

Revisions from previous documents have been accepted below; new comments from B Fisher 4/2/24

Drawn by and mail to:

St. Amand & Efirm PLLC (JSE)
Lincoln at Belle Grove
3315 Springbank Lane, Suite 308
Charlotte, North Carolina 28226

**STATE OF NORTH CAROLINA
COUNTY OF GASTON**

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“Agreement”), is made and entered into this ____ day of ____, 202__ 4 (the “**Effective Date**”), by and among **LENNAR CAROLINAS, LLC**, a Delaware limited liability company (“**Lennar**” or “**Developer**”), the **COUNTY OF GASTON**, a North Carolina County, a body politic and corporate (hereinafter sometimes also referred to as “**Gaston County**” or the “**County**”) and **THE CITY OF LOWELL**, a municipal corporation, created, organized and existing under and by virtue of the laws of the State of North Carolina (the “**City**”). Developer, the County and the City may be collectively referred to herein as “**Parties.**”

AUTHORITY

The North Carolina General Statutes (“**N.C.G.S.**”) §160D-1001 through §160D-1012, as it exists on the Effective Date of this Agreement (the “**Development Agreement Act**”), enables cities and towns to enter into binding development agreements with entities intending to develop real property under certain conditions set forth in the Development Agreement Act.

N.C.G.S. §160D-1001(a)(1) provides that "Development projects often occur in multiple phases over several years, requiring a long-term commitment of both public and private resources."

N.C.G.S. §160D-1001(a)(3) provides that "Because of their scale and duration, such projects often require careful coordination of public capital facilities planning, financing, and construction schedules and phasing of the private development."

N.C.G.S. §160D-1001 (a)(4) provides that "Such projects involve substantial commitments of private capital, which developers are usually unwilling to risk without sufficient assurances that development standards will remain stable through the extended period of development."

N.C.G.S. §160D-1001 (a)(6) provides that "To better structure and manage development approvals for such developments and ensure their proper integration into local capital facilities programs, local governments need flexibility to negotiate such developments."

In view of the foregoing, N.C.G.S. §160D-1001 through §160D-1012 expressly authorize local governments and agencies to enter into development agreements with developers pursuant to the procedures and requirements of N.C.G.S. §160D-1001 through 1012.

In addition to the authority under the N.C.G.S, Sections 7.15-1 through 7.15-4 the Lowell Development Ordinance as adopted on May 11, 2021 (the "**LDO**") authorize and require the City to enter into development agreement for any development project (i) that will be classified as Traditional Neighborhood Development Overlay (TNDO) District, Main Street (MS) District, and Mixed Use (MU-1 and MU-2) District or (ii) Major Subdivisions in any district where new street infrastructure will be developed.

Section 7.15-2 of the LDO sets forth the contents of any development agreement entered into the by the City, in addition to any requirements under the N.C.G.S., including the time period for completion, the description of the property subject to the development agreement, all terms and conditions for development that differ from the LDO, and the delivery date of public facilities.

The City on April 13, 2021 adopted its comprehensive land use plan (the "**CUP**") to promote orderly growth within the City.

In addition to the CUP, on August 10, 2021 and later amended on March 14, 2023, the City adopted its policy for managing utility allocations and extensions to establish sound policy for the management of water and sewer capacity (the "**Utility Allocation Policy**"), the terms of which are attached hereto and incorporated herein as **Exhibit B**.

In addition to any force of law conferred upon this Agreement by North Carolina law related to local governments, the terms of this Agreement are also contractual in nature, are a result of good and valuable consideration and mutual covenants, and may be enforced as contractual terms.

W I T N E S E T H:

WHEREAS, Developer has entered into a purchase and sale agreement to acquire from Belmont Land and Investment Company, LLC, a North Carolina limited liability company ("**BLIC**") that certain real property located in Gaston County, North Carolina as more particularly described on **Exhibit A** attached hereto (the "**Property**"). Following Developer's acquisition of the Property, Developer intends to develop the Property into a single-family residential community (the "**Intended Development**"), subject to Developer's receipt of all required permits and approvals from applicable governmental authorities (collectively, the "**Approvals**").

WHEREAS, the Property is zoned CZ (Conditional Zoning) and subject to those Zoning Conditions set forth in RZ22-03 which conditions were approved by the City Council for the City of Lowell following a public hearing on _____, and which, by the terms of the Conditional Zoning Approval, are binding upon and insure to the benefit of the Petitioner and subsequent owners of the Site and their respective heirs, devisees, personal representatives,

successors in interest or assigns. The Conditions of Approval in connection with the Conditional Zoning are attached hereto and incorporated herein as Exhibit ____.

