

CITY OF LEMOORE

SUBDIVISION TRACT AGREEMENT
TRACT NO. 817 PHASE 3

THIS AGREEMENT, made the _____ day of _____, 2011 by and between the City Council of the City of Lemoore, hereinafter referred to as "CITY" and Lennar Fresno, Inc. hereinafter referred to as the "SUBDIVIDER".

WITNESSETH

WHEREAS, the Subdivider as the owner has heretofore filed a tentative subdivision map of that certain real property known and designated as TRACT NO. 817-3 in the City, and

WHEREAS, the Subdivider has presented to City a certain proposed final map, a copy of which is on file at the office of the Director of Public Works, and by reference thereto made a part of this agreement, and said Subdivider has requested the City to accept the dedications delineated and shown on said map for the use and purpose specified thereon, and to otherwise approve said map in order that the same may be recorded as required by law, and

WHEREAS, the City requires, as a condition precedent to the acceptance and approval of said map, the dedication of such streets, highways, and public places and easements as are delineated and shown on said map, and deems the same necessary for public use, and requires and deems as necessary for the public use that any and all streets delineated and shown thereon shall be improved by the construction thereon and the installation therein of the improvements in said proposed subdivision as hereinafter specified, and

WHEREAS, the parties hereto have agreed that the improvement of said land included and shown by said final map shall be completed in accordance with the applicable ordinances and resolutions of the City and the laws of the State of California and the Subdivider has agreed to post the necessary improvement security to guarantee said improvement in accordance with the laws of the State of California and the ordinances of the City.

NOW, THEREFORE, in consideration of the acceptance of the offers of dedication of streets, highways, public ways, easements, and facilities as shown and delineated on said map, and the approval of said map for filing and recording as provided and required by law, it is mutually understood and agreed by and between the Subdivider and City and they do hereby mutually agree as follows:

1. **Onsite and Offsite Improvements.** Subdivider agrees that it will construct and install in accordance with the plans prepared for Tract No. 817-3 by North Coast Engineering, Inc. and approved by the City Engineer, which plans are hereby incorporated by reference, at its sole cost and expense and in full conformity with the standards prescribed by City, all of the following work and subdivision improvements.

- A. All landmarks, monuments and lot corners required to locate the divisions shown on the Final Map. Pursuant to Section 66497 of the State Subdivision Map Act prior to the City's final acceptance of the subdivision and release of securities, the Subdivider shall submit evidence to the City of payment and receipt thereof by the Subdivider's engineer or surveyor for the final setting of all monuments required in the subdivision.

- B. Street improvements including curbs, gutters, sidewalks, paving and street signs.
- C. Storm drainage facilities including valley gutters.
- D. Extension of the City water system including water mains, valves, services, fire hydrants and miscellaneous appurtenances.
- E. Sanitary sewer system including sewer mains, manholes, house branches and appurtenances.
- F. Street lighting facilities, including electroliers, stands and underground electrical service.
- G. Street trees shall be planted by the Developer at the time the dwelling unit on the lot is finalized. Number of trees to be planted shall be calculated on the length of curb and gutter within the local subdivision area divided by 40 feet. The variety of tree shall be selected from the Master Street Tree list.
- H. Public utility facilities including gas, electric, telephone and cable television service. Financial arrangements shall be made with the respective public utility, and proof of this arrangement shall be furnished to the City upon request.
- I. Street signs shall be paid for at a cost of \$200 per sign. Total payment for installation of 6 street signs is \$1,200.
- J. If Subdivider has not acquired all necessary rights of way and easements as of the date the final map is recorded, and the City must undertake the acquisitions pursuant to Section 66462.5 of the Government Code, Subdivider shall pay 100% of City's acquisition costs, including, but not limited to, appraisal and court costs and attorneys fees and shall make such deposits and/or advance payments to the City as the City may reasonably require for such purpose.

Subdivider further agrees to pay at the time of filing of the Improvement Security hereinafter required by Paragraph 12 of this Agreement an amount to cover the City's costs of engineering and inspection as may be set by the City's Municipal Code.

The estimated costs of all said improvements to be completed, including a ten percent (10%) contingency, is \$717,770, as shown on Exhibit "A", attached hereto.

