

Agenda Item No. K-3  
(Attachment)

SUBDIVISION IMPROVEMENT AND  
DEVELOPMENT AGREEMENT

*CITY OF SANGER*  
*REVISED AND RESTATED*  
*SUBDIVISION IMPROVEMENT AND DEVELOPMENT AGREEMENT*

*TRACT MAP NO. 5372*

*Stonehaven Phase 2*

This Revised and Restated Subdivision Improvement Agreement ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between the CITY OF SANGER, a Municipal corporation of the State of California, hereinafter referred to as "CITY," and LENNAR FRESNO, INC., referred to hereinafter as "SUBDIVIDER," as follows:

WITNESSETH

WHEREAS, on or about June 3, 2005, the CITY approved Final Tract Map 5372 Stonehaven Phase 2 consisting of 69 residential lots, a copy of which Map is attached hereto as Exhibit "A" and made a part hereof; and

WHEREAS, on or about June 3, 2005 the CITY and Sanger II CA, LLC, (hereinafter, "Original Subdivider") entered into a Subdivision Agreement for the completion of certain identified works of improvement relating to Tract 5372 Stonehaven Phase 2; and

WHEREAS, subsequent to June 3, 2005, United Security Bank foreclosed on the Original Subdivider's Deed of Trust and took ownership of Tract 5372 Stonehaven Phase 2; and

WHEREAS, Tract 5372 Stonehaven Phase 2 has been annexed into Sanger Landscaping and Lighting District No. 2; and

WHEREAS, SUBDIVIDER has entered into a purchase and sale agreement with United Security Bank for the purchase of Tract 5372 Stonehaven Phase 2 and is scheduled to close escrow on April 15, 2013; and

WHEREAS, SUBDIVIDER has agreed to enter into this Revised and Restated Subdivision Improvement and Development Agreement for Tract 5372 which reflects all of the conditions stated in the June 5, 2005 Subdivision Improvement and Development Agreement, except as amended to reflect new completion deadlines and new performance security, all of which are subject to CITY Council approval; and

WHEREAS, CITY staff has reviewed SUBDIVIDER'S plans and elevations and approved 10 model ranges from approximately 1,600 sq. ft. to approximately 2,300 sq. ft.; and

WHEREAS, on March 28, 2013, the CITY Planning Commission approved the use of asphalt composite shingle roofs on the homes to be constructed within this Subdivision; and.

WHEREAS, SUBDIVIDER has requested and CITY staff has agreed that SUBDIVIDER need not obtain pre-plotting of specific floor plans on specific lots; and

WHEREAS, ORIGINAL SUBDIVIDER requested CITY to accept the dedications delineated and shown on said Map for the uses and purposes specified thereon and otherwise to approve said Map in order that the same may be recorded, as required by law; and

WHEREAS, CITY accepted, in approving Resolution 3681, all necessary offers of dedication required of Tract Map 5372; and

WHEREAS, the Sanger City Code requires SUBDIVIDER to enter into a Subdivision Agreement with CITY when SUBDIVIDER has not completed all required work at the time the Final Map is submitted for approval.

NOW, THEREFORE, in consideration of the irrevocable offer of dedication to CITY of the streets, public ways, easements and facilities as shown on said Map, and the approval of said Map for filing and recording as required by law, it is mutually agreed as follows:

**1. SCHEDULE OF PERFORMANCE BY SUBDIVIDER**

The work schedule hereinafter set forth contains the dates when the SUBDIVIDER is required to complete work. Such work shall be installed and completed to the satisfaction of the City's Manager of Community & Economic Development, hereinafter "MANAGER." Should any extension of the time for the satisfactory completion of the required improvements be requested by SUBDIVIDER in writing, MANAGER might consider this schedule of performance in determining whether or not to grant any such extension. MANAGER'S determination shall be final and conclusive. Failure of SUBDIVIDER to perform in accordance with the schedule shall constitute prima facie evidence of failure to diligently prosecute the work required hereunder. No Certificate of Occupancy shall be issued for any residence of the Subdivision until all public improvements needed to serve the residence for which the Certificate of Occupancy has been requested, have been completed by the SUBDIVIDER and accepted by the City Engineer. The work schedule is as follows:

WORK SCHEDULE	DATE OF COMPLETION
Complete rough grading	May 30, 2013
Complete installation of utilities	July 31, 2013
Complete installation of curbs, gutters and sidewalks	October 30, 2013
Complete all work	December 21, 2013

Notwithstanding the above, all street work and public improvements required to be installed by the SUBDIVIDER (except the sidewalk and driveway approach construction and lot corner monumentation, which shall be completed upon construction of the residential dwellings) shall be fully completed and suitable for acceptance by CITY no later than October 30, 2013.

