

COOPERATIVE AGREEMENT
 Lake Elsinore – Rice Canyon Levees, Stage 2
 Project No. 3-0-00050
 TR 31957

This Cooperative Agreement ("Agreement"), dated as of _____, 2020, is entered into by and between the Riverside County Flood Control and Water Conservation District, a body politic ("DISTRICT"), the City of Lake Elsinore, a California municipal corporation, ("CITY"), and Richmond American Homes of Maryland, Inc., a Maryland Limited Liability Company, ("DEVELOPER"). DISTRICT, CITY, and DEVELOPER individually referred to herein as "party" and collectively referred to herein as "parties." The Parties hereto agree as follows:

RECITALS

A. DEVELOPER is the legal owner of record of certain real property located within the City of Lake Elsinore. DEVELOPER has submitted for approval Tract No. 31957 (TR 31957) located in the City of Lake Elsinore. As a condition of approval for TR 31957, DEVELOPER must construct certain flood control facilities in order to provide flood protection and drainage for DEVELOPER's planned development; and

B. The legal description of TR 31957 is provided in Exhibit "A" attached hereto and made a part hereof; and

C. The required flood control facilities and drainage improvements, are shown on DISTRICT's Drawing No. 3-0218, and as shown in concept on Exhibit "B", attached hereto and made a part hereof, include the construction of:

- i. Approximately 2300 lineal feet of soil cement embankment as shown on DISTRICT Drawing No. 3-0218 as SOIL CEMENT EMBANKMENT and as shown in concept in blue on Exhibit "B", which includes its associated access road and rock lined

outlet channel; and

- ii. Approximately 32 lineal feet underground storm drain within DISTRICT's right of way limits (approximately Station 10+62.12 to Station 10+94.22) as shown on DISTRICT Drawing No. 3-0218 as LINE E and as shown in concept in green on Exhibit "B", which includes its associated junction structures, downstream headwall/wingwall structure, and riprap, hereinafter called "DISTRICT LINE E"; and
- iii. All safety devices requested by DISTRICT staff during PROJECT construction and during any final field inspections, including but not limited to concrete pads, slope protection barriers, signage and fencing, ("SAFETY DEVICES"). SAFETY DEVICES shall be purchased and installed by DEVELOPER, and subject to the DISTRICT's inspection and approval.

D. Together, SOIL CEMENT EMBANKMENT, DISTRICT LINE E, and SAFETY DEVICES are hereinafter called "DISTRICT FACILITIES"; and

E. Associated with the construction of DISTRICT FACILITIES is the construction of the upstream portion of an underground storm drain within CITY's right of way as shown on DISTRICT Drawing No. 3-0218 as LINE E as shown in concept in red on Exhibit "B", hereinafter called "CITY LINE E". At the downstream terminus CITY LINE E will connect to DISTRICT LINE E at approximately Station 10+94.22; and

F. Also associated with the construction of DISTRICT FACILITIES is the construction of certain street inlets, connector pipe, curb and gutter, drainage and collection basins, outlet structures, various lateral storm drains that are thirty-six inches

(36") or less in diameter and a residential access road that are located within CITY held easements or rights of way ("APPURTENANCES"); and

G. Together, CITY LINE E and APPURTENANCES are hereinafter called "CITY FACILITIES", and

H. Together, DISTRICT FACILITIES and CITY FACILITIES are hereinafter called "PROJECT"; and

I. DEVELOPER and CITY desire DISTRICT to accept ownership and responsibility for the operation and maintenance of DISTRICT FACILITIES. Therefore, DISTRICT must review and approve DEVELOPER's plans and specifications for PROJECT and subsequently inspect the construction of DISTRICT FACILITIES; and

J. DEVELOPER and DISTRICT desire CITY to accept ownership and responsibility for the operation and maintenance of CITY FACILITIES. Therefore, CITY must review and approve DEVELOPER's plans and specifications for PROJECT and subsequently inspect and approve the construction of CITY FACILITIES; and

K. DISTRICT is willing to: (i) review and approve DEVELOPER's plans and specifications for PROJECT, (ii) inspect the construction of DISTRICT FACILITIES, and (iii) accept ownership and responsibility for the operation and maintenance of DISTRICT FACILITIES, provided DEVELOPER (a) complies with this Agreement, (b) constructs PROJECT in accordance with DISTRICT and CITY approved plans and specifications, (c) obtains and conveys to DISTRICT and CITY the necessary rights of way for the inspection, operation and maintenance of DISTRICT FACILITIES and CITY FACILITIES, and (d) accepts ownership and responsibility for the operation and maintenance of PROJECT following completion of PROJECT construction until such time as DISTRICT accepts ownership and responsibility for the operation and maintenance of DISTRICT FACILITIES as set forth herein; and

L. CITY is willing to (i) review and approve DEVELOPER's plans and specifications for PROJECT, (ii) inspect the construction of PROJECT, (iii) accept and hold faithful performance and payment bonds submitted by DEVELOPER for DISTRICT FACILITIES and CITY FACILITIES, (iv) grant DISTRICT the right to inspect, operate and maintain DISTRICT FACILITIES within CITY rights of way, and (v) accept ownership and responsibility for the operation and maintenance of CITY FACILITIES, provided PROJECT is constructed in accordance with plans and specifications approved by DISTRICT and CITY.

