



336 Pacific Avenue, Shafter, CA 93263
Meeting Held In-Person and Via Zoom and Livestream on YouTube.

**AGENDA
REGULAR MEETING
SHAFTER PLANNING COMMISSION
TUESDAY, FEBRUARY 11, 2025**

NOTICE TO THE PUBLIC:

Any documents produced by the City and distributed to a majority of the Planning Commission regarding any item on this agenda will be made available in the City Clerk's Office during normal business hours at City Hall located at 336 Pacific Avenue, Shafter CA. In addition, such documents will be posted on the City's website at www.shafter.com.

CALL TO ORDER: 6:00 PM

PLEDGE OF ALLEGIANCE: Commissioner Simmons

INVOCATION: Commissioner Sanchez

ROLL CALL: Chairman Joshan
Vice Chairman Piuser
Commissioner Camacho
Commissioner Sanchez
Commissioner Simmons

APPROVAL OF AGENDA:

MINUTES OF PREVIOUS MEETING:

1. Approval of Minutes: January 14, 2025.

PUBLIC COMMENT:

This portion of the meeting is reserved for persons wanting to address the Commission only on matters not listed on this agenda. Speakers are limited to five minutes unless additional time is needed for translation. Please state your name and address for the record before making your presentation.

PUBLIC HEARING:

Should anyone challenge any proposed action which is the subject of a public hearing listed on this agenda, that person challenging any action taken after the public hearing may be limited to raising only those issues addressed at the public hearing described

in this notice, or in written correspondence delivered to the Planning Commission at or prior to this public hearing.

- 1. First Amendment to Development Agreement No. 23-21 for Revised Tentative Tract Map No. 7244:** Planning Commission conduct a public hearing and adopt Resolution No. 25-456, a Resolution of the Planning Commission of the City of Shafter, recommending City Council approve and adopt execution of a First Amendment to Development Agreement No. 23-21 for Revised Tentative Tract No. 7244. (Planning Director Esselman)

ROLL CALL

COMMISSIONER REPORTS:

ADJOURNMENT:

Pursuant to the Americans with Disabilities Act, if you need special assistance to participate in a City Council Meeting, please contact the City Clerk at (661) 746-5000 at least three (3) days prior to the meeting or time the special services are needed to allow

City staff in making reasonable arrangements to provide you with access to the meeting. Any public record, relating to an open session agenda item, that is distributed within 72 hours prior to the meeting is available for public inspection in the City Clerk's Office at Shafter City Hall, 336 Pacific Ave., Shafter, CA 93263. This is to certify that this Agenda notice was posted at City Hall and Police Dept. by 5:00 p.m., February 6, 2025. Yazmina Pallares, S/S, City Clerk

REMOTE PUBLIC PARTICIPATION IS ALLOWED IN THE FOLLOWING WAYS, SEE BELOW FOR INSTRUCTIONS.

1. You are strongly encouraged to observe the Planning Commission meetings live via YouTube <https://www.youtube.com/user/CityofShafter/>
2. If you wish to make a comment on a specific agenda item or public comment, please submit your comment via email by **6:00 PM on February 11, 2025** to the City Clerk at CityClerk@shafter.com
3. If you wish to make a written comment to the City Clerk, 336 Pacific Avenue, Shafter, CA 93263.
4. If you wish to make a comment during the live meeting, callers must first register with the City Clerk at 661-746-5012 before the meeting begins to receive instructions and the call-in number and code. Please call by 5:00pm on the Monday prior to the Planning Commission meeting to allow ample time for sign up. You will need to provide your name, phone number and the item number you wish to address.
5. All public comments are provided to the Planning Commission and applicable Staff, for review and consideration by the Board prior to taking action on any matters listed on the agenda and are incorporated into the official record of the Planning Commission meeting.

**MINUTES OF THE REGULAR MEETING OF THE
SHAFTER PLANNING COMMISSION
COUNCIL CHAMBER, 336 PACIFIC AVENUE
MEETING HELD IN-PERSON AND VIA ZOOM AND LIVESTREAM TO YOUTUBE
TUESDAY, JANUARY 14, 2025**

CALL TO ORDER: 6:00 PM

PLEDGE OF ALLEGIANCE: Commissioner Piuser

INVOCATION: Chairman Sanchez

ROLL CALL:

PRESENT(In-Person): Chairman Sanchez, and Commissioners Camacho, Joshan, Piuser and Simmons. Also present: Planning Director Esselman, Deputy City Clerk Aleman, and City Clerk Pallares.

OATH OF OFFICE FOR NEWLY APPOINTED PLANNING COMMISSIONERS:

1. Planning Commissioners Armando Camacho, John Sanchez, and Joseph Simmons.

City Clerk Pallares administered the Oath of Office to Reappointed Commissioner John Sanchez and newly appointed Commissioners Armando Camacho and Joseph Simmons. The meeting of Shafter Planning Commission continued with Planning Commissioners Camacho, Joshan, Piuser Sanchez and Simmons.

ORGANIZATIONAL BUSINESS:

1. Election of Chairman and Vice Chairman.
 - a. Planning Director Esselman opened the nominations for Chairman.

MOVED (SANCHEZ) AND SECONDED (PIUSER) THE NOMINATION OF COMMISSIONER JOSHAN AS CHAIRMAN. MOTION CARRIED BY THE FOLLOWING VOTE:

<i>AYES:</i>	<i>CAMACHO, JOSHAN, PIUSER, SANCHEZ, AND SIMMONS.</i>
<i>NAYS:</i>	<i>NONE.</i>
<i>ABSENT:</i>	<i>NONE.</i>
<i>ABSTENTIONS:</i>	<i>NONE.</i>

Commissioner Joshan was appointed as Chairman of the Planning Commission.

- b. Chairman Joshan opened the nominations for Vice Chairman.

MOVED (SANCHEZ) AND SECONDED (PIUSER) THE NOMINATION OF COMMISSIONER PIUSER AS VICE CHAIRMAN. MOTION CARRIED BY THE FOLLOWING VOTE:

<i>AYES:</i>	<i>CAMACHO, JOSHAN, PIUSER, SANCHEZ, AND SIMMONS.</i>
<i>NAYS:</i>	<i>NONE.</i>
<i>ABSENT:</i>	<i>NONE.</i>
<i>ABSTENTIONS:</i>	<i>NONE.</i>

Commissioner Piuser was appointed as Vice Chairman of the Planning Commission.

APPROVAL OF AGENDA:

*MOVED (SANCHEZ) AND SECONDED (PIUSER) COMMISSIONERS APPROVED THE AGENDA AS PRESENTED.
MOTION CARRIED BY THE FOLLOWING VOTE:*

*AYES: CAMACHO, JOSHAN, PIUSER, SANCHEZ, AND SIMMONS.
NAYS: NONE.
ABSENT: NONE.
ABSTENTIONS: NONE.*

MINUTES OF PREVIOUS MEETING:

1. Approval of Minutes: December 10, 2024.

*MOVED (PIUSER) AND SECONDED (SANCHEZ) COMMISSIONERS APPROVED THE MINUTES OF THE
REGULAR MEETING OF DECEMBER 10, 2024 AS PRESENTED. MOTION CARRIED BY THE FOLLOWING VOTE:*

*AYES: CAMACHO, JOSHAN, PIUSER, SANCHEZ, AND SIMMONS.
NAYS: NONE.
ABSENT: NONE.
ABSTENTIONS: NONE.*

PUBLIC COMMENT:

There were no members of the public wishing to speak.

COMMISSIONER REPORTS: There were no Commissioner Reports.

ADJOURNMENT:

*MOVED (SANCHEZ) AND SECONDED (PIUSER) COMMISSIONERS ADJOURNED THE MEETING AT 6:08 P.M.
MOTION CARRIED WITH NO OPPOSITION.*

Lovedeep Joshan, Chairman

ATTEST:

Yazmina Pallares, City Clerk

DATE: February 11, 2025
TO: Planning Commission
FROM: Planning Department
SUBJECT: First Amendment to Development Agreement No. 23-21 for Revised Tentative Tract Map No. 7244

RECOMMENDATION:

Planning Commission conduct a public hearing and adopt Resolution No. 25-456, a Resolution of the Planning Commission of the City of Shafter, recommending City Council approve and adopt execution of a First Amendment to Development Agreement No. 23-21 for Revised Tentative Tract No. 7244.

APPLICANT

Staff-initiated request

OWNER

Lennar Homes of California, LLC
8080 N. Palm Avenue, Suite 110
Fresno, CA 93711

LOCATION: Revised Tentative Tract No. 7244 and Tentative Tract No. 7483 are both located north of the intersection of 7th Standard Road and N. Jewetta Avenue within the Marcona Preserve Specific Plan area (see **Exhibit 1**).

PROJECT ANALYSIS:

The City of Shafter and Lennar Homes of California, LLC (Owner) entered into a Development Agreement (DA) approved April 16, 2024, and recorded April 25, 2024, as Entry No. 224047405 in the office of the Kern County Recorder (see **Exhibit 2**). The current DA guides the development of Tract No. 7244, including rules for subdivision and collection of impact fees.

After the approval of DA No. 23-21, the owner (FranMar Company, LP) of Tentative Tract No. 7483 (APN 536-020-02) reached out to staff stating, that when DA No. 23-21 for the adjacent Revised Tentative Tract No. 7244 was recorded, the legal description attached to the DA inadvertently included the property for Tentative Tract No. 7483; the portion of the legal description that unintentionally included the property for Tentative Tract No. 7483 has been highlighted in **Exhibit 2**. Therefore, the grant deed for the property that encompasses Tentative Tract No. 7483 now currently has an entry stating that the property must comply with DA No. 23-21, which is incorrect. The purpose of this item is to correct this error by replacing the current legal description in the DA with a new legal description that rightfully excludes the property for Tentative Tract No. 7483 from the area that must comply with DA No. 23-21 and, in turn, removes the requirement to comply with DA No. 23-21 for Tentative Tract No. 7483. Tentative Tract No. 7483, like all other tracts in the City, will have to undergo its own Development Agreement approval process that is unique to that tract in the future, and this

PUBLIC HEARING

Commission will have an opportunity to review and recommend approval of a future Development Agreement for Tentative Tract No. 7483. **Exhibit 1** provides a map showing the proximity of Revised Tentative Tract No. 7244 to Tentative Tract No. 7483.

CEQA:

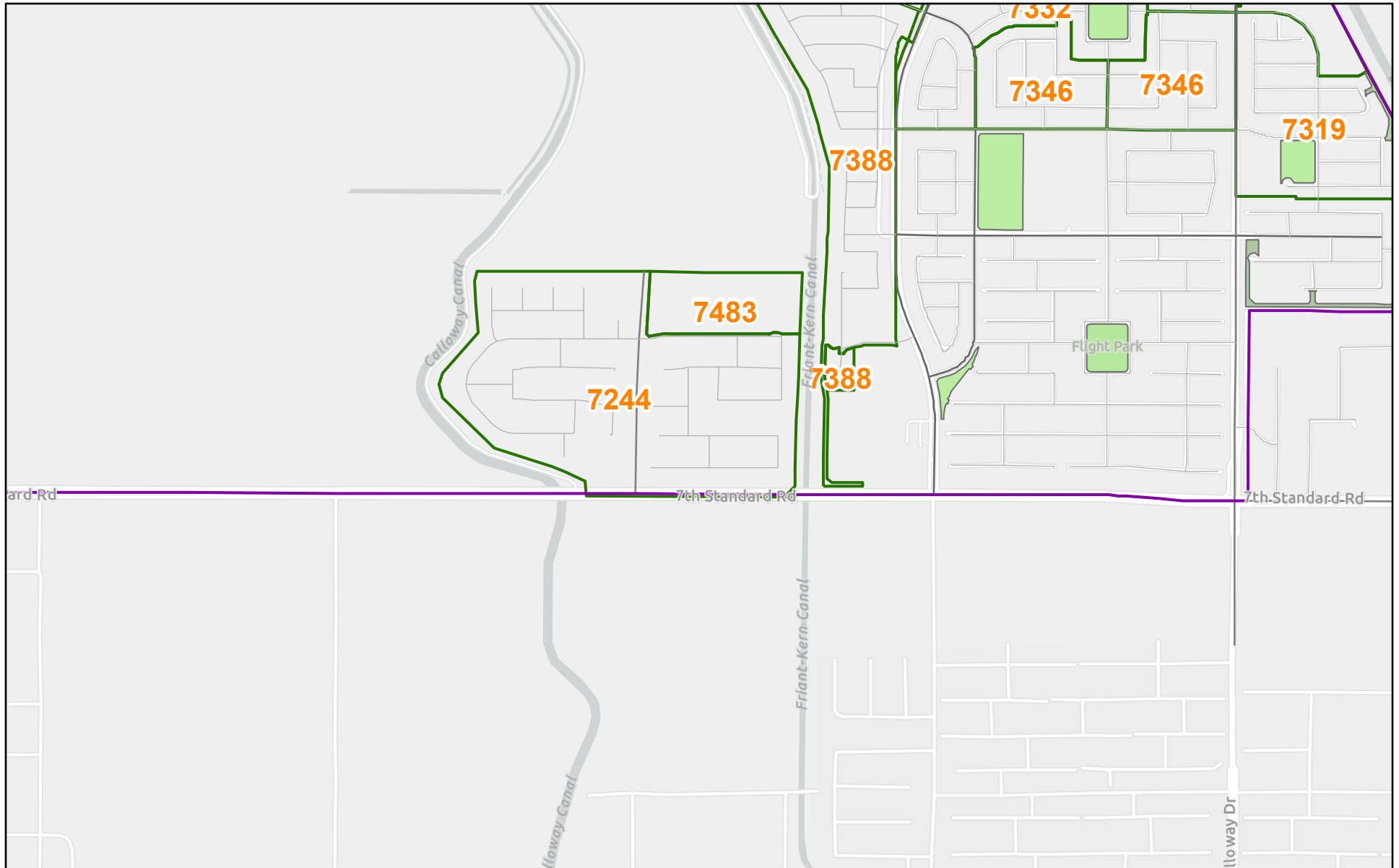
Per Section 15601(b)(3) (Common Sense) of the California Environmental Quality Act (CEQA) Guidelines, the action is exempt from CEQA because the environmental analysis for the original DA already analyzed and mitigated, to the greatest extent possible, environmental impacts as required by CEQA. The revisions in this first amendment do not result in an intensification of the identified impacts beyond what was previously analyzed. Therefore, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment and the activity is not subject to CEQA.

ATTACHMENTS

EXHIBIT

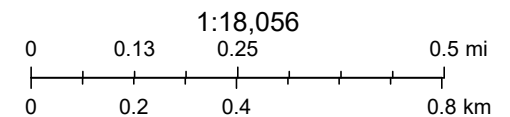
Vicinity Map	1
Development Agreement No. 23-21	2
Resolution No. 25-456	3

Exhibit 1 - Vicinity Map



1/15/2025, 11:37:42 AM

- | | | | |
|----------------------|------------------|-----------|----------------------|
| Shafter City Limits | RECREATION | Collector | Subdivision Projects |
| Community Facilities | Road Centerlines | Local | TRACT |
| PARKS | Arterial | | |



Esri Community Maps Contributors, City of Bakersfield, City of Shafter, California State Parks, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, City of Shafter

EXHIBIT 2

Laura Avila, Assessor — Recorder
Kern County Official Records

PRATTT1
4/25/2024
8:26 AM

RECORDED AT REQUEST OF
CITY OF SHAFTER

Recorded at the request of
Public

WHEN RECORDED RETURN TO:

City of Shafter
336 Pacific Avenue
Shafter, CA 93263
Attention: City Clerk

DOC#: **224047405**



Stat Types: 1 Pages: **102**

Fees	0.00
Taxes	0.00
Others	0.00
PAID	<u>\$0.00</u>

Exempt from Filing Fees Gov. Code Section 27383

**PORTION OF MARCONA PRESERVE SPECIFIC PLAN
REVISED TENTATIVE TRACT NO. 7244
DEVELOPMENT AGREEMENT No. 23-21**

between

CITY OF SHAFTER
a California municipal corporation

and

LENNAR HOMES OF CALIFORNIA, LLC
a California limited liability company

Exhibit “1” of Ordinance No. 752

ARTICLE 1. PARTIES AND EFFECTIVE DATE

This Development Agreement (“Agreement”) is entered into between (i) THE CITY OF SHAFTER, a California municipal corporation (“City”) and (ii) LENNAR HOMES OF CALIFORNIA, LLC, a California limited liability company (“Owner”). This Agreement shall become effective on the Effective Date.

ARTICLE 2. RECITALS

2.1 City is authorized to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, pursuant to Section 65864, et seq. of the Government Code (the “Development Agreement Law”); and

2.2 City has adopted rules and regulations for consideration of development agreements, pursuant to Section 65865 (the “Development Agreement Procedures”) for consideration of development agreements, pursuant to Section 65864, et seq. of the Government Code (the “Development Agreement Law”); and as further provided in Section 2.70 (Development Agreements), Chapter 2, Title 17 of the Shafter Municipal Code; and

2.3 Owner is the owner of the real property described in Exhibit “A”, attached hereto and incorporated herein by this reference, which property is located within the City of Shafter, County of Kern, State of California; and

2.4 Owner has requested that City enter into a development agreement, and proceedings have been taken in accordance with the rules and regulations of City; and

2.5 By entering into this Agreement, City binds the City and future City Councils of City by the obligations specified herein, and limits the future exercise of certain governmental and proprietary powers of City; and

2.6 The terms and conditions of this Agreement have undergone extensive review by City and the City Council and have been found to be fair, just, and reasonable and consistent with the City’s General Plan and any applicable specific plan; and

2.7 All the requirements of the California Environmental Quality Act have been met with respect to the Project and City has reviewed, considered and, on August 15, 2017, adopted the addendum to the Final Environmental Impact Report for the 2005 General Plan Update for the Heritage Ranch Specific Plan (now referred to as Marcona Preserve Specific Plan, which was last amended on December 20, 2022 under Ordinance No. 744.) for Revised Tentative Tract No. 7244 as adequate and complete; and

2.8 This Agreement and the development of the Project are consistent with the Shafter General Plan; and

2.9 All actions taken and approvals given by City have been duly taken or approved in accordance with all applicable legal requirements for notice, public hearings, findings, votes, and other procedural matters in accordance with the Development Agreement Law and Development Agreement Procedures; and

2.10 Development of the Property in accordance with this Agreement will provide substantial benefits to City and will further important policies and goals of City; and

2.11 This Agreement will eliminate uncertainty in planning and provide for the orderly development of the Property, ensure progressive installation of necessary improvements, provide for public services appropriate to the development of the Project, and generally serve the purposes for which development agreements under the Development Agreement Law are intended; and

2.12 Owner has incurred and will in the future incur substantial costs in order to assure development of the Property in accordance with this Agreement; and

2.13 Owner has incurred and will in the future incur costs in excess of the generally applicable requirements in order to assure vesting of legal rights to develop the Property in accordance with this Agreement; and

2.14 On March 12, 2024, the Planning Commission of the City, following a duly noticed public hearing, recommended adoption of this Agreement to the City Council in accordance with the Development Agreement Law and Development Agreement Procedures; and

2.15 On April 2, 2024, at a duly noticed public hearing, the City Council of the City introduced **Ordinance No. 752** approving and adopting this Agreement and authorizing its execution by the City. The City further, at its April 16, 2024 meeting, approved the second reading of said Ordinance.

ARTICLE 3. AGREEMENT

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE 4. DEFINITIONS AND EXHIBITS

4.1 Definitions. The following terms when used in this Agreement shall be defined as follows:

4.1.1 “Agreement” means this Development Agreement.

4.1.2 “City” means the City of Shafter, a California municipal corporation.

4.1.3 “Days” means calendar days unless otherwise specified.

4.1.4 “Dedicate” is defined in Section 7.9.

4.1.5 “Development” means the improvement of the Property for the purposes of completing single-family dwelling units, improvements and facilities comprising the Project including, but not limited to: grading, the construction of infrastructure and public facilities related to the Project whether located within or outside the Property, the construction of single-family dwelling units, and the installation of required landscaping. “Development” includes, without limitation, the right to maintain, repair, or reconstruct any private building, structure, improvement or facility after the construction and completion thereof; provided, however, that such maintenance, repair, or reconstruction takes place within the term of this Agreement on parcels subject to it.

4.1.6 “Development Approvals” means all permits and other entitlements required for the development and/or use of the Property and which are subject to approval or issuance by City in connection with the Development of the Property including, but not limited to:

- (a) 2005 City General Plan;
- (b) City Zoning Code;
- (c) Marcona Preserve Specific Plan dated December 20, 2022;
- (d) Tentative Map 7244 and final subdivision map

- (e) Design review approvals;
- (f) Grading and building permits; and
- (g) California Environmental Quality Act Requirements

“Development Approvals” specifically do not include this Agreement.

4.1.7 “Development Exactions” mean, except as otherwise provided in this Agreement, all exactions, in lieu fees or payments (including but not limited to impact mitigation fees) or dedication or reservation of land requirements, obligations for on-site or off-site improvements or construction requirements of a type not normally regarded as subdivision improvements, mitigation measures in connection with environmental review, or impositions made under other rules, regulations, or official policies of the City or in order to make a Development Approval consistent with the City’s General Plan, including without limitation, any requirements of City in connection with or pursuant to any Land Use Regulation or Development Approval for the development of land, the construction of improvements for public facilities, or the payment of fees in order to lessen, offset, mitigate or compensate for the impacts of development on the environment or other public interests. Development Exactions shall not include filing fees or other Processing Fees.

4.1.8 “Development Plan” means the Existing Development Approvals and the Existing Land Use Regulations applicable to the Development of the Property.

4.1.9 “Effective Date” means the 30th day after the second reading of the City Council ordinance which adopts and approves this Agreement, unless timely referendum proceedings to set aside the ordinance adopting this Agreement are commenced, in which case the occurrence of the Effective Date shall be postponed until the final disposition of the referendum, including the disposition of any judicial proceedings commenced with respect thereto.

4.1.10 “Existing Development Approvals” means all Development Approvals approved or issued prior to the Effective Date. Existing Development Approvals includes the approvals incorporated herein as Exhibit “C” of this agreement and all other approvals which are a matter of public record on the Effective Date.

4.1.11 “Existing Land Use Regulations” means all Land Use Regulations in effect on the Effective Date. Existing Land Use Regulations include, without limitation, all regulations of the City which are a matter of public record on the Effective Date, as they may be modified by the Existing Development Approvals.

4.1.12 “Land Use Regulations” means all ordinances, resolutions, codes, rules, regulations and official policies of City legally adopted in accordance with all applicable laws governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes and all Development Exactions, the phasing or timing of development, and the design, improvement and construction and initial occupancy standards and specifications applicable to the Development of the Property as they may be modified by the Development Approvals. “Land Use Regulations” includes those land use regulations in the General Plan but does not include any City ordinance, resolution, code, rule, regulation, or official policy, governing:

- (a) The conduct of businesses, professions, and occupations;
- (b) Other than as provided in this Agreement, taxes and assessments of general application, provided that the taxes and assessments are not imposed for the purpose of taxing the right, power or privilege of developing or improving land (e.g. excise tax) or to directly finance the construction or maintenance of any public improvement in respect of which Owner is paying any fee or providing any improvement pursuant to ARTICLE 7 hereof;
- (c) The control and abatement of nuisances;
- (d) The granting of encroachment permits and the conveyance of rights and interests which provide for the use of or the entry upon public property;
- (e) The exercise of the power of eminent domain.

4.1.13 “Environmental Impact Report” means that environmental certification referred to in Section 2.7 above.

4.1.14 “Mortgagee” means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device lender, and their successors and assigns.

4.1.15 “Owner” means Lennar Homes of California LLC, a California limited liability company, and permitted successors in interest to all or any part of the Property.

4.1.16 “Processing Fees” means the normal and customary application, filing, plan check, and permit fees for land use approvals, design review, tree removal permits, building permits, demolition permits, and other similar permits and entitlements, and inspection fees, which fees are charged to reimburse the City’s expenses attributable to such applications, processing,

permitting, review and inspection and which are in force and effect on a general basis at such time as said approvals, permits, review, inspection or entitlements are granted or conducted by City.

4.1.17 “Project” means the future development of the entirety of the public and private improvements on the Property in a manner consistent with the Development Plan, as such Plan may be further defined, enhanced, or modified pursuant to the provisions of this Agreement.

4.1.18 “Property” means the real property described on Exhibit “A” and shown on Map on Exhibit “B” to this Agreement.

4.1.19 “Public Improvements” means those Public Improvements described in the Conditions of Approval for the Tract Map in Exhibit D attached hereto and incorporated herein by this reference and Sections 7.2 through 7.11, inclusive as applicable.

4.1.20 “Public Improvement Obligations” means the obligation to construct or to Dedicate those certain public improvements specifically described in ARTICLE 7 and Exhibit D of this Agreement (together with all applicable exhibits) and the real property interests associated therewith.

4.1.21 “Reservations of Authority” means the rights and authority excepted from the assurances and rights provided to Owner under this Agreement and reserved to City including, without limitation, those rights and authorities described in Section 6.5 of this Agreement.

4.1.22 “Subsequent Development Approvals” means all Development Approvals required after the Effective Date in connection with development of the Property, including without limitation, subdivision improvement agreements which require the provision of bonds or other securities.

Subsequent Development Approvals include, without limitation, all excavation, grading, building, construction, demolition, encroachment or street improvement permits, occupancy certificates, utility connection authorizations, or other non-discretionary permits or approvals necessary, convenient or appropriate for the grading, construction, marketing, use and occupancy of the Project within the Property at such times and in such sequences as Owner may choose consistent with the Development Plan and this Agreement.

4.1.23 “Subsequent Land Use Regulations” means any Land Use Regulations or any amendments to Existing Land Use Regulations legally adopted and effective after the Effective Date of this agreement.

Other initially capitalized terms appearing in this Agreement shall have the meaning given to them at the point at which they first appear.

4.2 Exhibits. The following documents are attached to, and by this reference made a part of, this Agreement:

- Exhibit "A" - Legal Description of the Property
- Exhibit "B" - Map of Property
- Exhibit "C" - List of Existing Development Approvals
- Exhibit "D" - Conditions of Approval for Revised Tentative Tract No. 7244
- Exhibit "E" - House Plans and Elevations
- Exhibit "F" - Form of Assignment and Assumption Agreement
- Exhibit "G" - Park Improvements

ARTICLE 5. GENERAL PROVISIONS

5.1 Binding Effect of Agreement. The Property is hereby made subject to this Agreement. Subject to Owner's receipt of all Development Approvals relative thereto, the Development of the Property is hereby authorized and shall, except as otherwise provided in this Agreement, be carried out only in accordance with the terms of this Agreement.

5.2 Fee Interest in Property. Owner represents covenants and warrants that as of the Effective Date it is the sole holder of fee simple absolute title to the Property.

5.3 Term. The term of this Agreement shall commence on the Effective Date and shall continue for a period of five (5) years thereafter unless this term is modified or extended pursuant to the provisions of this Agreement.

5.4 Assignment, Sale and Transfer of Interest in the Property and this Agreement.

5.4.1 Right to Assign.

(a) Owner shall have the right to assign Owner's rights and obligations under this Agreement, but only in connection with the concurrent sale, assignment, ground lease, encumbrance, or other transfer (collectively, a "Transfer") of all or any portion of the Property. Upon (1) any Transfer of all or any portion of the Property, (2) the express assumption of Owner's obligations (with respect to the portion of the Property being transferred) under this Agreement by such transferee and (3) City's prior written consent, which consent shall not be unreasonably withheld, in a form such as the example "Form of Assignment and Assumption Agreement" document in Exhibit F, Owner shall be relieved of and from further liability or responsibility for compliance with the obligations arising under this Agreement (with respect to the portion of the Property being transferred), and City agrees to look solely to the transferee for compliance by such transferee with the provisions of this Agreement as such provisions relate to the portion of the Property acquired by such transferee; provided however, that the City shall look solely to Owner for compliance with the provisions of this Agreement as such provisions relate to the portion of the property not so transferred. In order to permit City to make an informed decision to approve or disapprove a proposed assignment of Owner's rights and obligations under this Agreement, or any partial assignment thereof, City may reasonably require the proposed transferee (other than an Owner Affiliate, defined hereinafter) to submit financial statements and evidence of its fitness, experience and ability (or that of its senior managerial personnel) to comply with the obligations being assumed. Notwithstanding anything to the contrary in this Section 5.4.1, no consent shall be required for any assignment to an "Owner Affiliate"; provided, however, that all conditions and provisions of subsection (b) of this Section 5.4.1 have been satisfied except as otherwise expressly provided in Section 5.4.1(b). The term "Owner Affiliate" shall mean any of the following:

(1) any member of Owner or any shareholder or shareholders of any member who own(s) and control(s), directly or indirectly, fifty percent (50%) or more of the common stock of such member ("Owner Member").

