

**RECORDING REQUESTED BY:**

City of Merced, A California  
charter municipal corporation

**WHEN RECORDED MAIL TO:**

City of Merced  
City Clerk  
678 West 18<sup>th</sup> Street  
Merced, California 95340

**Exempt Recording Per Gov't  
Code Section 6103**

(Above for Recorder's Use Only)

DOCUMENT TITLE

**SUBDIVISION AGREEMENT WITH CONTINUING COVENANTS  
(CFD CONDITION)**

A SUBDIVISION AGREEMENT BETWEEN THE CITY OF MERCED  
AND LENNAR HOMES OF CALIFORNIA, INC., A CALIFORNIA  
CORPORATION, FOR MORAGA OF MERCED, UNIT NO. 2  
SUBDIVISION TO BE RECORDED CONCURRENTLY WITH THE  
FINAL MAP FILED THIS \_\_\_\_ DAY OF \_\_\_\_\_ 2019, AT  
\_\_\_\_\_.M. IN BOOK \_\_\_\_\_ OF OFFICIAL PLATS, AT  
PAGES \_\_\_\_\_, MERCED COUNTY RECORDS

**SUBDIVISION AGREEMENT**  
**(CFD Condition)**  
**(Bonds as Security)**

THIS AGREEMENT, made and entered into \_\_\_\_\_, 2019, between the City of Merced, a California Charter Municipal Corporation, hereinafter called "City," and Lennar Homes of California, Inc., a California Corporation, hereinafter called "Subdivider," relates to the installation of improvements within the Moraga of Merced, Unit No. 2 Subdivision, a subdivision of real property within the corporate limits of "City."

**RECITALS**

A. The Planning Commission of City, on May 4, 2005, adopted Resolution No. 2817 approving the tentative map of the above mentioned subdivision.

B. Subdivider has submitted for approval the final map of said subdivision in full compliance with State Law and City subdivision ordinances. Final Map Application Number 5370 was submitted by the subdivider on October 8, 2018. A complete Final Map Application (including all bonds and insurance) was filed with the City on \_\_\_\_\_, 201\_\_.

C. Section 18.24.100 of the Merced Municipal Code requires certain improvements within said subdivision.

D. Improvement plans for said subdivision have been approved by the City.

E. The "Subdivision Map Act" and Section 18.24.150 of the Merced Municipal Code require certain security to guarantee the installation of said improvements.

F. Inspection fees required in accordance with Section 18.24.110 of the Merced Municipal Code have been paid.

G. Condition of Approval of the tentative subdivision map No. 6 requires the Subdivider to have established a Community Facilities District ("CFD") for public safety, maintenance, and other services prior to obtaining a Final Map for the property. This property was annexed into the City's CFD 2003-2 for Services on March 20, 2006.

Based upon the foregoing recitals, and in consideration of the mutual covenants, promises, and agreements herein contained, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged and agreed, the parties hereto mutually agree as follows:

## **AGREEMENT**

### 1. AGREEMENT TO CONDITIONS IMPOSED

Subdivider, for himself and all successors thereto, acknowledges and agrees to all conditions imposed in the Planning Commission Resolution approving the Tentative Map as identified in Recital A above.

### 2. IMPROVEMENTS

A. Subdivider agrees to cause all improvements to be made and constructed in said subdivision within twelve (12) months of the date of City approval of this Agreement, in full compliance with the requirements of approved Tentative Map, the Conditions of Approval thereto, and the City's "Standard Designs for Common Engineering Structures," and with the improvement plans approved by City and any changes or alterations in such work required by City, and to pay for any materials, provisions, or other supplies used in, upon, for, or about the performance of said work, and for any work or labor done thereon of any kind, and any amounts due under the Unemployment Insurance Act with respect to such work or labor.

B. The Subdivider may request an extension of time to complete the terms hereof. Such request shall be submitted to the City in writing no less than four (4) weeks before the expiration date hereof, and shall contain a statement of circumstances necessitating the extension of time. The City shall have the right to review the provisions of this Agreement, including the construction standards, cost estimate, and improvement security, and

to require adjustments therein if any substantial change has occurred during the term hereof.

C. If the Subdivider fails or neglects to comply with the provisions of this Agreement, the City shall have the right at any time to cause said provisions to be met by any lawful means, and thereupon recover from the Subdivider and/or his surety the full cost and expense incurred.

### 3. SECURITY—FILING OF THE SAME

The Subdivider shall file securities for this Agreement per Sections 66496 and 66499 of the Government Code as follows and as shown on Exhibit "A" attached hereto:

A. To secure faithful performance of this Agreement, security in an amount equal to one hundred (100%) percent of the estimated cost of the work as determined by the City shall be filed with the City prior to the Final Map application being considered complete or action on the same by the City Council.

B. To secure payment to the contractor, his subcontractors, and to persons furnishing labor, materials, or equipment to them, security in an amount equal to fifty (50%) percent of the estimated cost of the work as determined by the City shall be filed with the City prior to the Final Map application being considered complete or action on the same by the City Council.