Now, therefore, in consideration of the preceding recitals and the mutual covenants hereinafter contained, the parties hereto mutually agree that the above recitals are true and correct and incorporated into the terms of this Agreement and as follows:

SECTION I

DEVELOPER shall:

1. Prepare PROJECT plans and specifications, hereinafter called "IMPROVEMENT PLANS", in accordance with applicable DISTRICT and CITY standards, and submit to DISTRICT and CITY for their respective review and approval.
2. Continue to pay DISTRICT, within thirty (30) days after receipt of periodic billings from DISTRICT, any and all such amounts as are deemed reasonably necessary by DISTRICT to cover DISTRICT's costs associated with the review of IMPROVEMENT PLANS, review and approval of rights of way and conveyance documents, and with the processing and administration of this Agreement. Additionally, DEVELOPER shall pay CITY, within thirty (30) days after receipt of periodic billings from CITY, any and all such amounts as are deemed reasonably necessary by CITY to cover CITY 's costs associated with i) the review of IMPROVEMENT PLANS, ii) the review and approval of right of way and conveyance documents, and iii) the

processing and administration of this Agreement.

3. Grant DISTRICT and CITY, by execution of this Agreement, the right to enter upon DEVELOPER's property where necessary and convenient for the purpose of gaining access to and performing inspection service for the construction of PROJECT as set forth herein.

4. Provide CITY, upon execution of this Agreement, or not less than twenty (20) days prior to recordation of the final map for TR 31957 or any phase thereof, whichever occurs first, with faithful performance and payment bonds in accordance with the CITY's municipal code for the estimated cost for construction of DISTRICT FACILITIES as determined by DISTRICT and of CITY FACILITIES as determined by CITY. The surety, amount and form of the bonds, shall list DISTRICT as an obligee in addition to the CITY and shall be subject to approval of DISTRICT (Attention: Contract Services Section) and CITY. The bonds shall remain in full force and effect until DISTRICT FACILITIES are accepted by DISTRICT and CITY as complete.

5. Deposit with DISTRICT (Attention: Business Office – Accounts Receivable), and notify Contract Services Section, upon DISTRICT approval of IMPROVEMENT PLANS, the estimated cost of providing construction inspection for DISTRICT FACILITIES, in an amount as determined and approved by DISTRICT in accordance with Ordinance Nos. 671 and 749 of the County of Riverside, including any amendments thereto, based upon the bonded value of DISTRICT FACILITIES.

6. Furnish DISTRICT (Attention: Contract Services Section), upon DISTRICT's approval of IMPROVEMENT PLANS, with a complete list of all contractors and subcontractors to be performing work on PROJECT, including the corresponding license number and license classification of each. At such time, DEVELOPER shall further identify in writing its designated superintendent for PROJECT construction.

7. Furnish DISTRICT (Attention: Contract Services Section), upon DISTRICT's approval of IMPROVEMENT PLANS, with a construction schedule which shall show the order and dates in which DEVELOPER or DEVELOPER's contractor proposes to carry out the various parts of work, including estimated start and completion dates. As construction of PROJECT progresses, DEVELOPER shall update said construction schedule as requested by DISTRICT.

8. Furnish DISTRICT (Attention: Contract Services Section), upon DISTRICT's approval of IMPROVEMENT PLANS, with a confined space entry procedure specific to PROJECT. The procedure shall comply with requirements contained in California Code of Regulations, Title 8, Section 5158, Other Confined Space Operations, Section 5157, Permit Required Confined Space and District Confined Space Procedures, SOM-18. The procedure shall be reviewed and approved by DISTRICT prior to the issuance of a Notice to Proceed, which shall be given by DISTRICT to DEVELOPER upon DISTRICT's and CITY's approval.

9. DEVELOPER shall not commence operations until DISTRICT (Attention: Contract Services Section) and CITY have been furnished with original certificate(s) of insurance and original certified copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments. Upon approval of IMPROVEMENT PLANS, an original certificate of insurance evidencing the required insurance coverage shall be provided to DISTRICT. At minimum, the procured insurance coverages should adhere to the DISTRICT's required insurance provided in Exhibit "C", attached hereto and made a part hereof. Failure to maintain the insurance required by this paragraph shall be deemed a material breach of this Agreement and shall authorize and constitute authority for DISTRICT, at its sole discretion, to provide written notice to DEVELOPER that DISTRICT is unable to perform its

obligations hereunder, nor to accept responsibility for ownership, operation and maintenance of DISTRICT FACILITIES due, either in whole or in part, to said breach of this Agreement.

10. Secure, at its sole cost and expense, all necessary licenses, agreements, permits and rights of entry as may be needed for the construction, inspection, operation and maintenance of PROJECT. DEVELOPER shall furnish DISTRICT (Attention: Real Estate Services Section) and CITY, upon DISTRICT approval of IMPROVEMENT PLANS, or not less than twenty (20) days prior to recordation of the final map for TR 31957 or any phase thereof, whichever occurs first, with sufficient evidence of DEVELOPER having secured such necessary licenses, agreements, permits and rights of entry, as determined and approved by DISTRICT and CITY.

11. Obtain and provide DISTRICT (Attention: Real Estate Services Section), upon DISTRICT approval of IMPROVEMENT PLANS, with duly executed Irrevocable Offers(s) of Dedication to the public for flood control and drainage purposes, including ingress and egress, for the rights of way deemed necessary by DISTRICT for the construction, inspection, operation and maintenance of DISTRICT FACILITIES. The Irrevocable Offer(s) of Dedication shall be in a form approved by DISTRICT and shall be executed by all legal and equitable owners of the property described in the offer(s).

12. Furnish DISTRICT (Attention: Real Estate Services Section), when submitting the Irrevocable Offer(s) of Dedication as set forth in Section I.11., with Preliminary Reports on Title dated not more than thirty (30) days prior to date of submission of all the property described in the Irrevocable Offer(s) of Dedication.

13. Furnish DISTRICT (Attention: Plan Check Section) and CITY each with a set of final mylar PROJECT plans and assign their ownership to DISTRICT and

CITY respectively.