Failure of SUBDIVIDER to meet such deadline shall constitute a material breach of this Agreement. In such event, the Subdivision Improvement Security, hereinafter described, shall thereupon immediately be paid to CITY, and CITY shall have permission to go upon the property and complete all street work and public improvements, including installation or reinstatement, as CITY deems necessary, of all utility facilities, streets, curbs, gutters, sidewalks, sewer, water, drainage and other public improvements, which were not properly or fully completed or installed by SUBDIVIDER.

Issuance of building permits for any structure within the Subdivision shall conform to the requirements of the Uniform Fire Code and Uniform Building Code. SUBDIVIDER'S attention is particularly called to Sections 10.207(a), 10.30/(c), and 10.301(d) of the *Fire Code*. All public improvements, which serve the property for which an Occupancy Permit is sought, shall have been completed and accepted by the MANAGER. The issuance of any Occupancy Permits by the CITY for dwellings located within the Subdivision shall not be construed to constitute an acceptance and approval by CITY of any of the streets or improvements in the Subdivision.

**2. ROAD IMPROVEMENT TO BE COMPLETED BY SUBDIVIDER**

(a) SUBDIVIDER shall grade and place aggregate base and pave and construct drainage facilities on all roads listed below where required, in accordance with the approved Improvement Plans and Specifications, applicable City Improvement Standards, and this Agreement for inclusion into the CITY maintained road system:

ALL OF THE FOLLOWING STREETS: THE WEST HALF OF BETHEL AVENUE FROM APPROXIMATELY FLORENCE AVENUE SOUTH TO SOUTHERN PROPERTY LINE OF OUTLOT A, TAMARACK AVENUE FROM BETHEL TO APPROXIMATELY 105 FEET WEST OF DALTON AVENUE, SEQUOIA AVENUE FROM LILY AVENUE TO DALTON AVENUE,

CLAREMONT AVENUE, LILY AVENUE FROM TAMARACK TO APPROXIMATELY 104.72 FEET NORTH OF SEQUOIA AVENUE, FENMORE AVENUE TO APPROXIMATELY 203 FEET SOUTH OF TAMARACK AVENUE, TAMARACK COURT, AND DALTON AVENUE FROM TAMARACK AVENUE TO SEQUOIA AVENUE.

If, after rough grading, additional Resistant "R" value tests are taken in accordance with Test Method California 301-F, the base and surfacing requirements will be adjusted to meet any revision resulting from said tests. Areas that the MANAGER determines to have been over-excavated shall be reconstructed to the approved typical section.

(b) SUBDIVIDER shall install, so that no finished road or street surface need be reopened, all water mains and laterals, gas mains and laterals, underground electrical, cable television, telephone, and sewer lines, and any other underground utility or drainage system shown on the approved Plans and Specifications and the City Improvements Standards, prior to paving streets or constructing the curbs, gutters, sidewalks or driveways. All underground utilities shall be constructed and any existing underground utilities shall be lowered to a depth of not less than 36" (measured from top of pipe) below street grade shown on the approved plans.

(c) SUBDIVIDER shall install, prior to paving the streets, all curb and gutter, valley gutters, drop inlets and any other structure required in the applicable City Improvement Standards.

(d) SUBDIVIDER shall obtain and pay for any testing required by the MANAGER. A registered and licensed materials testing firm shall do the sampling and testing.

(e) SUBDIVIDER shall construct all required improvements in accordance with this Agreement, the Improvement Plans and Specifications and City Improvement Standards.

(f) Where concrete curbs and gutters are required and where driveway approaches are not constructed at the time such curbs and gutters are installed, the curb and gutter shall be continuous.

(g) SUBDIVIDER shall construct drainage facilities in accordance with the Approved Improvement Plans and Specifications, this Agreement and City Improvement Standards.

(h) That portion of the right-of-way lying outside the curb line shall be graded to conform to the approved cross-section. All drainage structures shall be cleaned. The entire roadway area shall be swept clean. The entire street section shall be sealed with an approved seal prior to final acceptance. All "dead-end" streets shall be barricaded in accordance with City Standards within seven (7) days from the time said streets are surfaced, or as directed by the MANAGER. The estimated cost of the road improvements has been included in the "Improvement Security."

