

SEWER DEVELOPMENT AGREEMENT
FOR MCCORD POINTE SECTION 5

THIS SEWER DEVELOPMENT AGREEMENT (“Agreement”) is entered into as of this _____ day of _____, 2020 (the “Effective Date”) by and between Lennar Homes of Indiana, Inc., (hereinafter referred to as “Grantee”), and the Town of McCordsville, Indiana, an Indiana municipal Corporation, by and through its Town Council (hereinafter referred to as “the Town”).

WITNESSETH

WHEREAS, Grantee and the Town wish to enter into an agreement regarding the development of sanitary sewers on Grantee’s property, more particularly described in **Exhibit “A”** attached hereto and incorporated by reference herein (hereinafter “Section 5”), which facilities shall collect and transport wastewater and effluent to the Town’s Wastewater Treatment Plant (herein referred to as “Plant”); and

WHEREAS, The Town wishes to acquire and Grantee wishes to dedicate appropriate easements for municipal purposes (the “Utility Easements”) to allow the Town to service Section 5 with sanitary sewer service.

NOW, THEREFORE, the parties agree as follows:

1. Compliance with Local Rules

Grantee agrees in all respects to comply with the Town’s Master Sewer Plan, Sewer Rate Ordinance, Sewer Use Ordinance, and the McCordsville Zoning Code adopted January 11, 2011 and any and all amendments or supplements thereto, and the McCordsville Stormwater Management Ordinance, and any and all relevant Town Ordinances and state statutes unless otherwise agreed to herein or as otherwise approved by the Town.

2. Wastewater Facilities and Easements

Grantee shall design and prepare cost estimates for the construction and installation of facilities sufficient to collect all wastewater and effluent generated on or within Section 5 in addition to any force mains, gravity interceptor lines or other facilities necessary to transport said wastewater and effluent to the Town’s regional collection system at a point designated by the Town’s engineer and all necessary infrastructure to provide adequate connection to said system by adjoining property owners. All of the aforementioned infrastructure shall be collectively referred to as “the Facilities”. The Facilities shall be utilized to deliver wastewater, liquid waste, sewage, and other effluent from Grantee’s property and from other properties within the **Bay Creek Drainage Basin** to the Plant by way of the

regional collection system. The Town of McCordsville shall be responsible for obtaining all easements or rights-of-way necessary to install the Facilities set forth above, except for the portion of the Facilities located on the subject Section 5 owned by Grantee, and to connect said Facilities to the Town's plant. The costs of said easements or rights-of-way shall be reimbursed to the Town by Grantee. In addition, Grantee agrees to grant, at no cost to the Town, all necessary easements or rights-of-way as determined by the Town's engineer that are necessary to provide for extension of the Town's regional wastewater collection system to adjoining properties and/or sewage collection basins.

3. Oversizing Costs

Grantee may recover a portion of its oversizing costs. In order to determine the sums recoverable by Grantee for oversizing certain infrastructure, Grantee must provide to the Town and the Town's engineer a bid quotation by the Grantee's contractor for the infrastructure to be constructed and installed with the entire development broken down by phase or section, if applicable, prior to the beginning of construction. The cost of said infrastructure must be itemized by pipe size, length, and depth. The Town and/or the Town's engineer will provide to Grantee a document containing the appropriate format for the information required. Furthermore, Grantee must provide to the Town and/or the Town's engineer detailed itemized final construction costs for the sewer infrastructure constructed and installed upon completion of said installation for each section or phase of the development. The amount of reimbursement, if any, due Grantee will be based on construction costs for labor and materials solely related to oversizing the applicable infrastructure as determined by the Town Engineer within 90 days of the date of this agreement and should Grantee fail to supply to Town Engineer the necessary data and documentation to establish the oversizing cost, said oversizing reimbursement shall be deemed waived. Grantee is entitled to recover at the rate of Four Hundred Dollars (\$400.00) for each additional EDU that utilizes the oversized offsite facilities constructed by Grantee within the Bay Creek Drainage Basin excluding the subject real estate. The sum of Four Hundred Dollars (\$400.00) shall be added to the sewer availability and/or connection fee collected by the Town for connection of any additional EDU to the facilities. All amounts collected by the Town for reimbursement to Grantee shall be rebated to Grantee on a quarterly basis until such time as Grantee has recovered the oversizing costs in the amount agreed upon by the parties or the expiration of 15 years from the effective date of this Agreement, whichever comes first.

4. Sewer Availability

In exchange for the Town's allocation of sufficient treatment to serve the estimated amount of 48 EDU's for Section 5 for the residential subdivision as approved as part of the Planned Unit Development ("PUD") zoning designation, as amended,

Grantee shall be required to pay to the Town the sum of Three Thousand One Hundred Dollars (\$3,100.00) representing the developer upfront portion for each of the 48 EDU's constituting all or a portion of Section 5, prior to recording all or any portion of the plat of Section 5.

