supplemental Ambulance Services Tax**"). The Supplemental Ambulance Services Tax will be adjusted annually based on the percentage changes in the CPI or appropriate inflationary index as may be required by the enabling legislation for the Supplemental Ambulance Services Tax. The Supplemental Ambulance Services Tax will not be considered in determining whether the Project has a negative fiscal impact and is not accounted for when calculating the estimated shortfall in Section 3.8.1. Unless the County, in its sole discretion, agrees in writing in advance of approval of the first final small lot subdivision map, County and Developers shall cooperate, utilizing best efforts, to form the CFD prior to approval of the first final small lot subdivision map, and the County may withhold approval of a final small lot subdivision map until such CFD is formed. Any written agreement under this subsection to allow for approval of a final small lot subdivision map before formation of the CFD does not require an amendment to this Agreement.

3.9 Regional Connector. In order to allow for future connectivity in the area, the County may plan for a new four-lane public road that would generally connect Latrobe Road south of Royal Oaks Drive to White Rock Road in Sacramento County ("Regional Connector") and utilize a portion of the Regional Park Site. The Parties recognize that any such Regional Connector is not currently included in the County's Capital Improvement Program ("CIP") or General Plan. To ensure that land is available if and when the County plans for such a Regional Connector, Developers agree that, subject to the terms and conditions set forth in this Section 3.9, Developers will grant an irrevocable offer of dedication ("IOD") to the County for land generally along the southernmost property line of the Regional Park Site to be utilized as a



Regional Connector. The Parties agree that any such IOD will be limited to the necessary right of way needed for a four-lane road with curb, gutter, and sidewalk. The final alignment, if any, will be determined if and when the County designs and includes the Regional Connector in its CIP. If the final alignment requires Developers to grant the IOD as set forth in this Section 3.9, the portion of the final alignment within the Regional Park Site shall be subject to Developers' approval, which approval shall not be unreasonably withheld, conditioned, or delayed. In no event shall Developers be required to provide an IOD anywhere other than as specified in this Section 3.9. The County hereby agrees that if the El Dorado Hills Community Services District ("CSD") desires to purchase the Regional Park Site from Developers before the County has determined the final alignment, the County shall use good faith, diligent efforts to work with Developers and the CSD to more precisely define the planned final alignment in order to allow for the planning and programming of the Regional Park Site. The Parties agree that any sale of the Regional Park Site will be subject to this Section 3.9 and Developers shall ensure that the obligations of this Section 3.9 are binding on any subsequent owner of the Regional Park Site. Parties agree that the southern edge of the right of way for the Regional Connector may not abut the southernmost property line of the Regional Park Site exactly given alignment constraints that are unknown at this time, but the County will use best efforts to develop an alignment that traverses as close to the southernmost property line of the Regional Park Site as feasible based on engineering analysis and economic considerations. The Parties agree that the total acreage of the Regional Connector and any remaining land between the southern edge of the right of way for the Regional Connector and the southernmost property line of the Regional Park Site will not exceed one and three-quarters (1.75) acres. The Parties further agree that Developers' grant of an IOD at no cost to the County shall not exceed one and three-quarters (1.75) acres. In the event the County requires land exceeding one and three-quarters (1.75) acres for the Regional Connector and any remaining land between the southern edge of the right of way for the Regional Connector and the southernmost property line of the Regional Park Site, the County shall purchase or otherwise lawfully acquire the same from Developers at fair market value. With respect to any remaining land between the southern edge of the right of way for the Regional Connector and the southernmost property line of the Regional Park Site, Developers may elect to include any or all of such remaining land in the IOD and, if included, the County agrees to accept this remaining land. The County's request for an IOD pursuant to this Section 3.9 shall be limited to use as a public road and must be made within the Term of this Agreement. Developers shall have no obligation to grant the IOD unless and until the Regional Connector is included in the County's CIP. In the event the County includes the Regional Connector in its CIP in an alignment that does not at least partially utilize the area of the Regional Park Site provided for in this Section 3.9, Developers' obligations pursuant to this Section 3.9 shall automatically terminate and Developers shall be relieved of any and all obligations hereunder with respect to the Regional Connector. In the event the County includes the Regional Connector in its CIP in an alignment that partially utilizes the area of the Regional Park Site provided for in this Section 3.9, Developers' obligations pursuant to this Section 3.9 shall be limited to the area provided in this Section 3.9 and the County shall purchase or otherwise lawfully acquire any remaining land from Developers at fair market value. Provided that the County's request for an IOD complies with the terms provided herein, Developers agree to grant, and County agrees to accept, the IOD in a form reasonably acceptable to the County within sixty (60) days of the County's written request for the IOD. The County will have no obligation to compensate or reimburse Developers for the costs of the dedicated land unless the amount of