WHEREAS, Developer intends to develop the Intended Development in phases (each a “**Phase**” and collectively the “**Phases**”) according to the phase schedule attached hereto as **Exhibit B**.

WHEREAS, in connection with the Approvals, Developer has agreed to plan, engineer and construct an amenity center to serve the Intended Development (hereinafter, the “**Amenity Center**”).

WHEREAS, in connection with the Approvals, Developer has agreed to plan, engineer and construct a landscape buffer around the Intended Development as required by the LDO (hereinafter, the “**Landscape Buffers**”).

WHEREAS, in connection with the Approvals, Developer has agreed to plan, engineer and construct stormwater control measures within the Intended Development as required by the LDO (hereinafter, the “**SCMs**”).

WHEREAS, in connection with the Approvals for Phase 4 (the “**Phase 4 Approvals**”), Developer has agreed to plan, engineer and construct a waterline to serve Phase 4 which will create a connecting loop of the City’s water main system (hereinafter, the “**Phase 4 Waterline**”).

WHEREAS, the Phase 4 Waterline requires an easement from the adjacent property owner, Gaston County (herein the “**County**”) for the development and installation of the same.

WHEREAS, the Phase 4 Waterline requires the County grant Developer an easement for to allow for the extension of an existing waterline (the “**Existing City Waterline**”) through Gaston County PID # 148012, commonly known as “George Poston Park.”

WHEREAS, the County has agreed to grant Developer County Easement (as defined herein) as necessary for Developer to extend the Existing City Waterline .

WHEREAS, in connection with the Approvals, Developer has agreed to plan, engineer and construct a trail within an easement for access to the Carolina Thread Trail (the “**Trail**”) within the Intended Development (hereinafter, the “**Trail Easement**”).

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, it is mutually agreed as follows:

1. **Term**. The term of this Agreement shall commence on the later of (i) the date on which this Agreement is executed by the City and Developer or (ii) Developer’s acquisition of the Property (the “**Commencement Date**”), and shall terminate on the date which is () years thereafter (the “**Term**”). Notwithstanding such termination date, provided that the Developer is not in default of this Agreement, Developer has pursued the Intended Development, and the Intended Development has not been completed, at the conclusion of five years from the Commencement Date the termination date of this Agreement shall automatically be extended for one (1) additional five (5) year term. At the conclusion of the initial five (5) year extension of the Term, provided that the Developer is not in default of this Agreement, Developer has pursued

development of the Property, and the Intended Development has not been completed, the termination date of this Agreement shall automatically be extended for a second and final additional five (5) year term.

2. Construction of the Amenity Center. Following Developer's acquisition of the Property and in connection with the development thereof, Developer shall complete the Amenity Center which shall include: (i) a pool and clubhouse and (ii) any required environment permits to complete the project (collectively, the "**Amenity Center Improvements**"). The construction of the Amenity Center Improvements shall occur in accordance with the plans approved in accordance with the Rezoning Plan (the "**Amenity Plans**") as prepared by Developer's project engineer ("**Project Engineer**"). Developer shall in good faith, subject to the terms of this Agreement, pursue the substantial completion of the Amenity Center Improvements prior to that date which is the earlier of (i) the date on which the two hundred fiftieth (250th) certificate of occupancy ("**CO**") is issued for the Intended Development or (ii) the date on which the first CO is issued for Phase 4 (the "**Amenity Completion Deadline**"). The substantial completion of the Amenity Center Improvements shall be evidenced by Developer's delivery to City of the certification of substantial completion from the Project Engineer, certifying that the same are substantially complete in accordance with the Amenity Plans.