14. Notify DISTRICT in writing (Attention: Construction Management Section) after receiving DISTRICT's plan check, administrative and right of way clearance for PROJECT as set forth in Sections I.4 through I.13, with twenty (20) days written notice of intent to start of construction of PROJECT, and include the PROJECT's Geotechnical Firm, Concrete Lab/Test Firm, D-Load test forms, Trench Shoring/False Work Calculations, Concrete Mix designs for DISTRICT's review and approval. Construction shall not begin on any element of PROJECT, for any reason whatsoever, until DISTRICT and CITY have issued to DEVELOPER a written Notice to Proceed authorizing DEVELOPER to commence construction of PROJECT.

15. Prior to commencing construction, furnish DISTRICT (Attention: Plan Check Section) and CITY with copies of all permits, approvals or agreements required by any federal, state or local resource and/or regulatory agency for the construction, operation and maintenance of PROJECT. Such documents include but are not limited to those issued by the U.S. Army Corps of Engineers, California Regional Water Quality Control Board, California State Department of Fish and Wildlife, State Water Resources Control Board, and Western Riverside County Regional Conservation Authority ("REGULATORY PERMITS").

16. Not permit any change to or modification of DISTRICT and CITY approved IMPROVEMENT PLANS without the prior written permission and consent of DISTRICT and CITY.

17. Comply with all Cal/OSHA safety regulations including regulations concerning confined space and maintain a safe working environment for DEVELOPER, CITY and DISTRICT employees on the site.

18. Construct or cause to be constructed, PROJECT at DEVELOPER's

sole cost and expense, in accordance with DISTRICT and CITY approved IMPROVEMENT PLANS.

19. Within two (2) weeks of completing PROJECT construction, provide DISTRICT (Attention: Construction Management Section) and CITY with written notice that PROJECT construction is substantially complete and requesting that DISTRICT conduct a final inspection of DISTRICT FACILITIES and CITY conduct a final inspection of PROJECT.

20. Upon completion of PROJECT construction, and upon acceptance by CITY of all rights of way deemed necessary by DISTRICT and CITY for the operation and maintenance of PROJECT but prior to DISTRICT acceptance of DISTRICT FACILITIES for ownership, operation and maintenance, convey or cause to be conveyed to CITY the flood control easement(s) including ingress and egress, in a form approved by DISTRICT, to the rights of way as shown in concept cross-hatched on Exhibit "D", attached hereto and made a part hereof. The easement(s) or grant deed(s) shall be in a form approved by both DISTRICT and CITY and shall be executed by all legal and equitable owners of the property described in the easement(s) or grant deed(s).

21. At the time of recordation of the conveyance document(s) as set forth in Section I.2, furnish DISTRICT (Attention: Real Estate Services Section) with policies of title insurance, each in the amount of not less than (i) fifty percent (50%) of the estimated fee value, as determined by DISTRICT, for each easement parcel to be conveyed to DISTRICT, or (ii) one hundred percent (100%) of the estimated value, as determined by DISTRICT, for each fee parcel to be conveyed to DISTRICT, guaranteeing DISTRICT'S interest in said property as being free and clear of all liens, encumbrances, assessments, easements, taxes and leases (recorded or unrecorded), and except those which, in the sole discretion of DISTRICT, are acceptable.

22. Accept ownership and sole responsibility for the operation and maintenance of PROJECT until such time as (i) DISTRICT accepts ownership and responsibility for operation and maintenance of DISTRICT FACILITIES, (ii) CITY accepts ownership and responsibility for operation and maintenance of CITY FACILITIES.

23. Upon completion of PROJECT construction but prior to DISTRICT's acceptance of DISTRICT FACILITIES for ownership, operation and maintenance, provide or cause its civil engineer of record or construction civil engineer of record, duly registered in the State of California, to provide DISTRICT (Attention: Construction Management Section), with (i) soil compaction report(s) – stamped and wet signed by the geotechnical engineer, (ii) concrete testing report(s) – stamped and wet signed by the civil engineer of record, and (iii) a redlined "Record Drawings" copy of PROJECT plans. After DISTRICT approval of the redlined "Record Drawings", DEVELOPER's engineer shall schedule with DISTRICT a time to transfer the redlined changes onto DISTRICT's original mylars at DISTRICT's office, after which the engineer shall review, stamp and sign the original DISTRICT FACILITIES plans "Record Drawings."

24. Ensure that all work performed pursuant to this Agreement by DEVELOPER, its agents or contractors is done in accordance with all applicable laws and regulations, including but not limited to all applicable provisions of the Labor Code, Business and Professions Code, and Water Code. DEVELOPER shall be solely responsible for all costs associated with compliance with applicable laws and regulations.

25. Pay, if suit is brought upon this Agreement or any bond guaranteeing the completion of PROJECT, all costs and reasonable expenses and fees, including reasonable attorneys' fees, and acknowledge that, upon entry of judgment, all such

costs, expenses and fees shall be computed as costs and included in any judgment rendered.

SECTION II

DISTRICT shall:

1. Review IMPROVEMENT PLANS and approve when DISTRICT has determined that such plans meet DISTRICT standards and are found acceptable to DISTRICT prior to the start of PROJECT construction.
2. Provide CITY an opportunity to review and approve IMPROVEMENT PLANS prior to DISTRICT's final approval.
3. Upon execution of this Agreement, record or cause to be recorded, a copy of this Agreement in the Official Records of the Riverside County Recorder.
4. Record or cause to be recorded, the Irrevocable Offer(s) of Dedication provided by DEVELOPER pursuant to Section I.12.
5. Inspect construction of DISTRICT FACILITIES.
6. Keep an accurate accounting of all DISTRICT costs associated with the review and approval of IMPROVEMENT PLANS, the review and approval of right of way and conveyance documents, and the processing and administration of this Agreement.
7. Keep an accurate accounting of all DISTRICT construction inspection costs, and within forty-five (45) days after DISTRICT acceptance of DISTRICT FACILITIES as being complete, submit a final cost statement to DEVELOPER. If the deposit, as set forth in Section I.5., exceeds such costs, DISTRICT shall reimburse DEVELOPER the excess amount within sixty (60) days after DISTRICT acceptance of DISTRICT FACILITIES as being complete.
8. Provide CITY with a reproducible duplicate copy of "Record Drawings" of DISTRICT FACILITIES plans upon (i) DISTRICT acceptance of PROJECT

construction as being complete, and (ii) DISTRICT receipt of stamped and signed "Record Drawings" of DISTRICT FACILITIES plans as set forth in Section I.23.