dedicated land exceeds one and three-quarters (1.75) acres as further set forth above. The Parties further agree that the offer to dedicate up to one and three-quarters (1.75) acres for the Regional Connector at no cost to the County is an essential term of this Agreement. In the event the County accepts the IOD as set forth hereinabove but does not commence construction of the Regional Connector within the Term of this Agreement, the County shall, if desired by Developers and upon written request, convey the dedicated land back to Developers no more than sixty (60) days prior to the expiration of the Term of this Agreement. The foregoing obligation of County shall survive the expiration or earlier termination of this Agreement.

3.10 Voluntary Agreement. Developers acknowledge by their approval and execution of this Agreement that they are voluntarily agreeing to pay the Community Benefit Fee, the Affordable Housing Fee, and the ITS Project Fee, including the annual increases provided for in this Agreement, and to provide the IOD, if requested. Developers agree that their obligations to pay the enumerated fees and provide the IOD, if requested, are essential terms of this Agreement and are not severable from County's obligations and Developers' vested rights hereunder. Developers expressly waive any constitutional, statutory, or common law right they might have in the absence of this Agreement to protest or challenge the payment of the Community Benefit Fee, the Affordable Housing Fee, and the ITS Project Fee unless terminated as provided for in Section 3.2.4 with an Adopted ITS Fee, and provide the IOD, if requested, on any ground whatsoever, including without limitation pursuant to the Fifth and Fourteenth Amendments to the United States Constitution, California Constitution Article I Section 19, the Mitigation Fee Act (California Government Code Section 66000 et seq.), or otherwise. In addition to any other remedy set forth in this Agreement for Developers' default, if Developers shall fail to timely pay any of these fees when due, County shall have the right to withhold issuance of any further building permits, occupancy permits, or other development or building permits for the Project, excepting any such permits for which Developers' rights have previously vested.

3.11 Changes in State or Federal Law. In the event changes in County law, based on changes to state or federal law, prevent or preclude, or render substantially more expensive or time consuming, compliance with one or more provisions of this Agreement, County and Developers shall meet and confer in good faith in order to determine whether such provisions of this Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary to comply with such changes in the law. County shall reasonably cooperate with Developers, at Developers' expense, in Developers' effort to obtain any permits, approvals, or entitlements that may be required as a result of modifications or suspensions made pursuant to this Section. Nothing in this Agreement shall preclude County or Developers from contesting by any available means (including administrative or judicial proceedings) the applicability to the Project of any such changes in the law. If changes in the law preclude or substantially prevent or preclude, or render substantially more expensive or time consuming, performance of this Agreement in a manner that makes the Project economically infeasible, Developers, in their sole and absolute discretion, may terminate this Agreement by providing written notice thereof to County.

3.12 Estoppel Certificate. Developers or their lenders may, at any time, and from time to time, deliver written notice to County requesting County to certify in writing that: (a) this Agreement is in full force and effect; (b) this Agreement has not been amended or modified or, if so amended or modified, identifying the amendments or modifications; and (c) the

applicable Developer is not in default of the performance of its obligations, or if in default, to describe there the nature and extent of any such defaults. The applicable Developer shall pay, within thirty (30) days following receipt of County's invoice, the actual costs borne by County in connection with its review of the proposed estoppel certificate, including the costs expended by the County Counsel's Office in connection therewith. The Director of Planning and Building Department shall be authorized to execute any certificate requested by the applicable Developer hereunder. The form of estoppel certificate shall be in a form reasonably acceptable to the County Counsel. The Director of Planning and Building Department shall execute and return such certificate within thirty (30) days following the applicable Developer's request therefor. Developers and County acknowledge that a certificate hereunder may be relied upon by tenants, transferees, investors, partners, bond counsel, underwriters, bond holders, and mortgagees. The request shall clearly indicate that failure of County to respond within the thirty (30)-day period will lead to a second and final request. Failure to respond to the second and final request within twenty (20) days of receipt thereof shall be deemed approval of the estoppel certificate.