(2) any general or limited partnership in which Owner or an owner partner, individually or collectively, is/are the managing general partner of such partnership.

(3) any limited liability company in which Owner or an owner member, individually or collectively, is/are the managing member of such limited liability company, or control, directly or indirectly, fifty-one percent (51%) or more of the ownership interest in such limited liability company.

(b) City's consent to an assignment by Owner under this Section 5.4.1 shall not be unreasonably withheld provided (i) Owner notifies City at least forty-five (45) business days prior to the date of such assignment, (ii) the transferee (including any Owner Affiliate) expressly assumes Owner's obligations (with respect to the portion of the Property being transferred) under this Agreement, and (iii) prior to the date of such assignment the transferee (including any Owner Affiliate) posts cash, surety bonds, letters of credit or other collateral

reasonably acceptable to City and equivalent to any security previously provided by Owner to City to secure the transferee's performance of its obligations with respect to the portion of the Project being acquired by such transferee and of all required Public Improvements (with respect to the portion of the Property being transferred). Notwithstanding clause (iii) in the preceding sentence, where adequate surety bonds, letters of credit or other collateral has already been provided by Owner and the Owner and such transferee choose to not substitute surety bonds, letters of credit or other collateral in accordance with clause (iii), the City's consent shall not be withheld provided the following conditions are met: (1) Owner shall not reduce any of the surety bonds, letters of credit or other collateral previously provided; and (2) Owner shall cause to be named in any instrument establishing rights of the City under any such surety bonds, letters of credit or other collateral the transferee as the obligee thereunder. In such event, and notwithstanding Section 5.4.1(c) below, the surety bonds, letters of credit or other collateral previously provided by Owner shall not be reduced. Any notification under (i) above shall be forwarded, in writing, to the City Manager with a copy to the City Attorney. It is understood and agreed that, until all of the conditions set forth in clauses (i), (ii) and (iii) immediately hereinabove have been performed, Owner shall not be relieved of and from liability or responsibility for compliance with the obligations arising under this Agreement with respect to the portion of the Project being transferred. In order to permit City to determine the amount and type of collateral that will be reasonably acceptable, City may, as part of its rights under this Section 5.4.1 above, reasonably require the proposed transferee (excepting an Owner Affiliate) to submit financial statements and evidence of its fitness, experience and ability (or that of its senior managerial personnel) to comply with the obligations being assumed.

(c) With respect to any permitted assignment pursuant to the provisions of this Section 5.4.1, City shall release Owner from its obligations under this Agreement and any other agreements or undertakings pertaining to the transferred portion of the Project, and release to Owner any bonds or other security posted to secure obligations under such agreements or undertakings, provided the transferee expressly assumes the obligations under such agreements and substitutes bonds or other security acceptable to City in place of the security to be released.

(d) Nothing contained in this Section 5.4.1 shall prevent a Transfer of the Property, or any portion thereof, to a lender as a result of a foreclosure or deed in lieu of foreclosure, and any successor in interest (including the lender) acquiring the Property, or any portion thereof, as a result of foreclosure or a deed in lieu of foreclosure shall take such Property subject to the rights and obligations of Owner under this Agreement; provided, however, in no event shall such successor in interest (including the lender) be liable for any defaults or monetary obligations of Owner arising under this Agreement prior to acquisition of title to the Property by such successor in interest, and provided further, in no event shall any such successor in interest be entitled to a building permit or occupancy certificate until all fees due under this Agreement relating to the portion of the Property acquired by such successor in interest have been paid to City and until any other default relating to the portion of the Property acquired by such successor in interest has been cured.

(e) Any amendment to this Agreement between City and a transferee shall only affect the portion of the Property owned by such transferee, and a default by such transferee shall only affect that portion of the Property owned by such transferee.

5.4.2 Subsequent Assignment. Any subsequent assignment after an initial assignment shall be made only in accordance with and subject to the terms and conditions of Section 5.4.1.

5.4.3 Construction of Public Improvements Upon Sale. If Owner sells or assigns a portion of the Property, Owner and the new owner of the portion sold by Owner shall be jointly and severally responsible for constructing a road to provide access to the public road system for the parcel sold by Owner and all other Public Improvements. In its sole discretion, City may require that any road constructed to provide access pursuant to this Section 5.4.3 be offered for dedication to the City and constructed to City standards.

5.4.4 Termination of Agreement with Respect to Individual Lots and Units.

5.4.4.1 Release of Subdivided Lots. Any other provisions of this Agreement notwithstanding, this Agreement shall terminate with respect to any lot, or, as to common areas in common interest subdivision, upon the sale of the first unit, and such lot or unit shall be released and no longer subject to this Agreement without need for the execution or recordation of any further document, upon satisfaction of both of the following conditions.

(a) The lot or unit has been finally subdivided and individually (and not in “bulk”) sold or leased (for a period longer than one year) to a member of the public or other ultimate user; and

(b) A certificate of occupancy has been issued for a building on the lot. No such release approved pursuant to Subsection 5.4.5.1 shall cause or otherwise affect a release of Owner from its duties and obligations under this Agreement as to the remainder of the Property owned by Owner.

(c) The fees set forth in Section 7.2 have been paid in full to the City for the lot.

5.4.4.2 Partial Release of Purchaser, Transferee or Assignee of a Lot. If a purchaser, transferee or assignee of a lot (i) which have been finally subdivided as provided for in the Development Plan and for which a site design review for development of the lot and all onsite improvements and Public Improvements have been finally constructed pursuant to the Development Plan or, (ii) if such improvements and site design review has not been approved, but the lot is a subdivided lot and the conditions of approval of the subdivision map are secured to the

reasonable satisfaction of City for the performance of the improvement obligations applicable to the lot, then City shall release said lot from the obligations under this Agreement relating to all other portions of the Property. No such release approved pursuant to Section 5.4.5.2 shall cause or otherwise affect a release of Owner from its duties and obligations under this Agreement as to the remainder of the Property owned by Owner.

5.5 Amendment or Cancellation of Agreement. This Agreement may be amended, modified, or canceled in whole or in part only by the following means:

(a) As provided in Article II;

(b) Pursuant to Government Code Section 65869.5, as necessary to comply with state or federal laws or regulations enacted after the Effective Date; provided, however, that this Agreement shall remain in full force and effect to the extent that it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render the remaining provisions of this Agreement impractical to enforce; or

(c) By mutual written consent of both the City and the Owner pursuant to Government Code Section 65868, following all required public notices and hearings and City Council approval; provided, however, that within the limits of the authority granted to him or her, the City's Planning Director may make the following minor modifications to this Agreement without the need for formal action by the City's Planning Commission or City Council:

(1) Minor modifications of schematic plans approved by the City; and

(2) Minor modifications that do not alter the terms of this Agreement, the permitted uses, density, or intensity of uses, maximum height or size of buildings, provisions for reservations or dedication of land, conditions, terms, restrictions and requirements relating to Subsequent Development Approvals, and monetary contributions by the Owner.

5.6 Automatic Termination. This Agreement shall automatically terminate and of no further effect upon the occurrence of any of the following events:

(a) Expiration of the stated term of this Agreement as set forth in Section 5.3.

(b) Entry of a final judgment setting aside, voiding, or annulling the adoption of the ordinance approving this Agreement.

(c) The adoption of a referendum measure pursuant to Section 65867.5 overriding or repealing the ordinance approving this Agreement.

(d) Completion of the Project in accordance with the terms of this Agreement including issuance of all required occupancy permits and acceptance by City or applicable public agency of all required Dedications and improvements.

(e) Upon the default of Owner or City to the extent provided in ARTICLE 9 and ARTICLE 10, respectively.

(f) The entry of a final judgment (or a decision on any appeal therefrom) voiding the City's General Plan or any element thereof, which judgment or decision would preclude development of the Project, but only if the City is unable to cure such defect in the General Plan or element within one hundred and eighty (180) days from the later of entry of final judgment or decision on appeal.

Termination of this Agreement shall not constitute termination of any other land use entitlements approved for the Property unless such land use entitlements are conditioned upon the continued existence of this Agreement or upon the construction of improvements or the payment of fees described in this Agreement and Owner fails to construct such improvements or pay such fees as required in the conditions to the land use entitlements or this Agreement. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination, or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination, or with respect to any obligations which are specifically set forth as surviving this Agreement. Upon such termination, all fees paid pursuant to ARTICLE 7 of this Agreement by Owner to City for buildings on which construction has not yet begun shall either, at City's option, be refunded to Owner by City; or applied as a credit to future development fees due from Owner, provided, however that Owner may designate another party to receive such refund or credit. Notwithstanding anything to the contrary in Section 5.6, Owner shall receive the applicable fee credits set forth in ARTICLE 7 for those portions of any Public Improvements Dedicated to the City prior to such termination. Those fee credits shall survive such termination and may be used by Owner, to the extent not previously used by Owner, to offset the City's collection of such fees in connection with the Project.

5.7 Notices.

(a) As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment, or other communication required or permitted hereunder.

(b) All notices shall be in writing and shall be considered given either: (i) when delivered in person to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below; or (iii) three days after deposit in the United States mail, postage prepaid, addressed to the recipient named below; or (iv) on the date of delivery shown in the records of the telegraph company after transmission by telegraph to the recipient named below; or (v) on the date of delivery by facsimile transmission to the recipient named below. All notices shall be addressed as follows:

If to City:

City Manager
City of Shafter
336 Pacific Avenue
Shafter, California 93263
Fax No. (661) 746-0607

with a copy to:

Best Best & Krieger LLP
2855 E. Guasti Road, Suite 400
Ontario, California 91761
Attn: Shafter City Attorney
Fax No. (909) 944-1441

If to Owner:

Lennar Homes of California, LLC
8080 N. Palm Avenue, Suite 110
Fresno, CA 93711
Attention: Walter Diamond, Land Development Manager
Telephone: (559) 240-5053
Email: walter.diamond@lennar.com

with a copy to:

Backowski Law Group, PC
7522 N. Colonial Ave., Suite 100
Fresno, California 93711
Attention: Matthew G. Backowski, Esq.

Telephone: (559) 214-0301
Email: mbackowski@backowskilawgroup.com

(c) Either party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

5.8 Validity of This Agreement. The Owner and the City each agree that neither party has made any representations to the other concerning the enforceability or validity of any one or more provisions of this Agreement.

ARTICLE 6. DEVELOPMENT OF THE PROPERTY

6.1 Rights to Develop. Subject to the terms of this Agreement, including the Reservations of Authority, Owner shall have a vested right to develop the Property in accordance and to the extent of, the Development Plan and subject to the Existing Land Use Regulations. The property shall remain subject to all Subsequent Development Approvals required to complete the Project as contemplated by the Development Plan. Except as otherwise provided in this Agreement, and subject to the Reservations of Authority, the permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, and provisions for reservation and Dedication of land for public purposes and other Development Exactions, the phasing and timing of development, the design, improvement and construction standards and specifications applicable to development of the Property, and other terms and conditions of development applicable to the Property shall be those set forth in the Development Plan.

6.2 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement, including the Reservations of Authority, the rules, regulations and official policies and conditions of approval governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, provisions for reservation and Dedication of land for public purposes, and other Development Exactions, the phasing and timing of development, and the design, improvement, occupancy and construction standards and specifications applicable to development of the Property shall be the Existing Land Use Regulations.

City shall accept for processing, review, and action all applications for Subsequent Development Approvals, and such applications shall be processed in the normal manner for processing such matters unless otherwise required by this Agreement to be expedited or given priority.

Owner acknowledges and agrees that the failure or inability of public utility providers other than the City including, without limitation, such providers as electricity, gas, telephone, and cable to provide the appropriate amount and type of utility service to the Property shall be sufficient cause for City to withhold issuance of approvals hereunder necessary for the development and/or occupancy of those buildings to which such utility service is not then available until such service is available. A will serve letter issued by a utility provider shall be conclusive evidence that the utility service is available to that portion of the Property covered by that letter. City agrees that it shall not take any action with the express intent of preventing any such provider from furnishing appropriate utility service to the Property.

6.3 Timing of Development. The parties acknowledge that the Owner cannot at this time predict when or the rate at which phases of the Property will be developed. Such decisions depend upon numerous factors which are not within the control of Owner, such as market orientation and demand, interest rates, absorption, completion, and other similar factors. Since the California Supreme Court held in Pardee Construction Co. v. City of Camarillo (1984) 37 Cal.3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that Owner shall have the right to develop the Property in such order and at such rate and at such times as Owner deems appropriate within the exercise of its subjective business judgment, subject only to any timing or phasing provisions set forth in this Agreement or the Development Plan.

6.4 Changes and Amendments. The parties acknowledge that development of the Project will require Subsequent Development Approvals and may demonstrate that changes are appropriate and mutually desirable in the Existing Development Approvals. In the event Owner finds that a change in the Existing Development Approvals is necessary or appropriate, Owner shall apply for a Subsequent Development Approval to effectuate such change and City shall process and act on such application in accordance with the Existing Land Use Regulations, except as otherwise provided by this Agreement, including the Reservations of Authority. If approved, any such change in the Existing Development Approvals shall be incorporated herein as an addendum and may be further changed from time to time as provided in this Section. Unless otherwise required by law, as determined in City's reasonable discretion, a change to the Existing Development Approvals shall be deemed "minor" and not require an amendment to this Agreement provided such change does not:

- (a) Alter the permitted uses of the Property as a whole; or
 - (b) Increase the density or intensity of use of the Property as a whole;
- or
- (c) Increase the maximum height and size of permitted buildings; or

(d) Delete a requirement for the reservation or dedication of land for public purposes within the Property as a whole; or

(e) Constitute a project requiring a subsequent or supplemental environmental impact report pursuant to Section 21166 of the Public Resources Code, as it exists from time to time.

6.5 Reservations of Authority.

6.5.1 Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, the following Subsequent Land Use Regulations shall apply to the development of the Property:

(a) Processing Fees imposed by City to cover the estimated or actual costs to City of processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued, which fees are charged to reimburse the City's expenses attributable to such applications, processing, permitting, review and inspection and which are in force and effect on a general basis at such time as said approvals, permits, review, inspection or entitlements are granted or conducted by City.

(b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure.

(c) Regulations, policies (written or unwritten) and rules governing engineering and construction standards and specifications applicable to private or public improvements including, without limitation, all uniform codes adopted by the City, including local amendments to those codes adopted pursuant to state law allowing for such amendments, provided that such codes are uniformly applied to all new development projects of the same uses within the City. Such codes include, without limitation, the City's Uniform Housing Code, Building Code, Plumbing Code, Mechanical Code, Electrical Code, Fire Code and Building Security Code. City agrees that such regulations, policies, and rules shall be those applied on a City-wide basis to all development projects of a similar type as the Project.

(d) Regulations which may conflict with the Development Plan, but which are reasonably necessary to protect the residents of the Project or of the immediate community, or both, from a condition perilous to their health or safety, or both; provided, however, the following shall apply:

(1) That to the extent possible, such regulations shall be applied and construed to provide Owner with the rights and assurances provided in this Agreement; and

(2) That such regulations apply uniformly to all new development projects of the same uses within the City; and

(3) That the City Council finds, based on substantial evidence, that such regulations are necessary to eliminate or reduce a public danger perilous to the health or safety of the residents of the Project or of the immediate community.

(e) Subsequent regulations which do not conflict with the Development Plan. For the purposes of this Agreement, the term “does not conflict” and its variants means new rules, regulations, and policies which: (i) do not modify the Development Plan, including, without limitation, the permitted land uses, the density or intensity of use, the phasing or timing of development of the Project, the maximum height and size of proposed buildings on the Property, provisions for Dedication of land for public purposes and Development Exactions, except as expressly permitted elsewhere in this Agreement, and standards for design, development and construction of the Project, except with respect to uniform codes as permitted elsewhere in this Agreement; (ii) do not prevent Owner from obtaining any Subsequent Development Approvals, including, without limitation, all necessary approvals, permits, certificates, and the like, at such dates and under such circumstances as the Owner would otherwise be entitled by the Development Plan; or (iii) do not prevent Owner from commencing, prosecuting, and finishing grading of the land, constructing public and private improvements, and occupying the Property, or any portion thereof, all at such dates and schedules as Owner would otherwise be entitled to do so by the Development Plan. Any Regulation whether adopted by initiative or otherwise, limiting the rate, timing, type, or density of development of the Property shall be deemed to conflict with the Development Plan and shall therefore not be applicable to the development of the Property, unless otherwise provided for in this Agreement or by statute.

(f) Regulations which conflict with the Development Plan, provided Owner has given written consent to the application of such regulations to the Development of the Property.

6.5.2 Subsequent Development Approvals. This Agreement shall not prevent City, in acting on Subsequent Development Approvals, from applying Subsequent Land Use Regulations which do not conflict with the Development Plan, nor shall this Agreement prevent City from denying or conditionally approving any Subsequent Development Approvals based on the Existing Land Use Regulations or any Subsequent Land Use Regulation not in conflict with the Development Plan or as otherwise permitted by this Agreement.

6.5.3 Modification or Suspension by State or Federal Law. In the event that State or Federal laws or regulations enacted after the Effective Date of this Agreement prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations, provided, however, that this Agreement shall remain in full force and

effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce.

6.5.4 Intent. The parties intend that, unless otherwise expressly herein provided, or as otherwise provided by law, this Agreement embodies the full terms and conditions relative to the proposed Development of the Project. Notwithstanding the foregoing, however, Owner and City each agree that neither party has made any representations to the other concerning the enforceability or validity of this Agreement or any one or more of its provisions and that each party has exercised due diligence in ascertaining for itself the validity and enforceability of this Agreement and its provisions.

6.6 Public Works. Owner is required by this Agreement to construct public work facilities and improvements which will be Dedicated to City or other public agencies upon completion.

6.6.1 Payment of Prevailing Wages. Owner acknowledges that the City has made no representation, express or implied, to Owner or any person associated with Owner regarding whether or not laborers employed relative to the construction and installation of improvements on the Property, if any, must be paid the prevailing per diem wage rate for their labor classification, as determined by the State of California, pursuant to California Labor Code Sections 1720, et seq. Owner agrees with the City that Owner shall assume the responsibility and be solely responsible for determining whether or not laborers employed relative to any construction of capital improvements on the Property or for the Development must be paid the prevailing per diem wage rate for their labor classification, as determined by the State of California, pursuant to California Labor Code Sections 1720, et seq.

6.6.2 If Civil Code sections 9550 et seq. require contractors to procure a payment bond for the improvements on the Property, then the Owner shall ensure that its contractors deliver the required bond.

6.6.3 Owner, on behalf of itself, its successors, and assigns, waives and releases the City from any right of action that may be available to any of them pursuant to California Labor Code Sections 1726 and 1781. Owner acknowledge the protections of California Civil Code Section 1542 relative to the waiver and release contained in this Section 12.2, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

OWNER HEREBY ACKNOWLEDGES THAT IT HAS READ AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 ("SECTION 1542"), WHICH IS SET FORTH BELOW:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

BY INITIALING BELOW, DEVELOPER HEREBY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE MATTERS WHICH ARE THE SUBJECT OF THE FOREGOING WAIVERS AND RELEASES:


Owner's Initials

MIKE MILLER
VICE PRESIDENT
LENNAR HOMES OF
CALIFORNIA LLC

ARTICLE 7. PUBLIC BENEFITS

7.1 Intent. The parties acknowledge and agree that development of the Property will result in substantial public needs which will not be fully met by the Development Plan and further acknowledge and agree that this Agreement confers substantial private benefits on Owner which should be balanced by commensurate public benefits. Accordingly, the parties intend to provide consideration to the public to balance the private benefits conferred on Owner by providing more fully for the satisfaction of the public needs resulting from the Project.

7.2 Impact Fees. Subject to any fee credits set forth in this ARTICLE 7, Owner shall pay to City the following public facilities and services impact fees at the times provided therefor by applicable City ordinance or resolution, which fees are as of the Effective Date as follows:

7.2.1 Traffic Impact Fee. Developer shall pay the traffic impact fee in effect at the time that the building permit is issued for each single-family residence. Notwithstanding the amount of the development impact fees in place, the fees paid by the Developer shall not exceed \$15,000.00 for each single-family residence.

BY INITIALING BELOW, OWNER KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 SOLELY IN CONNECTION WITH THE WAIVERS AND RELEASES OF THIS SECTION 6.6:

LENNAR HOMES OF CALIFORNIA LLC

Owner



MIKE MILLER, VICE PRESIDENT

6.6.4 Owner shall defend with counsel acceptable to the City, indemnify and hold harmless City and its elected officials, officers, employees, agents and contractors from any and all liability, costs, claims, damages, fines, penalties and expense, including costs of litigation and attorneys' fees, arising out of or in any way connected with Owner's construction of the public work described in this Agreement and Owner shall indemnify, defend with counsel acceptable to the City and hold harmless the City against any claims pursuant to California Labor Code Section 1781 arising from this Agreement or the construction or installation of any improvements on the Property or for the Development, in accordance with the terms of Section 6.6 of this Agreement.

6.7 Provision of Off-Site Real Property for Public Improvements. The City and Owner acknowledge that certain Public Improvements may be located on property which is neither owned nor controlled by the Owner. For purposes of this Section 6.7, any individual parcel of such property on which the Offsite Improvements will be located shall be hereinafter referred to singularly as a "Subject Property", and collectively as "Subject Properties."

6.7.1 No Commitment to Condemn. Owner hereby acknowledges and understands that this Agreement does not obligate the City in any way to use its power of eminent domain to acquire any Subject Property. The City's use of the power of eminent domain is conditioned by law upon certain findings and determinations that the City Council in its sole discretion, must make in accordance with California Code of Civil Procedure Sections 1240.030, 1240.040, and 1245.230. These findings and determinations include, without limitation, all of the following:

- (a) The public interest and necessity require the Offsite Improvement;
- (b) The Offsite Improvement is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
- (c) The Subject Property is necessary for the Offsite Improvement; and

(d) That either the offer (if any) required by Section 7267.2 of the California Government Code has been made to the owner or owners of record, or the offer has not been made because the owner or owners cannot be located with reasonable diligence.

Owner hereby acknowledges and understands that as of the date of this Agreement, the City has not considered the propriety of the use of its power of eminent domain to acquire any Subject Property. The City makes no representation or guarantee whatsoever concerning the eventual result or outcome of its discretionary consideration of the use of its power of eminent domain to acquire any Subject Property or of any actual eminent domain proceeding.

6.7.2 Indemnity. Owner hereby agrees to defend (with counsel reasonably acceptable to the City), indemnify and hold harmless the City, its officials, officers, employees, agents, attorney, and contractors from and against all third party liability, claims, lawsuits, judgments, fines, penalties, amounts paid in settlements, costs and expenses arising out of or in any way connected with the City's actions under this Section 6.7 and 6.6.4 with respect to any Subject Property, except to the extent that such liability arising from the negligence or willful misconduct of the City, its official, officers, employees, agents, attorney or contractors. Owner's obligations under this Section 6.7.2 and 6.6.4 shall survive the expiration or termination of this Agreement.

6.7.3 Cooperation. The parties hereby agree to take such other actions and execute such other reasonable documents as are consistent with this Section 6.7 and as are reasonably necessary to effectuate this Section 6.7; provided, however, that the foregoing shall not require the City to take any legislative act or exercise its discretion in any particular manner.

6.7.4 Effect of Termination, Expiration, or Invalidity of this Agreement. If the City terminates this Agreement in accordance with the provisions for termination contained herein, or if this Agreement otherwise expires or is declared invalid, Developer agrees that such termination, expiration, or determination of invalidity shall survive and Owner shall remain liable to City for all costs reasonably incurred by City up to the date of such termination, expiration or determination of invalidity and shall remain liable to the City for all costs reasonably incurred by the City subsequent to such termination, expiration or determination of invalidity relative to the taking of such actions as are necessary, as determined by the City in its sole and absolute discretion, to terminate any acquisition activity undertaken prior to such termination, including, without limitation, amounts that the City may pay pursuant to California Code of Civil Procedure Section 1268.610 et. seq., as a result of the City's election to abandon or settle any judicial proceedings which may have been filed.

6.8 Environmental Compliance. Owner and City acknowledge that City's adoption of the addendum to the Environmental Impact Report adopted for Revised Tentative Tract No. 7244 described in the recitals hereto reflect City's determination that the addendum was adequate, that such adoption is the product of City's independent review and judgment, that it satisfied the requirements of the California Environmental Quality Act, and that it fully and adequately

analyzed the environmental impacts of the Project. No mitigations measures other than those expressly identified in the Environmental Impact Report, the Existing Development approvals, or this Agreement shall be imposed on the Property or as an obligation of Owner for the development of the Property in accordance with the Development Approvals. However, City may impose additional environmental review and mitigation measures upon Subsequent Development Approvals where such additional environmental review and measures are required pursuant to Public Resources Code Section 21166, and California Code of Regulations Title 14 Section 15162, as those sections may be amended or substituted.

6.9 Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not within the control of City possess authority to regulate aspects of the development of the Property separately from or jointly with City and this Agreement does not limit the authority of such other public agencies.

6.10 [Intentionally left blank]

6.11 [Intentionally left blank]

6.12 Phasing Plan. Development of the Property and the Public Improvements shall be subject to all timing and phasing requirements established by this Agreement or the Development Plan. Owner has reserved the right to modify the phasing and timing of the development of the Property in its sole discretion. In the event Owner elects to amend the phasing of the Project, Owner shall give the City written notice of the revised phasing plan and shall provide the City Manager with a proposed revision to the Infrastructure Phasing Plan. The City Manager shall review and approve or approve with modifications the revised Infrastructure Phasing Plan within thirty (30) days of its submittal to the City Manager. In reviewing and approving the revised Infrastructure Phasing Plan, the discretion of the City Manager shall be limited to a determination as to whether the revised Infrastructure Phasing Plan will provide the necessary Public Improvements required to serve the associated phases of development set forth in the revised phasing plan. The determination of the City Manager with respect to the revised Infrastructure Phasing Plan may be appealed to the Planning Commission and any decision made by the Planning Commission may be appealed to the City Council pursuant to the then-existing appeal provisions of the City Code.

6.13 Application of Government Code Section 66462.5. The provisions of Government Code Section 66462.5 shall not apply to any of the Public Improvements and Owner hereby waives, to the maximum legal extent, any benefits accruing to Owner pursuant to Government Code Section 66462.5 and all other statutes and judicial decisions of similar effect; provided, however, that Government Code Section 66462.5 and all other statutes and judicial decisions of similar effect will continue to apply, to the extent applicable, to all other public improvements other than the Public Improvements.