**3. SEWER AND WATER IMPROVEMENTS TO BE COMPLETED BY SUBDIVIDER**

(a) SUBDIVIDER shall construct sanitary sewer lines in accordance with this Agreement, the Improvement Plans and Specifications and City Improvement Standards, connecting to the existing sewer system at Bethel Avenue.

(b) SUBDIVIDER shall construct a domestic water system in accordance with this Agreement, the Approved Plans and Specifications and the City Improvement Standards, connecting to the existing CITY water system in Bethel Avenue.

**4. GAS AND ELECTRICAL USES TO BE COMPLETED BY SUBDIVIDER**

SUBDIVIDER shall place underground all gas main services and all existing and new telephone and electrical lines, including cable television lines. This includes placing underground all existing facilities within the limits of this Subdivision and service lines thereto. SUBDIVIDER shall make arrangements with Pacific Gas & Electric, Verizon (Telephone) and Comcast (cable television) to guarantee the installation of these facilities. The estimated cost of these improvements is included in the "Improvement Security."

**5. DRAINAGE IMPROVEMENTS TO BE COMPLETED BY SUBDIVIDER**

SUBDIVIDER shall construct the storm drainage system and inlets within this Subdivision in accordance with this Agreement, the Approved Plans and Specifications, and the City Improvement Standards.

**6. ADDITIONAL IMPROVEMENT REQUIREMENTS**

(a) SUBDIVIDER is responsible for all work and maintenance within the CITY'S rights-of-way.

(b) Prior to commencement of any work within the right-of-way not included in the Improvement Plans and Specifications, or any work performed within an existing CITY maintained road, an encroachment permit must be obtained from the City's Public Works Department.

(c) SUBDIVIDER shall cause to be placed by a licensed Civil Engineer or Land Surveyor all survey monuments and lot corners as shown on the Final Map. Pursuant to Section 66497 of the *Calif. Subdivision Map Act*, prior to CITY'S final acceptance of the Subdivision and release of securities, SUBDIVIDER shall submit evidence to the CITY of payment and receipt thereof by the Engineer or Surveyor for the final setting of all monuments required in the Subdivision.

(d) SUBDIVIDER shall furnish to CITY a set of "as built" plans, certified by a registered and licensed Engineer, for all work performed in all rights-of-way. These plans shall include the location of all underground utilities.

(e) In the event the MANAGER grants an extension to complete any of the required public improvements in this Subdivision, SUBDIVIDER shall comply with all applicable City Improvement Standards in effect at the time such work is performed.

(f) All Conditions of Approval of the Tentative Map, the Approved Plans and Specifications, and the City Improvement Standards apply to and are included by reference in this Agreement.

(g) Grading of the lots shall conform to the grades shown on the Grading Plan and the Improvement Plans. Prior to acceptance of the work by CITY and release of the Subdivision Security, SUBDIVIDER shall provide CITY with a certification from a registered and licensed Engineer that all work performed within this tract conforms to the Approved Plans and Specifications, the recommendations contained in the Preliminary Soil Report, and the City of Sanger Improvement Standards.

(h) SUBDIVIDER shall install irrigation and landscaping to the median island directly in front of Tract 5372, and irrigation and landscaping of the right-of-way strip (both sides of the sidewalk) in front of the residential lot immediately south of Tract 5372.

## 7. SPECIAL DISTRICTS

(a) Sanger Landscaping & Lighting District No. 2: Tract 5372 Stonehaven Phase II has been annexed into the Sanger Landscaping and Lighting District No. 2 which was formed for the purpose of collecting assessments to defray the cost of maintaining the street lighting, and CITY public right-of-way landscaping for the following improvements:

Maintenance of all streetlights in Tract No. 5372; maintenance of the landscape and irrigation system along the West side of Bethel Avenue; and maintenance of any public special amenities located within the public right-of-way or easements; including, but not limited to maintenance of masonry walls; maintenance of storm water holding ponds and maintenance of roundabouts.

The SUBDIVIDER shall notify all potential lot buyers before they purchase a lot that this tract is a part of the Sanger Landscaping and Lighting District No. 2. Said notifications shall be in a manner approved by the CITY.

SUBDIVIDER also consents to the first year assessment of \$116 per lot, and consents to an annual adjustment to the assessment based upon changes in the Consumer Price Index, Cali-

fornia, All Urban Consumers, for each year.