9. Accept ownership and sole responsibility for the operation and maintenance of DISTRICT FACILITIES upon; (i) DISTRICT inspection of DISTRICT FACILITIES in accordance with Section I.19, (ii) DISTRICT acceptance of PROJECT construction as being complete, (iii) DISTRICT receipt of stamped and signed "Record Drawings" of PROJECT plans, as set forth in Section I.23, (iv) recordation of all conveyance documents described in Section I.20., (v) CITY acceptance of CITY FACILITIES for ownership, operation, and maintenance, (vi) DISTRICT FACILITIES are fully functioning as a flood control drainage system as solely determined by DISTRICT, and (vii) DISTRICT's sole determination that DISTRICT FACILITIES are in a satisfactorily maintained condition.

10. Prior to DISTRICT acceptance of ownership and responsibility for the operation and maintenance of DISTRICT FACILITIES, DISTRICT FACILITIES shall be in a satisfactorily maintained condition as solely determined by DISTRICT. If, subsequent to the inspection and, in the sole discretion of DISTRICT, DISTRICT FACILITIES is not in an acceptable condition, corrections shall be made at sole expense of DEVELOPER.

11. Provide CITY reproducible duplicate copy of "Record Drawings" of constructed DISTRICT FACILITIES along with a written notice that the PROJECT is complete and requesting CITY to release bonds held for DISTRICT FACILITIES upon; (i) DISTRICT acceptance of PROJECT construction as being complete, and (ii) DISTRICT receipt of stamped and signed "Record Drawings" of DISTRICT FACILITIES plans as set forth in Section I.23.

SECTION III

CITY shall:

1. Review IMPROVEMENT PLANS and approve when CITY has determined that such plans meet CITY standards and are found acceptable to CITY prior to the start of PROJECT construction.
2. Accept CITY and DISTRICT approved faithful performance and payment bonds submitted by DEVELOPER as set forth in Section I.4., and hold said bonds as provided herein CITY shall not release said bonds until DISTRICT provides CITY with a reproducible duplicate copy of "Record Drawings" and written notification as set forth in Section II.11.
3. Inspect PROJECT construction.
4. Consent, by execution of this Agreement, to the recording of any Irrevocable Offer(s) of Dedication furnished by DEVELOPER pursuant to this Agreement.
5. As requested by DISTRICT, accept the Irrevocable Offer(s) of Dedication as set forth herein, and any other outstanding offers of dedication necessary for the inspection, operation and maintenance of DISTRICT FACILITIES, and convey sufficient rights of way to DISTRICT to allow DISTRICT to inspect, operate and maintain DISTRICT FACILITIES.
6. Grant DISTRICT, by execution of this Agreement, the right to inspect, operate and maintain DISTRICT FACILITIES within CITY rights of way.
7. Upon completion of PROJECT construction, but prior to DISTRICT acceptance of DISTRICT FACILITIES for ownership, operation and maintenance, convey or cause to be conveyed to DISTRICT the flood control easement(s) including ingress and egress, to the rights of way as shown on Exhibit "D".
8. Accept ownership and sole responsibility for the operation and

maintenance of CITY FACILITIES upon DISTRICT acceptance of DISTRICT FACILITIES for ownership, operation and maintenance.

9. Upon DISTRICT and CITY acceptance of PROJECT construction as being complete, accept sole responsibility for the adjustment of all PROJECT manhole rings and covers located within CITY rights of way which must be performed at such time(s) that the finished grade along and above the underground portions of DISTRICT FACILITIES are improved, repaired, replaced or changed. It being further understood and agreed that any such adjustments shall be performed at no cost to DISTRICT.

SECTION IV

It is further mutually agreed:

1. All construction work involved with PROJECT shall be inspected by DISTRICT and CITY but shall not be deemed complete until DISTRICT and CITY mutually agree in writing that construction is completed in accordance with DISTRICT and CITY approved IMPROVEMENT PLANS.

2. CITY and DEVELOPER personnel may observe and inspect all work being done on DISTRICT FACILITIES but shall provide any comments to DISTRICT personnel who shall be solely responsible for all quality control communications with DEVELOPER's contractor(s) during the construction of PROJECT.

3. DEVELOPER shall complete construction of PROJECT within twelve (12) consecutive months after execution of this Agreement and within eight (8) months after commencing work on PROJECT. It is expressly understood that since time is of the essence in this Agreement, failure of DEVELOPER to perform the work within the agreed upon time shall constitute authority for DISTRICT to perform the remaining work and require DEVELOPER's surety to pay to CITY the penal sum of any and all bonds. In which case, DISTRICT or CITY on behalf of DISTRICT shall file a claim with

DEVELOPER's surety to DISTRICT costs incurred.

4. If DEVELOPER fails to commence construction of PROJECT within nine (9) months after execution of this Agreement, then DISTRICT reserves the right to withhold issuance of the Notice to Proceed pending a review of the existing site conditions as they exist at the time DEVELOPER provides written notification to DISTRICT of the start of construction as set forth in Section I.14. In the event of a change in the existing site conditions that materially affects PROJECT function or DISTRICT's ability to operate and maintain DISTRICT FACILITIES, DISTRICT may require DEVELOPER to modify IMPROVEMENT PLANS as deemed necessary by DISTRICT.