#### **SECTION 4. ANNUAL REVIEW AND COST RECOVERY**

4.1 Annual Review. During the term of this Agreement, the County shall, once every calendar year, review the extent of good faith compliance by Developers with the terms of this Agreement. Such periodic review shall be limited in scope to compliance with the terms and conditions of this Agreement pursuant to California Government Code Section 65865.1. This review shall be conducted pursuant to Section 130.58 of the County Ordinance Code. Developers shall pay, within thirty (30) days following receipt of County's invoice, the established fee for this annual review as established in the Planning and Building Department Fee Schedule at the time of each annual review. The County is not responsible for allocating costs between Developers and may send a single invoice for which Developers shall be jointly and severally liable. Upon not less than thirty (30) days' written notice by the Director of the Planning and Building Department, Developers shall provide such information as may be reasonably requested by the Director and deemed by the Director to be required in order to ascertain compliance with this Agreement. A Developer's failure to provide the requested information within thirty (30) days of the Director's request shall constitute a default of this Agreement by that Developer in accordance with Section 5 herein.

4.2 Cost Recovery. While staff time for the Planning and Building Department is recovered through the Planning and Building Department Fee Schedule on a time and materials basis, involvement of other County departments is not included under that fee schedule. Developers agree that cost recovery for the Planning and Building Department will be pursuant to the Planning and Building Department Fee Schedule and nothing in this Agreement will alter that cost recovery. For all other departments, Developers agree to reimburse the County for its other costs in negotiating, drafting, and approving this Agreement that have been incurred since May 3, 2021, including staff, legal, and consultant costs, in an amount not to exceed Ten Thousand Dollars (\$10,000.00). Developers shall submit such cost recovery payment to the County within thirty (30) days of receipt of County's invoice itemizing staff time expended in furtherance of this Agreement. The County is not responsible for allocating costs between Developers and may send a single invoice for which Developers shall be jointly and severally liable.

**SECTION 5.**  
**DEFAULT, ENFORCEMENT, AND REMEDIES**

5.1 Application of Section. The Parties agree that the following provisions shall govern the availability of remedies should any of the Parties breach any of its obligations under this Agreement.

5.2 Default. Failure or delay by the Parties to perform any term or provision of this Agreement shall constitute a default, provided, however, the default by any successor in interest of Developers to whom the applicable Developer has assigned development rights pursuant to Section 1.7, shall not be considered a default by the applicable Developer or by any other successor in interest of the applicable Developer. The County may institute proceedings pursuant to this Section against any individual defaulting Party. In the event of alleged default or breach of any terms or conditions of this Agreement, the Party alleging such default or breach shall give the other Party not less than sixty (60) days' notice in writing specifying the nature of the alleged default and the manner in which said default may be satisfactorily cured. During any sixty (60) day period, the Party charged shall not be considered in default for purposes of termination or institution of legal proceedings.

After notice of expiration of the sixty (60)-day period, the Party alleging default, at its option, may institute legal proceedings pursuant to Section 5.3 of this Agreement or give notice of intent to terminate this Agreement pursuant to California Government Code Section 65868 or may pursue such other administrative remedies as may be appropriate. Following notice of intent to terminate, the matter shall be scheduled for a hearing before the County Board of Supervisors to consider and review the matter within sixty (60) calendar days. Following consideration of the evidence presented in the review, if no resolution of the matter is reached, either Party alleging the default by the other Party may give written notice of termination of this Agreement to the other Party.

5.3 Remedies. In the event of an uncured default, the Parties' remedies under this Agreement are as follows:

5.3.1 An action for specific performance of an obligation of a Party, after giving that Party the opportunity to cure a default as provided in Section 5.2.

5.3.2 An action for injunctive relieve to preserve the physical or legal status quo of the development of the Project pending a judicial determination of the rights of the Parties in the event of a dispute between the Parties as to their rights and obligations under this Agreement.

5.3.3 An action for declaratory relief to determine the rights and obligations of the Parties under this Agreement.

5.3.4 Developers understand and agree that the County would not be willing to enter into this Agreement if it created any monetary exposure for the County for damages (whether actual, compensatory, consequential, punitive, or otherwise) in the event of a breach by the County. Developers specifically acknowledge that they may not seek monetary damages of any kind, and Developers, and their successors, hereby waive, relinquish, and surrender any right

to any monetary remedy. The applicable Developer, and its successors, hereby agrees to indemnify, defend, and hold the County harmless for any cost, loss, liability, expense or claim, including attorneys' fees, arising from or related to any claim brought by the applicable Developer, and its successors, inconsistent with the foregoing waiver.