The SUBDIVIDER shall supply all necessary assessment diagrams, other pertinent materials, and a signed and dated original of said Exhibit "B," for the Sanger Landscaping and Lighting District No. 2 as requested by the CITY. SUBDIVIDER shall also sign and date the Memorandum of Subdivision Agreement attached hereto as Exhibit "B."

## 8. FEES AND SECURITIES

(a) Before starting any of the work of improvement described in paragraph 1, SUBDIVIDER shall submit to CITY an acceptable security ensuring the Faithful Performance furnished by an approved financial institution or surety in a form acceptable to CITY or a cashier's check in an amount equal to one hundred percent (100%) of the estimated cost of the required un-constructed improvements, in the amount of \$600,000 to guarantee the proper installation of the improvements required in this Agreement, the Approved Plans and Specifications, and the City Improvement Standards.

(b) Before starting any of the work of improvement described in paragraph 1, SUBDIVIDER shall submit to CITY an acceptable security ensuring payment furnished by an approved financial institution or surety in a form acceptable to CITY or a cashier's check in an amount equal to fifty percent (50%) of the estimated cost of the required un-constructed improvements, in the amount of \$300,000 to secure payment to all contractors and subcontractors performing work on said improvements and all persons furnishing labor, materials, and equipment used for installation of said improvements.

(c) Prior to final acceptance of the Subdivision Improvements by the CITY, the SUBDIVIDER shall submit to the CITY Improvement Security in a form acceptable to the CITY in sufficient funds to guarantee and warranty maintenance of all work required herein, for a period of one (1) year following acceptance equal to the amount of \$120,000. Said Improvement Security shall be released to the SUBDIVIDER, less any amount required to be used for fulfillment of the warranty, one (1) year after final acceptance of the Subdivision improvements by the CITY. Warranty security shall be in a form acceptable to the CITY.

(d) Improvement Security for performance and for labor and materials hereinabove provided shall be for the purpose of securing the completion of said work together with any changes or alterations in such work as approved by the MANAGER and the City Engineer.

(e) Subdivision Improvement Security for performance and labor and materials, but not including the warranty security, will remain in effect until such time as all required improvements, are satisfactorily completed and the Subdivision has formally been accepted by the CITY. Such Securities may be released only upon written authority of the MANAGER.



(f) The Subdivision Improvement Security required under this paragraph 8 shall be payable to the City of Sanger.

(g) Upon failure of the SUBDIVIDER to properly install the required improvements in a form acceptable to the City Engineer by December 31, 2013, CITY shall be entitled to immediately draw upon the Improvement Security and cause the required improvements to be installed or repaired without further notice to SUBDIVIDER.

## 9. INDEMNITY AND INSURANCE

(a) CITY shall not be liable to the SUBDIVIDER or to any other person, firm or corporation whatsoever, for any injury or damage that may result to any person or property by or from any cause whatsoever in, on or about the Subdivision of said land covered by this Agreement, or any part thereof. SUBDIVIDER hereby releases and agrees to indemnify, defend and save the CITY and its agents, officials and employees harmless from and against any and all liability, loss, damage, expense, costs (including attorney's fees) for all injuries to and deaths of persons and damage to property, howsoever same may be caused, resulting directly or indirectly from the performance of any or all work to be done in and upon the street rights-of-way in said Subdivision and upon the premises adjacent thereto pursuant to this Agreement; and also from all injuries to and deaths of persons and damage to property, and all claims, demands, costs, losses, damage and liability, howsoever same may be caused, either directly or indirectly made or suffered by the SUBDIVIDER, the Subdivider's agents, employees and subcontractors, while engaged in the performance of said work. The SUBDIVIDER further agrees that the use, for any purpose and by any person, of any and all of the streets and improvements hereinbefore specified, shall be at the sole and exclusive risk of the SUBDIVIDER at all times prior to final acceptance by the CITY of all completed street and other improvements thereon and therein.

(b) SUBDIVIDER shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with performance of the work hereunder by SUBDIVIDER, his agents, representatives, employees or subcontractors.

(c) Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (Occurrence Form CG0001).
2. Insurance Services Office form number CA0001 covering automobile Liability, Code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(d) SUBDIVIDER shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
4. Course of Construction: Completed value of the project.

(e) Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the option of the CITY, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY, its officers, officials, employees and volunteers; or the SUBDIVIDER shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

(f) The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The CITY, its officers, officials, employees, agents and volunteers are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the SUBDIVIDER, products and completed operations of the SUBDIVIDER, premises owned, occupied or used by the SUBDIVIDER, or automobiles owned, leased, hired or borrowed by the SUBDIVIDER. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officers, officials, employees, agents or volunteers.