2. **Inspection of Work.** The City shall inspect all work to be done and performed by the Subdivider and Subdivider agrees that all work, improvements and materials to be done and supplied and performed shall be done, supplied and performed in strict accordance with the approved construction plans of said work on file in the Office of the City Engineer of the City, and in accordance with the standard specifications of the City, which said plans and specifications and standards are hereby referred to and incorporated by reference in this Agreement. All of said work and improvements and materials shall be done, performed, and installed to the satisfaction of the City Engineer of the City. Subdivider agrees to pay all fees for such inspection as required by the current City Code and fee resolutions and agrees to pay an additional three percent (3%) for reinspection required by reason of defective work, improvements and/or materials.

3. **Final Acceptance.** Upon completion of all said work and improvements and acceptance thereof by City, or upon the acceptance by City of the required Improvement Security referred to in Paragraph 12 hereof, the City agrees to approve the final subdivision map, and to accept on behalf of the public all lands, rights-of-way and easements offered for dedication in accordance with the conditions herein set forth. A complete set of "as built" reproducible plans shall be filed with the City upon completion of the work and improvements.

4. **Completion of Said Work of Improvements.** Subdivider agrees to complete the work and improvements as herein set forth within a period of twenty-four (24) months from the date of this Agreement. When a delay occurs due to unforeseen causes beyond the control and without the fault or negligence of the Subdivider, the time of completion may be extended for a period justified by the effect of such delay on the completion of the work. The Subdivider shall file a written request for a time extension with the Director of Public Works prior to the above noted date, who shall ascertain the facts and determine the extent of justifiable delays, if any. The Director of Public Works shall give the Subdivider written notice of his determination in writing, which shall be final and conclusive. In the event an extensions is granted to the time within which all work is to be completed on this subdivision, the Subdivider hereby agrees that he will comply with all the applicable improvement standards in effect at the time of said extension.

5. **Maintenance of Improvements Following Acceptance.** Upon satisfactory completion of all improvements required in accordance with this agreement and acceptance thereof by the City, the City agrees to accept for maintenance the improvements to be constructed in accordance with this Agreement; provided, however, within fifteen (15) days after written notice from the City, the Subdivider agrees to remedy any defects in the improvements arising from faulty or defective construction of said improvements occurring within twelve (12) months after acceptance thereof.

6. **Safety.** Subdivider shall perform all work in accordance with the applicable sections of Title 3 of the California Administrative Code (CAL OSHA), and the Manual of Traffic Controls, Warning Signs, Lights, and Devices for Use in Performance of Work Upon Highways, published by California Department of Transportation, and available at the City Engineer's Office. Provisions shall be made by Subdivider for protection of the traveling public on all public roads affected by the improvements.

Barricades and related facilities shall be placed in such number and in such locations as required for public safety, and at night they shall be equipped with flashing yellow lights. City reserves the right to require and Subdivider shall promptly install or place additional barricades or other facilities to assure public safety if City shall deem the same to be necessary or desirable for public safety. Subdivider is responsible for all liability which may arise out of work herein permitted whether or not on public property, and shall indemnify, defend and hold City harmless from any and all claims, damages, or causes of action arising therefrom or related thereto.

7. **Insurance and Indemnity.** The Subdivider shall take and assume all responsibility for the construction of the improvements and the safety of operation in connection therewith. The Subdivider shall bear all losses and damages directly or indirectly resulting to the City, its officers, agents, and employees or to others on account of the construction of the improvements, unforeseen difficulties, accidents, or any other causes whatsoever.

The Subdivider shall assume the defense of and indemnify and save harmless the City, its officers, agents, and employees from all claims, loss, damage, injury and liability of every kind, nature, and description, directly or indirectly arising from the construction of the improvements.

Subdivider further agrees that before commencing any work pursuant to this agreement, Subdivider will obtain, and at all times prior to final acceptance of all improvements hereunder, and will keep in full force and effect, insurance coverage in such limits and amounts, and covering such risks as shall be acceptable to the City. In the event that no other requirement is made known to Subdivider, the minimum coverage and limits shall be as follows:

<u>COVERAGE</u>	<u>LIMITS</u>
Workers Compensation	Statutory
Comprehensive General Liability, including or separately insuring liability assumed by contract	
Bodily Injury	\$ 500,000 per person \$1,000,000 per occurrence
Property Damage	\$ 250,000 per occurrence

Subdivider shall, prior to commencement of construction work, furnish to City a certificate of insurance, which shall provide that the above insurance shall not be cancelled without 30 days prior written notice to City, and which shall also show the City, its officers and employees, as additional named insureds (except as to worker's compensation coverage).