3. Installation of Landscape Buffers. Following Developer's acquisition of the Property and in connection with the development thereof, Developer shall install Landscape Buffers around the Property which shall include: (i) code required plantings and (ii) any required environmental permits to complete the same (collectively, the "**Landscape Buffer Improvements**") and (iii) any related rezoning conditions. The installation of the Landscape Buffer Improvements shall occur in accordance with the plans approved in accordance with the Rezoning Plan, (the "**Buffer Plans**") as prepared by the Project Engineer and approved/stamped by City Staff. Developer shall in good faith, subject to the terms of this Agreement, complete the Landscape Buffer Improvements prior to that date on which the final CO is issued for the respective Phase in which the Landscape Buffer Improvements are located (the "**Buffer Completion Deadline**"). The completion of the Landscape Buffer Improvements shall be evidenced by Developer's delivery to City of the certification of completion from the Project Engineer, certifying that the same are complete in accordance with the Buffer Plans. Following completion of the Landscape Buffer Improvements, and inspection by the City to confirm compliance with the LDO and all conditions of the Conditional Zoning Approval, Developer shall be permitted in accordance with the rezoning conditions and the Lowell Development Ordinance ("**LDO**") (see open space requirements and Article 2) to convey its rights and obligations for the maintenance of the Landscape Buffer Improvements to a property owners association established for the ownership, maintenance, and upkeep of common area facilities located on the Property (the "**Property Owners Association**"). Upon such conveyance or designation, all duties and obligations of Developer hereunder shall transfer to the Property Owners Association and Developer shall be released from the rights, duties and obligations assigned immediately upon such assignment.

4. Construction of Stormwater Control Measures. Following Developer's acquisition of the Property and in connection with the development thereof, Developer shall install SCMs around the Property which shall include: (i) those stormwater control measures as designed and approved on the construction drawings for each Phase of the Intended Development (ii) any required environment permits to complete the same (collectively, the "**SCM Improvements**").



The installation of the SCM Improvements shall occur in accordance with the plans approved in accordance with the City, County and NCDEQ Requirements (the “**SCM Plans**”) as prepared by the Project Engineer. Developer shall in good faith, subject to the terms of this Agreement, pursue the substantial completion of the SCM Improvements prior to that date on which is the later of (i) six (6) months following the issuance of the final CO for the respective Phase in which the SCM Improvements are located or (ii) six (6) months following the issuance of the final CO for the respective drainage area in which the SCM Improvements are located (the “**SCM Completion Deadline**”), provided that prior to the date of Substantial Completion, SCM’s used as Erosion and sediment control measures during construction shall be properly maintained in accordance with the issued EC permit until successfully converted to the permanent SCM facility. The substantial completion of the SCM Improvements shall be evidenced by Developer’s delivery to City of the certification of substantial completion from the Project Engineer, certifying that the same are substantially complete in accordance with the SCM Plans. Following completion of the city/plan approved SCM Improvements, Developer shall be permitted, in compliance with in compliance with the LDO Section xxx to convey its rights and obligations for the maintenance of the SCM Improvements to a Property Owners Association. An Operation and Maintenance Agreement for each SCM shall be recorded with the final plat for each phase of the development, which shall be completed prior to the Developer’s conveyance of its rights and obligations for maintenance of the SCM Improvements. Upon such conveyance or designation, all duties and obligations of Developer hereunder shall transfer to the Property Owners Association and Developer shall be released from the rights, duties and obligations assigned immediately upon such assignment.

5. The Developer agrees to use good faith efforts to procure all offsite easements from the owners of Gaston County Parcel IDs# 136566, 136565, 136563, 136562, 136561, 136560, 136558, 136557 and 136559 as necessary for the installation of the utilities, including waterline extension through “George Poston Park” and water main and force main along Lowell Spencer Mountain Road to serve the Intended Development (collectively, the “**Offsite Easements**”). In the event that Developer successfully acquires all Offsite Easements, Developer shall notify the City and County in writing of the same (each an “**Easement Acquisition Notice**”). In the event that the Developer is unable to obtain any of the Offsite Easements within forty-five (45) days following recording of this Agreement (the “**Offsite Easement Deadline**”) in the Office of the Gaston County Register of Deeds, the Developer shall notify the City and County in writing of the same (each an “**Offsite Easement Notice**”).

6. Construction of Waterline Phase 1; Phase 4 Waterline; Extension of Utilities. Following Developer’s acquisition of the Property and in connection with the development of Phase 1, Developer shall complete the following improvements: installation of approximately 6500 linear feet of 12” waterline along Lowell Spencer Mountain Road. In connection with the development of Phase 4, Developer shall complete the following improvements: (i) installation of utilities in accordance with either Section 6(a), 6(b) or 6(c), as applicable and (iii) any other encroachment or third party agreements as necessary along with any required environment permits to complete the Phase 4 Waterline (collectively, the four phases of construction are the “**Waterline Improvements**”). The construction of the Waterline Improvements shall occur in accordance with the plans approved in accordance with the City, County and NCDEQ Requirements (the “**Waterline Plans**”) as the Project Engineer. Developer shall in good faith, subject to the terms of this Agreement, pursue the substantial completion of the Waterline Improvements, including acquisition of the County Easement, prior to that date on which the first (1st) CO is issued for each phase of development (the “**Waterline Phase Completion Deadline**”). The substantial

completion of the Waterline Improvements shall be evidenced by Developer's delivery to Town of the certification of substantial completion and Final Approval from the NCDEQ Public Water Supply Section from the Project Engineer, certifying that the same are substantially complete in accordance with the Plans.