5. DISTRICT shall endeavor to issue DEVELOPER a Notice to Proceed within twenty (20) days of receipt of DEVELOPER's complete written notice as set forth in Section I.14; however, DISTRICT's construction inspection staff is limited and, therefore, the issuance of a Notice to Proceed is subject to staff availability.

In the event DEVELOPER wishes to expedite issuance of a Notice to Proceed, DEVELOPER may elect to furnish an independent qualified construction inspector at DEVELOPER's sole cost and expense. DEVELOPER shall furnish appropriate documentation of the individual's credentials and experience to DISTRICT for review and, if appropriate, approval. DISTRICT shall review the individual's qualifications and experience, upon approval thereof, said individual, hereinafter called "DEPUTY INSPECTOR", shall be authorized to act on DISTRICT's behalf on all DISTRICT FACILITIES construction and quality control matters. If DEVELOPER's initial construction inspection deposit furnished pursuant to Section I.5. exceeds ten thousand dollars (\$10,000), DISTRICT shall refund to DEVELOPER up to eighty percent (80%) of DEVELOPER's initial inspection deposit within forty-five (45) days of DISTRICT's approval of DEPUTY INSPECTOR; however, a minimum balance

of ten thousand dollars (\$10,000) shall be retained on account.

6. PROJECT construction work shall be on a five (5) day, forty (40) hour work week with no work on Saturdays, Sundays or DISTRICT designated legal holidays, unless otherwise approved in writing by DISTRICT. If DEVELOPER feels it is necessary to work more than the normal forty (40) hour work week or on holidays, DEVELOPER shall make a written request for permission from DISTRICT to work the additional hours. The request shall be submitted to DISTRICT at least seventy-two (72) hours prior to the requested additional work hours and state the reasons for the overtime and the specific time frames required. The decision of granting permission for overtime work shall be made by DISTRICT at its sole discretion and shall be final. If permission is granted by DISTRICT, DEVELOPER will be charged the cost incurred at the overtime rates for additional inspection time required in connection with the overtime work in accordance with Ordinance Nos. 671 and 749, including any amendments thereto, of the County of Riverside.

7. DEVELOPER shall indemnify and hold harmless DISTRICT, the County of Riverside, the CITY, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as "Indemnitees") from any liability whatsoever, claim, damage, proceeding or action, present or future, based upon, arising out of or in any way relating to DEVELOPER's (including its officers, employees, contractors, subcontractors and agents) actual or alleged acts or omissions related to this Agreement, performance under this Agreement, or failure to comply with the requirements of this Agreement, including but not limited to: (a) property damage; (b) bodily injury or death; (c) liability or damage pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States

Constitution or any other law, ordinance or regulation caused by the diversion of waters from the natural drainage patterns or the discharge of drainage within or from PROJECT; or (d) any other element of any kind or nature whatsoever arising from the performance of DEVELOPER, its officers, employees, contractors, subcontractors, agents or representatives ("Indemnitors") from this Agreement.

DEVELOPER shall defend, at its sole expense, including all costs and fees (including but not limited to attorney fees, cost of investigation, defense and settlements or awards), the Indemnitees in any claim, proceeding or action for which indemnification is required.

With respect to any action or claim subject to indemnification herein by DEVELOPER, DEVELOPER shall, at its sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, compromise any such claim, proceeding or action without the prior consent of DISTRICT, the County of Riverside and CITY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes DEVELOPER's indemnification obligations to Indemnitees as set forth herein.

DEVELOPER's indemnification obligations hereunder shall be satisfied when DEVELOPER has provided to DISTRICT, the County of Riverside and CITY the appropriate form of dismissal (or similar document) relieving DISTRICT, the County of Riverside, or CITY from any liability for the claim, proceeding or action involved.

The specified insurance limits required in this Agreement shall in no way limit or circumscribe DEVELOPER's obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

In the event there is conflict between this section and California Civil Code Section 2782, this section shall be interpreted to comply with California Civil Code

Section 2782. Such interpretation shall not relieve DEVELOPER from indemnifying the Indemnites to the fullest extent allowed by law.

8. DEVELOPER for itself, its successors and assigns hereby releases DISTRICT, County of Riverside and CITY (including their agencies, districts, special districts and departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives) from any and all claims, demands, actions or suits of any kind arising out of any liability, known or unknown, present or future, including but not limited to any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution or any other law or ordinance which seeks to impose any other liability or damage, whatsoever, for damage caused by the discharge of drainage within or from PROJECT. Nothing contained herein shall constitute a release by DEVELOPER of DISTRICT or CITY, their officers, agents and employees from any and all claims, demands, actions or suits of any kind arising out of any liability, known or unknown, present or future, for the negligent maintenance of PROJECT, after the acceptance of PROJECT by CITY.

9. Any waiver by any party hereto of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term hereof. Failure on the part of any party hereto to require exact, full and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms hereof or stopping such party from enforcement hereof.

10. Any and all notices sent or required to be sent to the parties of this Agreement will be mailed by first class mail, postage prepaid, to the following addresses:

To DISTRICT: RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION
DISTRICT
1995 Market Street
Riverside, CA 92501
Attn: Contract Services Section

To CITY: CITY OF LAKE ELSINORE
130 S. Main Street
Lake Elsinore, CA 92530
Attn: City Manager

To
DEVELOPER: RICHMOND AMERICAN HOMES OF
MARYLAND INC.
391 N. Main Street, Suite 205
Corona, CA 92880
Attn: Edgar Gomez

11. This Agreement is to be construed in accordance with the laws of the State of California. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

12. Any action at law or in equity brought by any of the parties hereto for the purpose of enforcing a right or rights provided for by the Agreement, shall be tried in a court of competent jurisdiction in the County of Riverside, State of California, and the parties hereto waive all provisions of law providing for a change of venue in such proceedings to any other County.