**SECTION 6.  
HOLD HARMLESS AND INDEMNIFICATION**

6.1 No Joint Venture or Partnership. County and Developers hereby renounce the existence of any form of joint venture or partnership between the County and Developers and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating a partnership, joint venture, or other legal entity between them.

In entering into this Agreement, the County is acting under the statutory and police powers that it holds as a political subdivision of the State of California which authorize it to regulate the development of land within its boundaries and to provide for the general health, safety and welfare.

In entering into this Agreement, Developers are acting in a purely private capacity as the owners of real property in the County of El Dorado, which property is subject to the jurisdiction of the County.

6.2 No Liability for Acts of Developers.

6.2.1 It is expressly understood that the development of the Project is an undertaking that may create for Developers liability to third parties including, but not limited to, assignees of all or part of this Agreement, buyers and lessees of buildings, building contractors and subcontractors, and suppliers. Developers understand and agree that the County would not execute this Agreement if, in so doing, it created for the County any liability to any third party. Consequently, Developers, and their successors, heirs, and assigns agree to defend, indemnify, and hold harmless the County, and its officers, agents, and employees from any claim or injury to person or property arising out of or relating to this Agreement or the operations of Developers in the development of the Project under the terms of this Agreement.

6.2.2 Developers and all successors also agree to and shall hold County and its appointed councils, boards, commissions, officers, agents, and employees harmless from any liability, including costs and attorneys' fees, for any challenge to this Agreement, damages or claims for damage for personal injury, including death, and from claims for property damage which may arise from any act or omission of Developers, of their assigns, successors in interest, or their agents, employees, contractors, or sub-contractors, pursuant to this Agreement.

6.2.3 Notwithstanding anything in Section 6.3 to the contrary, the County shall have any remedy available to it at law or in equity to enforce the provision of, or to collect damages for, any breach of this Section.

6.3 Duty to Defend Challenges to this Agreement.

6.3.1 The Parties recognize that there may be third party challenges to this Agreement, relative to the procedure used to adopt it or the contents of it.

6.3.2 Developers shall defend the County and its elective and appointive councils, boards, commissions, officers, agents, and employees from any suits or actions at law or in equity for damage caused by reason of the aforesaid operations under this Agreement.

6.3.3 The County shall have the right, at its sole discretion, to select its own attorneys to defend the County in any action brought by a third party, and Developers hereby agree to pay the fees and expenses of the attorneys selected.

6.3.4 The County agrees to cooperate in good faith in the defense of any action or proceeding brought to challenge this Agreement or the ordinance adopting it.

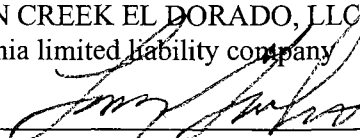
6.3.5 Should a court, in any action challenging this Agreement or the Ordinance adopting it, award attorneys' fees, costs, or other litigation expenses against the County, Developers shall be responsible for the payment of those fees, costs, and expenses and shall hold the County harmless from any claim thereto.

[Signatures on next page]

IN WITNESS WHEREOF, the Parties have duly signed this Agreement as of the date first written above.

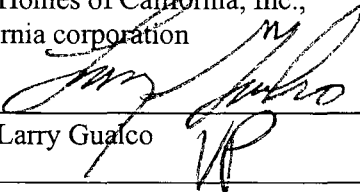
**CCED:**

CARSON CREEK EL DORADO, LLC  
a California limited liability company

  
\_\_\_\_\_  
By: Larry Gualco  
Its: Vice President

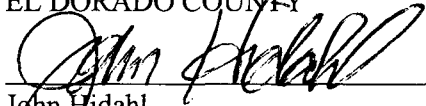
**LENNAR:**

Lennar Homes of California, Inc.,  
a California corporation

  
\_\_\_\_\_  
By: Larry Gualco  
Its: \_\_\_\_\_

**COUNTY:**

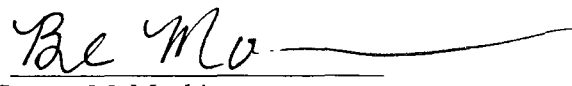
EL DORADO COUNTY

  
\_\_\_\_\_  
John Hidahl  
Chair, Board of Supervisors

ATTEST: Kim Dawson  
Clerk of the Board of Supervisors

By: 