a. In the event that Developer acquires all the Offsite Easements prior to the Offsite Easement Deadline, as evidenced by Developer's delivery of the Easement Acquisition Notice, then within one (1) month of receipt of the Easement Acquisition Notice, the County shall grant and convey to Developer an easement over and upon the property of the County, including George Poston Park, as necessary for the construction of utilities, including without limitation, waterline and force main, as well as to tie into Existing County Waterline, together with all necessary temporary construction and grading easements to complete the utility work, as more particularly shown and depicted on that drawing entitled " " attached hereto as **Exhibit "D"** and incorporated herein by reference (collectively, "**County Easement Option A**").

b. In the event that Developer is unable to acquire all the Offsite Easements prior to the Offsite Easement Deadline, as evidenced by Developer's delivery of the Offsite Easement Notice, then within one (1) month of receipt of the Offsite Easement Notice, the County shall grant and convey to Developer an easement over and upon the property of the County, including George Poston Park, as necessary for the construction of utilities, including without limitation, multiple waterlines and force main, as well as to tie into Existing County Waterline, together with all necessary temporary construction and grading easements to complete the utility work, as more particularly shown and depicted on that drawing entitled " " attached hereto as **Exhibit "E"** and incorporated herein by reference (collectively, "**County Easement Option B**").

c. In the event that Developer acquires all the Offsite Easements prior to the Offsite Easement Deadline, and acquires record title to Gaston Parcel #136558, as evidenced by Developer's delivery of the Easement Acquisition Notice and recording of a deed vesting title in Developer for Gaston Parcel #136558, then within one (1) month of receipt of the Developer's written notice it has acquired Gaston Parcel #136558 and delivery of the Offsite Easement Notice, the County shall grant and convey to Developer a temporary construction easement and sight triangle easement over and upon the property of the County, including George Poston Park, as necessary for the construction of a right-of-way connection from the Intended Development to Lowell Spencer Mountain Road, as more particularly shown and depicted on that drawing entitled " " attached hereto as **Exhibit "F"** and incorporated herein by reference (collectively, "**County Easement Option C**")

7. **Grant of Trail Easement.** Following Developer's acquisition of the Property and in connection with the development thereof, Developer shall design and plan a location for access to the Trail (the "**Trail Construction Drawings**"), including having the Trail Easement surveyed or platted (the "**Trail Survey**"). Developer shall deliver a copy of the Trail Survey to the City for City's written approval and consent to the location, and City shall approve the location of the Trail Easement within ten (10) days of receipt of the Trail Survey, which approval shall not be unreasonably withheld. Following approval, the Parties shall enter into a written easement for the Trail Easement in the location as approved on the Trail Survey, and the Developer shall proceed with construction of the Trail and all neighborhood connectors as provided in the Trail

Construction Drawings The Parties agree that the Trail Easement shall be granted and the Trail Construction completed prior to that date on which the fiftieth (50th) CO is issued for the applicable Phase in which the Trail and Trail Easement are located (the “**Easement Grant and Trail Construction Deadline**”). The completion of the Trail Easement shall be evidenced by Developer’s recording of an easement agreement in the Office of the Register of Deeds for Gaston County in favor of the City for access to the Trail. The completion of the Trail Construction Improvements shall be evidenced by Developer’s delivery to City of the certification of completion from the Project Engineer, certifying that the same are complete in accordance with the Trail Construction Plans, and inspection by the City to confirm compliance with the LDO and all conditions of the Conditional Zoning Approval.