13. This Agreement is the result of negotiations between the parties hereto, and the advice and assistance of their respective counsel. The fact that this Agreement was prepared as a matter of convenience by DISTRICT shall have no importance or significance. Any uncertainty or ambiguity in this Agreement shall not be construed against DISTRICT because DISTRICT prepared this Agreement in its final form.

14. The rights and obligations of DEVELOPER shall inure to and be binding upon all heirs, successors and assignees.

15. In the event DEVELOPER sells Tract Map No. 35719, DEVELOPER shall notify DISTRICT and CITY of any such transfer or assignment in writing no later than 30 days from the date of the sale. DEVELOPER expressly understands and agrees that it shall remain liable with respect to any and all of the obligations and duties contained in this Agreement until DISTRICT, CITY, DEVELOPER and the new owner(s) of Tract Map No. 35719 fully execute an assignment and assumption agreement that transfers all DEVELOPER's rights, duties or obligations hereunder to the new owner(s) of Tract Map No. 35719.

16. The individual(s) executing this Agreement on behalf of DEVELOPER certify that they have the authority within their respective company(ies) to enter into and execute this Agreement, and have been authorized to do so by all boards of directors, legal counsel, and/or any other board, committee or other entity within their respective company(ies) which have the authority to authorize or deny entering into this Agreement.

17. This Agreement is intended by the parties hereto as a final expression of their understanding with respect to the subject matters hereof and as a complete and exclusive statement of the terms and conditions thereof and supersedes any and all prior and contemporaneous agreements and understandings, oral or written, in connection therewith. This Agreement may be changed or modified only upon the written consent of the parties hereto.

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

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

**RIVERSIDE COUNTY FLOOD
CONTROL
AND WATER CONSERVATION
DISTRICT**

By _____
JASON E. UHLEY
General Manager-Chief Engineer

By _____
KAREN SPIEGEL, Chairwoman
Riverside County Flood Control and Water
Conservation District Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS
County Counsel

KECIA HARPER
Clerk of the Board

By _____
LEILA MOSHREF-DANESH
Deputy County Counsel

By _____
Deputy

(SEAL)

[Signed in Counterpart]

Cooperative Agreement with City of Lake Elsinore and Sam-Running Deer, LLC
Lake Elsinore – Rice Canyon Levees, Stage 2
3-0-00050
TR 31957
11/16/2020
BB:blm

CITY OF LAKE ELSINORE

By _____
GRANT YATES
City Manager

By _____
NAME: _____
Mayor

APPROVED AS TO FORM:

ATTEST:

By _____
BARBARA LEIBOLD
City Attorney

By _____
CANDICE ALVAREZ
City Clerk

(SEAL)

By _____

(SEAL)

Cooperative Agreement with City of Lake Elsinore and Sam-Running Deer, LLC
Lake Elsinore – Rice Canyon Levees, Stage 2
3-0-00050
TR 31957
11/16/2020
BB:blm

**RICHMOND AMERICAN HOMES OF
MARYLAND, INC.,**
a Maryland limited partnership

By

Edgar Gomez
Vice President – Project Manager

(ATTACH NOTARY WITH CAPACITY
STATEMENT)

Cooperative Agreement with City of Lake Elsinore and Sam-Running Deer, LLC
Lake Elsinore – Rice Canyon Levees, Stage 2
3-0-00050
TR 31957
11/16/2020
BB:blm

Exhibit A

LEGAL DESCRIPTION

The land referred to in this report is situated in the City of Lake Elsinore, The County of Riverside, State of California, and is described as follows:

PARCEL 1: (APN'S: 394-120-007-6 AND 394-120-012-0)

Parcel 1 as shown on Lot Line Adjustment No. 2004-13, as evidenced by document recorded March 31, 2005 as Instrument No. 2005-0253297 of Official Records, being more particularly described as follows:

Being a portion of the East half of the Southeast quarter of Section 28, township 5 South, Range 5 West, San Bernardino Meridian as shown by Record of Survey, Book 72, Page 40, Records of Riverside County, State of California.

Commencing at the Southeast corner of said Section 28; thence North 00°49'34" East 1849.31 feet along the centerline of Wheatstone Drive, said centerline being the East line of said Section 28 and Lake Elsinore City limits, to the true point of being; thence North 89°10'26" West 209.53 feet; thence South 29°01'29" West 268.87 feet to a point at the beginning of a non-tangent curve concave Northwesterly and having a radius of 891.70 feet. Said point having a radial bearing of South 60°10'08" East; thence Southwesterly along said curve 370.98 feet through a central angle of 23°50'13" to a point of non-tangent curve, said point having a radial bearing of North 30°58'28" West. Said curve being concave Southeasterly and having a radius of 805.00 feet; thence Southwesterly along said curve 644.15 feet through a central angle of 45°50'51" to a tangent line; thence South 13°10'41" West 320 feet to a point at the beginning of a non-tangent curve concave Northwesterly and having a radius 806.03 feet, said point having a radial bearing of south 76°31'32" East; thence Southwesterly along said curve 574.59 feet through a central angle of 40°50'40" to a point on the West line of the east half of the Southeast quarter of said Section 28, said point having a radial bearing of South 35°40'52" East; thence North 00°35'41" East 2,588.50 feet along the West line of the East half of the Southeast quarter of said North line to the East one quarter of said Section 28; thence South 00°49'34" West 797.67 feet to the true point of beginning.