APPROVED AS TO FORM:  
David A. Livingston  
County Counsel

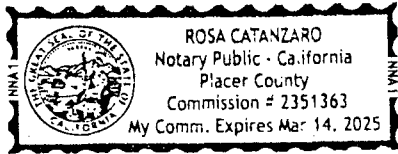
By:   
\_\_\_\_\_  
Breann M. Moebius  
Deputy County Counsel

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

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 August 30, 2021 before me, ROSA CATANZARO, Notary Public, personally appeared LARRY GUALCO 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 Above

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

WITNESS my hand and official seal

*Rosa Catanzaro*  
 Signature of Notary Public

**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: \_\_\_\_\_

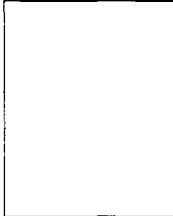
Signer(s) Other Than Named Above: \_\_\_\_\_

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

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

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

RIGHT THUMBPRINT OF SIGNER



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

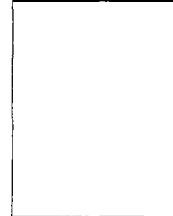
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\_\_\_\_\_

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

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

RIGHT THUMBPRINT OF SIGNER



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

\_\_\_\_\_

\_\_\_\_\_



**EXHIBIT A-1**

**Legal Description of CCED Property**

## EXHIBIT A-1

### LEGAL DESCRIPTIONS FOR CARSON CREEK DEVELOPMENT AGREEMENT CARSON CREEK EL DORADO, LLC

All that real property situated within a portion of sections 23 & 26, Township 9 North, Range 8 East, Mount Diablo Meridian, County of El Dorado, State of California, being further described as follows:

APN 117-680-007

Lot LL7, as shown on the map of Carson Creek Unit 2A, Phase 1, filed in the office of the County Recorder of the County of El Dorado, State of California on October 26, 2017, in Book K of Maps at Page 8, and as amended by that certain Certificate of Correction recorded November 7, 2017, Instrument No. 2017-0050018-00, and as corrected by Instruments recorded November 7, 2017 as Instrument No. 2017-0050015 and Certificate of Correction recorded November 7, 2017 as Instrument No.2017- 0050018 official records.

Containing 61.456 acres of land, more or less.