2. For any claims related to this project, the SUBDIVIDER'S insurance coverage shall be primary insurance as respects the CITY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents or volunteers shall be excess of the SUBDIVIDER'S insurance and shall not contribute with it.

3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the CITY, its officers, officials, employees, agents or volunteers.

4. The SUBDIVIDER'S insurance shall apply separately to each insured

against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.

5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested has been given to the CITY.

(g) Course of construction policies shall contain the following provisions:

1. CITY shall be named as loss payee.
2. The insurer shall waive all rights of subrogation against CITY.

(h) Insurance is to be placed with insurers with current *AM Best's* rating of no less than *A: VII*.

(i) SUBDIVIDER shall furnish the CITY with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the CITY. All endorsements are to be received and approved by the CITY before work commences. As an alternative to the CITY'S forms, the SUBDIVIDER'S insurer may provide complete, certified copies of all required policies, including endorsements affecting the coverage required by these specifications.

(j) SUBDIVIDER shall include all its contractors and subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each contractor and subcontractor. All coverages for contractors and subcontractors shall be subject to all of the requirements stated herein.

## 10. MISCELLANEOUS PROVISIONS

(a) The SUBDIVIDER shall remedy all deficient work or labor or any defective materials and pay for any damage to other work resulting there from, which shall occur within a period of one (1) year from the date of acceptance of the work.

(b) The SUBDIVIDER and his contractor and subcontractors shall pay for any materials, provisions, and other supplies used in, upon, for, or about the performance of the work contracted to be done, and for any work or labor thereon of any kind, and for amounts due under the Unemployment Insurance Act of the State of California, with respect to such work or labor, and shall file with the CITY pursuant to Section 3800 of the Labor Code, a Certificate of Worker's Compensation and shall maintain a valid policy of Workers' Compensation Insurance

for the duration of the period of construction.

(c) The SUBDIVIDER shall comply with the Street, Plumbing, Building, Electrical, Zoning Codes and all other codes of the CITY.

(d) It shall be the responsibility of the SUBDIVIDER to coordinate all work done by his contractors and subcontractors, such as scheduling the sequence of operations and the determination of liability if one operation delays another. In no case shall representatives of the CITY be placed in the position of making decisions that are the responsibility of the SUBDIVIDER. It shall further be the responsibility of the SUBDIVIDER to give the City Engineer written notice not less than two (2) working days in advance of the actual date on which work is to be started. Failure on the part of the SUBDIVIDER to notify the City Engineer may cause delays for which the SUBDIVIDER shall be solely responsible.

(e) Whenever the SUBDIVIDER varies the period during which work is carried on each day, he shall give due notice to the City Engineer so that proper inspection may be provided. If the SUBDIVIDER fails to duly notify the CITY as herein required, any work done in the absence of the City Engineer will be subject to rejection. The inspection of the work shall not relieve the SUBDIVIDER of any of his obligations to fulfill the Agreement as prescribed. Defective work shall be made good, and unsuitable materials may be rejected, notwithstanding the fact that such defective work and unsuitable materials were previously overlooked by the City Engineer or Inspector and accepted.

(f) Any damage to the sewer system, concrete work or street paving that occurs after installation shall be made good to the satisfaction of the City Engineer by the SUBDIVIDER before release of securities, or final acceptance of the completed work. When the surfacing on any existing street is disturbed, such surfacing shall be replaced with temporary or permanent surfacing within fourteen (14) days and maintained in a safe and passable condition at all times between the commencement and final completion of all construction.

(g) 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.

(h) No assignment of this Agreement or of any duty or obligation of performance hereunder shall be made in whole or in part by the SUBDIVIDER without the prior written consent of the CITY.

(i) The SUBDIVIDER shall pay all Development Impact Fees as set forth in Chapter 19A of the Sanger City Code. The Development Impact Fees are as follows:

1. Sanitary Sewer	69 Lots@	\$1886	\$130,134
2. Water	69 Lots@	\$ 303	\$20,907
3. Storm Drain	69 Lots@	\$ 989	\$68,241
4. Traffic	69 Lots@	\$ 409	\$28,221
5. Parks & Recreation	69 Lots@	\$ 975	\$67,275
6. Public Safety- Police	69 Lots@	\$ 310	\$21,390
7. Public Safety-Fire	69 Lots@	\$ 116	\$8,004
8. Solid Waste	69 Lots@	\$ 440	\$30,360
			Total= \$374,532

(j) An inspection fee in the amount of \$16,000 will be paid to the CITY before the beginning of any construction. Said fee is an estimate and may be increased by the CITY, if necessary. Any unused portion of the fee will be refunded.