8. **Compliance with Codes.** Subdivider shall comply with any and all ordinances and resolutions or other codes of the City applicable to the proposed subdivision and the work to be done by Subdivider under the terms of this Agreement.

9. **Notice of Commencement of Work.** The Subdivider shall give the City's Engineer written notice of not less than two working days in advance of the actual date on which work is to be started. Failure on the part of the contractor to notify the City's Engineer may cause delay for which the Subdivider shall be solely responsible.

Whenever the Subdivider varies the period which work is carried on each day, he shall give due notice to the City's Engineer so that proper inspection may be provided. Any work done in the absence of the City's Engineer or his duly authorized inspectors may be subject to rejection.

The inspection of work shall not relieve the Subdivider of any of his obligations to fulfill this Agreement as prescribed, and the Subdivider agrees that defective work shall be made good, and unsuitable materials may be rejected, notwithstanding the fact that such defective work and unsuitable materials have been previously overlooked by the City's Engineer or Inspector and accepted.

Any damage to sewer systems, concrete work or street paving or other works of improvements, as required by this agreement, that occurs after installation and prior to the acceptance thereof by the City shall be made good by the Subdivider, to the satisfaction of the City's Engineer, before release of the Improvement Security guaranteeing said work.

10. **Dust Control.** The Subdivider shall be responsible for the complete control of dust during the construction of the subdivision improvements and will take the following measures to reduce dust generation during the development and construction of the subdivision:

- A. Submit for approval by the Director of Public Works a program for the control of dust, which shall include but not be limited to, a watering schedule (frequency and time of day), use of dust control emulsions, and/or other measures necessary for the control of dust.
- B. Provide equipment and manpower for watering of all exposed or disturbed soil surfaces including on weekends and holidays.
- C. Sweep construction area and adjacent streets of all mud and dust daily at the end of the work day.
- D. The developer shall deposit with the City \$5,000 which may be used by the City for dust control measures on this development should the developer fail to adequately control dust. In case the City incurs cost for dust control in excess of the above amount, the developer shall reimburse the City for the total cost of dust control incurred by the City. Upon acceptance by the City of the subdivision improvements, the above amount, less any amount expended by the City for dust control, shall be returned to the Developer.

11. **Repair by City of any Work Damaged or Destroyed by City.** In the event that the City should damage, destroy or tear up any of the paving or other subdivision improvements to be installed by the Subdivider under the terms of this agreement in order to install sewer or water service connections or any other services to said subdivision that could have been installed prior to the installation of said paving or other subdivision improvements, the City agrees to repair and replace such destroyed paving or other subdivision improvements at its own cost and expense.

12. **Improvement Security.** Upon execution of this agreement, the Subdivider shall obtain and file with the City good and sufficient Improvement Security in favor of the City and in the form approved by City securing the faithful performance by Subdivider of the work of improvement required by the provisions of this agreement in the sum of \$717,770.

Said Improvement Security shall be an Improvement Security as defined and described in the Government Code of the State of California Section 66499, et. seq. and it is agreed that the City Council of the City has determined that the amount of said Improvement Security has been fixed at One Hundred Percent (100%) of the total estimated cost of said improvements as hereinabove set forth in Paragraph 1, conditioned upon the Subdivider's faithful performance of this agreement, and an additional amount of fifty percent (50%) of the total estimated cost of said improvement as hereinabove set forth in Paragraph 1, securing payment to the contractor, his subcontractors and to persons furnishing labor, materials, or equipment to them for the improvement.

- A. Release of Improvement Security given for faithful performance of this agreement:

The Subdivider may request the City to inspect the work as it progresses. If the work performed is inspected and found to be constructed in conformity with the requirements of the City, a partial release of the Improvement Security for faithful performance of this agreement shall be made in the sum in the same ratio of the total deposit as the work inspected bears to the total work to be done. No release of Improvement Security for faithful performance of this agreement in excess of eighty-five percent (85%) of the total amount of \$717,770 shall be made until all the work has been completed and accepted.