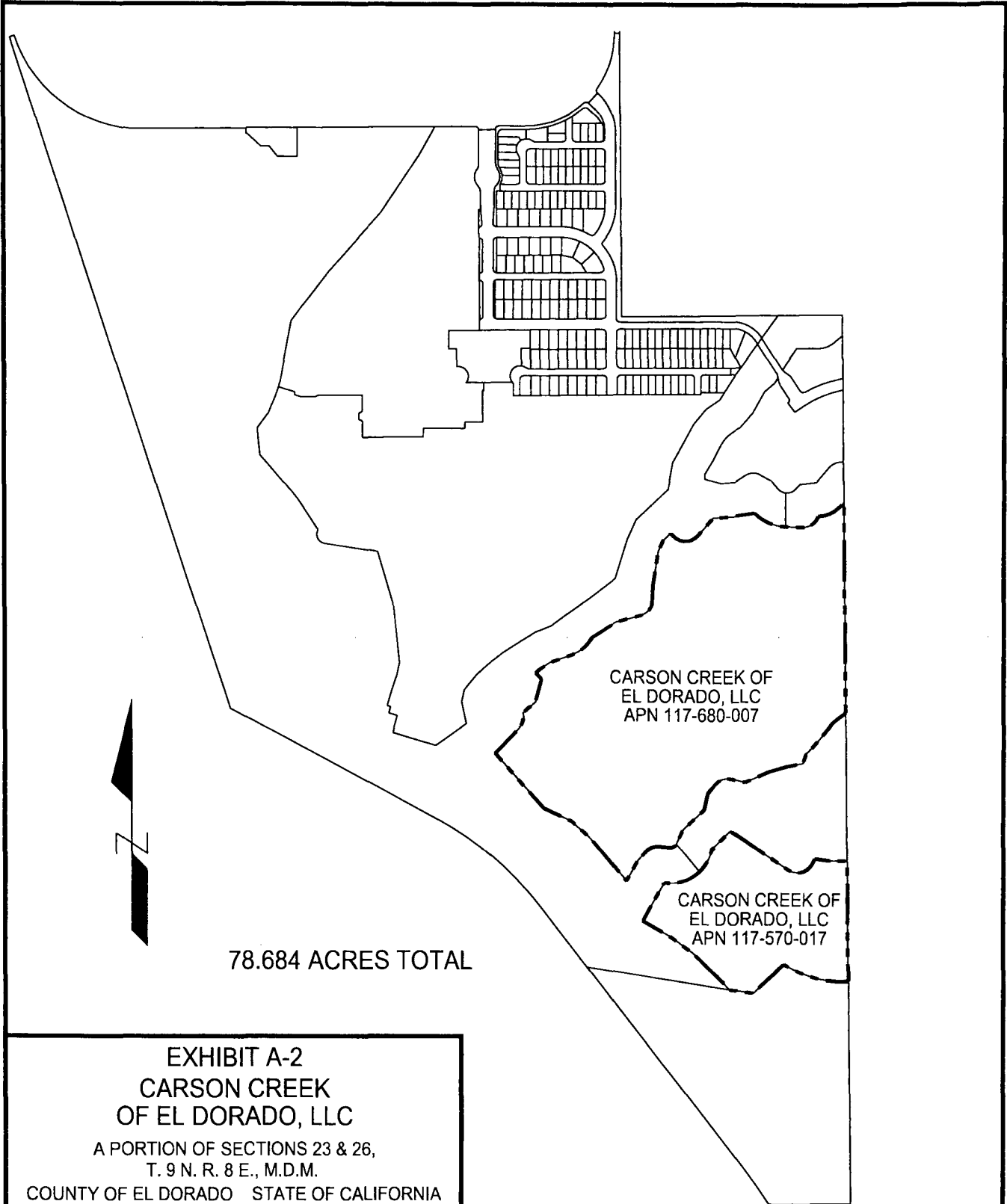
APN 117-570-017

Lot 17 of the plat of large lot final map of Carson Creek, filed in the office of the County Recorder of the County of El Dorado, State of California, filed August 26, 2014, in Book J of Maps at Page 130.

Containing 17.228 acres of land, more or less.

**EXHIBIT A-2**

**Depiction of CCED Property**



**EXHIBIT A-2**  
**CARSON CREEK**  
**OF EL DORADO, LLC**  
 A PORTION OF SECTIONS 23 & 26,  
 T. 9 N. R. 8 E., M.D.M.  
 COUNTY OF EL DORADO STATE OF CALIFORNIA

R. E. Y. ENGINEERS, Inc.  
 CIVIL ENGINEERS / LAND SURVEYORS  
 905 SUTTER ST. STE 200 FOLSOM CA 95630  
 (916) 366-3040 Fax (916) 366-3303

|          |       |            |          |
|----------|-------|------------|----------|
| MRD      | NTS   | 02/22/2021 | 7310.025 |
| DRAWN BY | SCALE | DATE       | JOB NO.  |

**EXHIBIT B-1**

**Legal Description of Lennar Property**

## EXHIBIT B-1

### LEGAL DESCRIPTIONS FOR CARSON CREEK DEVELOPMENT AGREEMENT LENNAR HOMES OF CALIFORNIA, INC

All that real property situated within a portion of sections 23 & 26, Township 9 North, Range 8 East, Mount Diablo Meridian, County of El Dorado, State of California, being further described as follows:

APN 117-680-003

Lot LL3, as shown on the map of Carson Creek Unit 2A, Phase 1, filed in the office of the County Recorder of the County of El Dorado, State of California on October 26, 2017, in Book K of Maps at Page 8, and as amended by that certain Certificate of Correction recorded November 7, 2017, Instrument No. 2017-0050018-00, and as corrected by Instruments recorded November 7, 2017 as Instrument No. 2017-0050015 and Certificate of Correction recorded November 7, 2017 as Instrument No. 2017-0050018 official records.

Containing 1.669 acres of land, more or less.

APN 117-680-004

Lot LL4, as shown on the map of Carson Creek Unit 2A, Phase 1, filed in the office of the County Recorder of the County of El Dorado, State of California on October 26, 2017, in Book K of Maps at Page 8, and as amended by that certain Certificate of Correction recorded November 7, 2017, Instrument No. 2017-0050018-00, and as corrected by Instruments recorded November 7, 2017 as Instrument No. 2017-0050015 and Certificate of Correction recorded November 7, 2017 as Instrument No. 2017-0050018 official records.

Containing 7.671 acres of land, more or less.