5. Building Permits

a. If Lennar Homes of Indiana, Inc. is the builder

Should Grantee request a sewer permit for any lot in Section 5, Grantee shall receive a credit of Three Thousand One Hundred Dollars (\$3,100.00) against the then current EDU charge authorized by ordinance. The sum of Four Hundred Dollars (\$400.00) to be allocated to repayment of the over sizing cost incurred within the Bay Creek Drainage Basin and all other remaining funds to be retained by the Town.

b. If Lennar Homes of Indiana, Inc. is NOT the builder

Should the entity requesting a sewer permit within Section 5 not be Grantee, the applicant shall pay the then current EDU charge authorized by ordinance with the sum of Three Thousand One Hundred Dollars (\$3,100.00) to be remitted to Grantee on a quarterly basis. The sum of Four Hundred Dollars (\$400.00), which shall be allocated to repayment of the over sizing cost incurred within the Bay Creek Drainage Basin, and the remainder of said funds to be retained by the Town.

6. Engineering Review

The design, construction, and specification of material and equipment to be used in all the Facilities installed by Grantee shall be subject to approval and construction observation by the Town's designated and qualified agent and/or consulting engineer whose decision shall be final as to any question arising regarding the same. Grantee shall contract directly with the Town's consulting engineer to review the plans for the design of said Facilities whose approval of the design, location, and specification for all materials and equipment shall be required prior to the commencement of construction and which will be in substantial compliance as to location as set forth on **Exhibit "A"** attached hereto and incorporated by reference herein. The decision of the Town's consulting engineer shall be final as to any question arising regarding the design, construction, or specification of material and equipment to be used in the construction of said Facilities. The cost for review of the design, construction, and specification of material and equipment to be used in the construction of the Facilities shall be in accordance with the schedule of charges for such review and construction observation fees as posted on the McCordsville website (www.mccordsville.org) at the time of each submitted section. Grantee

shall be responsible for any such design review and/or construction observation fees or any other cost in connection with such inspection and approvals.

7. Dedication

Upon the completion of construction and installation of the Facilities, Grantee shall dedicate all of said Facilities and all easements and rights-of-way necessary to service and maintain said Facilities, without restriction, to the Town.

8. Bonds

Prior to dedication of said Facilities and deeding the title in fee simple or other transfer of all rights-of-way and easements rights required to service and maintain said Facilities, Grantee shall place on file with the Clerk-Treasurer of the Town all bonds and/or other documents in amounts deemed acceptable to the Town pursuant to the McCordsville Subdivision Control Ordinance. Upon acceptance of the dedication of the said Facilities and the completion of all requirements herein by Grantee, the Town agrees to commence immediately to maintain and operate the sewer collection and treatment Facilities, subject to the invocation of the provisions of the Maintenance Bond.

9. Arbitration

The parties agree that should a disagreement regarding the terms and provisions of this Agreement arise and the parties are unable by negotiation to resolve said dispute, the parties shall submit the dispute to binding arbitration with each party to select an arbitrator of their choice and the two (2) selected arbitrators to select a third arbitrator with the cost of arbitration to be paid equally by the parties.

10. Assignment

The parties further agree that should Grantee desire to assign its rights, duties, and obligations under this Agreement, at any time within ten (10) years of the date of execution of this Agreement, said assignment may only be accomplished after receipt of the Town's written consent, which said consent shall not be unreasonably withheld or delayed. If Grantee, at any time, after the execution of this Agreement shall assign its rights, duties and obligations herein, Grantee shall notify the Town in writing ten (10) days prior to such assignment, the name, address, phone number and contact person of the assignee.

11. Binding

The terms of this Agreement shall be binding on and shall insure to the benefit of each party's heirs, executors, personal representatives, successors, assigns, parent

companies, subsidiaries, lessees or other authorized person or entity acting on either party's behalf.

12. Breach

In the event of any breach of this Agreement by any party hereto, the non-breaching party shall be entitled to pursue all remedies available to it at law or in equity including enforcing this Agreement by specific performance.

13. Notices

Any notices, requests, demands, consents or other communications required or permitted under this Agreement shall be in writing and shall be deemed delivered on the second day after such notice is deposited in a receptacle of the United States mail, registered or certified, first class postage prepaid, return receipt requested, address as follows:

To Lennar Homes
of Indiana, Inc.:

Lennar Homes of Indiana, Inc.
Attention: Keith Lash
11555 N. Median Street, Suite 400
Indianapolis, IN 46032

To Town:

Town of McCordsville
6280 W. 800 N.
McCordsville, IN 46055

14. Execution

Each person executing this Agreement on behalf of Grantee shall supply contemporaneously with the execution of this document all necessary documents and records indicating authority to enter into this Agreement and to bind Grantee to the terms thereof.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the effective date.

Lennar Homes of Indiana, Inc.

Town of McCordsville, Indiana

By: Keith Lash
Vice President

By: Barry Wood
Town Council President