8. Provision of Potable Water by City. Subject to the Preliminary Capacity Assurance Review (“**PCAR**”), Full Capacity Assurance Review (“**FCAR**”) and all applicable fees paid in association with the granting of the utility allocation with the required deadline stated in the City of Lowell Utility Allocation and Reservation Policy, as those procedures are described and detailed in the Utility Allocation Process, potable water will be supplied to the Property by the City upon request of the Developer and subject to the provisions of this Section 8. **Developer** will construct or cause to be constructed at **Developer’s** cost all necessary water service infrastructure to, from, and within the Property per City specifications which will be maintained by City or the provider. The Developer shall be responsible for maintaining all related internal water infrastructure until offered to, and accepted by, the City for public ownership and maintenance. To the extent easements are required to connect the improvements within the Property to the City’s existing improvements, the Developer will be responsible for providing such easements. Upon final inspection and acceptance by the City and Final Approval from the NCDEQ Public Water Supply Section, the **Developer shall provide a twelve (12) month warranty period for all water infrastructure constructed to serve the Intended Development.**

9. Provision of Sewage Treatment and Disposal by City. Subject to the PCAR and FCAR, as those procedures are described and detailed in the Utility Allocation Process, sewage treatment and disposal will be supplied to the Property by the City upon request of the Developer and subject to the provisions of this Section 9. **Developer** will construct or cause to be constructed at **Developer’s** cost all necessary sewer service infrastructure to, from, and within the Property per City specifications which will be maintained by it or the provider. The Developer shall be responsible for maintaining all related internal sewer infrastructure until offered to, and accepted by, the City for public ownership and maintenance. To the extent easements are required to connect the improvements within the Property to the City’s existing improvements, the Developer will be responsible for providing such easements. Upon final inspection and acceptance by the City and Final Approval from the NCDEQ, the **Developer shall provide a twelve (12) month warranty period for all sewer infrastructure constructed to serve the Intended Development.**

The City covenants that it has, will have, will construct or will acquire sufficient additional capacity so as to meet all reasonably foreseeable needs, of current and projected future customers of the sewage system, as reflected in or determined from the information provided by the Developer in its PCAR Application of [*insert date*] .

10. System Development Fees/. Within forty-five (45) days following FCAR approval Developer shall pay all “**System Development Fees**” imposed by the City at the time of this



Agreement, or following the date of this Agreement, provided such fees are applied consistently and in the same manner to all similarly-situated property within the City limits.. In particular, the Developer agrees that it shall not seek any exemptions for any portions of the Property from any current development impact fees (so long as such development impact fees are applied consistently and in the same manner to all similarly-situated property within the City limits) for any reason.

11. The delivery date of such public facilities as may be provided by Sections 8 and 9 above shall be conditioned on the successful performance by the Developer in implementing the proposed development and compliance with all terms of this Agreement.

12. **Transportation Improvements.** The Developer shall (a) improve Lowell Spencer Mountain Road to the Rural Cross Section per the most recently adopted version of the North Carolina Complete Streets Planning and Design Guidelines, subject to the recommendations of the Traffic Impact Analysis and NCDOT approval; and (b) make any required improvements to Lowell Spencer Mountain Road shall be as indicated by the TIA and required or approved by NC DOT. The construction of the Transportation Improvements shall occur in accordance with drawing and plans approved by NC DOT (the “**Transportation Construction Documents**”) as prepared by Developer’s project engineer. Developer shall in good faith, subject to the terms of this Agreement, pursue the substantial completion of the Transportation Improvements prior to the date on which the _____ CO is issued for the Phase of the Development where the respective Transportation Improvements are located (the “**Transportation Improvements Completion Deadline**”). Completion of the Transportation Improvements shall be evidenced by Developer’s delivery to City of the certification of completion from the Project Engineer, certifying that the same are complete in accordance with the Transportation Construction Documents, and the completion of inspection and approval by NC DOT. Sidewalks. As a public benefit, Developer shall install a sidewalk, as required by the LDO, along Lowell Spencer Mountain Road in accordance with the approved site plan. Sidewalks installed within the margin of or within the North Carolina Department of Transportation maintained portion of Lowell Spencer Mountain Road, shall be dedicated to the City for maintenance.

13. Terms and Conditions that differ from the provisions of the LDO, provide however, that any plans or construction drawings once approved by the City shall be deemed to have met all applicable requirements, provided that all conditions of approval as contained in the Conditional Rezoning and set forth in RZ22-03 shall remain in effect and may not be altered without the approval of the City Council. In the event of any conflict between the provisions of this Agreement and the Conditional Zoning Approval, the Conditional Zoning Approval shall control. [We need a paragraph incorporating any additional terms set out in the conditional zoning approval.]