The determination of the City as to the amount of work done and the amount of Improvement Security to be released shall be final and conclusive.

When the work of improvement is accepted, not less than ten (10%) percent of the total improvements costs to guarantee the faithful performance of the provisions of this agreement relating to defective or faulty construction for a period of one year following completion and acceptance thereof. The total improvement costs for this project is \$717,770.

- B. Release of Improvement Security securing the payment of contractors, subcontractors and to persons furnishing labor, materials, or equipment:

The Subdivider may certify to the City that any phase of the work required by terms of this agreement as set forth in Paragraph 1 of this agreement has been completed. Upon certification by City's Engineer that such phase of said work has been completed and inspected by City, the portion of said Improvement Security furnished by Subdivider for the purpose of securing the payment of the contractor, his subcontractors and persons furnishing labor, materials, or equipment for said phase or phases of said work shall be released six (6) months after the completion and acceptance of said work in an amount determined by the City Engineer, less an amount equal to all claims upon which an action has been filed and notice given in writing to the City Council of the City, and if no actions are filed such portion of said Improvement Security for said phase of said work shall be released in full.

Such release shall not apply to any required guarantee and warranty period nor to the amount of security deemed necessary by the City in such guarantee and warranty period nor to costs and reasonable expenses and fees, including reasonable attorney's fees.

13. **Title Held Under Holding Agreement.** Where title to the subdivided property is held by the record owner thereof under a holding agreement, this agreement and the bond given pursuant thereto may be executed by the real party or parties in interest.

14. **Extension of time Not to Release Improvement Securities.** Any extension of time hereunder shall not operate to release the surety on any Improvement Security given pursuant to this agreement and the said surety shall waive the provisions of Section 2819 of the Civil Code of the State of California.

15. **Time.** Time is of the essence of this agreement, and the same shall bind and inure to the benefit of the parties hereto, their successors and assigns.

16. **Attorney's Fees.** In the event legal action is taken by the City to enforce the terms of this agreement, or remedy the breach thereof, or in any action against the surety, the court shall award to the City a sum representing its reasonable attorney's fees.

IN WITNESS WHEREOF the parties have executed this agreement or caused the same to be executed by the officer thereunto duly authorized, on the day and year first written above.

CITY OF LEMOORE

By _____
JEFF BRILTZ, City Manager

ATTEST:

Nancy C.O. Lima, City Clerk

LENNAR FRESNO, INC.:

By *Las Peterson, V.P.*
Las Peterson, Vice President

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

STATE OF California)SS
COUNTY OF Fresno)

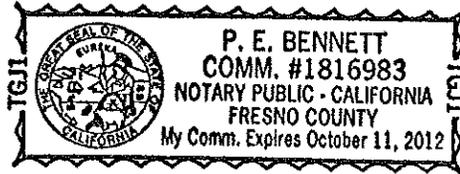
On 2nd June 2011 before me, P.E Bennett, Notary Public, personally appeared
Les Peterson

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.

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

WITNESS my hand and official seal.

Signature P.E Bennett



This area for official notarial seal.

**OPTIONAL SECTION
CAPACITY CLAIMED BY SIGNER**

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the documents.

- INDIVIDUAL
- CORPORATE OFFICER(S) TITLE(S)
- PARTNER(S) LIMITED GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER

SIGNER IS REPRESENTING:

Name of Person or Entity

Name of Person or Entity

OPTIONAL SECTION

Though the data requested here is not required by law, it could prevent fraudulent reattachment of this form.

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED BELOW

TITLE OR TYPE OF DOCUMENT: _____

NUMBER OF PAGES _____ DATE OF DOCUMENT _____

SIGNER(S) OTHER THAN NAMED ABOVE _____

EXHIBIT "A"

**ENGINEERING ESTIMATE
Prepared for Lennar Fresno, Inc.**

Tract No. 817-3

Sanitary Sewer	\$ 59,010
Water	\$ 84,800
Streets	\$271,817
Miscellaneous	<u>\$302,143</u>
TOTAL	\$717,770