C. To secure the guarantee and warranty of the work for a period of one (1) year following the completion and acceptance of the work, security in an amount equal to fifteen (15%) percent of the estimated cost of the work as determined by the City shall be filed with the City prior to final acceptance of the work by the City.

D. To secure payment of the cost of setting of monuments, security in an amount equal to one hundred (100%) percent of the estimated cost of setting such monuments as determined by the City shall be filed with the City prior to the Final Map application being considered complete or action on the same by the City Council.

If security is furnished in the form of a bond or bonds, such bonds shall be executed by a corporate surety company authorized to transact surety business in the State of California. Liability for security furnished as described herein shall be limited as set forth in Government Code Sections 66499.9 and 66499.10.

#### 4. SECURITY—RELEASE OF THE SAME

Release of Securities shall be as follows:

A. Security given for faithful performance may be released thirty-five (35) days after recording Notice of Completion of the work provided that evidence of recording of the Notice of Completion has been furnished to the City, the City has finally accepted the work, and provided the security has been furnished to the City to guarantee and warrant the work for one (1) year following the date of such acceptance of the work.

B. Security securing the payment to the contractor, his subcontractors, and to persons furnishing labor, materials, or equipment may be released six (6) months after recording Notice of Completion provided no claims have been filed with the City in accordance with the Subdivision Map Act.

C. The security guaranteeing that the completed work remains satisfactory during the required one-year warranty period may be released upon correction, by Subdivider, of any defects in the work existing at the end of the warranty period.

D. Monument security may be released in accordance with the provisions of Section 66497 of the Government Code.

In the event that improvements do not conform to the plans and specifications or defects are not corrected within the time limits specified by City, the City shall have the authority to order the necessary work done and to recover the cost of such work, as well as any costs of enforcing such obligation, including attorney fees, from the Subdivider and the Subdivider's surety or the financial institution providing the Instrument of Credit.

## 5. INSPECTION

City shall inspect all improvements made in connection with said subdivision for compliance with City requirements. Subdivider shall give at least twenty-four (24) hours' notice to City, including at least one full working day prior to any inspection. Improvements installed without inspection by the City shall be subject to rejection. Subdivider shall pay to City an amount equal to three (3) percent of the total estimated cost of the improvements as determined by City to cover the cost of inspection. Inspection by the City shall in no way relieve the Subdivider or its sureties of full responsibility for defective materials or workmanship. Any costs associated with testing of improvements shall be paid by the Subdivider in advance of the testing.

Neither final inspection nor acceptance of any public improvements for said subdivision will be permitted prior to receipt by City of sufficient monies to cover the cost of testing and inspection exceeding the above deposit.

## 6. FULFILLMENT OF CONDITIONS OF APPROVAL.

Condition of Approval No. 5 of Subdivider's Tentative Map requires Subdivider to have formed a CFD prior to obtaining approval of a Final Map for Subdivider's project. Cypress Terrace 6 was annexed into Community Facilities District (CFD) 2003-2 (Services) as part of Annexation No. 4 approved by the Merced City Council on February 10, 2007. Therefore, this condition has been satisfied.

## 7. SAFETY

Subdivider shall perform all work in accordance with the applicable sections of Title 8 of the California Code of Regulations (CAL OSHA), and the "WATCH" (Work Area Traffic Control Handbook) published by Building News, Inc., 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 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 public property, and shall indemnify, protect, defend, and hold City harmless from any and all claims, damages (including injury or death to any person or persons) , or causes of action arising therefrom or related thereto.

## 8. 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, employees, and agents or others on account of the construction of the improvements, unforeseen difficulties, accidents, or any other causes whatsoever.

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

The Subdivider shall indemnify, protect, defend, and hold harmless the City, and any agency or instrumentality thereof, and officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, Subdivider shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against another governmental entity in which Subdivider's project is subject to that other governmental entity's approval and a condition of such approval is that the City indemnify and defend such governmental entity. City shall promptly notify the Subdivider of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or

cooperate fully, the Subdivider shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.

## 9. PREVAILING WAGES

Subdivider acknowledges that City has made no representation, express or implied, to Subdivider or any person associated with Subdivider regarding whether or not laborers employed relative to the construction of the improvements to be constructed pursuant to this Agreement must be paid the prevailing per diem wage rate for their labor classification, as determined by the State of California, pursuant to Labor Code Section 1720, *et seq.* ("Prevailing Wage Laws"). Subdivider agrees with City that Subdivider shall assume any and all responsibility and be solely responsible for determining whether or not laborers employed relative to the construction undertaken pursuant to this Agreement must be paid the prevailing per diem wage rate pursuant to the Prevailing Wage Laws or other applicable law.

Subdivider, on behalf of itself, its successors, and assigns, waives and releases City from any right of action that may be available to any of them pursuant to Labor Code Section 1781 or any similar law. Relative to the waiver and release set forth in this Section, Subdivider acknowledges the protections of Civil Code Section 1542, which reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

By initialing below, Subdivider knowingly and voluntarily waives the provisions of Section 1542 or any similar law solely in connection with the waivers and releases contained in this Section.