- a. Only the uses appearing in Table 8.1 of the Lowell Development Ordinance (LDO) shall be allowed in the “Single Family Residential 4 District Conditional Zoning” (SFR-4/CZ) created herein.
- b. Minimum lot widths shall not be less than sixty linear feet (60’) in width as measured at the minimum required setback line per LDO Art./Sect. 8.4-2. This condition exceeds the minimum requirement of the LDO art. Sect. 8.4-2.
- c. All applicable standards and specifications of the LDO shall be met.

- d. Stormwater conditions for design and post construction stormwater containment on this project:
 - i. 200 Feet or 100-year Floodplain (whichever is greater) buffer on surface waters.
 - ii. For all projects with >10% BAU, Stormwater Control Measures (SCMs) capable of treating the greater of 1.5” or the difference in stormwater runoff from pre-development and post-development conditions for the 1-yr, 24-hour storm.
 - iii. SCMs capable of limiting peak flow from the site at each point of discharge to the predevelopment conditions for the 1- and 10-yr, 24hr storm events.
 - iv. A total phosphorus (TP) removal rate of at least 70% for all SCM(s) used.
 - v. SCMs capable of conveying the 25-yr design storm.
 - vi. SCM Operation and Maintenance Agreements and Plans shall be clearly explained to the responsible party.
 - vii. Developer shall use commercially reasonable efforts to minimize BUA and runoff through site design and Low Impact Development (LID) measures such as downspout disconnection.
- e. Stormwater conditions for active construction:
 - i. The use of high hazard and/or double row silt fencing along surface water bodies.
 - ii. Retention basins capable of conveying the 25-year storm with an outfall sized to maximize drawdown time.
 - iii. Installation of temporary seeding and slope drains per the approved Erosion Control Plan within 7 days after grading.
 - iv. Installation of natural fiber matting on slopes greater than 10’ in height, regardless of slope gradient.
 - v. Third party sediment and erosion control monitoring of the site.
 - vi. Implementation of devices on the two main tributaries running through the property before they enter the South Fork River to numerically monitor turbidity during construction and provide alerts to regulators and site operators when turbidity levels exceed action levels.
 - vii. Additional measures such as polyacrylamides, proposed by the designers and owners, as needed.

f. The general schematic development plan sheet RZ.01 appearing below establishes general layout and connectivity patterns.

14. Cooperation. The City agrees to cooperate with Developer in connection with the construction of the Improvements, including without limitation, including executing, within three (3) business days after Developer’s written request therefor, any and all documents, easements, encroachment agreements, instruments and plats, which are required to be executed by the City.

15. Costs and Bond. Developer shall be solely responsible for the expenses to construct the Improvements, which shall include all items defined by this Agreement as “Improvements” including but not limited to the Trail Improvement and the Landscape Buffer Improvements. As guaranty and security for performance of its obligations under this Agreement, Developer shall deposit with the City a bond or letter of credit covering the estimated cost of the Improvements (“**Bond**”) in accordance with the LDO Section xxx. This Bond shall be posted with the City within five (5) business days of the date on which the first plat of the Intended Development is recorded. The Bond may be used to pay for completion of the Improvements as the sole and exclusive remedy of the City in the event of default by Developer under this Agreement. The Bond shall auto-renew yearly.

16. Engineers, Contractors and Consultants. The parties acknowledge that Developer shall have the right to engage, consult and otherwise use engineers, contractors and consultants, including but not limited to the Project Engineer, without the consent or release of the City, in order to complete the Improvements.

17. Development Standards. Except as expressly provided in this Agreement, City acknowledges and agrees that Developer’s completion of the Improvements in accordance with the Plans, shall be subject to all faults and defects and without any expressed, implied or statutory warranties or representations of any kind, and Developer hereby disclaims any such representations and warranties.