SIGNATURE PAGE TO
REVISED TENTATIVE TRACT NO. 7244
DEVELOPMENT AGREEMENT NO. 23-21

CITY:

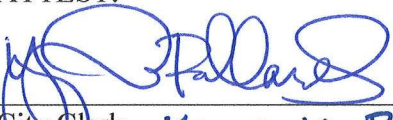
CITY OF SHAFTER
a California municipal corporation

By:



Mayor, City of Shafter
CHAD GIVENS

ATTEST:



City Clerk YAZMINA PALLARES



City Manager GABRIEL
A. GONZALEZ

APPROVED AS TO LEGAL FORM:
BEST BEST & KRIEGER LLP

By:



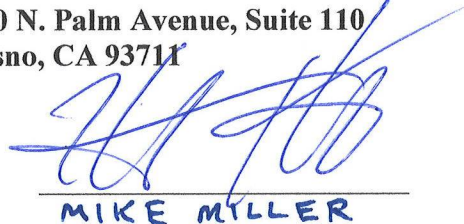
City Attorney
MARCO A. MARTINEZ

SIGNATURE PAGE TO
REVISED TENTATIVE TRACT NO. 7244
DEVELOPMENT AGREEMENT NO. 23-21

OWNER

Lennar Homes of California LLC
8080 N. Palm Avenue, Suite 110
Fresno, CA 93711

By:



MIKE MILLER

Its: Vice President

Dated: 01/30/24

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Fresno)

On January 30, 2024 before me, Christine Collins, Notary Public
personally appeared Mike Miller, who proved to me on the basis of
satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument
and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies),
and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

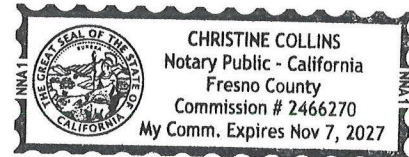
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)



**EXHIBIT "A" TO
REVISED TENTATIVE TRACT NO. 7244
DEVELOPMENT AGREEMENT NO. 23-21**

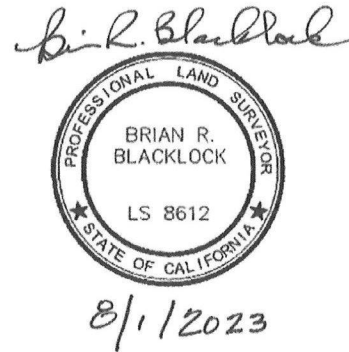
Legal Description of Property

**EXHIBIT "A"
LEGAL DESCRIPTION
DEVELOPMENT AGREEMENT BOUNDARY**

ALL THESE PORTIONS OF LOT 3 AND **LOT A OF TRACT 7333** RECORDED DECEMBER 11, 2018 IN BOOK 63 OF MAPS, PAGES 9 THROUGH 13 AND LOTS A THROUGH D OF LOT LINE ADJUSTMENT NO. 22-089 RECORDED MARCH 22, 2023 AS DOCUMENT NO. 223032366 OFFICIAL RECORDS, BOTH RECORDED IN THE OFFICE OF THE KERN COUNTY RECORDER; ALSO BEING A PORTION OF THE SOUTH HALF OF SECTION 36, TOWNSHIP 28 SOUTH, RANGE 26 EAST, MOUNT DIABLO MERIDIAN, IN THE CITY OF SHAFTER, COUNTY OF KERN, STATE OF CALIFORNIA.

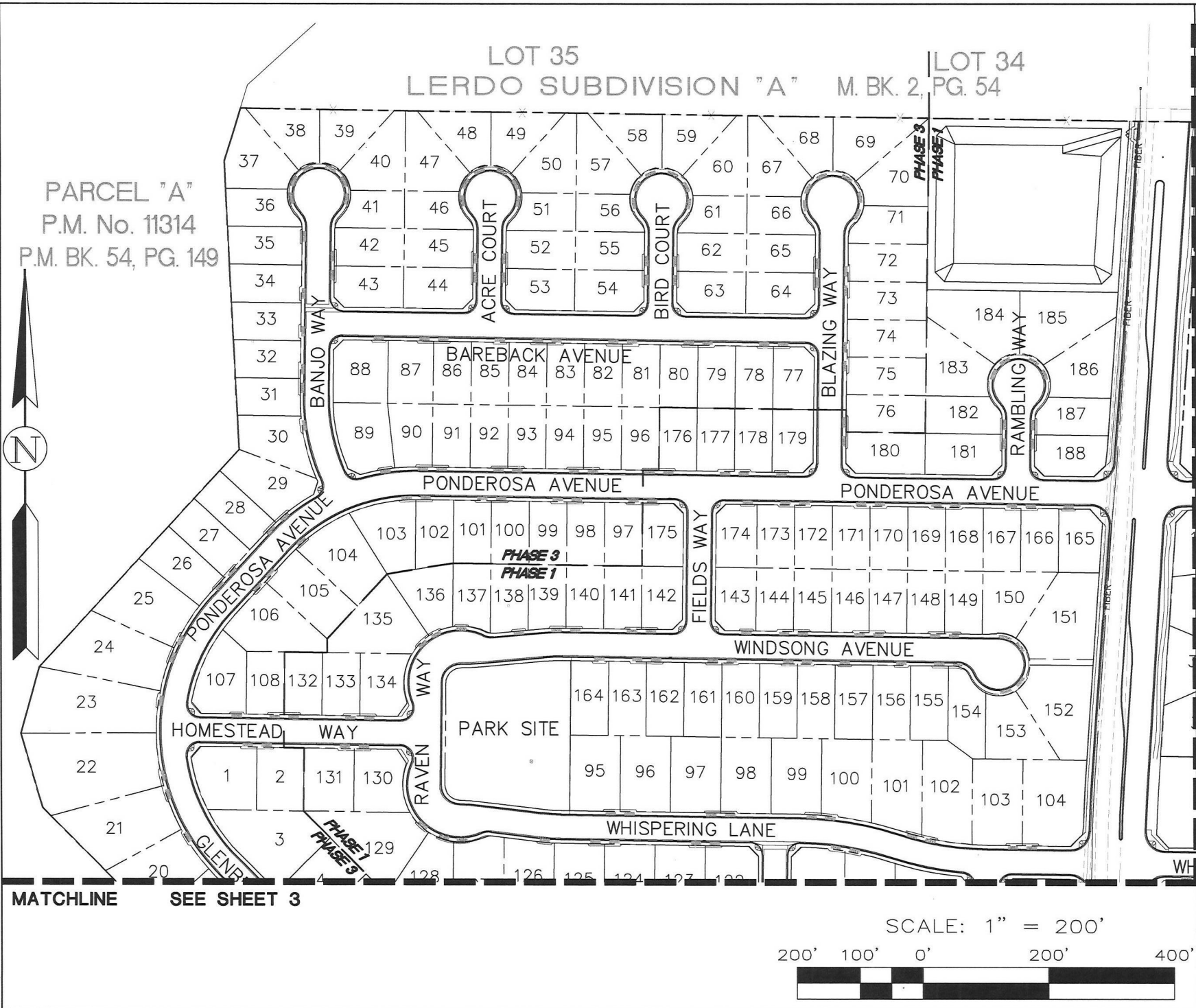


661-834-4814 • 661-834-0972
10800 Stockdale Hwy, Suite 103 • Bakersfield, CA 93311



**EXHIBIT "B" TO
REVISED TENTATIVE TRACT NO. 7244
DEVELOPMENT AGREEMENT NO. 23-21**

Maps of the Property



SEE SHEET 2
MATCHLINE
RTTM 7244
LENNAR HOMIES

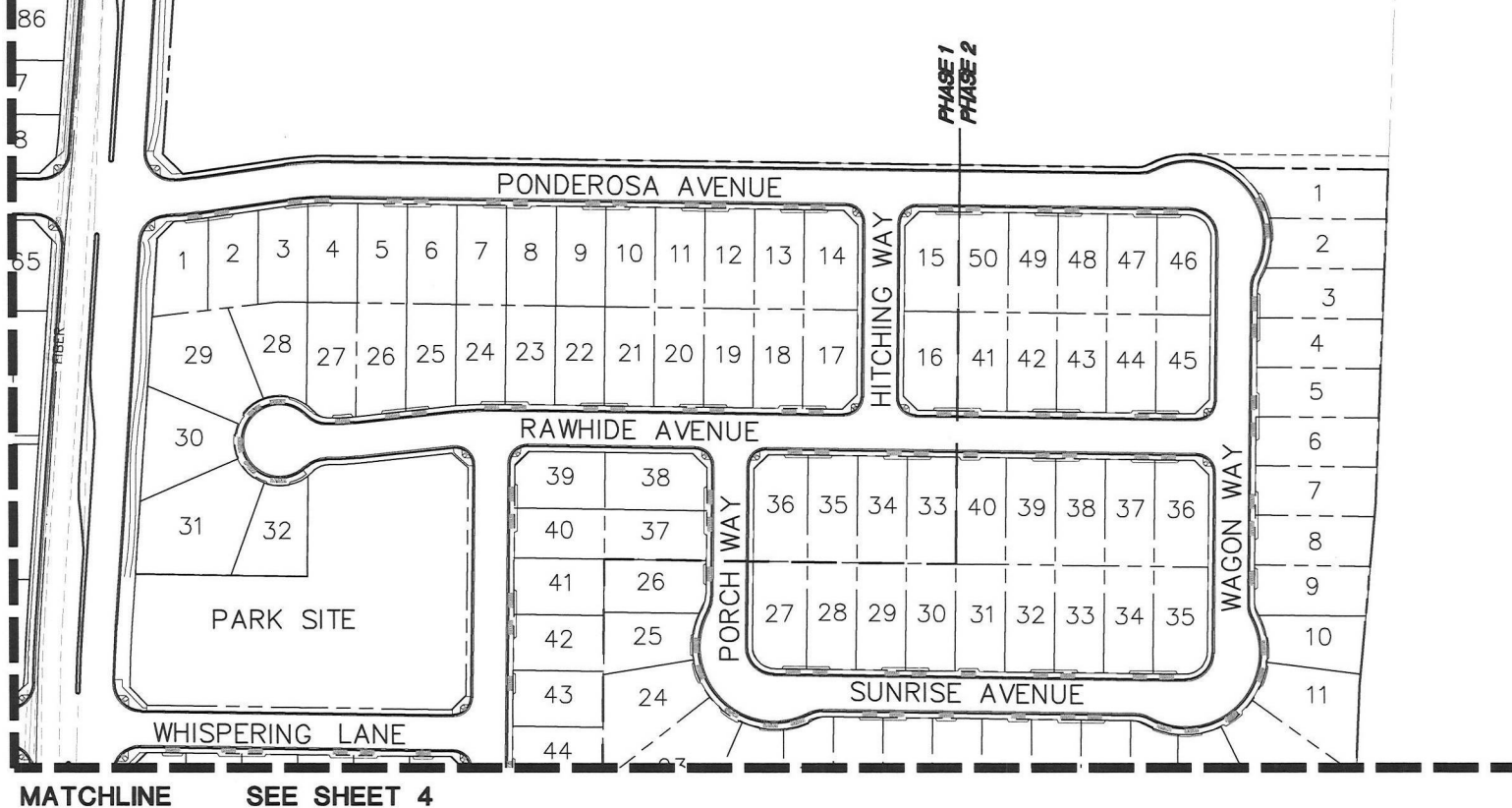
McINTOSH & ASSOCIATES
NEW GEN ENGINEERING GROUP
10800 STOCKDALE HWY, STE. 103 BAKERSFIELD, CA 93311 (661) 834-4814

SHEET 1 OF 4

MATCHLINE SEE SHEET 1

LOT 33 LOT 32
LERDO SUBDIVISION "A" M. BK. 2, PG. 54

LOT "A"
TRACT NO. 7333
M. BK. 63, PGS. 9-13
NOT A PART



MATCHLINE SEE SHEET 4

SCALE: 1" = 200'

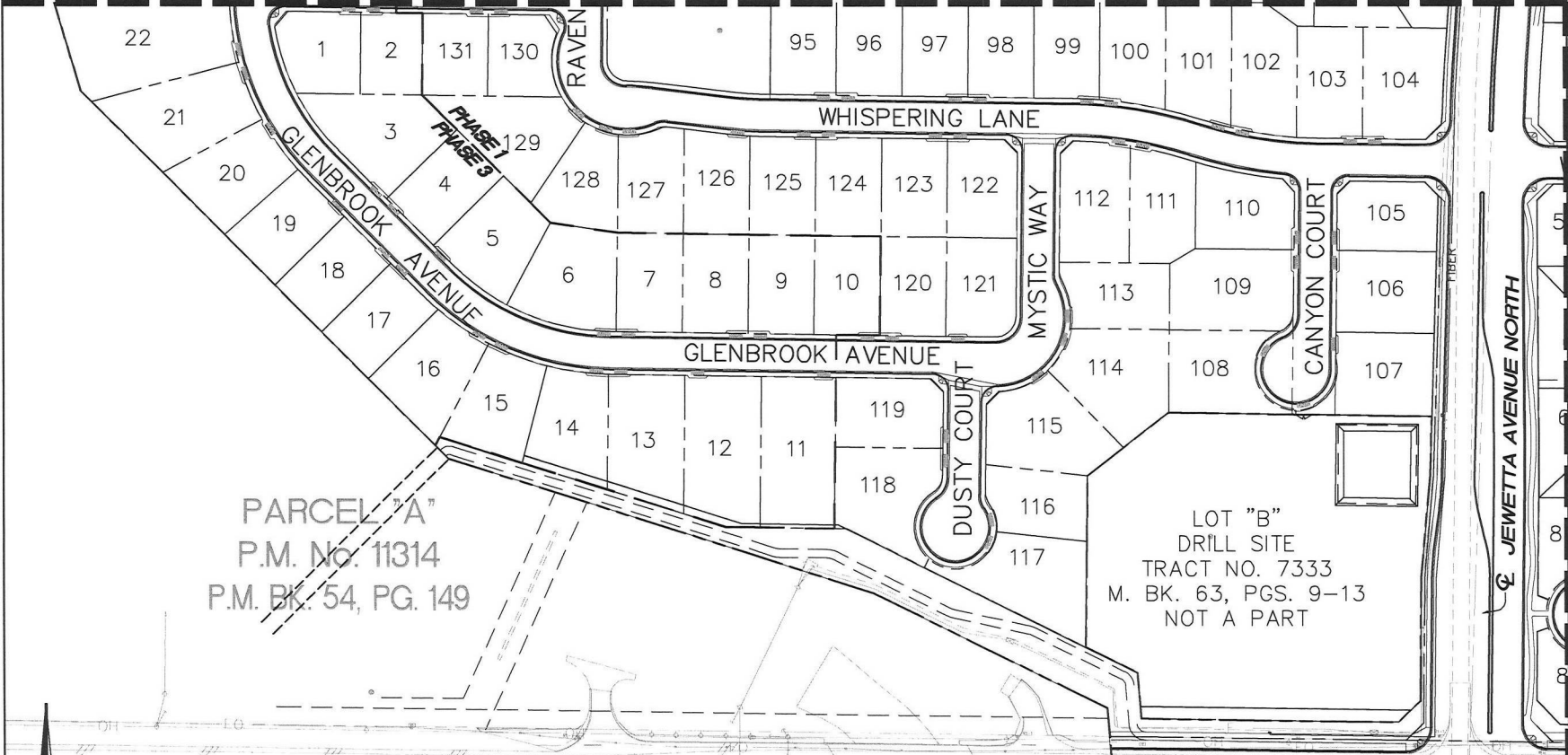


RTTM 7244
LENNAR HOMES

McINTOSH & ASSOCIATES
NEW GEN ENGINEERING GROUP
10800 STOCKDALE HWY, STE. 103 BAKERSFIELD, CA 93311 (661) 834-4814

MATCHLINE

SEE SHEET 3



PARCEL "A"
P.M. NO. 11314
P.M. BK. 54, PG. 149

LOT "B"
DRILL SITE
TRACT NO. 7333
M. BK. 63, PGS. 9-13
NOT A PART

MATCHLINE
SEE SHEET 4

RTTM 7244

LENNAR HOMES

SHEET 3 OF 4



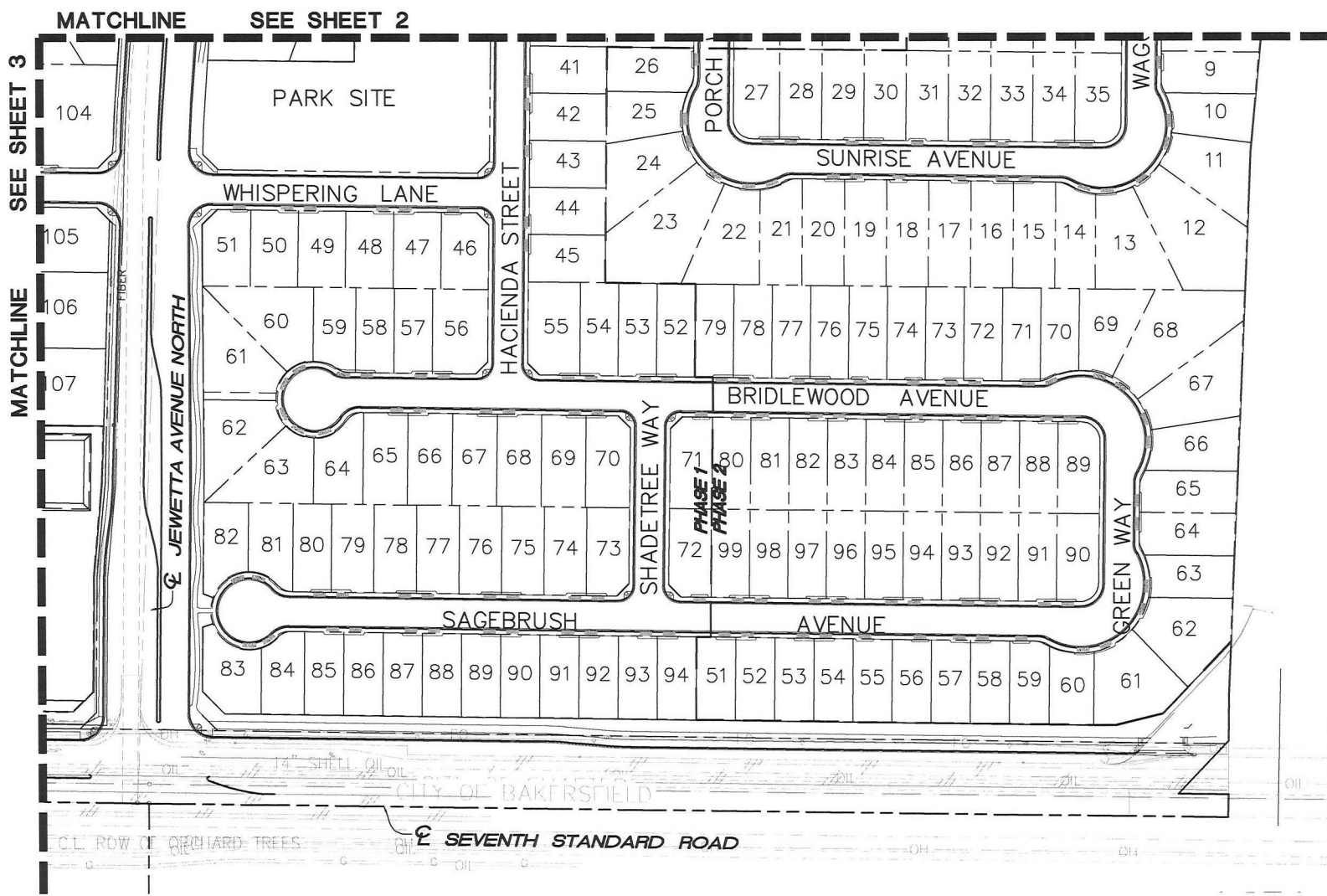
CITY OF BAKERSFIELD

SEVENTH STANDARD ROAD

SCALE: 1" = 200'



McINTOSH & ASSOCIATES
NEW GEN ENGINEERING GROUP
10800 STOCKDALE HWY, STE. 103 BAKERSFIELD, CA 93311 (661) 834-4814



**EXHIBIT “C” TO
REVISED TENTATIVE TRACT NO. 7244
DEVELOPMENT AGREEMENT NO. 23-21**

List of Existing Development Approvals

- 1.) City of Shafter Resolution No. 2543 for Revised Tentative Tract No. 7244
 - 2.) City of Shafter Resolution No. 2673 for Revised Tentative Tract No. 7244 Extension of Time
 - 3.) City of Shafter Resolution No. 2914 for Revised Tentative Tract No. 7244 Extension of Time
- (a) 2005 City General Plan;
- (b) City Zoning Code;
- (c) Marcona Preserve Specific Plan;
- (d) Tentative Map 7244 and final subdivision map
- (e) Design review approvals;
- (f) Grading and building permits; and
- (g) California Environmental Quality Act Requirements

EXHIBIT "D" TO
REVISED TENTATIVE TRACT NO. 7244
DEVELOPMENT AGREEMENT NO. 23-21

Conditions of Approval for Revised Tentative Tract No. 7244

GENERAL

1. The owner(s) or project proponents (hereinafter referred to as "Developer"), solely at their cost and expense, shall defend, indemnify and hold harmless the City of Shafter (hereinafter referred to as "City"), its agents, legislative bodies, officers and employees regarding any legal or administrative action, claim or proceeding concerning approval of Revised Tentative Tract No. 7244 and/or related actions including, without limitation, actions taken or not taken with respect to the California Environmental Quality Act (hereinafter referred to as "CEQA"); or, at its election and in the alternative, shall relinquish such approval. Developer shall assume the defense of the City in any such legal or administrative action, claim or proceeding with legal counsel paid for in the entirety by Developer, but subject to the City's reasonable approvals. Developer shall also reimburse the City, its agents, legislative bodies, officers and employees for any judgments, amounts paid in settlements, court costs and attorneys' fees which the City, its agents, legislative bodies, officers and employees may be required to pay or otherwise pay as a result of such action, claim, or proceeding. The City may, at its sole discretion, participate at its own expense in the defense of any such action, claim or proceeding, but such participation shall not relieve Developer's obligations under these conditions of approval (hereinafter referred to as "Conditions").
2. The developer or the developer's engineer shall submit a list of all contractors and/or subcontractors performing work on this project to the City Administrative Services Department and such contractors and subcontractors shall obtain valid business licenses to do business and/or work in the City of Shafter.
3. The following disclosure shall be given as part of transfer of properties: "All your real property is near property used for agricultural operations, you may be subject to inconveniences or discomforts arising from such operations on any 24 hour basis. Said discomforts may include, but not be limited to equipment noises, odors from manure or other chemicals, and dust or smoke. The City has determined that the use of real property for agricultural operations is a high priority and favored use to the City and Kern County and will not be considered a nuisance for those inconveniences or discomforts arising from agricultural operations, provided such operations are consistent with accepted customs, standards, and laws."
4. Until all portions of the tentative tract have been developed, all vacant and undeveloped land, not being actively farmed, shall be maintained in a weed-free and clean manner by the developer/applicant/property owner. Should said property not be so maintained, the City shall notify property owner that the property is to be cleaned within thirty (30) days

of receipt of said notice. If property owner does not comply within the required time frame, City may then clear the land and bill the property owner for expenses incurred.

5. Unless a final map is recorded, this tentative tract shall expire twenty-four (24) months from the date of approval by the City Council, unless an extension is granted by the City Council. Should an extension be requested, Developer, not less than sixty (60) days prior to the expiration date, shall submit to the City in writing, a request for an extension of that approval in accordance with the provisions of City Code.
6. All construction and development shall be consistent with the City of Shafter Heritage Ranch Specific Plan and Revised Tentative Tract No. 7244

PLANNING

7. Approved street names are as follows: Seventh Standard Road (existing), Jewetta Avenue North (existing), Bird Court, Canyon Court, Hitching Way, Marble Street, Ponderosa Avenue, Raven Way, Sunrise Avenue, Whispering Lane, Windsong Avenue, Dusty Court, Acre Court, Banjo Way, Fields Way, Green Way, Porch Way, Cabin Way, Yearling Court, Rawhide Avenue, Mystic Way, Blazing Way, Bareback Avenue, Glenbrook Avenue, and Sagebrush Avenue. Approved alternative street names include: Stagecoach, Shadetree, Tumbleweed, Wandering, Bridlewood, Homestead, Longmeadow, Majestic, Pleasant, Rambling, and Sparkling. Street names not approved include Grove Way, Knotty Way, and Golden Avenue.
8. Approved access shall be provided for each lot in accordance with City standards.
9. All roof-mounted air conditioning equipment shall be located on the rear portion of the roof ridge line in such a manner as to be screened as much as practical from view from public streets.
10. With the exception of model houses, as provided in Section 3.080, Chapter 3, Title 16 (Subdivision Ordinance) of the Shafter Municipal Code, no building permit shall be issued by the City until Revised Tentative Tract 7244 has been recorded pursuant to the requirements of Title 16 (Subdivision Ordinance) and Title 17 (Zoning Ordinance) of the Shafter Municipal Code.
11. Prior to recordation of the first phase of the final map, an 8-foot-tall solid masonry theme wall shall be constructed along the Seventh Standard Road frontage, from the Friant-Kern Canal to the Calloway Canal along the north side of the 22-foot-wide landscape easement, incorporating the primary entry signs and landscaping at the corners of Jewetta Avenue North and Seventh Standard Road as specified in the Heritage Ranch Specific Plan. The solid masonry wall shall be eight (8) feet in height above the grade of Seventh Standard Road, as measured from the median, from the west side of Lot "E" to the north side of Lot 117.
12. Prior to the recordation of the subject phase of the final map, an 8-foot-high solid masonry wall shall be constructed to separate Lot "E" from the adjacent residential lots,

including along the west side of Jewetta Avenue North. Access to the drilling island shall be provided from a residential street by a commercial drive approach and a minimum 16-foot-wide gate. Construction, style and finish are subject to City approval.

13. Prior to recordation of the subject phase of the final map, an eight (8) foot tall solid masonry theme wall shall be constructed along the eastern project boundary adjacent to the Friant-Kern Canal from the north side of Lot 117 to the north side of Lot 112. The solid masonry wall shall be eight (8) feet in height above the grade of Seventh Standard Road as measured from the median.
14. Prior to the recordation of the subject phase of the final map, an eight (8) foot high solid masonry theme wall shall be constructed along the north boundary of Lot "H" from the west side of Lot "E" to the north side of Lot 235. The solid masonry wall shall be eight (8) feet in height above the grade of Seventh Standard Road as measured from the median.
15. Prior to recordation of the subject phase of the final map, an eight (8) foot tall solid masonry theme wall shall be constructed along the west property lines of Lots 140 and 141, transitioning to a 6-foot-tall block wall with pilasters to the south side of Yearling Court, including corner cut-off, and along the eastern boundary of the twenty (20) foot school sign easement north of Ponderosa Avenue.
16. Prior to the recordation of the subject phase of the final map, a six (6) foot tall solid masonry block wall with pilasters shall be constructed from the north boundary of Lot "E" to the north map boundary along the west side of Jewetta Avenue North.
17. Prior to issuance of the first Certificate of Occupancy, a 6-foot-high masonry wall shall be installed along the east and west project boundaries adjacent to the Friant-Kern Canal and the Calloway Canal.
18. A six (6) foot tall solid masonry wall shall be constructed along the common lot lines between Lots 87 and 88 and the Recreation Center/Park Site (Lot "D"), and Lots 385 and 386 and Park Site (Lot "C").
19. A six (6) foot tall solid masonry wall shall be constructed along the common lot line between Lot "A" (School Site) and the adjacent residential lot, consistent with City of Shafter Development standards.
20. The following note shall appear on the final map and all grading and construction plans:
 - a. Prior to commencing construction activities, the developer shall excavate the plugged well on Lot "C" (Park Site) and coordinate with the Division engineer from the Department of Conservation/Division of Oil, Gas, and Geothermal Resources (DOGGR) to have the well plugs leak-tested and perform any required remediation.

- b. If during grading or construction, any plugged, abandoned, or unrecorded oil or gas wells are uncovered or damaged, the DOGGR shall be contacted to inspect and approve any remediation required.
 - c. Building setbacks on lots with existing plugged wells shall satisfy the requirements of the DOGGR. If the recommended setbacks cannot be satisfied, the developer shall submit, concurrent with the submittal for a building permit for the impacted lot, written confirmation from the DOGGR that the setback provided is acceptable.
 - d. If any abandoned water wells are located within the development or discovered during excavation or grading, the Kern County Environmental Health Services Department must be contacted to obtain information for the proper permitting and destruction procedures.
21. During grading operations, all activity shall be restricted to periods of low wind to reduce dust emissions. Verification of compliance will be the responsibility of the City of Shafter Building Inspection Division.
22. The developer of Revised Tentative Tract 7244 shall comply with all San Joaquin Valley Air Pollution Control District (SJVAPCD) requirements while grading and developing the site. It is the developer's responsibility to contact the SJVAPCD to determine the applicable District requirements and rules.
23. Prior to issuance of the first building permit, the developer shall provide written confirmation from the SJVAPCD confirming that the applicable off-site mitigation fees for the subdivision have been paid.
24. The recommendations of the biological, archaeological, and traffic studies shall be implemented by the developer during construction and development of Revised Tentative Tract 7244.
25. Prior to recordation of the first phase of Revised Tentative Tract No. 7244, the Developer shall enter into a Development Agreement with the City of Shafter, in a form and substance reasonably approved and required by the City, which shall provide for payment of traffic fees established by the City and development and funding for the recreation center and park site located on the east side of Jewetta Avenue North. In the event that the City has not adopted such fees in a timely manner such that the Developer would have to make payment at the time of obtaining each building permit for the development of the subdivision, then the Developer and the City agree that traffic fees shall be a minimum of \$6,925.00 per lot, and that such fees represent the actual costs pertaining to traffic impacts proportional to and directly related to each lot. Such fees shall be paid regardless of whether the Developer and the City enter into a development agreement. In addition, the Developer shall cooperate with the City regarding the establishment and formation of a community facilities district for school purposes and the Developer shall require all successors in interest in and to the subdivision, and each portion thereof, to cooperate with the City in the establishment of such a district. For this purpose, the Developer and its successors in interest shall not object or participate in any protest regarding the

formation of such a district, and shall affirmatively vote "yes" with respect to all real property within the subdivision for purposes of establishing such a district.