PARCEL 2: (APN'S: 394-120-008-7 and 394-120-013-11)

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Parcel 2 as shown on Lot Line Adjustment No. 2004-13, as evidenced by document recorded March 31, 2005 as Instrument No. 2005-0253297 of Official records, being more particularly described as follows:

Being a portion of the East half of the Southeast quarter of Section 28, Township 5 South, Range 5 West, San Bernardino Meridian as shown by record or survey, Book 72, Page 40, records of Riverside County, State of California.

Beginning at the Southeast corner of said Section 28; thence North $00^{\circ}49'34''$ East 1849.31 feet along the centerline of Wheatstone Drive, said centerline being the East line of said Section 28 and Lake Elsinore City Limits; thence North $89^{\circ}10'26''$ West 209.53 feet; thence South $29^{\circ}01'29''$ West 268.87 feet to a point at the beginning of a non-tangent curve concave Northwesterly and having a radius of 891.70 feet. Said point having a radial bearing of South $60^{\circ}10'08''$ East; thence Southwesterly along said curve 370.98 feet through a central angle of $23^{\circ}50'13''$ to a point of non-tangent curve, said point having a radial bearing of North $30^{\circ}58'28''$ West. Said curve being concave Southwesterly and having a radius of 805.00 feet; thence Southwesterly along said curve 644.15 feet through a central angle of $45^{\circ}50'51''$ to a tangent line; thence South $13^{\circ}10'41''$ West 320.00 feet to a point at the beginning of a non-tangent curve concave Northwesterly and having a radius 806.03 feet, said point having a radial bearing of South $76^{\circ}31'32''$ East; thence Southwesterly along said curve 574.59 feet through a central angle of $40^{\circ}50'40''$ to a point on the West line of the east half of the Southeast quarter of said Section 28, said point having a radial bearing of South $35^{\circ}40'52''$ East; thence South $00^{\circ}35'41''$ West 47.07 feet along the West line of the East half of the Southeast quarter of said Section 28 to a point on the South line of said Section 28; thence South $89^{\circ}33'46''$ East, 1,315.23 feet along said South line to the true point of beginning.

Assessor's Parcel Number(s)

1. 394-120-007
2. 394-120-008
3. 394-120-012
4. 394-120-013

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Exhibit B



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DISTRICT's Insurance Requirements is as follows:

Without limiting or diminishing DEVELOPER's obligation to indemnify or hold DISTRICT harmless, DEVELOPER shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the DISTRICT herein refers to the Riverside County Flood Control and Water Conservation District, the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds.

A. **Workers' Compensation:**

If DEVELOPER has employees as defined by the State of California, DEVELOPER shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. Policy shall be endorsed to waive subrogation in favor of DISTRICT.

B. **Commercial General Liability:**

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of DEVELOPER's performance of its obligations hereunder. Policy shall name the DISTRICT as Additional Insured. Policy's limit of liability shall not be less than \$2,000,000 per occurrence combined single limit. If such

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insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit.

C. Vehicle Liability:

If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then DEVELOPER shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit. Policy shall name the DISTRICT as Additional Insureds.

D. Professional Liability:

DEVELOPER shall cause any architect or engineer retained by DEVELOPER in connection with the performance of DEVELOPER's obligations under this Agreement to maintain Professional Liability Insurance providing coverage for the performance of their work included within this Agreement, with a limit of liability of not less than \$2,000,000 per occurrence and \$4,000,000 annual aggregate. DEVELOPER shall require that, if such Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and that such architect or engineer shall purchase at such architect or engineer's sole expense either 1) an Extended Reporting Endorsement (also known as Trail Coverage); or 2) Prior Dates Coverage from a new insurer with a retroactive date back to the date of, prior to, the inception of this Agreement; or 3) demonstrate through

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Certificates of Insurance that such architect or engineer has maintained continuous coverage with the same or original insurer. Coverage provided under items: 1), 2) or 3) shall continue for the term specified in the insurance policy as long as the law allows.

E. Pollution and Asbestos Liability:

DEVELOPER or its construction contractor(s) shall obtain, at its sole expense and keep in effect during the term of the contract, Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) covering DEVELOPER's or its construction contractor(s) liability for a third party bodily injury and property damage arising from pollution conditions caused by the DEVELOPER or its construction contractor(s) while performing their operations under the contract. The insurance coverage shall apply to sudden and accidental pollution events. Any coverage restriction as to time limit for discovery of a pollution incident and/or a time limit for notice to the insurer must be accepted by the DISTRICT. The insurance coverage shall also respond to cleanup cost. This coverage may be written in combination with the commercial general liability insurance or professional liability insurance.

DEVELOPER or its construction contractor(s) shall maintain Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate. The policy shall be endorsed to state that the general aggregate limit of liability shall apply separately to this contract. Any self-insured retention/deductible amount shall be submitted to the

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DISTRICT for review and approval. If DEVELOPER or its construction contractor(s) maintains broader coverage and/or higher limits than the minimums shown above, the DISTRICT requires and shall be entitled to the broader coverage and/or higher limits maintained by DEVELOPER or its construction contractor(s). Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the DISTRICT.

In the event, DEVELOPER or its construction contractor(s) encounters materials on the site that is believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, DEVELOPER or its construction contractor(s) shall immediately stop work in the area affected and report the condition to the DISTRICT in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the DISTRICT and DEVELOPER, if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the DISTRICT and DEVELOPER.

DEVELOPER or its construction contractor(s) shall not be required to perform without consent any work relating to asbestos or polychlorinated biphenyl (PCB).