18. Notices. All notices required or desired to be given under this Agreement shall be in writing and either (a) hand-delivered, (b) sent by certified mail, return receipt requested, (c) sent via FedEx or similar overnight service, or (d) sent via electronic mail, so long as notice is also provided through either method (a), (b) or (c) as herein described. All notices shall be addressed to the party being noticed, and shall be deemed to have been given (i) when delivered, if by hand delivery, (ii) three (3) business days after deposit in a U.S. Post Office or official letter box, if sent by certified mail, (iii) one (1) business day after timely deposited in a FedEx or similar overnight service depository, or (iv) upon transmission by sender if sent via electronic mail. All notices shall be delivered or sent prepaid for the specified service by the party giving notice, and shall be addressed as follows:

CITY: City of Lowell

COUNTY: County of Gaston

LENNAR: LENNAR CAROLINAS, LLC
6701 Carmel Road, Suite 425
Charlotte, NC 28226
Attn: Mark Henninger
E-Mail: mark.henninger@lennar.com

Copy To: LENNAR CORPORATION
700 NW 107th Avenue - 4th Floor
Miami, Florida 33172
Attn: General Counsel
E-Mail: mark.sustana@lennar.com

Copy To: ST. AMAND & EFIRD, PLLC
3315 Springbank Lane, Suite 308
Charlotte, NC 28226
Telephone No.: (704) 837-2670
Attn: Scott Efird
E-Mail: sefird@stamand-efird.com

19. Other Approvals. To the extent that any county or other local government, state or federal approvals are required in connection with the Improvements, City and County shall use reasonable efforts to assist Developer in obtaining such approvals.

20. Inspection, Default and Remedies. During the Term of this Agreement the City shall have the right to enter the premises in order to conduct reasonable inspections, including inspections necessary to confirm or assure Developer’s compliance with the terms of this Agreement. In addition to any other remedies provided herein, the City shall have the right to withhold permit or other approvals in the event of material noncompliance with the terms of this Agreement. City shall take no action with respect to a default by Developer until the non-defaulting party has given written notice to the defaulting party and the defaulting party has failed to cure the default within thirty (30) days after receipt of such notice (the “**Cure Period**”).

21. Relationship of the Parties. This Agreement creates a contractual relationship between the parties. This Agreement shall not be interpreted or construed to create the relationship of master/servant, principal/agent, association, partnership, joint venture, or any other relationship where one party may be held responsible for acts of the other party. This Agreement does not impose any partnership obligation or liability upon either party. Further, this Agreement is not intended to create, nor does it create, a relationship whereby the conduct of Developer constitutes "state action" for any purposes. The Parties agree and acknowledge that pursuant to N.C. Gen. Stat. § 160D-1006(c), the City will be responsible for the overall administration of the Agreement.

22. Acquisition Contingency. The Parties hereby acknowledge, affirm and understand that as of the Effective Date of this Agreement, Developer has not yet acquired the Property and is not the record owner thereof. As a result, the Parties hereby agree, covenant, and acknowledge that the obligations of the Parties hereunder shall be expressly conditioned upon Developer's acquisition of the Property and taking record title thereto. In the event that the purchase and sale agreement is terminated and Developer does not acquire the Property, then Developer shall deliver written notice to the County the City and upon delivery thereof, this Agreement shall automatically terminate and the Parties shall be released from any obligations hereunder and any Bond paid shall be promptly returned to Developer.

23. Official Act. This Agreement constitutes an official act of the County and the City and has been adopted following procedures required by applicable law.

24. Enforceability. The unenforceability or invalidity of any particular provision of this Agreement, in whole or in part, shall not affect the enforceability and validity of the remainder of this Agreement.

25. Entire Agreement. This Agreement, together with other writings signed by the parties expressly stated to be supplementary hereto and together with any instruments to be executed and delivered pursuant to this Agreement, constitutes the entire agreement between the parties and supersedes all prior understandings and writing, and may be changed only by a writing signed by the parties hereto.

26. Applicable Laws. This Agreement shall be governed and construed under the laws of the State of North Carolina.

27. Binding Effect. This Agreement shall run with title to the Property and shall be binding on all persons having any right, title or interest therein. ESTABLISH TIME PERIOD FOR COMPLETION AND CONSTRUCTION PER 7.15-2 (A)

28. Estoppel. Each party agrees, from time to time, within thirty (30) days after request of another party, to deliver to the requesting party or such party's designee, an estoppel certificate stating that this Agreement is in full force and effect, the unexpired term of this Agreement, and whether or not, to such party's knowledge, there are any existing defaults or matters which, with the passage of time, would become defaults under this Agreement. It is understood and agreed that the party's obligations to furnish such estoppel certificates in a timely fashion is a material inducement for execution of this Agreement.