26. Prior to recordation of the first phase of Tract 7244, the Developer shall complete the following:

- a. Establish a Homeowners Association for maintenance of the streets, entry gates (Pleasant Street and Lot "F"), common landscaping, and infrastructure within the proposed gated community.
- b. Obtain approval from the City of Shafter and the North of the River Recreation and Parks District for the design of the proposed recreation center/park site located on Lot "D". The approval shall include recordation of any document specifying the mechanism for maintenance and funding of the park construction as well as long-term maintenance of the park facilities and amenities. For non-agreement on park design between the City of Shafter and North of the River Recreation and Parks District, the City of Shafter shall have final approval authority. See Condition No. 34.
- c. Obtain and record all required easements and shared use agreements for the pedestrian path and future pedestrian bridge to be constructed along the north side of and across the Calloway Canal.
- d. Obtain permits and record all easements needed for construction of the pedestrian bridge across the Friant-Kern Canal if they have not already been obtained by the developer of the Gossamer Grove Specific Plan.
- e. Obtain and record all easements and shared access agreements on behalf of the City of Shafter for access and maintenance of the sewer facilities to be constructed along and across the Calloway Canal property.
- f. Obtain and record all easements required for construction of and future access to the lift station and associated lines within the Mission Lakes Specific Plan.

27. The developer shall add the subject property to the North of the River Park Maintenance District prior to recordation of the first phased final map.

28. The Developer shall enter into an agreement with North of the River Recreation and Parks District (NOR) to:

- a. Develop the two park sites to NOR's standards and be approved by NOR prior to permit and commencement of construction.
- b. Join the NOR Park Maintenance District (Proposition 218). A secondary assessment above the annual NOR Park Maintenance fee may be assessed to maintain desired high cost recreation items such as pools, splash pads, water features, distinctive plantings, etc.

- c. Record a Covenant for each phase of the tract with NOR, disclosing proximity of the development to public parks, potential for increased vehicular traffic during programmed activities and potential of light, glare and noise disturbances associated with park operation.
 - d. NOR's acceptance of the two (2) parks is contingent upon Norris School District's agreement to allow use of their open space and playing fields as public park land. Should Norris School District not agree to allow NOR to utilize their open space and playing fields making NOR unwilling to accept the two (2) parks, the City of Shafter shall have full authority over the design and construction of the two parks. See Conditions Nos. 33 and 34.
29. Prior to recordation of the phase of Tract 7244 containing the 200th lot of the map, the developer shall pay to the City of Shafter his or her proportional share, based on an engineer's estimate acceptable to the City Engineer, of the cost to construct a pedestrian bridge across the Calloway Canal. The City will place the funds into an escrow account for use when the bridge is constructed. The developer will be refunded any excess funds upon completion of the bridge construction or, should the bridge construction costs exceed the original engineer's estimate will be responsible for providing any additional funds needed.
30. Prior to or concurrent with the recordation of the first phase of Tract 7244, the developer shall pay to the City of Shafter his or her proportional share, based on an engineer's estimate acceptable to the City Engineer, of the cost to construct a pedestrian bridge across the Friant-Kern Canal. The City will place the funds into an escrow account for use when the bridge is constructed. The developer will be refunded any excess funds upon completion of the bridge construction or, should the bridge construction costs exceed the original engineer's estimate will be responsible for providing any additional funds needed.
31. If applicable, the developer shall enter into an agreement with the Norris School District to either join the existing Community Facilities District (CFD) or create a new CFD.
32. Developer shall ensure all existing electrical conduits, conductors, poles, guy wires, utility boxes, and all related surface and subsurface facilities between the solar field to the north and the PG&E substation to the south are not damaged by development activity except where allowed or approved by the utility owner, PG&E. Developer shall also ensure no portion of the easement for said utility is located within any residential lot boundary.
33. Prior to recordation of the final map and issuance of a residential occupancy permit for the subject phase, the Lot "C" public park site shall be fully constructed, landscaped, and completed pursuant to City of Shafter approval, consistent with the Heritage Ranch Specific Plan, and dedicated to the City of Shafter.
34. Prior to recordation of the final map and issuance of a residential occupancy permit for the subject phase, the Lot "D" public park site shall be fully constructed, landscaped, and

completed pursuant to City of Shafter approval, consistent with the Heritage Ranch Specific Plan, and dedicated to the City of Shafter.

35. The map shall be redesigned to replace the knuckle at the intersection of Marble Street and Glenbrook Avenue with a radius curve.
36. Lot "H" shall be dedicated to the City of Shafter with the first recorded phase of Tract 7244. Lot "H" shall fully contain the following:
 - a. The existing electrical easement owned by Shafter Solar LLC.
 - b. Sewer easements required for gravity sewer and force mains from both Tract 7244 and the Gossamer Grove development.
 - c. A thirty (30) foot wide pedestrian easement on and along the north right-of-way line of the Calloway Canal needed to connect the Natural Trail on Seventh Standard Road to the future pedestrian bridge crossing the Calloway Canal.
37. Prior to initiating any grading or earthmoving within Revised Tentative Tract No. 7244, the developers shall provide the City of Shafter with written confirmation from the San Joaquin Valley Air Pollution Control District that the development is in compliance with the District's Rule 9510.

BUILDING

38. Prior to issuing a certificate of occupancy for any building, building address(es) shall be permanently installed and be clearly visible from the street.
39. No final inspection or issuance of a certificate of occupancy shall be approved for any lot, until all required improvements have been completed by the developer/applicant and accepted by the City.
40. Developer shall pay all development fees and impact fees adopted by the City in effect at the time of issuance of any building permits.
41. Developer shall comply with the latest California Building Code, California Mechanical Code, California Plumbing Code, California Electrical Code, California Fire Code and all other applicable codes, ordinances, regulations, and development standards in effect at the time of issuance of relative permits.
42. Prior to issuance of each building permit for houses within Revised Tentative Tract 7244, developer shall submit a site plan to the City Planning Department for review and approval. The site plan shall reference the floor plan layout and building elevations, including exterior building materials and colors, for each of the single-family residences to be constructed within Revised Tentative Tract 7244.

43. Private drives constructed of Portland cement concrete shall be constructed at a minimum width of 16 feet from the edge of public roadway pavement to the garage of each home.
44. A landscaping plan, including design of a permanent irrigation system, shall be submitted to and approved by the Planning Director. Said approved landscape and irrigation plan shall be implemented prior to receiving a final inspection for any house constructed within the subdivision. All landscaping is subject to the requirements for landscaping contained herein these conditions and with City Standards. Landscaping shall include an irrigation system for both the front-yard and the street side-yard (where applicable) provided the street side-yard is not obscured from sight from an adjacent street by fencing, for each lot within the subdivision. Landscaping shall be in compliance with current State guidelines for residential landscaping.
45. Fiber Optic Installation for Dwelling Units: Owner agrees to install in each dwelling unit the following fiber optic requirements:
- a. Install a City fiber box (enclosure type: 14326W-UL or as directed by the City) adjacent to the other utility boxes (power, phone, and cable). The fiber box shall be in addition to the phone and cable boxes. The fiber box shall face the exterior and shall include one 120 volt, 15 amp surge protected convenience receptacle located inside the fiber box. The Owner may alternately install a common communication box (enclosure type: 14326W-UL or as directed by the City IT Department) for the proposed utilities (phone, cable, and fiber). The communication box shall face the exterior and shall include one 120 volt, 15 amp surge protected convenience receptacle located inside the communication box for the fiber installation.
 - b. Install an RF transparent structured media enclosure (enclosure type: Leviton 49605-30W, Primex Verge P3000 or as approved by the City) in the master bedroom closet with a minimum 72" clearance between any other in-wall or freestanding appliances or accessories so as to allow for unobstructed wireless signal propagation throughout the home. The enclosure shall include one 120 volt, 15 amp surge-protected convenience receptacle located inside the enclosure.
 - c. Install a future route from the City fiber or common communication box to the proposed media enclosure with a minimum of a one (1) inch diameter non-metallic tubing (smurf-tube) or better with bright orange Tyvek or plastic tags, labeled "City Fiber Use Only, 661-746-5000", attached at each end of the conduit in plain view.
 - d. Install a continuous conduit without breaks or couplings from the bottom side of the City fiber or common communication box to the existing City fiber infrastructure located in the right-of-way. The conduit shall be a minimum of one (1) direct bury 10/6mm (OD/ID) HDPE microduct with attached trace wire. The proposed conduit shall be installed a minimum of 36 inches below grade and be bright orange or other color approved by the City. The final conduit shall be a different size, color or shade of color from all other utility conduits. If the conduit

does not have an attached trace wire, a continuous external #12 AWG solid-conductor tracer wire with high-density polyethylene insulation rated for direct burial shall be installed along with the conduit leaving a minimum 4 feet of slack at both ends.

- i. After backfill, all fiber optic conduits installed underground shall be mandrelled between the City fiber or common communication box and the existing City fiber infrastructure located in the right-of-way. The mandrelling process shall be witnessed by a City of Shafter Public Works Department representative. For conduit without a pull string, mandrel diameter shall be at least 70% of the conduit inside diameter. For conduit with a pull string, the string shall be taped taught to both ends and the mandrel diameter shall be at least 50% of the conduit inside diameter.
 - ii. Conduit couplings shall only be used to repair damaged conduit and shall be airtight, water-tight, push-up compression fitting approved by the City.
- e. Install Category 6 Unshielded Twisted Pair (CAT 6 UTP) cable (or as approved by the City) from the media enclosure to every phone and cable termination point through the home leaving 6 feet of slack in the enclosure and terminating to a CAT 6-rated 8P8C (RJ-45) jack, using the TIA/EIA-568 T568A pinout standard, adjacent to every phone and cable termination. All CAT 6 and other networking cable is to be installed according to industry standards and shall not be pinched, stapled, bent sharply or crossing any sharp, unprotected edges.
- f. Install ceiling Wi-Fi Access Point mounting locations as approved by the City on each floor such that no exterior wall is more than 30 feet from either the media enclosure or another Wi-Fi AP mounting location. Since Wi-Fi AP signals generally do not propagate well vertically between floors, each floor must meet the aforementioned 30-foot standard. Each Wi-Fi AP mounting location will include a single-gang low voltage walk box through which a single CAT 6 UTP cable, terminated with a CAT 6-rated 8P8C (RJ-45) plug and connected to the AP, will be run to the media enclosure and left with 6 feet of slack.

ENGINEERING

- 46. Developer shall remove and replace any existing public or private improvements that may become damaged during any phase of construction, as required by the City Engineer. The contractor working within the public right-of-way shall obtain an encroachment permit from the City Engineer prior to commencing any such work.
- 47. Acceptable traffic control, including signs and personnel, shall be utilized whenever construction of required improvements requires the contractor to work within existing vehicular paths of travel. If determined necessary by the City Engineer, the contractor shall include provisions to allow for pedestrian traffic through or past the construction site. The latest edition of Caltrans Traffic Manual shall be the standard for all construction related traffic control.

48. Developer shall relocate and/or install all necessary infrastructure to provide utilities to the proposed project.
49. A ten (10) foot public utility easement, as shown on the tentative map, shall be provided in the front of all lots and on the street side of all corner lots as requested by the utility companies and the City Engineer. Easements shall be granted with the final map.
50. Pedestrian easements shall be provided wherever sidewalks and other public walking paths are to be constructed outside the proposed public rights-of-way. The minimum width of the pedestrian easements shall be one (1) foot.
51. Lot "F" (Pedestrian Access) between Lots 117 and 118 shall be lighted and landscaped in a manner approved by the City Engineer. The lot shall be recorded as a Public Access Easement on the final map. Walls on both sides shall be constructed within the easement. Walls shall be reduced to no more than 40 inches in height within the minimum front-yard setback.
52. Easements to be given to the City or any other public utility agency for, sewer, water, storm drain, electrical, or any other utility or similar purpose shall not cross private property without prior approval of the City Engineer.
53. Any above-ground utility cabinets or facilities to be located within the road right-of-way or public utility easement shall be permitted only upon approval by the City Engineer. Such approval will be made in writing, upon written request of the developer and/or the affected utility company.
54. Any obstructions including utilities, irrigation lines, etc., shall be removed and/or relocated, if necessary, at the expense of the developer.
55. No final inspection shall be approved until all required improvements have been completed by the developer and accepted by the City of Shafter.
56. All new utilities shall be underground service.
57. During construction, vehicular access points shall be covered with decomposed granite, road oil, or some other treatment acceptable to the City Engineer, to prevent generation of dust during periods of vehicular activity and/or windy conditions and tracking of mud and dirt on public roadways.
58. Prior to the issuance of a Certificate of Occupancy on any lot of Tract 7244, all required improvements shall be completed and accepted by the City of Shafter. Additional improvements outside the affected project boundary may be required for orderly development as determined by the City Engineer.

59. All improvements shall be complete within one (1) year from the date of filing of the final map for the development, unless a time extension is granted by the City Engineer. Timing of improvements shall be subject to approval of the City Engineer.
60. Type and location of centralized mail delivery units shall be determined by the postal service. If the postal service requires special easements for the placement of the delivery units, then said easements shall be shown on the final map.
61. Access to and from the existing solar plant through the main gate on the south side of the facility shall not be restricted or prevented by development activities.
62. Prior to recordation of the first phase of the final map, Seventh Standard Road shall be constructed to its ultimate northerly extent within the development of Revised Tentative Tract 7244. Improvements shall include an additional west bound lane, deceleration and acceleration lanes at Jewetta Avenue North, landscaping (minimum 22 feet wide) trail, paseo, and 8' high block wall, consistent with Revised Tentative Tract 7244, Heritage Ranch Specific Plan, and City of Shafter General Plan.
63. Prior to the recordation of the first phase of the final map, Jewetta Avenue North shall be constructed and improved including theme wall, entrance monuments, landscaping, sidewalk, and multi-use walkway, as required by and consistent with Revised Tentative Tract 7244 and the Heritage Ranch Specific Plan.
64. The developer shall install a traffic signal and construct a median break for the intersection of Jewetta Avenue North and Seventh Standard Road prior to recordation of the first phase of Tract 7244. The median break shall not be constructed separately from the traffic signal. The design, construction, and installation of the traffic signal and median break shall be subject to City of Shafter and City of Bakersfield approval.
65. All road, landscaping, trail, sidewalk, block wall, and multi-use walkway improvements, required by and consistent with Revised Tentative Tract 7244 and the Heritage Ranch Specific Plan, shall be constructed by the developer and approved by the City of Shafter prior to recordation of the subject final map phase. Wall plans, materials, and dimensions shall be consistent with the requirements of the Heritage Ranch Specific Plan and Revised Tentative Tract 7244 and shall be approved by the City of Shafter prior to construction. Timing of improvements shall be subject to the approval of the City Engineer.
66. All landscaping, trail, sidewalk, block wall, and multi-use walkway improvement areas within the map boundary shall be dedicated to the City of Shafter with the recorded map. Areas located outside the tract map boundary shall be dedicated by separate instrument prior to, or concurrent with, recordation of the final map phase.
67. Developer shall place the entire subdivision within a new Landscape/Lighting Maintenance District, prior to acceptance of improvements by the City of Shafter. The maintenance district shall be set-up to cover the cost of street lighting, drainage basin

maintenance, landscaping maintenance, paseo/trail maintenance, as well as all administrative costs associated with the City of Shafter's management of the district.

- a. The developer shall be required to cover the cost of street lighting, maintain all landscaping, park maintenance, including the replacement of any trees or shrubs that do not survive, within public right-of-way and landscape easements for a period of one (1) year after final inspection of the landscape improvements, or until such time as the maintenance district is formed, whichever shall occur last.
- b. Developer shall be fully responsible for the formation, and formation cost of the Landscape/Lighting District, as directed by the City Engineer.
- c. Developer shall be fully responsible for paying the cost of water for all landscaping and electricity for the street lights until such time as the maintenance district is formed.

68. Engineered plans and building permits are required for all block walls greater than 6-feet in height.
69. Developer shall design and install a system of conduits, terminal boxes, splice boxes, connection points, and hand holes for a fiber optic network to each buildable lot within the development. Plans shall be submitted and approved by the City of Shafter, prior to recordation of the final map, showing the proposed utility trench and all appurtenant hardware. Fiber optic conduits can be joint trenched with other utility company pipes and/or conduits. After backfill, conduits and microducts shall be mandrelled, checked for obstructions, and re-excavated and repaired where necessary. The mandrelling process shall be witnessed by a City of Shafter Public Works Department representative. For conduit without a pull string, mandrel diameter shall be at least 70% of the conduit inside diameter. For conduit with a pull string, the string shall be taped taught to both ends and the mandrel diameter shall be at least 50% of the conduit inside diameter. Conduits 1/2-inch or larger shall require mule tape. Design and material specifications are available from the City of Shafter. Existing City owned fiber optic conduits, boxes, FOC cable, and related facilities within the development shall be modified or relocated by the developer as necessary in a manner approved by the City.
70. Prior to construction, all improvement plans and landscaping plans shall be approved by the City of Shafter.
71. Developer shall install four (4) way stop signs, pursuant to City of Shafter standards, at the intersections of 1.) Jewetta Avenue North and Whispering Lane, and 2.) Jewetta Avenue North and Ponderosa Avenue.
72. The side-yard fences running parallel to local streets shall consist of a masonry block wall topped with a wooden fence. Wall shall be designed to retain earth where necessary. Sufficient area behind the sidewalk shall be provided to accommodate the installation of community mailboxes, where required by the US Postal Service.

73. All phased final subdivision maps proposed for recordation shall be in substantial conformance with the approved tentative map.
74. If the subdivision is to be phased, additional improvements for circulation shall be provided as required by the City Engineer.

ENGINEERING: GRADING & DRAINAGE

75. Prior to review of any required improvement plans, both a drainage/hydrology study and a grading plan shall be submitted to and approved by the City Engineer. A master grading plan shall be submitted and approved for Revised Tentative Tract 7244. Future development plans shall be based upon the approved master plan. Any deviation from the approved master plan will require the approval of the City Engineer.
76. The drainage/hydrology study and hydraulic analysis for the project shall be performed by a registered civil engineer and submitted to the City Engineer for review and approval. The study shall demonstrate that any potential run-off will not impact surrounding properties. The study shall focus on the project property and any affected adjacent properties.
77. Developer shall review the existing grading for the solar plant constructed to the north to ensure to the Developer's satisfaction that drainage from the existing solar site will not negatively impact finished lots or improvements within Tract 7244.
78. A soils report, prepared by a registered civil engineer shall be submitted along with the grading plan. Soils report shall be performed in compliance with California Building Code, Chapter 18, latest edition. In addition, all site grading, earthwork and building design shall be performed in accordance with the recommendations of the soils report.
79. A soils report, prepared by a registered civil engineer shall be submitted along with the grading plan. Soils report shall be performed in compliance with California Building Code, Chapter 18, latest edition. In addition, all site grading, earthwork and building design shall be performed in accordance with the recommendations of the soils report.
80. **Prior to issuance of a building permit,** the developer shall file a "Rough Grade Certificate" with the City in accordance with the City Engineering Design Standards. Rough Grade Certificate shall be accompanied by certified soil compaction test data from an acceptable materials testing company and a certificate stating that the rough grade is in substantial conformance with the approved grading plan and Chapter 33 of the California Building Code. Developer to obtain Rough Grade Certificate form from the City.

81. Prior to final approval, acceptance of work, or issuance of Certificate of Occupancy, the developer's engineer shall file a "Final Grade Certificate" stating that all required grading has been done in accordance with the approved grading plan. Developer to obtain Final Grade Certificate form from the City.
82. The location and frequency of soils compaction testing shall be per the City Engineer. Soils compaction testing shall be provided by the developer/owner.
83. Minimum slopes across any flat surface shall be 1%. For slopes less than 1%, surface drainage shall be channeled into a concrete v-gutter, curb and gutter, underground storm drain, or similar drainage structure.
84. All building pads shall provide a minimum of 2% slope away from each house to an earth swale, and a minimum of 1% from the highest point in the swale to the street. A four inch landscape drain may be used to replace the earth swale. The minimum pad height shall be twelve (12) inches above the adjacent curb.
85. Street side corner lots shall not have their side yard slope (finish grade to back of sidewalk) exceed 4 horizontal: 1 vertical. If maximum slope is exceeded, side yard shall be retained in an approved manner.
86. Wood retaining structures shall not be approved. Developer shall use masonry, concrete, or other approved material.
87. Engineered off-site drainage plans for Revised Tentative Tract 7244 shall be submitted to and approved by the City of Shafter prior to recordation of the final map. The approved drainage facilities shall be constructed and approved by the City of Shafter prior to issuance of building permits.
88. The area used for the drainage sump shall be fenced and screened in a manner approved by the City Engineer and consistent with the requirements of the Heritage Ranch Specific Plan. The fence is to enclose the entire sump. Masonry wall (or equivalent) conforming to City standards shall be built for all portions of the perimeter fence viewable from the street or adjacent lots. The north side does not need to be provided with a block wall. A lockable privacy gate, concrete driveway, access easements, and drainage easements shall be provided for access and storm drain lines to the drainage sump as required by the City Engineer. At the option of the City Engineer, a landscaping plan, including design of a permanent irrigation system, shall be submitted to and approved by the City Engineer. Said approved landscape and irrigation plans shall be implemented prior to issuance of any building permit for the development. At the option of the City Engineer, in lieu of the above, the area between the right-of-way line and the setback line from the lots containing the sump shall be dedicated to the adjacent lots, and the landscaping usually required for the sump lot shall belong to the lots adjacent to the sump.

89. The number and location of cross gutters allowed, if any, will be determined during the grading and drainage review process. Drainage siphons shall not be used. The minimum grade for allowed cross gutters shall be 0.6%.
90. All storm drain pipes and manholes shall be installed with the street paving. Catch basins shall be installed per City standards.
91. Grading onto adjacent property shall not be done without written permission from the adjacent property owner.
92. The Office of the City Engineer shall be notified 24 hours in advance of the placement of any fill material.
93. Fill and/or import material shall be subject to the approval of the soils engineer.
94. Developer is responsible for the grading of lot pad areas to within 0.1-foot of the design elevations.
95. All areas in the site on which structures are to be placed must be compacted to 90% relative density, or as required by the soils report and with concurrence of the City Engineer, for a minimum distance of 5-feet in all directions from the foundations of the structure.
96. All fill material shall be moisture conditioned to at least 2% above optimum moisture and compacted to 90% relative density, or as required by the soils report and with concurrence of the City Engineer, as determined by test methods referenced in California Building Code, appendix Chapter 33, Section 3305, and so certified by test and report from the soils engineer.
97. The design engineer shall exercise sufficient supervisory control during grading operations to ensure compliance with the plans, specifications, and code within his purview.
98. The placement of fill shall be in 6-inch maximum lifts, compacted with heavy compaction equipment approved by the City Engineer, unless specifically recommended otherwise in the preliminary soils report.
99. Compaction in proposed pavement areas should be the same as for the building pads, and should extend to a minimum distance of 2-feet beyond the outside edges of pavement. Compaction shall be as required by the soils report and with concurrence with the City Engineer.
100. All cut and fill slopes shall not be steeper than 2 horizontal to 1 vertical.

101. All fill areas to be cleared of all vegetation and other unsuitable materials for a structural fill and the areas shall be scarified to a depth of 6-inches, unless specifically noted otherwise in the preliminary soils report.
102. All slopes in excess of three (3) feet shall be prepared and maintained to control against erosion.
103. Grading work shall be supervised as engineered grading in accordance with Chapter 33 of the California Building Code.
104. During grading, reasonable searching should be performed for concealed subsurface obstructions. All abandoned subsurface obstructions should be removed. If terminus of any abandoned piping is outside the project limits, the piping should be removed within the project and properly capped at the project boundary.
105. The Developer shall coordinate with the North Kern Water Storage District to establish a new common grade along the common property line with the Calloway Canal.
106. Developer's attention is directed to the provisions of the SJVAPCD's Regulation VIII —Fugitive PM10 Prohibitions, which require the submission of a Dust Control Plan for certain construction projects. Developer shall comply with all applicable SJVAPCD rules and regulations including the submission of a Dust Control Plan as may be applicable. Current SJVAPCD rules and regulations are available online at [http://www.valleyair.org/rules/l rulesl i st. him](http://www.valleyair.org/rules/l%20rules%20list.htm).
107. It shall be the Developer's responsibility to prevent a dust nuisance from originating from the site of the work as a result of its operations. Preventative measures to be taken by the Contractor shall include, but shall not be limited to, the following:
 - a. Water shall be applied to all unpaved areas as required to prevent the surface from becoming dry enough to permit dust formation.
 - b. Paved surfaces over which vehicular traffic is permitted to travel shall be kept free of dirt.
 - c. Temporary suspension of the work, either as a result of order by the Engineer or as a result of conditions beyond control of the Contractor shall not relieve the Contractor from his responsibility for dust control as set forth herein.

ENGINEERING: WATER/FIRE

108. The developer shall install two water systems for the project together with such equipment, pipeline, and facilities, including individual water services, as may be necessary to ensure the development has a minimum supply of water for the purposes of the development including fire protection. One water system shall be developed exclusively for drinking or domestic water service. The other shall be for irrigation of lawns, parks, and common landscape area and provided by either existing or new

wells. Developer shall submit water improvement plans to the City Engineer and Oildale Mutual Water Company for review and approval. Developer shall construct the public water system in accordance with Subdivision Engineering Design Manual for the subject property. The dual water system shall be constructed by the developer and approved by the City of Shafter and Oildale Mutual Water Company prior to recordation of the final map.

109. To the greatest extent possible, above ground air-vac or air release valves required by Oildale Mutual Water Company shall be located in public landscaping or natural trail areas and not along residential project frontages. This requirement is subject to the approval of Oildale Mutual Water Company.
110. To the greatest extent possible, wet utilities (sewer, water, storm drain) shall be installed between the flowlines on all streets.
111. Fire protection shall be provided per Kern County Fire Department Standards for the type of development. A Certificate of Approval shall be obtained by the developer from the Kern County Fire Department. Evidence of this Certificate of Approval shall be provided to the City prior to acceptance of the water system by the City.
112. Prior to installation, all water improvement plans shall be reviewed and approved by the Kern County Fire Department. The review includes hydrant locations and access into and out of the Tract. A plan review permit, obtained from the Kern County Fire Department, must be applied and paid for prior to the review of any modified or new tract map.
113. Water line size, location, and materials shall be subject to the approval of the City Engineer. Minimum water line size shall be in accordance with the Subdivision and Engineering Design Manual.
114. Tie-ins to existing water mains shall be constructed in a manner approved by the City Engineer.
115. Whenever possible, the water system shall be looped to minimize dead ends. For cul-de-sacs greater than 330 feet in length, the water main shall be looped through the side lot lines of the lots near the end of the cul-de-sac, back to adjacent streets, as directed by the City Engineer. Easements shall be provided to the City in a manner consistent with the Subdivision and Engineering Design Manual.
116. Separate dual water services shall be installed for each residential property.
117. No permanent structures shall be constructed over proposed or existing utility easements.
118. The developer shall provide a minimum 2 access/egress points per CFC Sec D107.1 into the tract for emergencies. Such access shall be provided through Lot "H" or

alternative approved by the City Engineer, or as approved by the Kern County Fire Department.

119. The developer shall provide fire hydrants that comply with Kern County Development Standards (Clow 850 or equivalent).
120. The required fire hydrants shall be placed a maximum of 660 feet apart throughout the tract for firefighting purposes. Final hydrant locations shall be approved by the Kern County Fire Department prior to installation.
121. The developer shall install reflective markers to identify hydrant locations pursuant to California Health and Safety Code 13060.
122. The required fire hydrants shall provide a minimum fire flow of 500 gallons per minute for one hour at 20 psi residual pressure.
123. The water system for the required fire hydrants shall be looped.
124. The Kern County Fire Department, Fire Prevention Office shall be contacted for a fire flow test and approval prior to the start of underground construction.
125. The developer shall install the required water, access and street signs prior to issuance of any building permit.
126. A fire flow test of the on-site facilities shall be performed and approved by the Kern County Fire Department prior to issuance of any Certificates of Occupancy. A fire flow test permit, obtained from the Kern County Fire Department, must be applied and paid for before flow test clearance will be granted.
127. Prior to issuance of a building permit, water mains and fire hydrants to be installed by developer shall be completed, tested, and accepted (UFC 10.502, 10.503).