#### 11. DUST CONTROL

Adequate dust control shall be maintained by the SUBDIVIDER on all streets within and without the Subdivision on which work is required to be done under this Agreement from the time work is first commenced in the Subdivision until the paving of the streets is completed "Adequate dust control" as used herein shall mean the sprinkling of the streets with water or the laying of a dustcoat of oil thereon with sufficient frequency to prevent the scattering of dust by wind or the activity of vehicles and equipment onto any street area or private property adjacent to the Subdivision.

Whenever in the opinion of the City Engineer adequate dust control is not being maintained on any street or streets as required by this paragraph, the City Engineer shall give notice to the SUBDIVIDER to comply with the provisions of this paragraph forthwith. Such notice may be personally served upon the SUBDIVIDER or, if the SUBDIVIDER is not an individual, upon any person who has signed this Agreement on behalf of the SUBDIVIDER or, at the election of the City Engineer, such notice may be mailed to the SUBDIVIDER at his address on file with the City Engineer. If, within twenty-four (24) hours after such personal service of such notice or within forty-eight (48) hours after the mailing thereof as herein provided, the SUBDIVIDER shall not have commenced to maintain adequate dust control or shall at any time thereafter fail to maintain adequate dust control, the City Engineer may, without further notice of any kind, cause any such street or streets to be sprinkled or oiled, as he may deem advisable, to eliminate the scattering of dust, by equipment and personnel of the CITY or by contract as the City Engineer shall determine. The SUBDIVIDER shall pay to the CITY forthwith, upon receipt of billing therefore, the entire cost to the CITY of such sprinkling or oiling.

12. LITIGATION

The CITY is currently engaged in litigation with United Security Bank, the current property owner (Fresno County Superior Court Case No. 10 CECG 02913) (the "Lawsuit"), regarding the distribution of proceeds resulting from a settlement with the Original Subdivider's bonding company. SUBDIVIDER represents and warrants that upon close of escrow of its purchase of the subject property from the current property owner, all rights and liabilities relating to the Lawsuit will be assigned to SUBDIVIDER. CITY agrees to pay SUBDIVIDER One Hundred Thousand Dollars (\$100,000.) for land and infrastructure repair and development to the subject property within five (5) business days after SUBDIVIDER (1) executes this Agreement and (2) delivers performance security to the CITY in satisfaction of paragraph 8 hereof, and (3) dismisses the CITY from said Lawsuit with prejudice.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed the day and year first above written.

LENNAR FRESNO, INC.,  
a California corporation

By: \_\_\_\_\_  
Mike Miller, Division President

CITY OF SANGER

By: \_\_\_\_\_  
Joshua Mitchell, Mayor

AGREEMENT APPROVED AS FORM:

APPROVED AS TO CONTENT:

By: \_\_\_\_\_  
Jenell Van Bindsbergen,  
City Attorney

By: \_\_\_\_\_  
Dan Spears, Manager  
Community & Economic Development

EXHIBIT "A"

Tract Map 5372 Stonehaven Phase 2

EXHIBIT "B"

RECORDED AT THE REQUEST OF AND  
WHEN RECORDED MAIL TO:

CITY CLERK  
CITY OF SANGER  
1700 SEVENTH STREET  
SANGER, CA 93657

MEMORANDUM OF SUBDIVISION AGREEMENT  
TRACT NO. 5372-STONEHAVEN PHASE 2

Tract 5372, in the City of Sanger, County of Fresno, State of California is subject to a Subdivision Agreement signed by the Subdivider, Lennar Fresno, Inc., a California Corporation, and the City of Sanger. The Subdivision Agreement is a public document and is available for review in the Office of the City Clerk in the City of Sanger.

Tract No. 5372 is a subdivision of the following described property:

SEE EXHIBIT 'A' ATTACHED HERETO

The Subdivision Agreement specified the terms, conditions and requirements for the subdivision of lands within Tract No. 5372. The complete text of the Subdivision Agreement should be reviewed by any person contemplating any transaction in connection with the lands in Tract No. 5372.

LENNAR FRESNO, INC.,  
a California corporation

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Mike Miller, Division President

CITY OF SANGER

\_\_\_\_\_  
Date

BY: \_\_\_\_\_  
Joshua Mitchell, Mayor