\_\_\_\_\_  
Initials of  
City Manager

\_\_\_\_\_  
Initials of Authorized  
Subdivider Representative

Subdivider shall indemnify, hold harmless and defend City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Subdivider, its contractor(s) and subcontractors) to pay prevailing wages as required by law or to comply with the other applicable provisions of Labor Code Sections 1720 *et seq.* and implementing regulations of the Department of Industrial Relations in connection with construction and installation of the improvements required pursuant to this Agreement. Subdivider's defense of the City shall be provided by counsel reasonably acceptable to the City.

The foregoing indemnity shall survive any termination of this Agreement.

## 10. INSURANCE

Subdivider further agrees that before commencing any work pursuant to this Agreement, Subdivider shall obtain, and at all times prior to final acceptance of all improvements hereunder, keep in full force and effect, insurance coverage in such limits and amounts, and covering such risks as shall be acceptable to City.

All policies of insurance must be issued by a company that is either:

- (1) Admitted to transact insurance business in the State of California;
- (2) On the "LESLI List," i.e., the List of Eligible Surplus Line Insurers; or,
- (3) In the form of a risk retention group ("RRG") so long as the RRG contains at least \$750,000 in capital, has been in operation for at least one year, and the reinsurance agreement associated with the RRG contains AM Best A rated insurers with an attachment point of \$250,000 or less.

All insurance companies must have an A.M. Best's rating of at least A- and a financial size of IX or X. All required policies shall contain an

endorsement adding the Indemnified Parties under the agreement, specifically including but are not limited to, the City, its officers, employees, and agents, as additional insureds. The required policies shall stipulate that this insurance will operate as primary insurance for work performed by Developer and its sub-contractors, and that no other insurance effected by City or other named insureds will be called on to cover a loss covered thereunder. The General Liability insurance shall be provided by an ISO Commercial General Liability policy, with edition dates of 1985, 1988, or 1990. The additional insured endorsement required hereunder must be issued using ISO form CG 20 10 11 85, or the same form with an edition date no later than 1990. In lieu of CG 20 10 11 85, City will accept alternate additional insured endorsements on ISO forms CG 20 10 10 01 and CG 20 37 10 01, but only if both forms are used together and provided to City. The minimum coverage and limits shall be as follows:

COVERAGE	LIMITS
Workers Compensation	Statutory
Comprehensive General Liability, including or separately insuring liability assumed by contract	
Bodily Injury	\$1,000,000 per person \$1,000,000 per occurrence
Property Damage	\$ 500,000 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 thirty (30) days prior written notice to City. Prior to acceptance of the improvements, the Subdivider shall provide the City with a copy of the endorsements required herein.

## 11. AS-BUILTS

Subdivider shall submit one (1) reproducible print (mylar) of the improvements "as-built" to City prior to release of securities.

## 12. NOTICE OF COMPLETION

City shall record a Notice of Completion with the Merced County Recorder immediately following City's acceptance of the improvements.

### 13. APPROVALS

This Agreement is subject to approval by the City Manager of City as to substance, and by the City Attorney as to form. Any improvement securities tendered hereunder shall be subject to approval by the City Manager as to amount, and by the City Attorney as to form and legal sufficiency.

### 14. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the respective parties hereto.

### 15. WAIVER

In the event that either City or Consultant shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

### 16. VENUE

This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Merced.

### 17. AMENDMENT

This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

### 18. INTEGRATION

This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understandings or agreements between the parties with respect to all or any part of the subject matter hereof.

19. AUTHORITY TO EXECUTE

The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

20. COUNTERPARTS

This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

IN WITNESS WHEREOF, three (3) identical counterparts of this Agreement, each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties hereinabove named, on the day and year first herein written.

CITY OF MERCED  
A California Charter Municipal  
Corporation

By: \_\_\_\_\_  
City Manager

ATTEST:  
STEVE CARRIGAN, CITY CLERK

By: \_\_\_\_\_  
Assistant/Deputy City Clerk

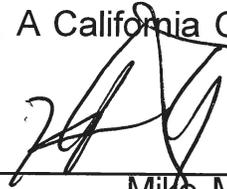
APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney      Date

FUNDS/ACCOUNTS VERIFIED BY:

\_\_\_\_\_  
Finance Officer      Date

DEVELOPER:  
LENNAR HOMES OF CALIFORNIA,  
INC., A California Corporation

By:  \_\_\_\_\_  
Mike Miller

Its: Vice President

Address: 8080 N. Palm, Suite 110  
Fresno, CA 93711

Telephone: (559) 437-4269 Taxpayer

ID Number: 93-1223261

EXHIBIT A  
Moraga Phase 2

The securities on this subdivision shall be according to, or equivalent to, either Method 1 or Method 2.

	<b>Method 1</b>		<b>Method 2</b>
	<u>Performance Bond</u>	<u>Labor/Material Bond</u>	<u>Letter of Credit</u>
Subdivision Improvements, Including monuments	\$4,602,256.85	\$2,301,128.43	\$5,522,708.22
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One-Year Warranty*	\$690,338.53		\$690,338.53
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\*Due prior to issuance of Notice of Completion