ENGINEERING: SEWER

128. No properties shall be served by a septic system.
129. Developer shall install a sewer system for the development together with such materials, pipeline, manholes, and individual services for the purposes of the development. Developer shall submit sewer improvement plans to the City Engineer for review and approval prior to recordation of the final map. Developer shall construct public sewer system in accordance with Shafter Subdivision Engineering Design Manual for the subject property.
 - a. Until such time as a permanent City trunk sewer in Seventh Standard Road can be constructed and connected, the development shall construct a gravity sewer system, sewer lift station, and a force main that will collect and pump sewage

from Tract 7244 to the existing City sewer system located within the Wonderful Industrial Park near the intersection of Seventh Standard Road and Zachary Avenue.

- i. Gravity sewer mains shall be provided and installed within rights-of-way and easements granted to the City of Shafter and within Lot "H". All easements, deeds, licenses, and/or permits necessary for sewer facilities located outside the tract boundary shall be secured and recorded prior to the first recorded phase of Tract 7244 or sewer plan approval, whichever is first.
- ii. Gravity sewer shall collect sewage from all sources within Tract 7244 and deliver them to the proposed lift station. Lift station shall be a premanufactured precast concrete lift station constructed by a manufacturer with at least 10 years of experience in sewage lift station design and manufacture. Make and manufacturer shall be approved by the City. Lift station shall be delivered to the site and constructed in accordance with the manufacturer's installation requirements and plans approved by the City of Shafter.
- iii. Lift station shall be located off-site, north of Seventh Standard Road and west of the Calloway Canal. Developer shall secure sufficient property (easements, dedications, or deeds) and access rights for the proposed lift station prior to the first recorded phase of Tract 7244 or sewer plan approval, whichever is first.
- iv. Lift station site location, layout, ultimate size, design, and capacity shall be reviewed and approved by the City.
- v. Developer shall secure a sufficient source of electrical power to operate the lift station.
- vi. A single sewer force main pipe shall connect the lift station to the City of Shafter's existing sewer system located near the intersection of Zachary Avenue and Fanucchi Way. Force main shall be sized for the lift station discharge from both Tract 7244 and Gossamer Grove Specific Plan. Developer shall coordinate with Lennar Homes (developer of Gossamer Grove) for the future anticipated flows from Gossamer Grove Specific Plan.

- (1) As of July 8, 2017, the City of Shafter is in the process of designing a trunk sewer system on and along the north side of Seventh Standard Road. This gravity sewer will eventually provide sewer service to properties located north of Seventh Standard Road, including Tract 7244 (Heritage Ranch) and Gossamer Grove. It is possible that this trunk sewer may be operational prior to the development of Tract 7244 allowing the Developer to connect to the City's sewer system at a location closer to Tract 7244. The City makes no warranty regarding the schedule of the construction of this sewer trunk. The Developer is advised to coordinate with the City regarding connection to the City's sewer system.

- vii. Dual parallel force mains shall be installed along the north side of Seventh Standard Road for the Gossamer Grove development. The force main shall run from the west right-of-way line of the Friant-Kern Canal to the lift station location. The force mains shall bypass the lift station location and connect to the force main installed for Tract 7244.
 - (2) The developer of Gossamer Grove (Lennar Homes) shall be responsible for construction of their force mains up to and over the Friant-Kern Canal right-of-way to the west side of the Calloway Canal right-of-way to connect with the sewer system that is being designed and constructed for Tract 7244.
 - (3) The developer of Tract 7244 shall coordinate the size and location of the force mains with the developer of Gossamer Grove (Lennar Homes).
 - (4) City of Shafter shall be provided with access rights to the force mains for maintenance and repair where they are installed outside public right-of-way. Access easements shall be recorded prior to, or concurrent with, the first recorded phase of Tract 7244, whichever occurs first.
- viii. Other conditions applicable to the design and construction of the lift station and all force mains shall be developed in consultation with the City Engineer.

130. All fees and costs necessary to connect to the sanitary sewer collection and treatment system shall be those in effect at the time the service connection is made.

131. Sewer line size, location, slope and materials shall be subject to the approval of the City Engineer. Minimum sewer line size, location, slope, and materials shall also be in accordance with the Subdivision and Engineering Design Manual.

132. Tie-ins to existing sewer mains, manholes, or other structures shall be constructed as directed by the City Engineer.

133. Sewer pipelines and manholes shall be installed within the proposed street paving of the development.

134. Separate sewer services shall be installed for each property. At no time shall sewer be joint trenched with water.

135. Sewer lines will not be permitted in easements between the backyards or side-yards of residential lots.

136. No permanent structures shall be constructed over proposed or existing utility easements.

ENGINEERING: STREET & TRAFFIC

137. Developer shall construct and provide right-of-way for all streets, curb, gutter, cross gutter, drainage facilities, sidewalks, walls, landscaping, street lights, drive approaches, intersections, and other related improvements consistent with Revised Tentative Tract 7244 and the Heritage Ranch Specific Plan. Developer shall submit street improvement plans prepared by a registered civil engineer to the City Engineer for review and approval and shall include: Preliminary soils report with R-Value tests taken from proposed road locations, preliminary engineer's estimate of construction costs; and plan check and inspection fees.
138. Pleasant Street shall be considered private south of the easterly extension of the south line of Lot 188.
139. The drawings shall include all proposed public street pavement, curb, gutter, driveways, street lights, cross gutter, catch basins, striping, signage, traffic signals, and sidewalks along the perimeter of all streets adjacent to or within the project site. Said improvements shall be constructed as per the street improvement plans approved by the City Engineer in a manner consistent with the Subdivision and Engineering Design Manual.
140. All local streets shall be developed as full-width streets in accordance with standards and specifications of the Heritage Ranch Specific Plan and the City, as approved by the City Engineer. All local streets shall be fifty-two (52) feet full right-of-way with forty (40) feet flowline to flowline.
141. Should a street transition to another street with a ninety (90) degree turn occur, that transition shall be a street knuckle and shall be shown on the final tract map and in the street improvement plans.
142. Cul-de-sac and street knuckle dimensions and radii to conform to the Subdivision and Engineering Design Manual and/or as approved by the City Engineer. The use of off-set cul-de-sacs is approved provided they meet the requirements of the City.
143. Street signs shall be installed per City standards as required by the City Engineer.
144. All utilities proposed under paving shall be installed prior to paving. Cover over utilities shall be a depth as approved by the City Engineer.
145. During construction, the developer shall maintain the project, including adjacent streets in a dust free condition. This condition applies at all times including weekends, evenings, and night time hours. During construction operations, cleanup of soil from the public roadways shall be required, if deemed necessary, by the City Engineer.
146. Driveway approaches shall be constructed in a manner consistent with the requirements for residential approaches as set forth in the City's Subdivision and Engineering Design Manual.

147. Sidewalk, including curb, shall be five (5) feet wide and shall be placed behind the curb, or as specified by the Heritage Ranch Specific Plan. Transitions at intersections and wheelchair ramps shall be provided and installed per the City's Subdivision and Engineering Design Manual.

148. Monument and monument covers shall be set per City Standards.

149. Temporary turnarounds, if required, including right-of-way, shall be granted, designed, and installed per the Subdivision and Engineering Design Standards.

150. Property line locations shall be marked with a chiseled line on the top of curb for all property lines. The location of all sewer laterals shall be indicated on the top of curb with a stamped "S".

151. Street lighting shall be installed in accordance with the City Engineering and Subdivision Design Manual as directed by the City Engineer. Developer shall coordinate with Pacific Gas & Electric to ensure that the street lights are established under the LS-2 rate schedule.

152. Secondary access easements shall be provided at the request of the City Engineer. Within any given phase of development, secondary access easements and improvements shall be provided in a manner approved by the City Engineer. Access roads shall be twelve (12) feet in width and shall consist of three (3) inches of Class II aggregate base over six (6) inches of native material compacted to 90% relative maximum density.

153. A waiver of direct access to the following shall be dedicated and shown on the final map as follows:

- a. Lots 263, 264, 273, 274, 283, and 284 to Bareback Avenue.
- b. Lots 308 and 309 to Banjo Way
- c. Lots 297 and 320 to Blazing Way
- d. Lots 321, 322, and 329 to Ponderosa Avenue
- e. Lots 332, 340, 363, and 364 to Fields Way
- f. Lot 351 to Marble Street
- g. Lot 355 to Raven Way
- h. Lot 212 to Grove Way
- i. Lots 227 and 231 to Glenbrook Avenue
- j. Lots 203, 204, and 223 to Mystic Way
- k. Lots 194 and 201 to Whispering Lane
- l. Lots 13, 14, 39, and 40 to Hitching Way
- m. Lots 56, 57, 82 and 83 to Porch Way
- n. Lots 90, 96, 187 and 188 to Pleasant Street
- o. Lots 150, 151, 172, 173 to Knotty Way
- p. Lots 161 and 162 to Green Way
- q. Lots 117 and 118 to Common Lot "F"
- r. All lots adjacent to the east and west sides of Jewetta Avenue North

- s. All lots adjacent to the north line of the Natural Trail easement along Seventh Standard Road
- t. All rear lot lines adjacent to the Friant-Kern Canal and the Calloway Canal
- u. All rear lot lines adjacent to the sewer/landscape lot identified as Lot "H"

154. Developer shall design and construct, with the subject phase of the final map, the public path(s) between common Lot "F", the sidewalk along Seventh Standard Road, and the pedestrian bridge across the Friant-Kern Canal meeting the requirements of the American with Disabilities Act (ADA). The path design and construction shall be approved by the City of Shafter.

155. Yearling Court shall be constructed and approved by the City of Shafter, including curb and flowline, with the subject phase.

ENGINEERING: LANDSCAPING

156. Developer shall provide easements for and construct a 30-foot-wide pedestrian easement on and along the north right-of-way line of the Calloway Canal.

- a. Pedestrian easement shall be contained within Lot "H" for all portions within the boundary of Tract 7244. Any portions of the easement lying outside the tract boundary, including the proposed pedestrian bridge across the Calloway Canal, shall be recorded prior to, or concurrently with, the first recorded phase of Tract 7244. The pedestrian easement shall provide public access from the north side of Seventh Standard Road east of the existing vehicle bridge over the Calloway Canal to a future pedestrian bridge over the Calloway Canal, the exact location to be determined at a later date.
- b. The minimum width of the pedestrian easement shall be thirty (30) feet.
- c. Masonry wall shall be constructed between the pedestrian easement and residential lots.
- d. A thirty (30) foot wide pedestrian easement west of Lot "H" on the northern portion of the Calloway Canal property to a point where the pedestrian bridge will be constructed over the Calloway Canal. The easement shall be recorded prior to, or concurrently with, the first phase of Tract 7244.
- e. A thirty (30) foot wide easement for a pedestrian bridge over the Calloway Canal shall be recorded prior to, or concurrent with, the first phase of Tract 7244.
- f. A six (6) foot high chain link fence shall be installed along the common boundary of Lot "H" and the Calloway Canal, north of the Seventh Standard Road right-of-way, to the pedestrian bridge canal crossing.

157. Electrical Source for Landscaping:

- a. Developer shall provide one or more metered services and pedestals for public landscaping.
- b. Location of the meter pedestal shall be approved by the City Engineer.

158. Landscaping Enclosure:

- a. Landscaping water service point of connection shall be approved by the City Engineer. Water source shall be from the non-potable water system installed with the tract.
159. Water Source for Landscaping:
 - a. Landscaping timers, electrical service fuses, breakers, etc., shall be installed within a commercial grade landscaping enclosure.
 - b. Commercial grade landscaping enclosure shall be installed within the dedicated landscaping area adjacent to the water source and/or electrical source.
 - c. Commercial grade landscaping enclosure shall be installed on a concrete foundation poured onto a minimum of six (6) inches of native subgrade compacted to 90% (or in accordance with manufacturer's recommendations, whichever is more stringent).
 - d. Landscaping enclosure shall be provided with a 110-volt duplex electrical GFCI plug within the enclosure.
160. The developer shall comply with all requirements for grading and erosion control, including the prevention of sedimentation or potential damage to off-site property.
161. Sleeves shall be placed under the proposed paving for landscape piping or low voltage electrical per the City Engineer.
162. Landscaping within the Natural Trail on Seventh Standard Road shall be approved by the City. Separate plan sets shall be provided for the Natural Trail landscaping and shall show locations of water and electrical services necessary to serve the landscaping and lighting needs of the areas.
163. Bollards or other effective obstructions shall be placed at the pedestrian access easements located at the east end of Ponderosa Avenue.
164. Developer shall deed Lots B, C, D, H, and I to the City of Shafter concurrent with the recordation of the applicable phase of the final map.
165. The landscaping along the north side of 7th Standard Road, between Jewetta Avenue North and the east boundary of the project, shall be dedicated to the City of Shafter as a lot.
166. A thirty (30) foot wide easement for a pedestrian bridge over the Friant-Kern Canal shall be recorded prior to, or concurrent with, the first phase of Tract 7244.

ENGINEERING: SUBDIVISION IMPROVEMENT AGREEMENT

167. The developer shall furnish the City of Shafter with acceptable security to guarantee the construction of off-site street improvements in accordance with all applicable provisions of the City of Shafter Municipal Code and the State Subdivision Map Act. The developer may enter into a subdivision improvement agreement with the City of

Shafter for public improvements that are not completed at the time of Final Map approval.

**EXHIBIT "E" TO
REVISED TENTATIVE TRACT NO. 7244
DEVELOPMENT AGREEMENT NO. 23-21**

House Plans and Elevations

Choral Series

The Choral Series offers brand-new single-family homes for sale, including Next Gen® floorplans, at the Marcona Preserve master-planned community in Bakersfield, CA. Residents enjoy no HOA and convenient proximity to great local attractions, nearby walking trails, parks and golf courses. Plus, the community is situated close to Highway 99 for simplified commutes and access to great entertainment venues and shopping centers.

Plans

Tutti X

3 bd . 2 ba . 1,856 ft²

Bolero

4 bd . 3 ba . 2,085 ft²

Melody X

5 bd . 3 ba . 2,578 ft²

Symphony X

4 bd . 3 ba . 1 half ba . 3,156 ft²

Orchestra X

5 bd . 3 ba . 3,278 ft²

7.2.2 Park Impact Fee. Developer shall pay the park impact fee (“Park Impact Fee”) in effect at the time the building permit is issued for each single-family residence. Notwithstanding the amount of the development impact fees in place, the fees paid by the Developer shall not exceed \$6,000.00 for each single-family residence.

In lieu of paying a Park Impact Fee for each single-family residence, the Developer may design and fully construct publicly accessible parks included in a City-approved specific plan, which shall be completed within eight (8) months of commencing park construction as set forth in Exhibit G, Park Improvements, incorporated herein by reference

All hardware or equipment supplied shall be installed in accordance with City Standards or the manufacturer’s requirements, has been inspected for conformance with applicable codes and passed, and is ready for use by the City or the public in general.

7.2.3 Sewer Impact Fee. Developer shall pay the sewer impact fee in effect at the time that the building permit is issued for each single-family residence. Notwithstanding the amount of the development impact fees in place, the fees paid by the Developer shall not exceed \$10,000.00 for each single-family residence.

7.2.4 Miscellaneous Impact Fees. Developer shall pay any additional miscellaneous impact fees in effect at the time that the building permit is issued for each single-family residence, including but not limited to the following:

- i. Local Storm Drainage Collection Facilities;
- ii. Water Storage and Distribution;
- iii. Wastewater Collection Facilities;
- iv. General Facilities (city hall, corporate yard, and municipal fleet);
- v. Aquatics Facilities;
- vi. Public Use Facilities (community, senior, teen centers, et. al.);
- vii. Library Building and Collection,
- viii. Park Land and Open Space Acquisition and Recreation Facilities; and
- ix. Development and any other infrastructure provided by the City allowed by Government Code §66000, et. seq. (often referred to as AB1600).

Notwithstanding the amount of the development impact fees in place, the fees paid by the Developer shall not exceed \$20,000.00 for each single-family residence in total for all miscellaneous fees.

7.2.5 Fee Limitations Caveat. Developer understands and agrees that the fee limitations contained in Section 7.2.1 through 7.2.3 apply only to the Traffic Impact Fee, Park Impact Fee, Sewer Impact Fee, and Miscellaneous Impact Fees, and not to other categories of impact fees, Development Exactions and Processing fees, whether in existence or later enacted.

7.3 Landscaping Improvements. Owner shall, at its sole cost, expense, and liability, construct those certain landscaping improvements required as “conditions of approval” of Revised Tentative Tract Map No. 7244 as described in Exhibit “D” of this Agreement and as described in Section 4.1.6 (Development Approvals) of this Agreement. Owner shall dedicate any required improvements to the City at the time of recordation of the final map for which the improvements were a condition of approval. Owner will construct such landscaping improvements in accordance with City and other applicable governmental agency rules, codes, standards, ordinances, and regulations in accordance with the Existing Land Use Regulations, subject to the Reservations of Authority.

7.4 Public School Impact Fee. Owner shall pay all public-school impact fees required by the Norris School District attributable to the Project.

7.5 Flood Control and Storm Drainage Improvements. Owner shall meet all applicable conditions of approval pursuant to Resolution No. 2543 in Exhibit “D” consistent with the tract design, as illustrated in Exhibit “B”, found to be in substantial conformance by the City Engineer.

7.6 Public Utilities Impact. Contemporaneously with or prior to the approval of each final map applicable to the Project, Owner shall provide written evidence, acceptable to City, that Owner has fully satisfied all public utilities impact measures lawfully required by any public utility purveyor, including, without limitation, phone, water, electric, cable television and gas, which will service that portion of the Project. Failure to provide such evidence will result in disapproval of any final map.

7.7 Alternative Improvements Interests. City and Owner acknowledge and agree that acquisition of the real property and other interests necessary for the construction of the Public Improvements described in this ARTICLE 7 is subject to the provisions of Section 6.7. If, due to any reason whatsoever, Owner is unable to construct those Public Improvements described in this ARTICLE 7 due to the inability of either Owner or City to acquire the necessary real property or other interests to allow such construction, then Owner shall construct alternative improvements of an equal or greater value than those improvements which would have been constructed had the necessary property and other interests been obtained or pay an in lieu thereof if applicable. The value of such alternative improvements shall be as determined in the City’s reasonable discretion, consistent with the programs, studies and reports substantiating the amount of development impact fees adopted by the City. Construction of the alternative improvements shall be in accordance with plans and specifications approved by City in accordance with all codes, ordinances, regulations, standards, and policies in effect at the time of the construction of the improvements.

7.8 Environmental Site Inspection. Owner hereby grants to the City, its agents, contractors, employees and other representatives the right to enter upon the Property during reasonable business hours for purposes including, without limitation, the surveying, inspecting, photographing, sampling, and other testing necessary, in the City’s absolute discretion, to the

determination of whether hazardous or toxic pollutants, contaminants or materials (collectively, “environmental contaminants”) are located upon any property which the City will be receiving through Dedication including, without limitation, parks, rights of way, and utility easements. Upon discovery of any environmental contamination, Owner shall immediately cease any work that may have begun upon the Project, will notify all appropriate governmental authorities and regulatory agencies, and will take all steps necessary to comply with any provisions of any federal or state environmental laws, including the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, and all other federal or state statutes of similar import and effect.

7.9 Dedication. The term “Dedicate” as used in this ARTICLE 7 means to acquire and offer the subject land for dedication and to construct the improvements to be constructed by the Owner on such land pursuant to this ARTICLE 7 and thereafter to convey such land and improvements to the City. Owner shall convey the land on which the Public Improvements are to be constructed at the time provided therefor by the Infrastructure Phasing Plan, but in no event later than the recordation of the final tract map for which such Public Improvement(s) was/were a condition of approval. Owner shall Dedicate/convey easement interests in all property required to be Dedicated by this Agreement. The Owner shall Dedicate each Public Improvement upon completion of a segment component of such Public Improvement.

7.10 Minimum Dwelling Unit Size. Owner agrees that the minimum single family dwelling unit size permitted in the subdivision shall be no less than 1,400 square feet of living space. The minimum square foot requirement excludes garages, patios and/or porches whether enclosed or not.

7.11 Fiber Optic and Networking Installation for Dwelling Units. Owner agrees to install in each dwelling unit the following fiber optic and networking requirements:

A. Building Department Requirements

(a) Install a Dedicated City Fiber Enclosure adjacent to the other utility enclosures or a Common Communication Enclosure (collectively “Utility Enclosure”) for the proposed communications utilities (phone, cable, fiber, etc.). The enclosure type shall be Benner-Nawman 14326W-UL or as approved by the City. The Utility Enclosure may face the garage exterior or interior and shall include one 120-volt, 15-amp convenience receptacle inside the enclosure mounted on either side of the wall. A surge-protected receptacle must be installed.

(b) Install a wireless-transparent Structured Media Enclosure (“Media Enclosure”), such as models: Legrand 30” ENP3050, Legrand 42” ENP4250, Leviton 30” 49605-30W, Primex Verge 30” P3000, 42” Primex Verge P4200, or as approved by the City. The Media Enclosure shall be installed in the wall of a master bedroom closet or a laundry room furthest from the water supply and maintain a minimum 48-inch horizontal clearance between and 24-inch

clearance above any metallic appliances or accessories. The Media Enclosure shall include one 120-volt, 15-amp convenience receptacle located inside the enclosure.

(c) Install a conduit pathway from the Utility Enclosure to the Media Enclosure with a minimum of one (1) 1-inch diameter non-metallic, flexible conduit which shall maintain a minimum 36-inch bend radius and protrude a minimum of 6-inches into the enclosures. The conduit shall be marked with orange Tyvek or plastic tags, labeled "City Fiber Use Only", 661-746-5000", tie wrapped to the conduit in plain view within the enclosures.

(d) Install a continuous conduit without breaks or couplings from the existing City Fiber Distribution Enclosure located in the right-of-way ("Distribution Enclosure") to the bottom side of the Utility Enclosure. The conduit shall be installed a minimum of 36-inches below grade, protrude a minimum of 12-inches into the Utility Enclosure, be orange in color, and be factory labeled "City of Shafter 661-746-5000". If the conduit does not have an integrated tracer wire, a continuous external #12 AWG solid-conductor tracer wire with high-density polyethylene insulation rated for direct burial shall be installed along with the conduit leaving a minimum 15-feet of slack coiled in the Distribution Enclosure and 3-feet of slack coiled in the Utility Enclosure. The conduit and tracer wire shall be inspected by a City of Shafter representative before shading and backfilling.

(1) After backfilling, polyester cable pulling tape (Muletape), or equivalent, shall be installed in all conduit paths between the Distribution Enclosure and the Utility Enclosure. Mule tape shall be slack (no tension) and fastened to the plug or cap.

(2) Couplings shall be used to repair damaged or short-length conduit only if approved by the City. Conduit couplings shall be an air-tight, water-tight, push-on compression fitting approved by the City. Tracer wire couplings shall be air-tight, water-tight, twist on or compression connector approved by the City. Coupling integrity shall be inspected by a City of Shafter representative.

(e) Category 6 Unshielded Twisted Pair (CAT 6 UTP) cable (or as approved by the City) shall be installed according to industry standards and the requirements below, and shall not be pinched, stapled, bent sharply, or crossing any sharp, unprotected edges:

(1) Install a minimum of two (2) cables from the Utility Enclosure to the Media Enclosure.

B. Engineering Department Requirements

(f) Developer shall design and install a system of conduits, terminal enclosures, distribution enclosures, splice enclosures, connection points, and hand holes for a fiber

optic network to each buildable lot within the development. Design and material specifications are available from the City of Shafter. Plans shall be submitted to and approved by the City of Shafter, prior to recordation of the final map, showing the proposed utility trench and all appurtenant hardware. The design shall include the following minimum specifications:

(1) A combination of fiber optic conduits shall minimally include 4" SDR-11 HDPE, 2" SDR-11 HDPE, 1.25" SDR-11 HDPE, and 7-Way bundled HPDE innerduct with attached tracer wire. Fiber optic conduits may be joint-trenched with other utility company pipes and/or conduits.

(2) All underground fiber optic conduits, innerduct bundles, etc. shall be factory-labeled "City of Shafter 661-746-5000". Conduits shall be identified by a permanent marking, with the address number of the residence they serve, within the distribution enclosures.

(3) All underground fiber optic conduit paths shall have tracer wire. If the conduit does not have an integrated tracer wire, a continuous external #12 AWG solid-conductor tracer wire with high-density polyethylene insulation rated for direct burial shall be installed along with the conduit leaving a minimum 15-feet of slack coiled in the endpoint enclosures.

(4) The ends of all fiber optic conduits and innerducts shall be plugged or capped to prevent dirt, debris, or foreign objects from entering.

(5) After backfilling, all conduits shall be checked for obstructions, and re-excavated and repaired or replaced as required. All conduits ½-inch or larger shall require polyester cable pulling tape (Muletape) or equivalent installed. Polyester cable pulling tape (Muletape) shall be slack (no tension) and fastened to the plug or cap. Innerducts shall be mandrel tested and are subject to inspection by a City of Shafter representative.

(6) A combination of underground utility enclosures shall minimally include 36"W x 60"L x 36"D polymer concrete enclosures with dual torsion covers, 36"W x 36"L x 24-36"D and 24"W x 36"L x 24-36"D High Density Polyethylene (HDPE) enclosures.

(7) All underground utility enclosures shall be factory-stamped "City Fiber".

ARTICLE 8. FINANCING OF PUBLIC IMPROVEMENTS AND MAINTENANCE OBLIGATIONS

8.1 Maintenance Services Community Facilities District. The City and the Owner agree to the formation of a new, or annexation to an existing, Communities Facilities District (“CFD”) pursuant to the terms of the Mello-Roos Community Facilities Act of 1982, being Chapter 2.5 of Part 1 of Division 2 of Title 5 of the California Government Code commencing with section 53311, as amended (the “Act”). The territory of which shall include the Project, for the purposes of the payment of the ongoing maintenance and operation costs associated with certain public services authorized under the Act (“Services”) located within, or appurtenant to, the Project. Owner shall consent to the annexation or the formation of the CFD prior to recordation of the first final map for the Project or the first sale, transfer or conveyance of the Property or any portion thereof. The Owner further expressly agrees that failure of Owner to consent to the annexation or formation of such CFD will result in disapproval of any future tentative or final maps for the Project and will be cause for the City to terminate this Agreement.

The Owner also agrees that additional areas may be annexed into the CFD to be created pursuant to this Section 8.1; provided, however, that after giving effect to such annexation, the Owner is subject only to its fair share of the obligations and costs of providing the ongoing maintenance of the Services incurred for the Project. The Owner agrees to cooperate fully in any such annexation proceedings.

8.2 Public Safety Community Facilities District. The City and the Owner agree to the formation of a new, or the annexation to an existing, CFD pursuant to the terms of the Act, the territory of which shall include the Project, for the purposes of the payment of the ongoing costs associated with providing police protection, fire protection and suppression services, and other public services as authorized by the Act (“Public Services”). Owner shall consent to the annexation or the formation of the CFD prior to recordation of the first final map for the Project or the first sale, transfer or conveyance of the Property or any portion thereof. The Owner further expressly agrees that the failure of Owner to consent to the annexation or formation of such CFD will result in disapproval of any future tentative or final maps for the Project and will be cause for the City to terminate this Agreement.

The Owner also agrees that additional areas may be annexed into the CFD to be created pursuant to this Section 8.2; provided, however, that after giving effect to such annexation, the Owner is subject only to its fair share of the obligations and costs incurred because of providing the Public Services. The Owner agrees to cooperate fully in any such annexation proceedings.

The Owner agrees that the Public Safety Community Facilities District may be formed as part of or separate from the Maintenance Services Community Facilities District described in Section 8.1 of this Agreement, at the City’s discretion.

ARTICLE 9. REVIEW FOR COMPLIANCE

9.1 Periodic Review. The City Manager, or his or her designee, shall review this Agreement annually on or before the anniversary of the Effective Date, in order to ascertain the good faith compliance by Owner with the terms of the Agreement. Owner shall submit an Annual Monitoring Report, in a form acceptable to, and containing such information as may be requested by the City Manager, or his or her designee, within 30 days after written notice from the City Manager, or his or her designee. The Annual Monitoring Report shall be accompanied by an annual review and administration fee, in an amount consistent with then-existing City fee schedules and resolutions, sufficient to defray the estimated costs of review and administration of the Agreement during the succeeding year. The amount of the annual review and administration fee shall be set annually by resolution of the City Council. Neither City nor Owner shall have a duty to notify the other of their respective obligations hereunder and the City's failure to so conduct such annual reviews shall not affect the rights, protection, and benefits afforded Owner by the Development Agreement Law and this Agreement shall remain subject to the Development Agreement Law.