APN 117-680-008

Lot LL8, as shown on the map of Carson Creek Unit 2A, Phase 1, filed in the office of the County Recorder of the County of El Dorado, State of California on October 26, 2017, in Book K of Maps at Page 8, and as amended by that certain Certificate of Correction recorded November 7, 2017, Instrument No. 2017-0050018-00, and as corrected by Instruments recorded November 7, 2017 as Instrument No. 2017-0050015 and Certificate of Correction recorded November 7, 2017 as Instrument No. 2017-0050018 official records.

Containing 11.527 acres of land, more or less.

APN 117-680-016

INVESTMENT BOULEVARD, as shown on the map of Carson Creek Unit 2A, Phase 1, filed in the office of the County Recorder of the County of El Dorado, State of California on October 26, 2017, in Book K of Maps at Page 8, and as amended by that certain Certificate of Correction recorded November 7, 2017, Instrument No. 2017-0050018-00, and as corrected by Instruments recorded November 7, 2017 as Instrument No. 2017-0050015 and Certificate of Correction recorded November 7, 2017 as Instrument No.2017-0050018 official records.

Containing 0.562 acres of land, more or less.

APN 117-570-013

Lot 13 of the plat of large lot final map of Carson Creek, filed in the office of the County Recorder of the County of El Dorado, State of California, filed August 26, 2014, in Book J of Maps at Page 130.

Containing 1.966 acres of land, more or less.

APN 117-570-018

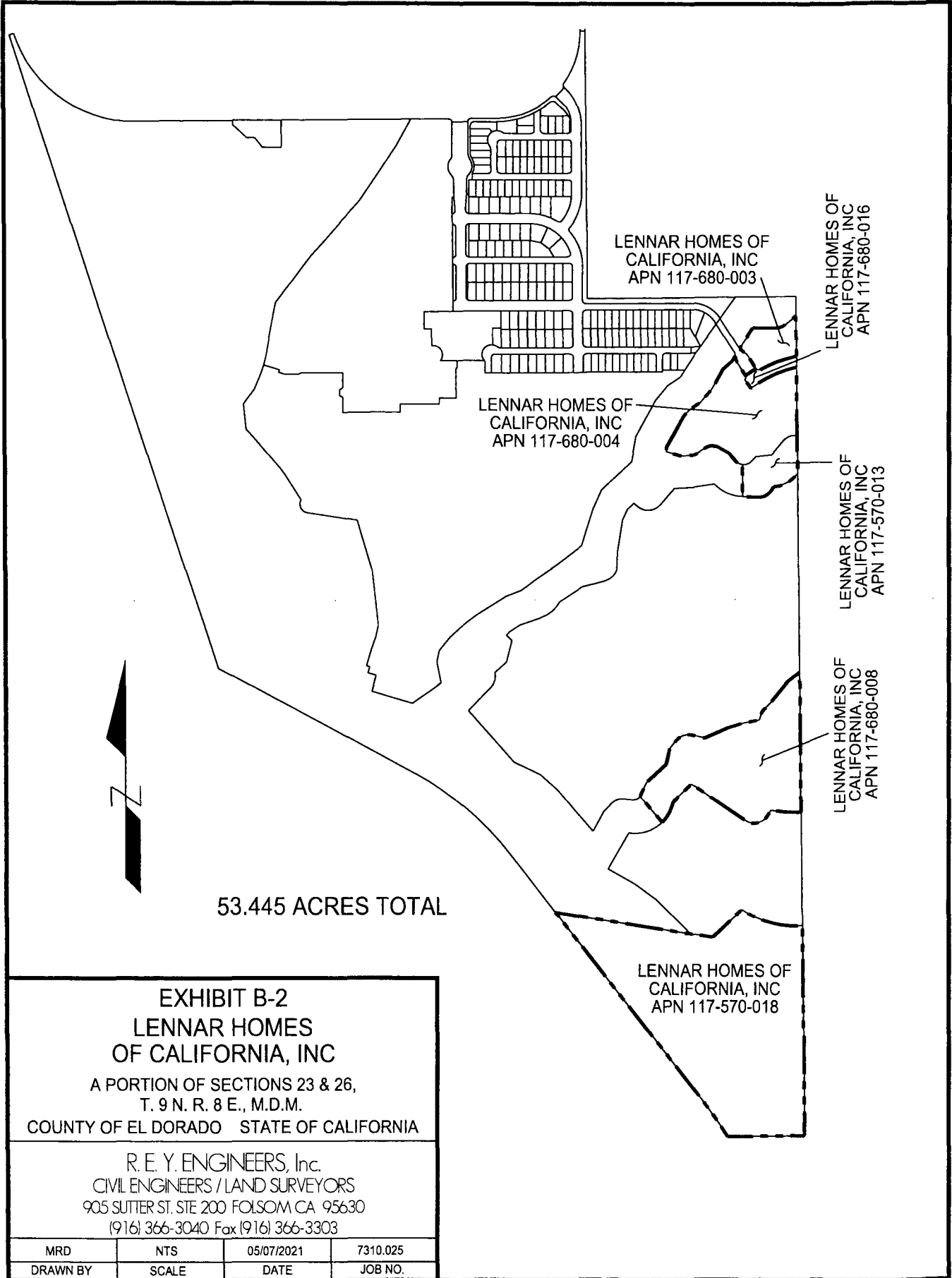
Lot 18 of the plat of large lot final map of Carson Creek, filed in the office of the County Recorder of the County of El Dorado, State of California, filed August 26, 2014, in Book J of Maps at Page 130.