29. Assignment. Notwithstanding the forgoing, the Parties agree that Developer, or any subsequent developer, shall be entitled to assign and delegate the rights and duties of the Developer under this Agreement (the "**Developer Rights**") to a subsequent purchaser of all or any portion of the Property. Such assignment shall be evidenced by a recorded assignment and assumption of development rights (the "**Assignment of Developer Rights**"), executed by the Parties and the subsequent purchaser, and shall be effective as the date of recording in the Office of the Register of Deeds for Gaston County. The Parties acknowledge and agree that any such assignment or transfer by the developer of the Developer Rights shall be non-recourse as to the assigning developer. From and after the effective date of the Assignment of Developer Rights, the assigning developer shall be released from all responsibility or liability under this Agreement.

30. Waiver. No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of time for performance of any other obligation or act.

31. Severability. If any term, covenant or condition of this Easement Agreement or the application thereof to any person or circumstance shall, to any extent, be illegal, invalid or unenforceable, the remainder of this Easement Agreement shall not be affected thereby and shall be valid and enforceable to the full extent permitted by law.

32. Force Majeure. In the event that the performance by either party of any of its obligations hereunder is delayed by natural disaster, adverse weather, acts of God, terrorist activity, war, labor dispute, pandemic, epidemic, governmental delay or other matter beyond the control of such party, without such party's fault or negligence, ("Force Majeure") then the deadline for completion of such obligation shall be extended by a like number of days.

33. Execution of Agreement. This Agreement may be executed in multiple parts as originals or by facsimile or scanned copies of executed originals and may further be executed by counterpart signature pages.

30. Recordation. Pursuant to NCGS §160D- 1011 and Section 7.15-3(F) of the LDO, this Agreement shall be recorded by the Developer with the Gaston County Register of Deeds within 14 days of the date of execution by the Developer, the City and the County.

IN WITNESS WHEREOF, Developer has caused this Agreement to be duly executed and sealed pursuant to proper authority as of the day and year first above written.

LENNAR CAROLINAS, LLC,
a Delaware limited liability company

By: _____
Name: Mark Henninger
Title: Vice President

STATE OF NORTH CAROLINA
COUNTY OF _____

I certify that the following person personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Mark Henninger as Vice President of Lennar Carolinas, LLC.

Date: _____

Official Signature of Notary Public

Notary printed or typed name

[OFFICIAL SEAL]

My commission expires: _____

IN WITNESS WHEREOF, the City caused this Agreement to be duly executed and sealed pursuant to proper authority as of the day and year first above written.

CITY OF LOWELL,
NORTH CAROLINA

ATTEST

BY: _____

BY: _____

Name: _____

Name: _____

Title: _____

Title: _____

STATE OF NORTH CAROLINA
COUNTY OF _____

I, a Notary Public of such County and State, certify that _____ and _____ personally appeared before me this day, each acknowledging to me that they are the _____ and _____, of the City of Lowell, North Carolina, and that by authority duly given and as the act of the City of Lowell, North Carolina, the foregoing document was signed in the City's name by such _____, sealed with its corporate seal and attested by such _____.

Date: _____

Official Signature of Notary Public

Notary printed or typed name

[OFFICIAL SEAL/STAMP]

My commission expires: _____

IN WITNESS WHEREOF, the County caused this Agreement to be duly executed and sealed pursuant to proper authority as of the day and year first above written.

COUNTY OF GASTON

BY: _____ (SEAL)

PRINT NAME: _____

Title: _____

STATE OF _____)

_____)

COUNTY OF _____)

I, the undersigned Notary Public for _____ County, do hereby certify that _____, the _____ of the Gaston County Board of Commissioners, who is personally known to me, or who was proved to me on the basis of satisfactory evidence to be the person who executed the foregoing instrument, appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this _____ day of _____, 2023.

(affix notarial stamp below)

Notary Public

Print Name

My Commission Expires: _____

EXHIBIT A

PROPERTY

BEING ALL OF "**TRACT 1**" as shown on that plat entitled "SPENCER MOUNTAIN RECOMBINATION PLAT" prepared by The John R. McAdams Company, Inc. , dated ____ , 2023 and recorded _____, 2023 in Book __ , Page ____ , in the Office of the Register of Deeds for Gaston County, North Carolina.

EXHIBIT B

PHASE SCHEDULE

Spencer Ridge (Spencer Mountain)
Preliminary Phasing Map



EXHIBIT C

UTILITY ALLOCATION PROCESS

EXHIBIT D

COUNTY EASEMENT OPTION A

EXHIBIT E

COUNTY EASEMENT OPTION B

EXHIBIT F
COUNTY EASEMENT OPTION C