9.2 Special Review. The Planning Commission or City Council may order a special review of compliance with this Agreement at any time. The City Manager, or his or her designee, shall conduct such special reviews.

9.3 Procedure.

(a) During either a periodic review or a special review or at any time upon City's determination that Owner is in default of this Agreement as described in Section 10.4, Owner shall be required to demonstrate good faith compliance with the terms of the Agreement. The burden of proof on this issue shall be on Owner.

(b) Upon completion of a periodic review or a special review, the City Manager, or his or her designee, shall submit a report to the Planning Commission setting forth the evidence concerning good faith compliance by Owner with the terms of this Agreement and his/her recommended finding on that issue.

(c) If the Planning Commission finds based on substantial evidence that Owner has complied in good faith with the terms and conditions of this Agreement, the review shall be concluded.

(d) If the Planning Commission makes a preliminary finding that Owner has not complied in good faith with the terms and conditions of this Agreement, the Planning Commission may recommend to the City Council that the City Council commence proceedings to modify or terminate this Agreement and the City Council may proceed to modify or terminate this Agreement under Section 9.4 and Section 9.5. Notice of default and opportunity to cure as provided

under Section 10.4 of this Agreement shall be given to Owner prior to or concurrent with proceedings under Section 9.4 and Section 9.5.

9.4 Proceedings Upon Modification or Termination. If, upon a recommendation of the Planning Commission under Section 9.3(d), the City Council determines to proceed with modification or termination of this Agreement, the City Council shall give written notice to Owner of its intention so to do. The notice shall be given at least ten calendar days prior to the scheduled hearing and shall contain:

- (a) The time and place of the hearing;
- (b) A statement as to whether or not the City Council proposes to terminate or to modify the Agreement; and the specifics of such modifications;
- (c) Such other information as is reasonably necessary to inform Owner of the nature of the proceeding.

9.5 Hearing on Modification or Termination. At the time and place set for the hearing on modification or termination, Owner shall be given an opportunity to be heard. Owner shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. The burden of proof on this issue shall be on Owner. If the City Council finds, based upon substantial evidence, that Owner has not complied in good faith with the terms or conditions of the Agreement the City Council may terminate this Agreement notwithstanding any other provision of this Agreement to the contrary, or modify this Agreement and impose such conditions as are reasonably necessary to protect the interests of the City. The decision of the City Council shall be final, subject only to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

9.6 Certificate of Agreement Compliance. If, at the conclusion of a Periodic or Special Review, Owner is found to be in compliance with this Agreement, City shall, upon request by Owner, issue a Certificate of Agreement Compliance ("Certificate") to Owner stating that after the most recent Periodic or Special Review and based upon the information known or made known to the Planning Commission and City Council that (1) this Agreement remains in effect and (2) Owner is not in default. The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, shall state whether the certificate is issued after a Periodic or Special Review, and shall state the anticipated date of commencement of the next Periodic Review. Owner may record the Certificate with the County Recorder.

Whether or not the Certificate is relied upon by assignees or other transferees of Owner, City shall not be bound by a Certificate if a default existed at the time of the Periodic or Special Review but was concealed from or otherwise not known to the City Manager.

ARTICLE 10. DEFAULT AND REMEDIES

10.1 Remedies in General. It is acknowledged by the parties that City would not have entered into this Agreement if it were to be liable in damages under this Agreement, or with respect to this Agreement or the application thereof.

In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement, except that City shall not be liable in damages, including, without limitation, attorneys' fees and litigation costs, to Owner, or to any mortgagee or lender of Owner or to a successor in interest of Owner, or a mortgagee or lender of Owner, or to any other person, and Owner covenants not to sue for damages or claim any damages:

(a) For any breach of this Agreement or for any cause of action which arises out of this Agreement; or

(b) For the impairment or restriction of any right or interest conveyed or provided under, with, or pursuant to this Agreement, including, without limitation, any impairment or restriction which Owner characterizes as a regulatory taking or inverse condemnation; or

(c) Arising out of or connected with any dispute, controversy or issue regarding the application or interpretation or effect of the provisions of this Agreement.

Further, nothing contained herein shall modify or abridge Owner's rights or remedies (including its rights for damages, if any) resulting from the exercise by City of its power of eminent domain; provided, however, that such exercise results in a physical occupation of the Property or portion thereof. Except as set forth in the preceding sentence, Owner's remedies shall be limited to those set forth in this Section 10.1 and Sections 9.5 and 10.2.

10.2 Specific Performance. The parties acknowledge that money damages and remedies at law generally are inadequate, and specific performance and other non-monetary relief, including temporary and permanent injunction relief, are particularly appropriate remedies for the enforcement of this Agreement and should be available to all Parties for the following reasons:

(a) Money damages are unavailable against the City.

(b) Due to the size, nature, and scope of the Project, it may not be practical or possible to restore the Property to its natural condition once implementation of this Agreement has begun. After such implementation, Owner may be foreclosed from other choices it may have had to utilize the Property or portions thereof. Owner has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement, and it is not possible to determine the sum of money which would adequately compensate Owner for such efforts; the parties acknowledge and agree that any injunctive relief may be ordered on an expedited, priority basis.

(c) Owner shall not be required to post a bond to obtain injunctive relief.

10.3 Release. Except for nondamage remedies and except as otherwise provided in this Agreement, including the remedy of specific performance and judicial review as provided for in Section 9.5, Owner, for itself, its successors and assignees, hereby releases the City, its officers, agents and employees from any and all claims, demands, actions, or suits or any kind or nature 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, ordinance, or judicial decision which seeks to impose any other liability or damage, whatsoever, upon the City because it entered into this Agreement or because of the terms of this Agreement.

Without limiting the generality of anything in the immediately preceding paragraph, Owner, for itself and its successors and assigns, hereby expressly waives the benefit of, and any protections provided by Civil Code Section 1542, which provides:

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

In addition to waiving the provisions of California Civil Code section 1542, the Owner hereby waives, releases, and foregoes the provisions of any federal or state statute or judicial decision of similar effect.

10.4 Termination or Modification for Default of Developer. City may terminate or modify this Agreement for any failure of Owner to perform any material duty or obligation of Owner under this Agreement as provided in Article 6 hereof, or to comply in good faith with the terms of this Agreement (hereinafter referred to as “default”); provided, however, City may terminate or modify this Agreement pursuant to this Section in accordance with Article 6 hereof only after providing written notice to Owner of default setting forth the nature of the default and the actions, if any, required by Owner to cure such default and, where the default can be cured, Owner has failed to take such actions and cure such default within sixty (60) days after the effective

date of such notice or, in the event that such default cannot be cured within such sixty (60) day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such sixty (60) day period and to diligently proceed to complete such actions and cure such default.

10.5 Termination of Agreement for Default of City. Owner may terminate this Agreement only in the event of a default by City in the performance of a material term of this Agreement and only after providing written notice to City of default setting forth the nature of the default and the actions, if any, required by City to cure such default and, where the default can be cured, City has failed to take such actions and cure such default within 60 days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 60 day period and to diligently proceed to complete such actions and cure such default.

ARTICLE 11.

THIRD PARTY LITIGATION

11.1 General Plan Litigation. City has determined that this Agreement is consistent with its General Plan, and that the General Plan meets all requirements of law. Owner has reviewed the General Plan and concurs with City's determination. City shall have no liability under this Agreement for any failure of City to perform under this Agreement or the inability of Owner to develop the Property as contemplated by the Development Plan, which failure to perform or inability to develop is as the result of a judicial determination that on the Effective Date, or at any time thereafter, the General Plan, or portions thereof, are invalid or inadequate or not in compliance with law, or that this Agreement or any of City's actions in adopting it were invalid, inadequate or not in compliance with law.

11.2 Third Party Litigation Concerning Agreement. Owner shall defend, at its expense, including attorneys' fees, indemnify, and hold harmless City, its agents, officers and employees from any claim, action or proceeding against City, its agents, officers, or employees to attack, set aside, void, or annul the approval of this Agreement or the approval of any permit granted pursuant to this Agreement. City shall promptly notify Owner of any such claim, action or proceeding, and City shall cooperate in the defense. If City fails to promptly notify Owner of any such claim, action or proceeding, or if City fails to cooperate in the defense, Owner shall not thereafter be responsible to defend, indemnify or hold harmless City. City may in its discretion participate in the defense of any such claim, action or proceeding.

11.3 Indemnity. In addition to and not as a limitation upon the provisions of Sections 11.1 and 11.2 above, Owner shall indemnify, defend and hold harmless City, its officers, agents, employees and independent contractors free and harmless from all liability whatsoever, based or asserted upon any act or omission of Owner, its officers, agents, employees, subcontractors and independent contractors, for property damage, bodily injury or death (Owner's employees included) or any other element of damage of any kind or nature, relating to or in any way connected

with or arising from the activities contemplated hereunder including, but not limited to, the design, engineering, construction, completion, operation, maintenance, repair, failure, conveyance or physical condition of the Public Improvements.

The foregoing obligation shall not apply to any claims for damages which arise through the sole active negligence or sole willful misconduct of City. Owner shall defend, at its sole cost, expense, and liability, including attorneys' fees, City, its officers, agents, employees, and independent contractors in any legal action based upon such alleged acts or omissions of Owner. City may, in its discretion, participate in the defense of any such legal claim, action or proceeding and shall be entitled to reimbursement from Owner for all costs associated with such defense including, without limitation, reasonable attorneys' fees.

11.4 Environmental Contamination. Owner shall indemnify and hold City, its officers, agents, and employees free and harmless from any liability, based or asserted, upon any act or omission of Owner, its officers, agents, employees, subcontractors, predecessors in interest, successors, assigns and independent contractors, excepting any acts or omissions of City as successor to any portions of the Property Dedicated or transferred to City by Owner, for any violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to environmental conditions on, under or about the Property, including, but not limited to, soil and groundwater conditions, and Owner shall defend, at its expense, including attorneys, fees, City, its officers, agents and employees in any action based or asserted upon any such alleged act or omission. City may in its discretion participate in the defense of any such claim, action or proceeding.

11.5 City to Approve Counsel. With respect to Sections 11.1, through 11.4, inclusive, herein, City reserves the right to either (1) approve the attorney(s) which Owner selects, hires or otherwise engages to defend City hereunder, which approval shall not be unreasonably withheld, or (2) conduct its own defense; provided, however, that Owner shall reimburse City forthwith for any and all reasonable expenses incurred for such defense, including attorneys' fees, upon billing and accounting therefor.

11.6 {Intentionally left blank}

11.7 Survival. The provisions of Sections 11.1 through 11.6 inclusive, shall survive the expiration or early termination of this Agreement.

11.8 No Waiver of Common Law or Statutory Obligations. City and Owner acknowledge and agree that this Agreement shall not constitute a waiver or abridgement of any common law or statutory obligations which Owner may have with respect to indemnification, defense, and contribution if any action or proceeding is commenced against City which is based upon this Agreement, or which is in any way related to any actions taken by Owner pursuant to this Agreement.

ARTICLE 12.

MORTGAGEE PROTECTION

The parties hereto agree that this Agreement shall not prevent or limit Owner, in any manner, at Owner's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property. City acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with Owner and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. City will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement, provided, further, that any modifications of this Agreement are subject to the provisions of Section 5.5 of this Agreement. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any mortgage on the Property made in good faith and for value.

(b) The Mortgagee of any mortgage or deed of trust encumbering the Property, or any part thereof, which Mortgagee has submitted a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive written notification from City of any default by Owner in the performance of Owner's obligations under this Agreement.

(c) If City timely receives a request from a Mortgagee requesting a copy of any notice of default given to Owner under the terms of this Agreement, City shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to Owner. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed Owner under this Agreement.

(d) Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of Owner's obligations or other affirmative covenants of Owner hereunder, or to guarantee such performance. However, to the extent that the performance of such covenant by Owner is a condition precedent to the performance of any act by the City, the City shall have no obligation to perform such act hereunder unless and until the Mortgagee performs the covenant of Owner which is the condition precedent to the City's performance. Although a Mortgagee is not obligated to perform the obligations and covenants of Owner hereunder, if the Mortgagee elects to so perform, such performance shall be in full accordance with the terms of this Agreement. Any sale, transfer, or assignment by any Mortgagee in possession shall be subject to the provisions of Section 5.4 of this Agreement.

ARTICLE 13.

MISCELLANEOUS PROVISIONS

13.1 Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the Kern County Recorder by the City Clerk within the period following the Operative Date as required by Section 65868.5 of the Government Code.

13.2 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

13.3 Severability. If any term, provision, covenant, or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. Notwithstanding the foregoing, the provision of the Public Benefits set forth in ARTICLE 7 of this Agreement, including the payment of the fees set forth therein, are essential elements of this Agreement and City would not have entered into this Agreement but for such provisions, and therefore in the event such provisions are determined to be invalid, void or unenforceable, this entire Agreement shall be null and void and of no force and effect whatsoever. Notwithstanding the foregoing, the development rights set forth in Section 6 of this Agreement are essential elements of this Agreement and Owner would not have entered into this Agreement but for such provisions, and therefore in the event such provisions are determined to be invalid, void or unenforceable, this entire Agreement shall be null and void and of no force and effect whatsoever.

13.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

13.5 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

13.6 Singular and Plural. As used herein, the singular of any word includes the plural.

13.7 Joint and Several Obligations. If at any time during the term of this Agreement any part of the Property is jointly owned, in whole or in part, by more than one owner, all obligations of such owners under this Agreement as to that portion of the Property jointly owned shall be joint and several, and the default of any such owner shall be the default of all such owners.

Notwithstanding the foregoing, no owner of a single lot which has been finally subdivided and sold to such owner as a member of the public or otherwise as an ultimate user shall have any obligation under this Agreement except as provided herein.

13.8 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

13.9 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

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

13.11 Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, government regulations, or court actions (such as restraining orders or injunctions). If any such events shall occur, the term of this Agreement and the time for performance by either party of any of its obligations hereunder may be extended by the written agreement of the parties for the period of time that such events prevented such performance, provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years. The failure of either party to obtain or maintain financing necessary for the performance of its respective obligations and duties hereunder shall not be deemed a cause for an extension of the term of this Agreement or a cause for the extension of time for performance of any such obligation by any party hereunder unless mutually agreed to by the parties in writing.

13.12 Mutual Covenants. The covenants contained herein are mutual covenants and constitute conditions for the concurrent or subsequent performance by the party benefitted thereby of the covenants to be performed hereunder by such benefitted party.

13.13 Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder regarding development of the Property: (a) is for the benefit of and is a burden upon

every portion of the Property; (b) runs with the Property and each portion thereof; and (c) is binding upon each party and each successor in interest during Ownership of the Property or any portion thereof.

13.14 Counterparts. This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all the parties had executed the same instrument.

13.15 Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing, or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Kern, State of California. Each Party hereto irrevocably consents to the personal jurisdiction of that court. The City and the Owner each hereby expressly waive the benefit of any provision of federal or state law or judicial decision providing for the filing, removal, or change of venue to any other court or jurisdiction, including, without implied limitation, federal district court, due to any diversity of citizenship between the City and the Owner, due to the fact that the City is a party to such action or proceeding or due to the fact that a federal question or federal right is involved or alleged to be involved. Without limiting the generality of the foregoing, the Owner and the City specifically waive any rights provided to it pursuant to California Code of Civil Procedure Section 394. The Owner acknowledges that the provisions of Section 13.15 are material consideration to the City for its entry into this Agreement, in that the City will avoid the potential cost, expense and inconvenience of litigating in a distant forum.

13.16 Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between City and Owner is that of a government entity regulating the development of private property and the Owner of such property.

13.17 Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement. The provisions of this Section 13.17 shall not require the taking of any actions which are prohibited by law or, except as expressly set forth in this Agreement, including, without limitation, Section 6.7, impair the lawful legislative discretion of the City as to those matters to which the law imparts legislative discretion to the City.

13.18 Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by City of its power of eminent domain.

13.19 Agent for Service of Process. In the event Owner is not a resident of the State of California or is an association, partnership or joint venture without a member, partner or joint venturer resident of the State of California, or is a foreign corporation, then in any such event, Owner shall file with the City Manager or his or her designee, upon its execution of this Agreement, a designation of a natural person residing in the State of California, giving his or her name, residence and business addresses, as its agent for the purpose of service of process in any court action arising out of or based upon this Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon Owner. If for any reason service of such process upon such agent is not feasible, then in such event Owner may be personally served with such process out of this County and such service shall constitute valid service upon Owner. Owner is amenable to the process so served, submits to the jurisdiction of the Court so obtained, and waives all objections and protests thereto.

13.20 Authority to Execute. The person or persons executing this Agreement on behalf of Owner warrants and represents that he/they have the authority to execute this Agreement on behalf of his/their corporation, partnership or business entity and warrants and represents that he/they has/have the authority to bind Owner to the performance of its obligations hereunder.

13.21 Subsequent Amendment to Authorizing Statute. This Agreement has been entered into in reliance upon the provisions of the statute governing development agreements (Sections 65864 through 65869.5 inclusive) in effect as of the Effective Date. Accordingly, subject to Section 6.5 above, to the extent the subsequent amendment to the Government Code would affect the provisions of this Agreement, such amendment shall not be applicable to the Agreement unless necessary for this Agreement to be enforceable.

13.22 No Personal Obligation/No Completion Obligation. This Agreement in and of itself does not represent a personal obligation of individual officers, directors, and shareholders of Owner, its successors or assigns. Nothing herein contained shall in and of itself be deemed to create an obligation of the Owner, its successors or assigns to complete the development of the entire Project as contemplated, or any portion thereof. No officer, official, employee, agent, contractor, or attorney of the City shall have any personal liability or obligation for the performance of the City's obligations hereunder.