F. General Insurance Provisions – All Lines:

- a. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A.M. BEST rating

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of not less than an A: VIII (A: 8) unless such requirements are waived, in writing, by the DISTRICT Risk Manager. If the DISTRICT's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

- b. The DEVELOPER must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence each such retention shall have the prior written consent of the DISTRICT Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention deemed unacceptable to the DISTRICT, and at the election of the DISTRICT's Risk Manager, DEVELOPER's carriers shall either: 1) reduce or eliminate such self-insured retention with respect to this Agreement with DISTRICT, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.
- c. DEVELOPER shall cause their insurance carrier(s) or its contractor's insurance carrier(s), to furnish DISTRICT with 1) a properly executed original certificate(s) of insurance and certified original copies of endorsements effecting coverage as required herein; and 2) if requested to do so orally or in writing by the DISTRICT Risk Manager, provide original certified copies of policies including all endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that a minimum of thirty (30) days written notice shall be given to the

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DISTRICT prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. If DEVELOPER insurance carrier(s) policies does not meet the minimum notice requirement found herein, DEVELOPER shall cause DEVELOPER's insurance carrier(s) to furnish a 30 day Notice of Cancellation Endorsement.

- d. In the event of a material modification, cancellation, expiration or reduction in coverage, this Agreement shall terminate forthwith, unless DISTRICT receives, prior to such effective date, another properly executed original certificate of insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto, evidencing coverages set forth herein and the insurance required herein is in full force and effect. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the certificate of insurance.
- e. It is understood and agreed by the parties hereto that DEVELOPER's insurance shall be construed as primary insurance, and DISTRICT's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.
- f. If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services or there is a material change in the equipment to be used in the performance of the scope of work which will add additional exposures (such as the use of

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aircraft, watercraft, cranes, etc.); or the term of this Agreement, including any extensions thereof, exceeds five (5) years, DISTRICT reserves the right to adjust the types of insurance required under this Agreement and the monetary limits of liability for the insurance coverages currently required herein, if, in the DISTRICT Risk Manager's reasonable judgment, the amount or type of insurance carried by DEVELOPER has become inadequate.

- g. DEVELOPER shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.
- h. The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to DISTRICT.
- i. DEVELOPER agrees to notify DISTRICT of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

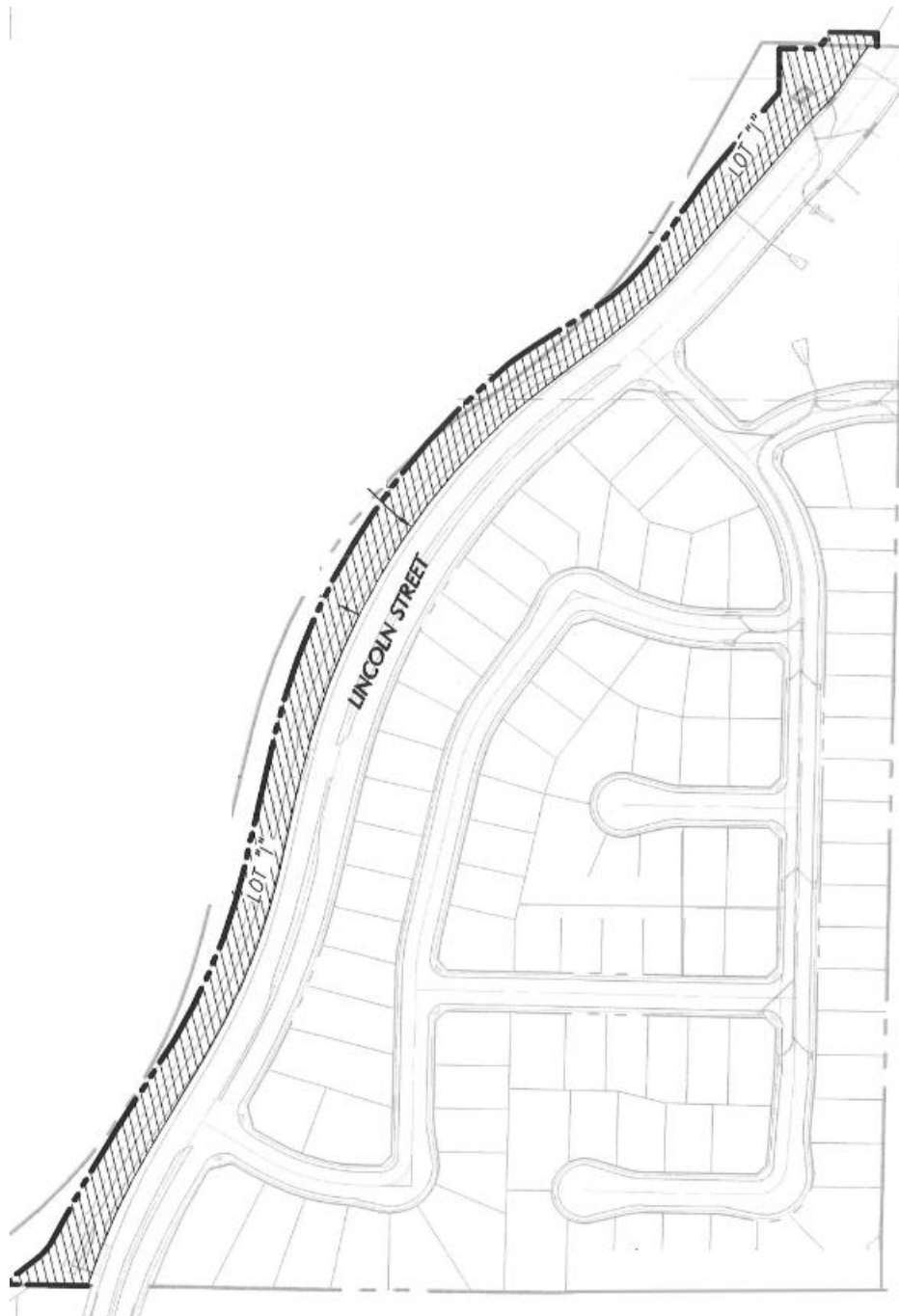
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Exhibit D



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