Containing 30.000 acres of land, more or less.

**EXHIBIT B-2**

**Depiction of Lennar Property**





**EXHIBIT B-2**  
**LENNAR HOMES**  
**OF CALIFORNIA, INC**  
 A PORTION OF SECTIONS 23 & 26,  
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|----------|-------|------------|----------|
| MRD      | NTS   | 05/07/2021 | 7310.025 |
| DRAWN BY | SCALE | DATE       | JOB NO.  |

**EXHIBIT C**

**Form of Assignment**

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

**THIS ASSIGNMENT AND ASSUMPTION AGREEMENT** (hereinafter "**Assignment Agreement**") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_ (hereinafter "**Owner**") and \_\_\_\_\_ (hereinafter "**Assignee**").

**RECITALS**

A. On \_\_\_\_\_, 2021, the County of El Dorado entered into that certain agreement entitled "Community Benefit and Development Agreement By and Between County of El Dorado and Carson Creek El Dorado, LLC and Lennar Homes of California, Inc.," approved by Ordinance No. \_\_\_\_\_ (hereinafter "**Development Agreement**"), relative to the development known as the "Heritage Carson Creek Village 11" (hereinafter "**Subject Property**").

B. Owner entered into a purchase and sale agreement whereby a portion of the Subject Property will be sold to Assignee, which portion of the Subject Property is identified and described in **Exhibit "A,"** attached hereto and incorporated herein by this reference (hereinafter "**Assigned Parcel(s)**").

C. Owner desires to assign all of its interests, rights, and obligations under the Development Agreement with respect to the Assigned Parcel(s).

D. Assignee desires to assume all Owner's interests, rights, and obligations under the Development Agreement with respect to the Assigned Parcel(s).

NOW, THEREFORE, Owner and Assignee hereby agree as follows:

1. Assignment. Owner hereby assigns, effective as of Owner's conveyance of the Assigned Parcel(s) to Assignee, all of the rights, title, interests, burdens, and obligations of Owner under the Development Agreement with respect to the Assigned Parcel(s). Owner retains all the

rights, title, interests, burdens, and obligations of Owner under the Development Agreement with respect to all other property within the Subject Property owned by Owner.

2. Assumption. Assignee hereby assumes all of the rights, title, interests, burdens, and obligations of Owner under the Development Agreement with respect to the Assigned Parcel(s), and agrees to observe and fully perform all of the duties and obligations of Owner under the Development Agreement with respect to the Assigned Parcel(s), and to be subject to all the terms and conditions thereof, with respect to the Assigned Parcel(s), it being the express intention of both Owner and Assignee that, upon the execution of this Assignment Agreement and conveyance of the Assigned Parcel(s) to Assignee, Assignee shall become substituted for Owner as the "Developer" under the Development Agreement with respect to the Assigned Parcel(s).

3. Binding on Successors. All of the covenants, terms, and conditions set forth herein shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, successors, and assigns.

4. Notice Address. The address for notices as contemplated by the Development Agreement for Developer with the Assigned Parcel(s) shall be:

[Name of Assignee]  
[Address of Assignee]

IN WITNESS HEREOF, the parties hereto have executed this Agreement as of the day and year first above written. This Assignment Agreement may be signed in identical counterparts.

**ASSIGNOR / OWNER**

[Name of Assignor / Owner],  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ASSIGNEE**

[Name of Assignee],  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[SIGNATURES MUST BE NOTARIZED]