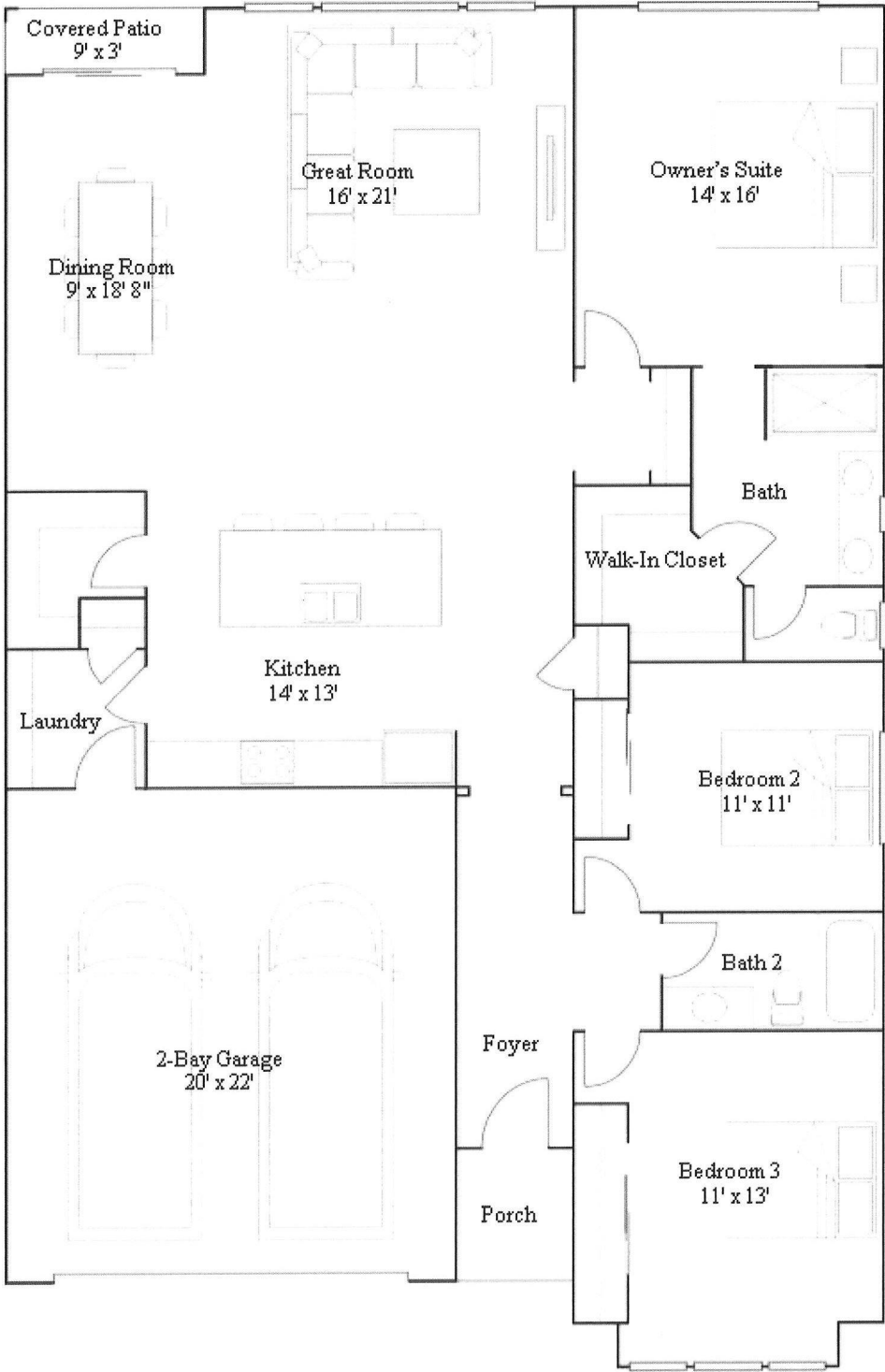
Choral Series

Tutti X

3 bd . 2 ba . 1,856 ft²

1st Floor

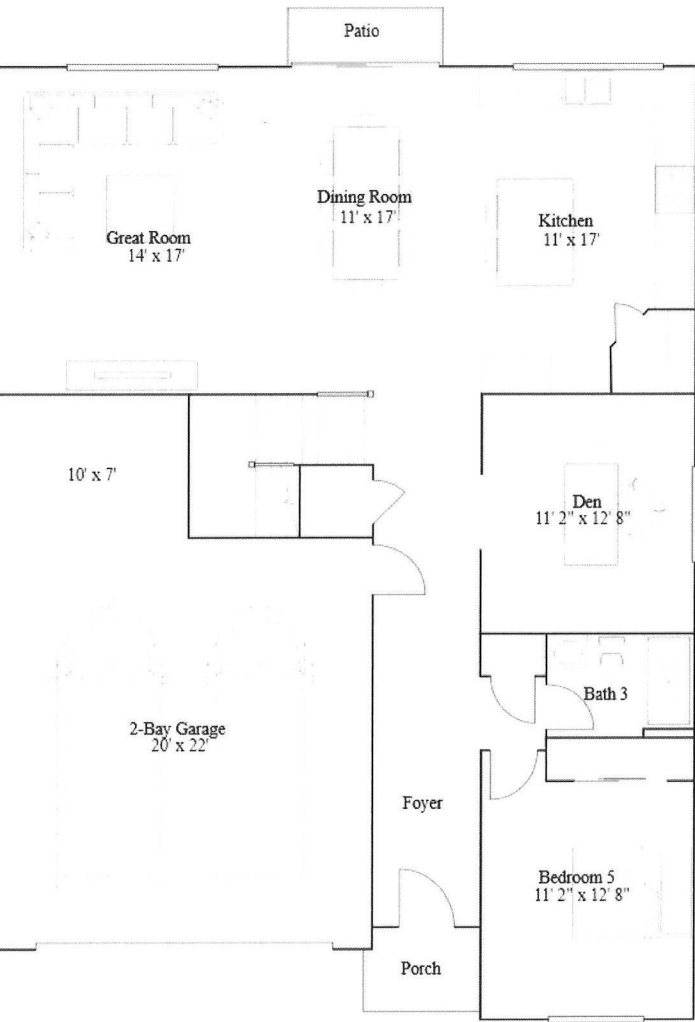
LENNAR



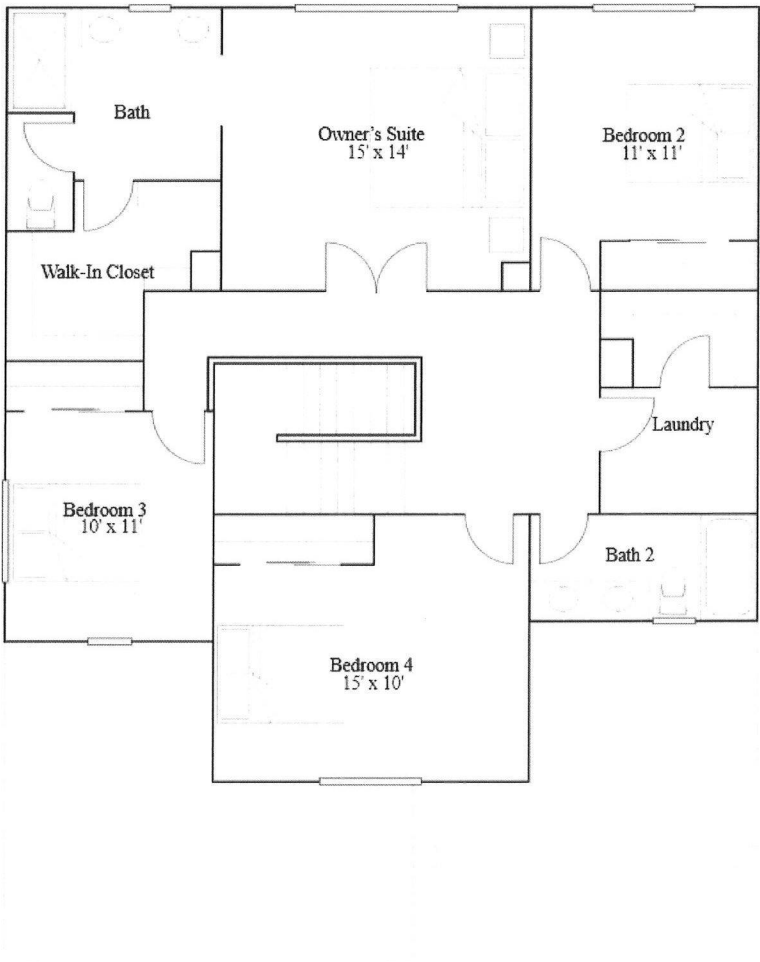
Melody X

5 bd . 3 ba . 2,578 ft²

1st Floor



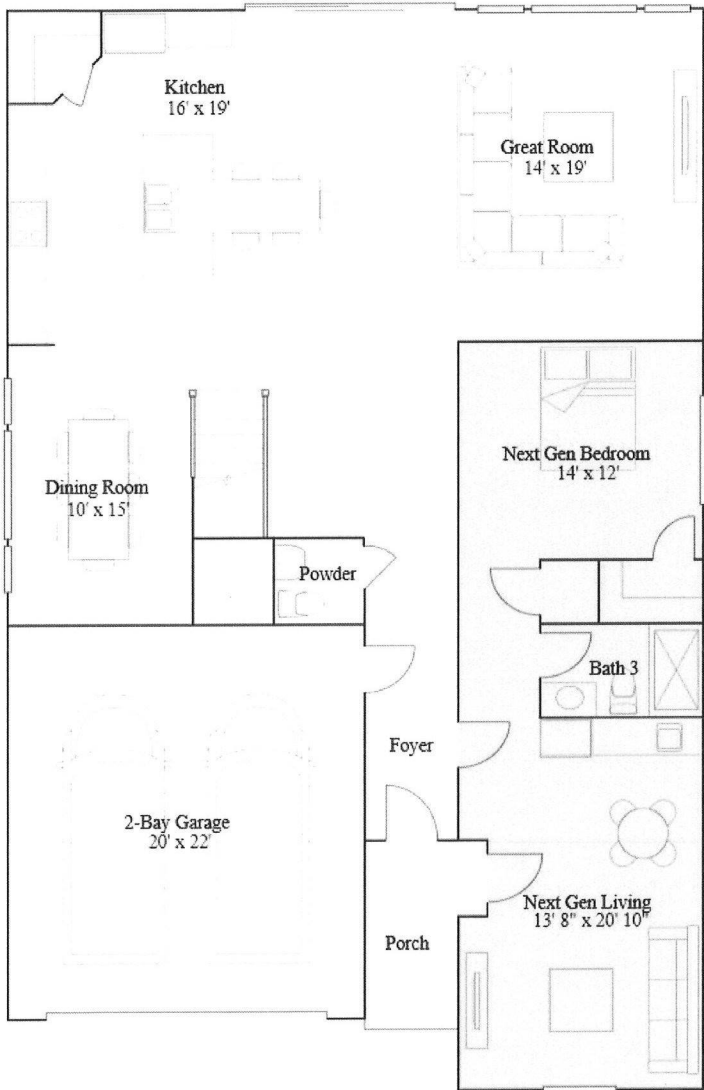
2nd Floor



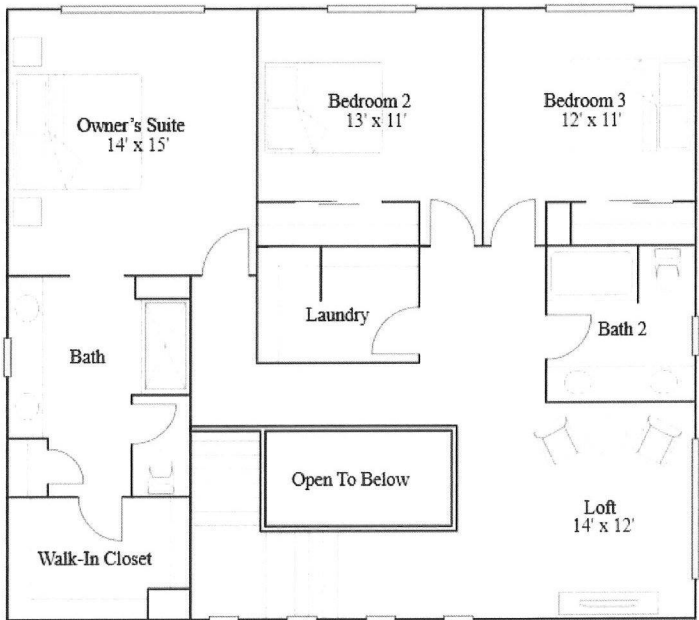
Symphony X

4 bd . 3 ba . 1 half ba . 3,156 ft²

1st Floor



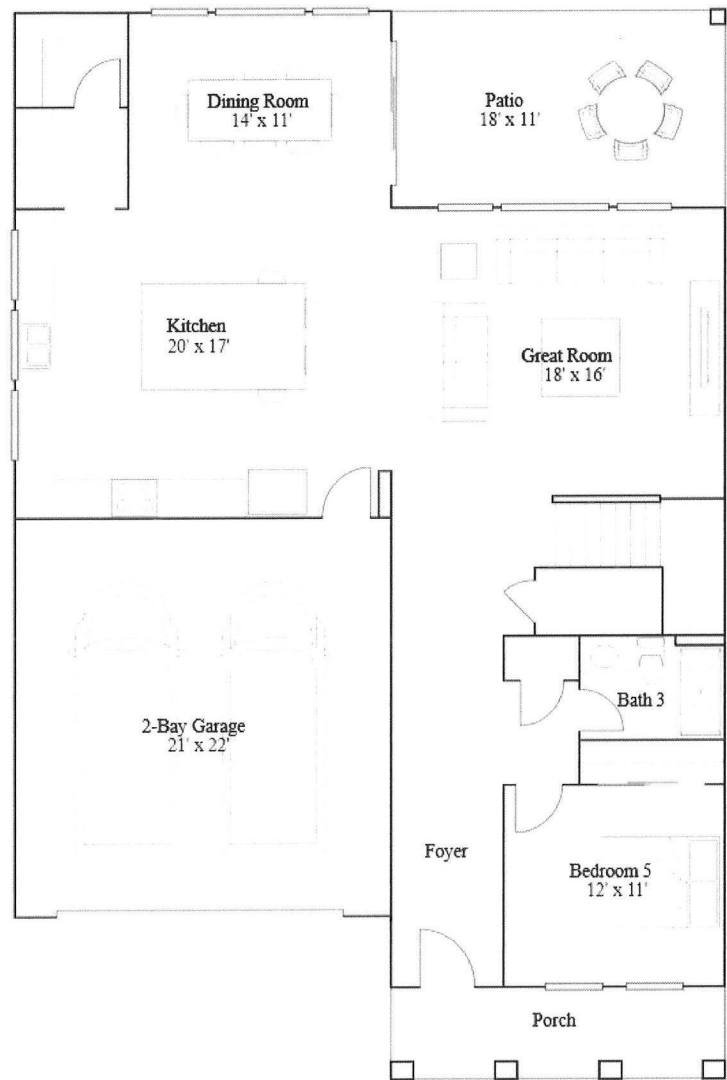
2nd Floor



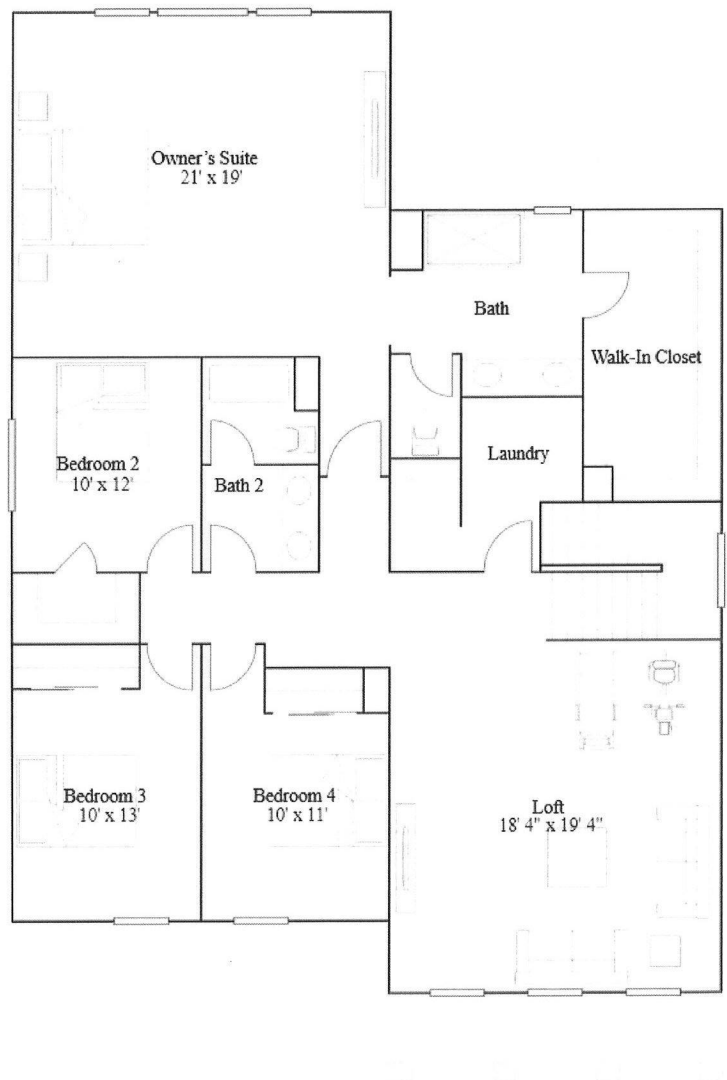
Orchestra X

5 bd . 3 ba . 3,278 ft²

1st Floor



2nd Floor



Skye Series

The Skye Series offers brand-new single-family homes for sale, including Next Gen® floorplans, at the Marcona Preserve master-planned community in Bakersfield, CA. Residents enjoy a low HOA and convenient proximity to great local attractions, nearby walking trails, parks and golf courses. Plus, the community is situated close to Highway 99 for simplified commutes and access to all that North Bakersfield has to offer.

Plans

Moonlight X

4 bd . 2 ba . 2,271 ft²

Alpenglow X

4 bd . 3 ba . 2,430 ft²

Borealis

4 bd . 3 ba . 2,508 ft²

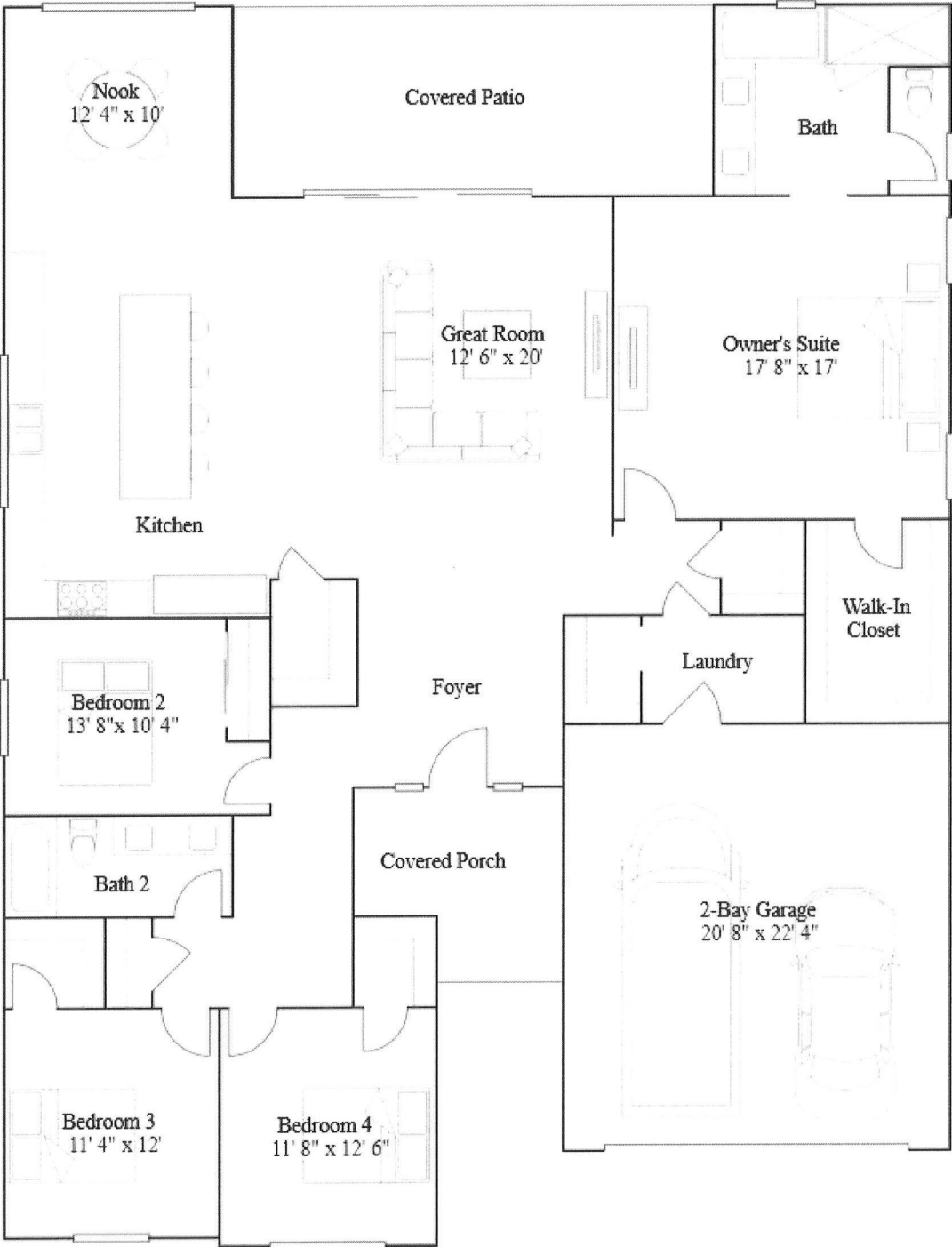
Solstice X

4 bd . 3 ba . 2,609 ft²

Moonlight X

4 bd . 2 ba . 2,271 ft²

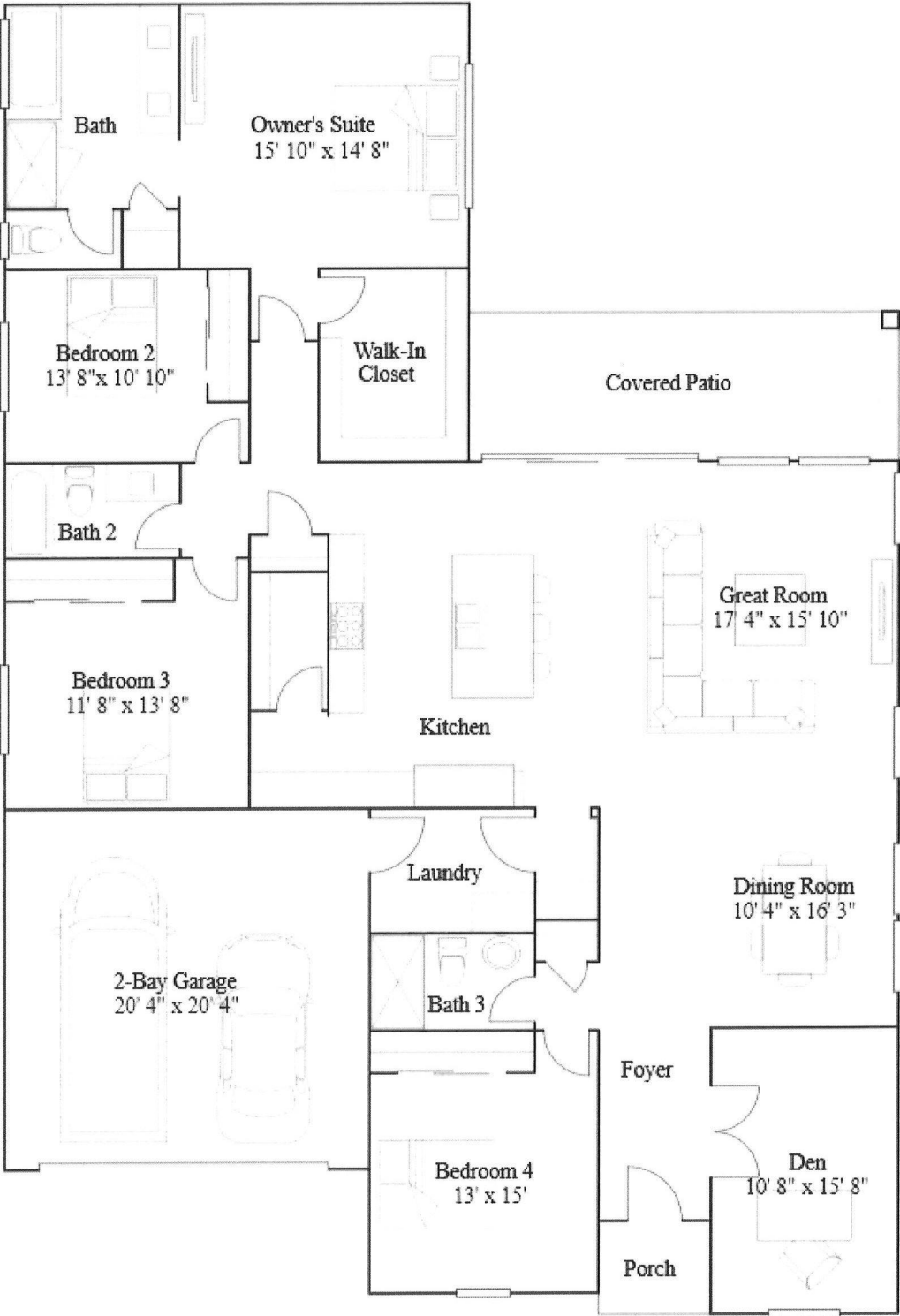
1st Floor



Alpenglow X

4 bd . 3 ba . 2,430 ft²

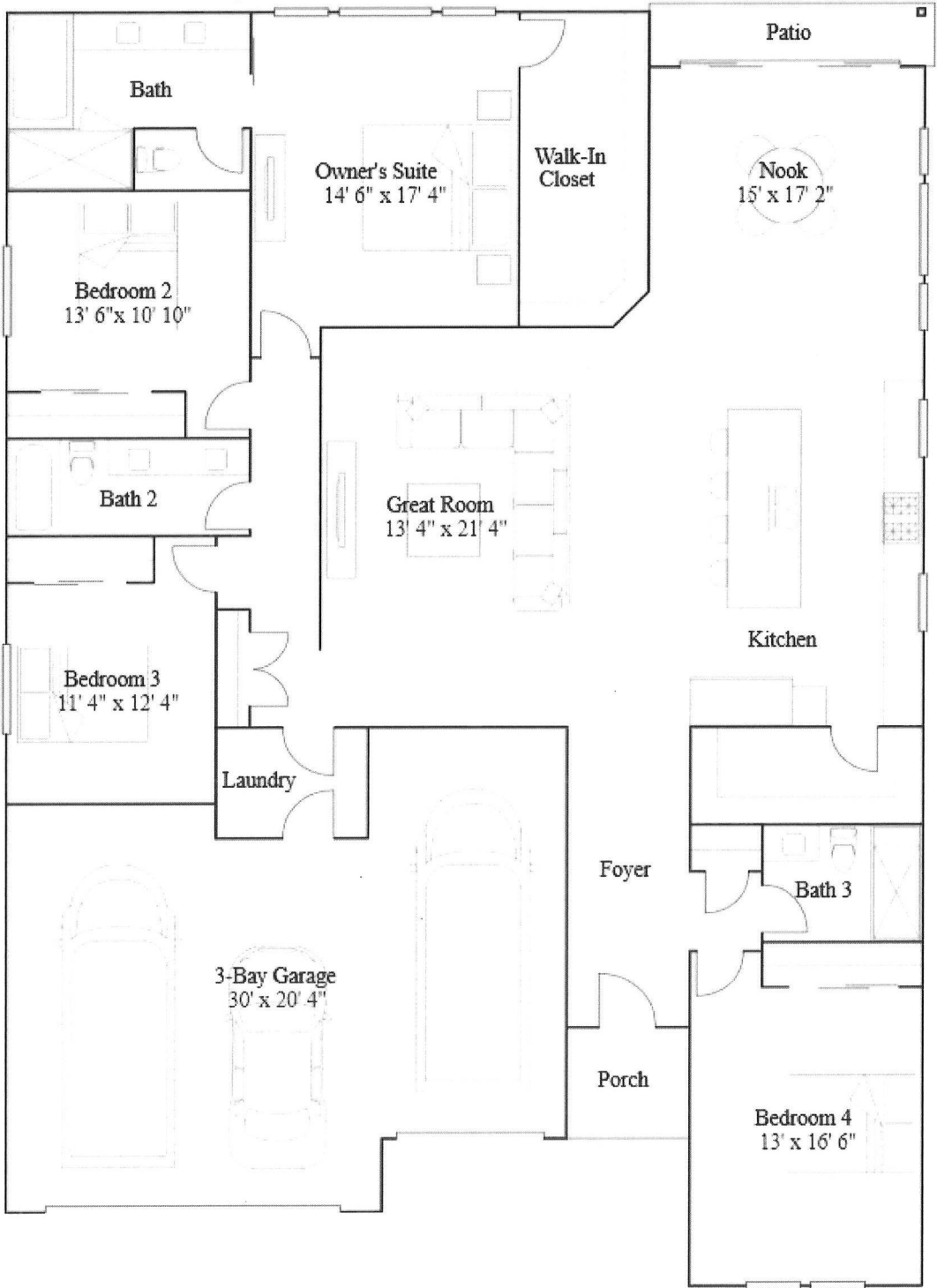
1st Floor



Borealis

4 bd . 3 ba . 2,508 ft²

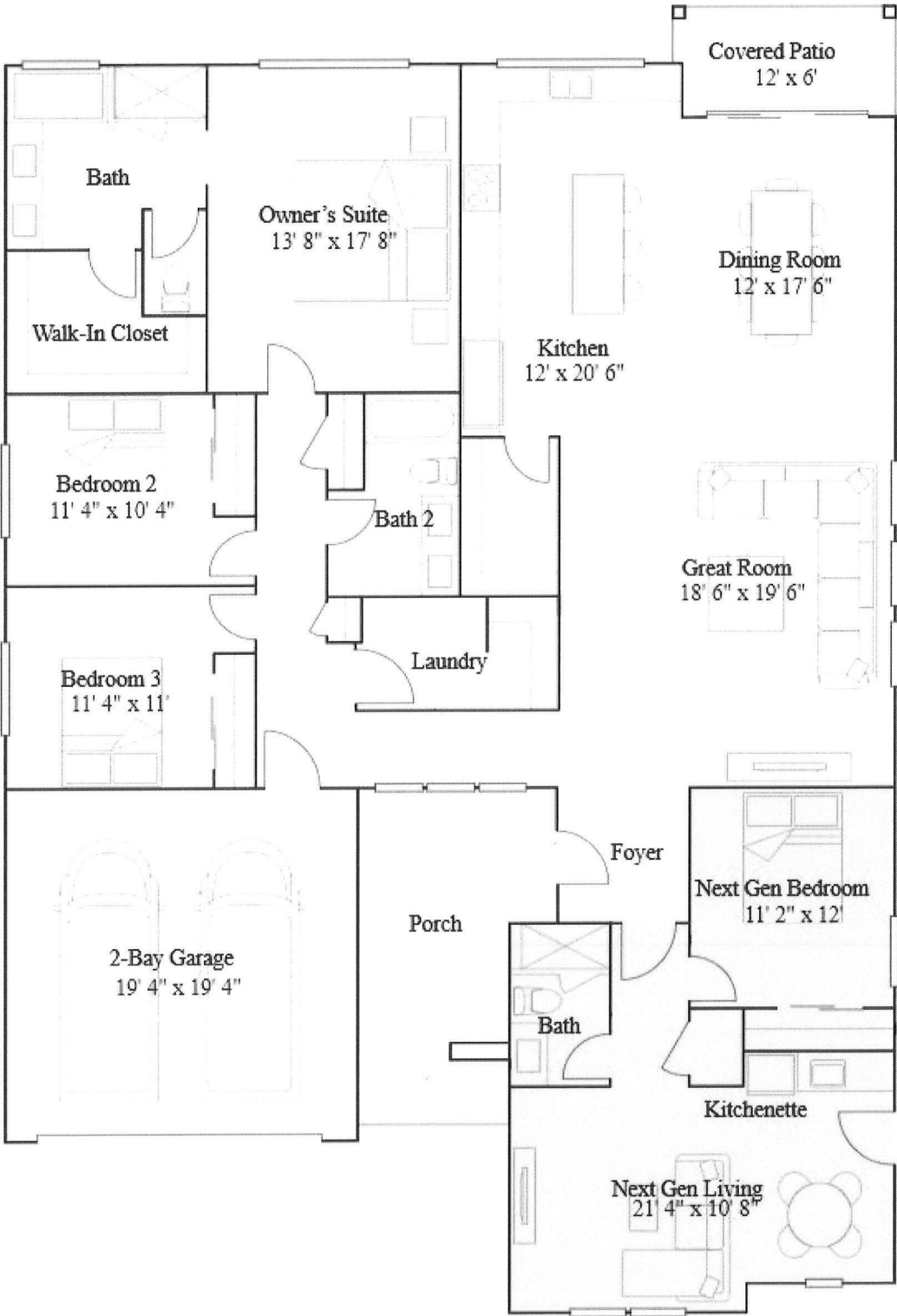
1st Floor



Solstice X

4 bd . 3 ba . 2,609 ft²

1st Floor



Solana Series

The Solana Series offers brand-new single-family homes for sale, including Next Gen® floorplans, at the Marcona Preserve master-planned community in Bakersfield, CA. Residents enjoy onvenient proximity to great local attractions, nearby walking trails, parks and golf courses. Plus, the community is situated close to Highway 99 for simplified commutes and access to all that North Bakersfield has to offer.

Plans

Arroyo

4 bd . 2 ba . 1,820 ft²

Bodega

5 bd . 3 ba . 2,169 ft²

Cabrillo

3 bd . 3 ba . 2,280 ft²

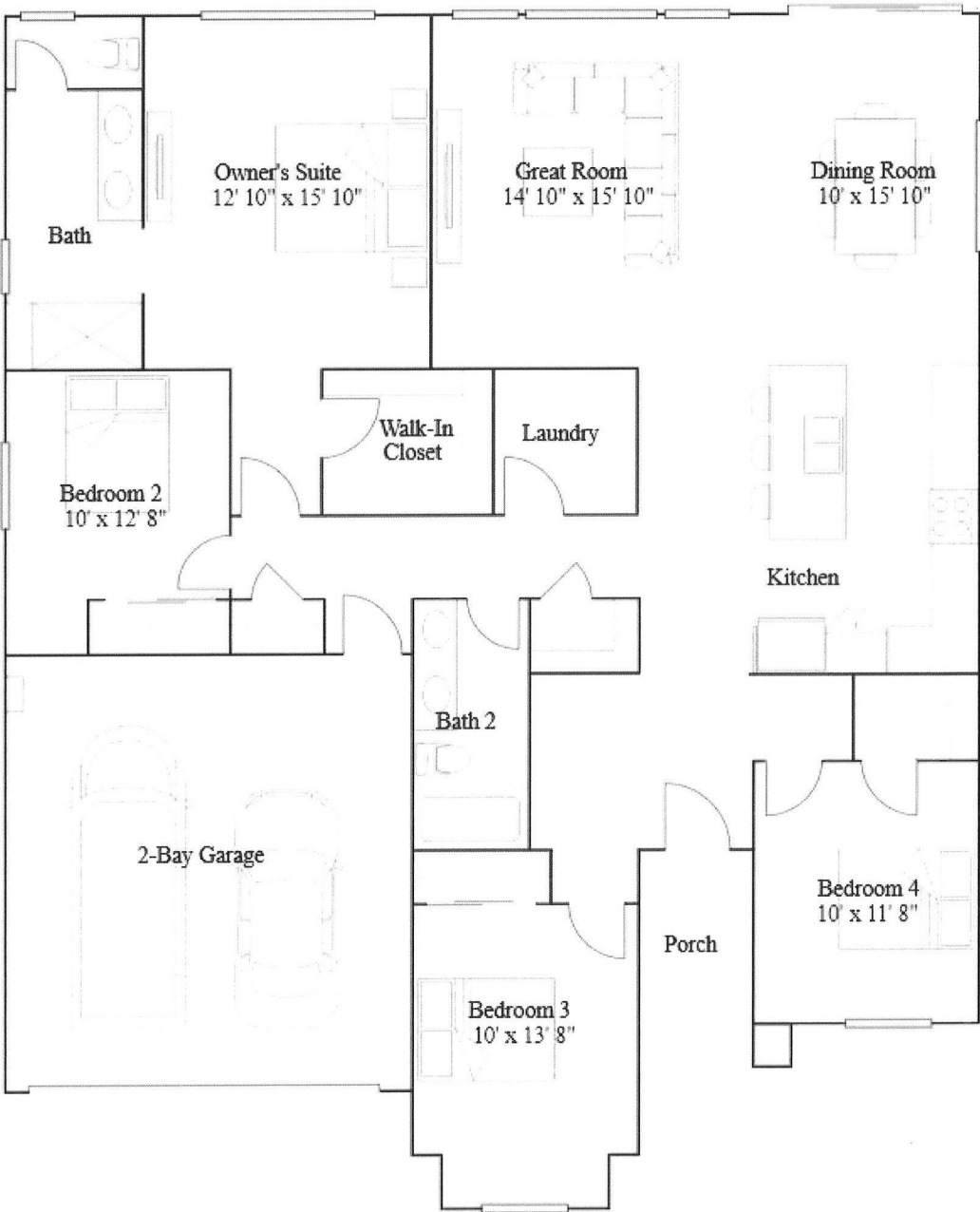
Esplanade

3 bd . 3 ba . 2,589 ft²

Arroyo

4 bd . 2 ba . 1,820 ft²

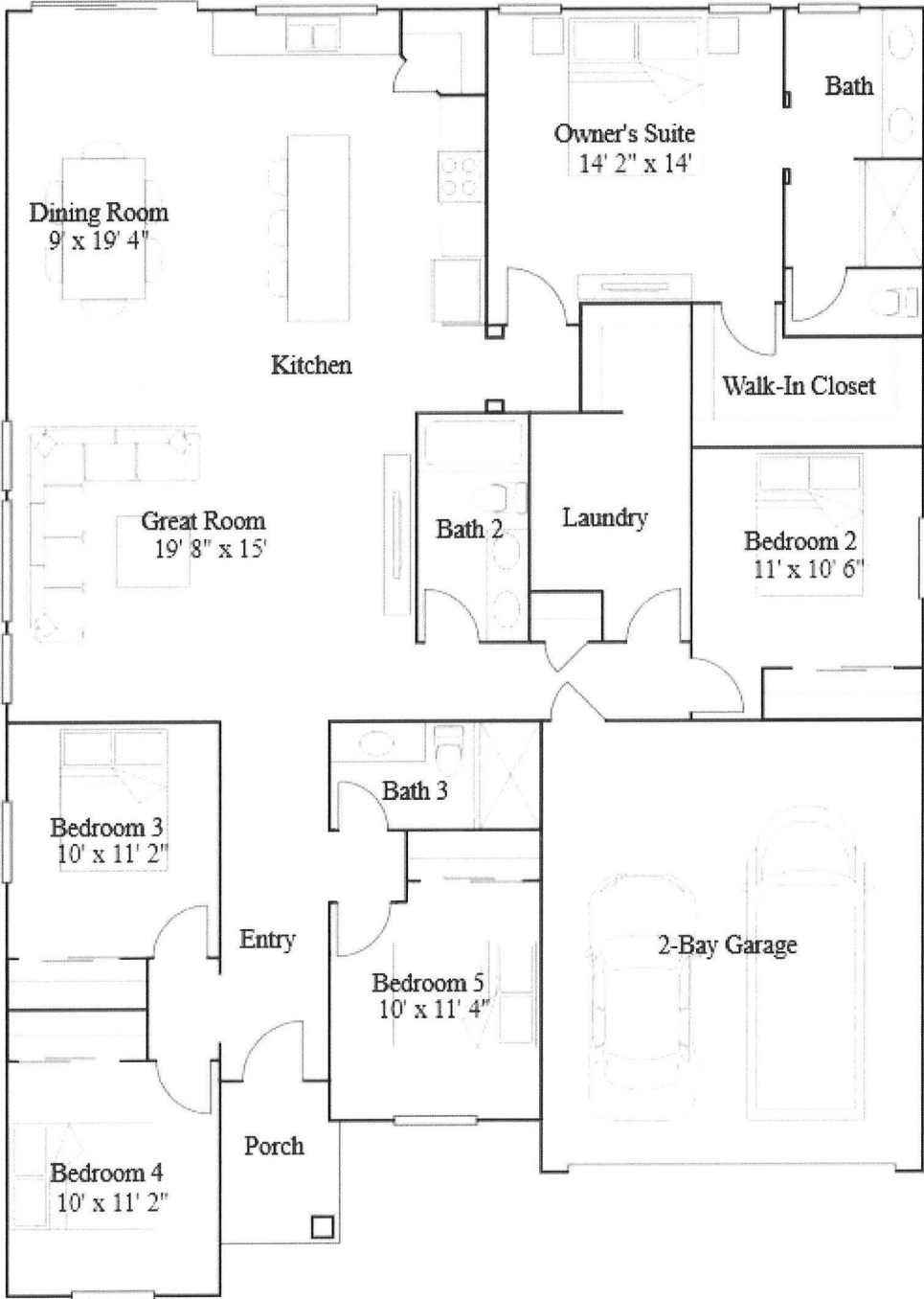
1st Floor



Bodega

5 bd . 3 ba . 2,169 ft²

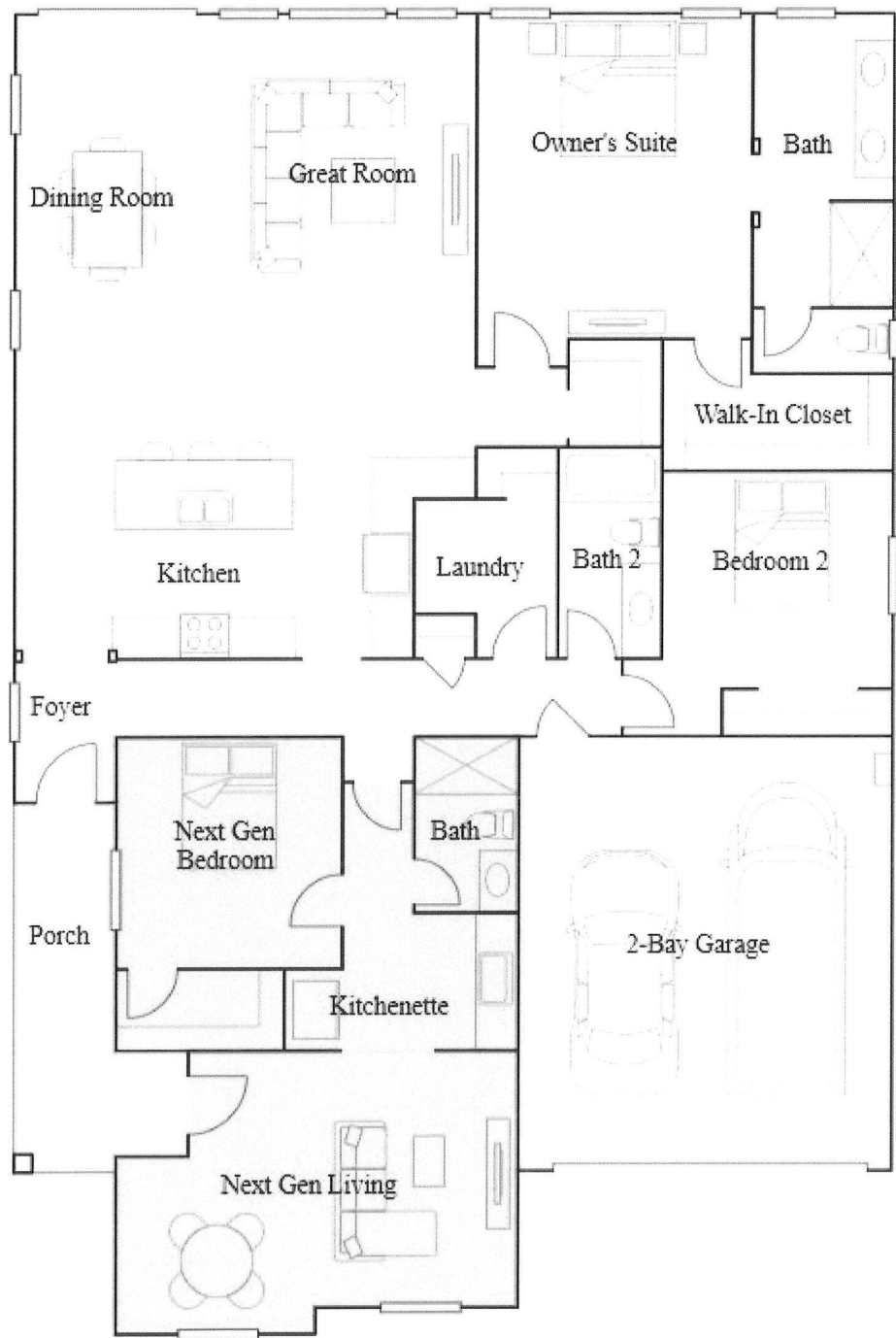
1st Floor



Cabrillo

3 bd . 3 ba . 2,280 ft²

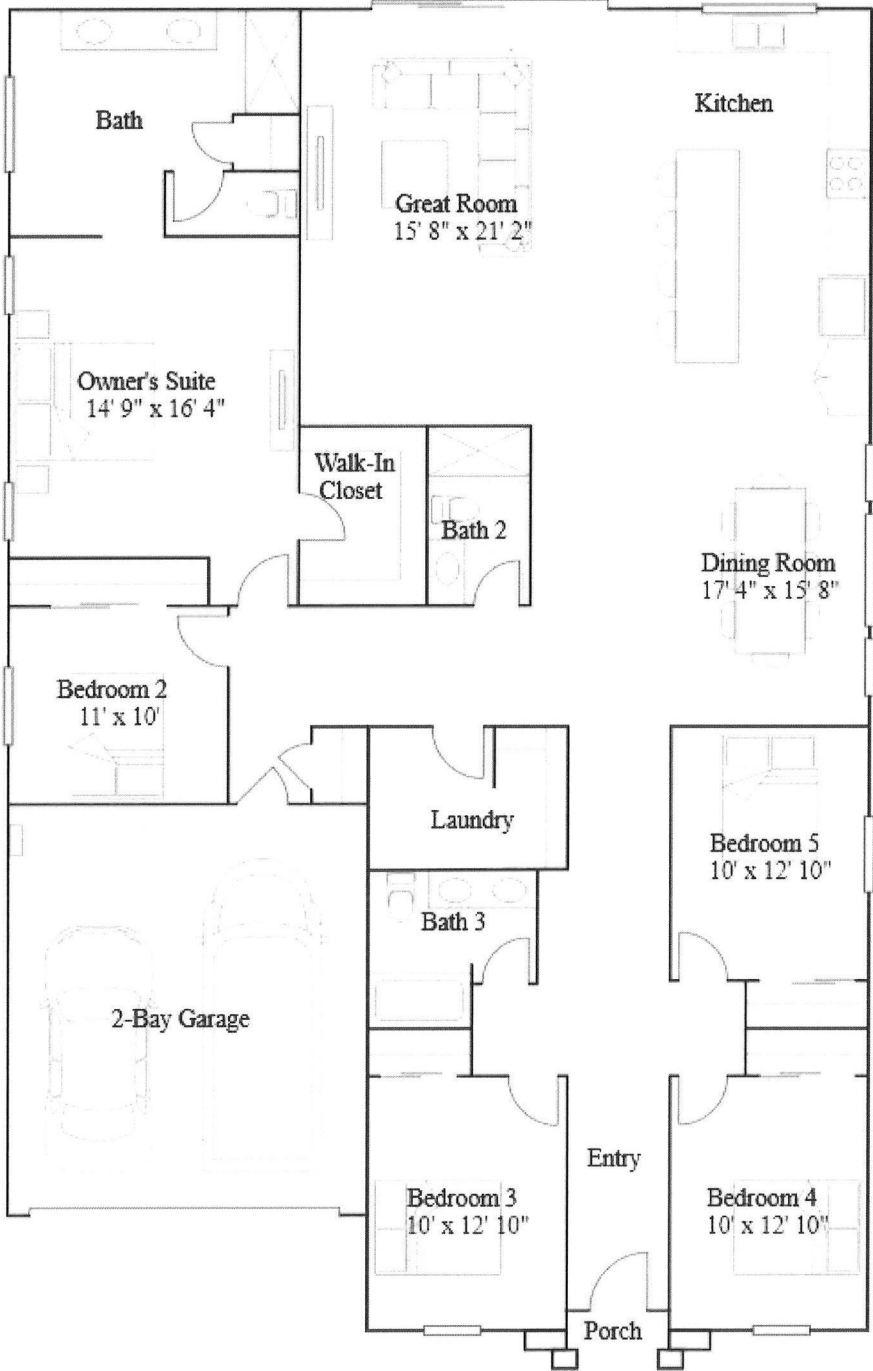
1st Floor



Esplanade

3 bd . 3 ba . 2,589 ft²

1st Floor



**EXHIBIT "F" TO
REVISED TENTATIVE TRACT NO. 7244
DEVELOPMENT AGREEMENT NO. 23-21**

Recording Requested by,
When Recorded Mail to
And Mail Tax Statements to

Attention: _____

Space Above This Line Reserved For Recorder's Use

ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT

This Assignment and Assumption of Development Agreement ("**Assignment**") is made this ____ day of _____, by _____, a _____ ("**Assignor**") and LENNAR HOMES OF CALIFORNIA, LLC, a California limited liability company ("**Assignee**") with reference to the following facts:

A. Assignee is the owner of that certain real property, described in **Exhibit "A"**, attached hereto and incorporated herein (the "**Property**").

B. Assignor entered into an escrow agreement to purchase the Property from Assignee. Pursuant to said escrow agreement, Assignor entered into that certain Development Agreement No. 23-21 ("**Development Agreement**"), as of _____, with the City of Shafter, a California municipal corporation ("**City**"). The Development Agreement was recorded on _____, as instrument no. _____, in the official records of the Kern County Recorder.

C. Assignor has relinquished all of its interest in the escrow agreement, and now desires to assign the Development Agreement to Assignee. Assignee desires to assume all of Assignor's rights, duties, and obligations under the Development Agreement which has been reviewed and approved by the City.

NOW, THEREFORE, in consideration of the mutual covenants of the parties herein, and for good and valuable consideration, the receipt of sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Incorporation of Recitals.** The Recitals of fact set forth above are true and correct and are incorporated into this Agreement in their entirety by this reference.

2. **Assignment and Assumption.** Assignor hereby sells, transfers and assigns to Assignee, and Assignee hereby expressly and unconditionally assumes all the rights, duties and obligations of Assignor under the Development Agreement, including, without limitation, all of the general rights, duties and obligations of Assignor under the Development Agreement for the development of the Property, the covenant not to sue and the waiver contained in Section 7.5 of the Development Agreement. Assignee agrees to observe and fully perform all of Assignor's obligations under the Development Agreement, and to be subject to all the terms and conditions thereof, it being the express intention of both Assignor and Assignee that, upon execution of this Assignment, Assignee shall become substituted for Assignor as the "Owner" under the Development Agreement.

3. **Secured Obligations.** Assignee has provided the City with security equivalent to any security previously provided by Assignor to secure performance of its obligations under the Development Agreement.

4. **Release of Assignor.** Pursuant to section 2.4.2 of the Development Agreement, Assignor shall be free from any and all liabilities accruing on or after the date hereof with respect to the Development Agreement. No breach or default under this Assignment or the Development Agreement by Assignee shall be attributed to Assignor.

5. **Governing Law.** This Assignment is made and entered into in the State of California and shall be interpreted, construed and enforced in accordance with the laws of the State of California. Venue shall be in Kern County.

6. **Binding Effect.** This Assignment shall apply to, bind, and inure to benefit of Assignor and Assignee, and their respective heirs, legal representatives, successors and assigns.

7. **Counterparts.** This Assignment may be executed in one or more counterparts, each of which shall be an original, but all of which shall together constitute one instrument.

[Signatures on Following Pages]

IN WITNESS WHEREOF, this Assignment has been executed as of the date first above written.

“ASSIGNOR”

LENNAR HOMES OF CALIFORNIA, LLC, a
California limited liability company

By: _____
Name: _____
Its: _____

“ASSIGNEE”

a _____

By: _____
Name: _____
Its: _____

[continued]

The City of Shafter hereby approves of this Assignment and acknowledges that Assignor, having satisfied the conditions to the release set forth in Section 2.4.2 of the Development Agreement, shall be released from its obligations under the Development Agreement.

CITY OF SHAFTER, a California municipal law corporation

By: _____
Name:
Its:

ATTEST:

By: _____
City Clerk

APPROVED AS TO LEGAL FORM

BEST BEST & KRIEGER LLP

By: _____
City Attorney

ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF _____

On _____, before me, _____,

Date

Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

personally appeared _____,

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

- ☐ Individual
☐ Corporate Officer

- _____
Title(s)
- ☐ Partner(s) ☐ Limited
 ☐ General
- ☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other: _____

Signer is representing:
Name Of Person(s) Or Entity(ies)

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document

Number Of Pages

Date Of Document

Signer(s) Other Than Named Above

EXHIBIT A TO EXHIBIT "F"

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT "A"
LEGAL DESCRIPTION
DEVELOPMENT AGREEMENT BOUNDARY

ALL THESE PORTIONS OF LOT 3 AND LOT A OF TRACT 7333 RECORDED DECEMBER 11, 2018 IN BOOK 63 OF MAPS, PAGES 9 THROUGH 13 AND LOTS A THROUGH D OF LOT LINE ADJUSTMENT NO. 22-089 RECORDED MARCH 22, 2023 AS DOCUMENT NO. 223032366 OFFICIAL RECORDS, BOTH RECORDED IN THE OFFICE OF THE KERN COUNTY RECORDER; ALSO BEING A PORTION OF THE SOUTH HALF OF SECTION 36, TOWNSHIP 28 SOUTH, RANGE 26 EAST, MOUNT DIABLO MERIDIAN, IN THE CITY OF SHAFTER, COUNTY OF KERN, STATE OF CALIFORNIA.



661-834-4814 • 661-834-0972
10800 Stockdale Hwy, Suite 103 • Bakersfield, CA 93311



**EXHIBIT “G” TO
REVISED TENTATIVE TRACT NO. 7244
DEVELOPMENT AGREEMENT NO. 23-21**

PARK IMPROVEMENTS

Per the Marcona Preserve Specific Plan approved December 20, 2022 (Ordinance No. 744), there are two parks found within Revised Tentative Tract No. 7244. A brief description of the two parks can be found in the table below:

Planning Area	Acres	Location
PA-2	1.01	SW quadrant west of Jewetta Avenue
PA-3	1.75	SE quadrant east of Jewetta Avenue

In lieu of paying a Park Impact Fee for each single-family residence, the Developer may design and fully construct publicly accessible parks included in the City-approved Marcona Preserve Specific Plan, which shall be completed within eight (8) months of commencing park construction.

PA-2 & PA-3

Per the approved Marcona Preserve Specific Plan and Conditions of Approval for revised Tentative Tract No. 7244, the following is applicable to the 1.01-acre park to be developed within PA-2 and the 1.75-acre park to be developed within PA-3:

- The parks will be connected to a multi-use walkway along Jewetta Avenue, the Specific Plan’s main roadway.
- The parks will be primarily passive recreation areas and may include amenities such as a children’s play area with adjacent seating and paths, multipurpose turf, bike racks, picnic tables, and other park furniture.
- Sidewalks will connect the two parks (1.01 acre and 1.75-acre located east and west of Jewetta Avenue).
- Site-specific design of the parks shall be determined and executed by a landscape architect and shall meet the approval of the Planning Director or his/her designee.
- Lighting within the parks will be consistent with street lighting along Jewetta Avenue.
- Landscaping will be consistent with the landscape design along Jewetta Avenue.
- The developer will include signage at the parks in compliance with Exhibit 3-7 of the Specific Plan.
- A block wall with pilasters will be built along the residential property lines adjacent to the parks.
- All hardware or equipment supplied shall be installed in accordance with City Standards or the manufacturer’s requirements, has been inspected for conformance with applicable codes and passed, and is ready for use by the City or the public in general.

- Prior to recordation to the final map and issuance of residential occupancy permit for subject phase, the park sites will be fully constructed, landscaped, and completed pursuant to City approval and dedicated to the City.
- The approval of the parks will include recordation of any document specifying the mechanism for maintenance and funding of park construction as well as long-term maintenance of park facilities and amenities.

PA-3 Only

Per the approved Marcona Preserve Specific Plan and Conditions of Approval for revised Tentative Tract No. 7244, the following is only applicable to the 1.75-acre park to be developed within PA-3:

- The developer will obtain approval from the City for the design of the recreation center. The approval will include recordation of any document specifying the mechanism for maintenance and funding of park construction, including recreation center, as well as long-term maintenance of park facilities and amenities.

Penalty of Perjury Statement

I hereby certify under penalty of perjury, under the laws of the State of California, that the copy affixed to the within document, while not being photographically reproducible, can be read.

Place of Execution: Shafter, California (City, State)

Date: April 24, 2024

 CITY OF SHAFTER
Signature (and firm name, if any)
STEVE ESSELMAN

(Attach clarity copy hereto)

Exhibit B (Sheet 1 of 4): FIBER, FIBER, FIBER

Exhibit B (Sheet 2 of 4): FIBER, FIBER, FIBER

Exhibit B (Sheet 3 of 4): FIBER, OH, FO, OH, FO, OH, 14' SHELL OIL, OIL, OIL, OIL, G, OIL, G, G, OIL, G, OIL, CITY OF BAKERSFIELD, CITY OF SHAFTER, 12" SHELL, OIL, 16" CHEVRON, G, OIL, G, OH, OH, G, 16" CHEVRON, 12" SHELL, G, OIL, C.L. ROW, G, OIL

Exhibit B (Sheet 4 of 4): FIBER, C.L. ROW, G, OH, OIL, ORCHARD TREES, OIL, 14" SHELL OIL, G, OIL, OH, OIL, FO, CITY OF BAKERSFIELD, CITY OF SHAFTER, G, OIL, OH, G, OIL, OH, FO, OIL, OH, FO, OIL, OH, OIL

RESOLUTION NO. 25-456

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SHAFTER
RECOMMENDING THE CITY COUNCIL APPROVE AND ADOPT EXECUTION OF
A FIRST AMENDMENT TO DEVELOPMENT AGREEMENT NO. 23-21 FOR
REVISED TENTATIVE TRACT NO. 7244**

WHEREAS, the City of Shafter (“City”) and Lennar Homes of California, LLC (“Owner”), entered into a Development Agreement (“DA”) approved April 16, 2024, and recorded April 25, 2024, as Entry No. 224047405 in the office of the Kern County Recorder; and

WHEREAS, DA No. 23-21 guides the development of Revised Tentative Tract No. 7244, including rules for subdivision and collection of impacts fees; and

WHEREAS, after the approval of DA No. 23-21, FranMar Company, LP, the owner of Tentative Tract No. 7483 adjacent to Revised Tentative Tract No. 7244, reached out to staff stating that when DA No. 23-21 for Revised Tentative Tract No. 7244 was recorded, the legal description attached to the DA inadvertently included the property for Tentative Tract No. 7483; and

WHEREAS, the Owner has requested revisions to DA No. 23-21 as described in Exhibit “A” (“First Amendment”) to replace the current legal description in the DA with a revised legal description that excludes the property for Tentative Tract No. 7483; and

WHEREAS, it is found that this First Amendment is exempt from the California Environmental Quality Act per Section 15601(b)(3) because the environmental analysis for DA No. 23-21 already analyzed and mitigated, to the greatest extent possible, environmental impacts and the First Amendment does not result in an intensification of the identified impacts beyond what was previously analyzed and therefore, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment; and

WHEREAS, a timely and properly noticed public hearing for this Resolution No. 25-456 was held by the Planning Commission of the City of Shafter on February 11, 2025, at which hearing evidence, oral and documentary, was admitted on behalf of said Resolution.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Shafter, in a regularly scheduled meeting assembled on the 11th day of February, 2025, resolved to recommend that the City Council approve and adopt execution of the First Amendment to Development Agreement No. 23-21 for Revised Tentative Tract No. 7244, as set forth in attached Exhibit “A” of this Resolution.

BE IT FURTHER RESOLVED that a copy of this Resolution be delivered forthwith to the City Council of the City of Shafter.

PASSED AND ADOPTED THIS 11TH DAY OF FEBRUARY, 2025.

Lovedeep Joshan, Chairman

ATTEST:

Hermila Aleman, Deputy City Clerk

RECORDING REQUESTED BY,
AFTER RECORDING RETURN TO:

City of Shafter
Attn: City Clerk
336 Pacific Ave.
Shafter, CA 93263

Exempt from filing fees per Gov't Code §27383

(space above for Recorder's use)

**FIRST AMENDMENT
TO
DEVELOPMENT AGREEMENT NO. 23-21
BETWEEN CITY OF SHAFTER
AND LENNAR HOMES OF CALIFORNIA, LLC**

This FIRST AMENDMENT TO DEVELOPMENT AGREEMENT NO. 23-21 BETWEEN CITY OF SHAFTER AND ("First Amendment") is entered into effective as of the ____ day of _____, 202__ ("First Amendment Effective Date"), by and between CITY OF SHAFTER, a California municipal corporation and charter city ("City") and LENNAR HOMES OF CALIFORNIA, LLC, a California limited liability company ("Owner"). The City and Owner are sometimes hereinafter referred to as a "Party".

RECITALS

A. City and Owner entered into that certain Statutory Development Agreement, a Development Agreement Between City of Shafter, a California municipal corporation and charter city, and Lennar Homes of California, LLC, a California limited liability company, dated April 2, 2024, recorded April 25, 2024, as Entry No. 224047405 in the office of the Kern County Recorder ("Development Agreement").

B. The Development Agreement affects certain real property located in Kern County, California, as more fully described on Exhibit A attached hereto and incorporated herein by reference ("Property").

C. The Parties now wish to amend the Development Agreement to revise the legal description found in both (1) Exhibit A and (2) Exhibit A of Exhibit F of the Development Agreement with Exhibit B attached hereto in order to exclude Lot A of Tract 7333 recorded December 11, 2018 in Book 63 of Maps, Pages 9 through 13, from the legal description of the property under the control of Development Agreement No. 23-21 which was recorded inadvertently.

AMENDMENTS

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Owner agree to amend the Development Agreement as follows:

1. **Recitals; Defined Terms.** The recitals above are hereby incorporated herein by this reference as if fully set forth in this paragraph. All capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Development Agreement.

2. **Term.** Exhibit A and Exhibit A of Exhibit F of the Development Agreement are revised with Exhibit B attached hereto.

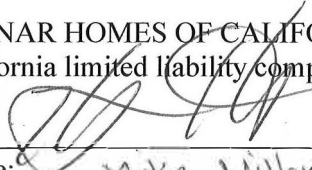
3. **Confirmation.** Except as amended and revised by this First Amendment, all terms and conditions in the Development Agreement remain unchanged and in full force and effect. In the event of any conflict between the terms of this First Amendment and the Development Agreement, this First Amendment shall control. This First Amendment may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, City and Owner have executed this First Amendment.

[Signatures and Acknowledgments Follow]

OWNERS:

LENNAR HOMES OF CALIFORNIA, LLC., a
California limited liability company

By: 
Name: Mike Miller
Its: Vice President

CITY:

CITY OF SHAFTER, a California municipal
corporation and charter city

Chad Givens
City of Shafter Mayor

ATTEST:

Yazmina Pallares
City Clerk

APPROVED AS TO FORM:

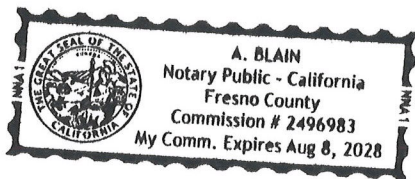
Marco Martinez
City Attorney

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF KERN)ss.
)

On Dec 23, 2024, before me, A. Blain, Notary Public, personally appeared Mike Miller, who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity~~(ies)~~, and that by his/her/their signatures~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

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



WITNESS my hand and official seal.

A. Blain
Notary Public

**EXHIBIT "A" TO
REVISED TENTATIVE TRACT NO. 7244
DEVELOPMENT AGREEMENT NO. 23-21**

Legal Description of Property

**EXHIBIT "A"
LEGAL DESCRIPTION
DEVELOPMENT AGREEMENT BOUNDARY**

ALL THESE PORTIONS OF LOT 3 AND LOT A OF TRACT 7333 RECORDED DECEMBER 11, 2018 IN BOOK 63 OF MAPS, PAGES 9 THROUGH 13 AND LOTS A THROUGH D OF LOT LINE ADJUSTMENT NO. 22-089 RECORDED MARCH 22, 2023 AS DOCUMENT NO. 223032366 OFFICIAL RECORDS, BOTH RECORDED IN THE OFFICE OF THE KERN COUNTY RECORDER; ALSO BEING A PORTION OF THE SOUTH HALF OF SECTION 36, TOWNSHIP 28 SOUTH, RANGE 26 EAST, MOUNT DIABLO MERIDIAN, IN THE CITY OF SHAFTER, COUNTY OF KERN, STATE OF CALIFORNIA.



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EXHIBIT "B"
LEGAL DESCRIPTION
DEVELOPMENT AGREEMENT BOUNDARY

ALL OF TRACT No. 7244 PHASE 1, FILED FOR RECORD ON DECEMBER 17, 2024 IN MAP BOOK 68, PAGES 16-26, LOT 3 OF TRACT No. 7333, FILED FOR RECORD ON DECEMBER 11, 2018 IN MAP BOOK 63, PAGES 9-13 AND LOTS "B", "C" & "D" OF LOT LINE ADJUSTMENT No. 22-89 PER CERTIFICATE OF COMPLIANCE RECORDED MARCH 22, 2023 AS DOCUMENT No. 223032366 OF OFFICIAL RECORDS, ALL IN THE OFFICE OF THE KERN COUNTY RECORDER; ALSO BEING A PORTION OF THE SOUTH HALF OF SECTION 36, TOWNSHIP 28 SOUTH, RANGE 26 EAST, M.D.M., IN THE CITY OF SHAFTER, COUNTY OF KERN, STATE OF CALIFORNIA.

CONTAINING 105.85 ACRES, MORE OR LESS

THIS LEGAL DESCRIPTION IS NOT A LEGAL FOR PARCELS OF LAND AS DEFINED IN THE SUBDIVISION MAP ACT. HOWEVER, IT DOES REPRESENT THE DESCRIPTION OF LAND/PARCELS BEING INCLUDED IN A DEVELOPMENT AGREEMENT.



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