

**PETITION, WAIVER AND AGREEMENT FOR INSTALLATION OF
PUBLIC IMPROVEMENTS AND ASSESSMENT OF THE COSTS THEREFOR**

RECITALS

1. This document supersedes the PETITION, WAIVER AND AGREEMENT FOR INSTALLATION OF PUBLIC IMPROVEMENTS AND ASSESSMENT OF THE COSTS THEREFOR by Bloomington Central Station, LLC, and LMC Bloomington Holdings, LLC, that was approved by the Bloomington City Council on November 18, 2013.

2. The undersigned make the following petition to the City Council of the City of Bloomington to include the Property described below in an assessment district for reimbursement of the cost of the Improvements described below following the City's standard assessment policies.

3. LMC Bloomington Holdings, LLC, a Delaware limited liability company, (hereinafter "**Lennar**") represents that it is the sole owner of the real property within the plat of Bloomington Central Station 4th Addition legally described on Exhibit A attached hereto and incorporated herein by reference (hereinafter the "**Lennar Property**").

4. Bloomington Central Station, LLC, a Delaware limited liability company (hereinafter "**BCS**") represents that is the Master Developer of the Bloomington Central Station Project and is also the sole owner of the real property with the plat of Bloomington Central Station 2nd Addition legally described on Exhibit B attached hereto and incorporated herein by reference (hereinafter the "**BCS Property**;" and together with the Lennar Property, the "**Property**").

5. Lennar and BCS have entered into a Secondary Development Agreement with the City of Bloomington and the Port Authority of the City of Bloomington relating to the Lennar Property described above, dated December 10, 2014 (hereinafter, as amended, the "**Contract**"), which

agreement was modified by the parties pursuant to the First Amendment to Secondary Development Agreement, dated May 27, 2015.

NOW THEREFORE, Lennar and BCS hereby petition the City of Bloomington, pursuant to Minnesota Statutes §429.031, subdivision 3, as follows:

1. To install the Public Improvements (as set forth in Minnesota Statutes §429.021) (hereinafter the “**Improvements**”) that are identified in that certain Feasibility Report dated November 18, 2013, which include the construction of public roadways, streetscapes, and utilities for City Project 2013-305 - Bloomington Central Station Phase 2B Infrastructure Improvements (hereinafter the “**Project**”).

2. To first expend the \$400,000 transit-oriented grant received from Hennepin County on eligible expenses relating to the Project for the costs of the Improvements, then to next assess the Lennar Property for all of the costs of installing the Improvements, up to a maximum amount of \$875,000 (hereinafter “**Lennar Project Cost**”), then to assess the BCS Property any remaining Project costs, up to a maximum amount of \$500,000 (hereinafter “**BCS Project Cost**”). The total Project cost (hereinafter “**Project Cost**”) is estimated currently to be approximately \$1,625,000, with a maximum project cost of \$1,775,000.

The Project Cost for the Improvements includes, but is not limited to: Feasibility Report preparation, design costs, engineering, preparation of plans and specifications, surveying, testing, construction, inspection, legal fees, assessing costs, easements, permit fees, construction interest carrying costs, and bond fees (approximately 2% of Project Cost). Some of the permitted Project Costs may be incurred by third-party consultants hired by BCS and/or Lennar, or the City. All costs will be reasonable for a project of the kind and scope undertaken by the City and based upon actual costs incurred by the City or submitted to the City by third-party consultants, engineers, contractors and others, including BCS and/or Lennar, without adjustment or increase. If the third-party consultants are hired by BCS and/or Lennar, the City must review and approve the third-party reports, plans and specifications prior to the undertaking the work and/or construction of the Improvements or making any reimbursement to BCS and/or Lennar for those Project Costs. Any and all reimbursements to BCS and/or Lennar for Project Costs incurred by BCS and/or Lennar shall be fully assessed back to the Lennar Property or BCS Property under the terms of this Agreement and the special assessment process outlined herein.

The Project Cost, set forth above, represents the current estimated cost of the Improvements. The amount to be assessed may be increased if:

- (a) Additional Improvements are installed or the cost of installing the Improvements currently identified in the Feasibility Report increases as a result of change orders agreed to by the City and Lennar and BCS and Lennar agree in writing to the increased assessment as an amendment to this Agreement; or

- (b) The Project Cost increases as a result of judicial proceedings resulting in a court order or settlement; or
- (c) BCS and Lennar agree in writing, as an amendment to this Agreement, to the increased assessment based upon an increase in the Project Cost; or
- (d) As a result of reasonable cost overruns.

3. To fairly apportion the special assessments for the Improvements against the benefitted lots of record within the Lennar Property as identified in Exhibit A and the BCS Property as identified in Exhibit B, in the manner set forth in Paragraph 2 above and in Minnesota Statutes, Chapter 429.

4. To levy the assessments for the Improvements over a twenty year period, pursuant to the authority set forth in this Agreement. The interest associated with the special assessment will be calculated in the same manner as other special assessments levied for public improvements within the City at the time the assessment is made.

5. Lennar and BCS agree, in consideration of the City designing and installing the Improvements:

- (a) That Lennar and BCS had the right to review plans and specifications for the Project and provided a signed approval for any portion of the Project that is immediately adjacent to or within the portion of the Property that BCS or Secondary Developer own.
- (b) That Lennar and BCS can request a stoppage of work on the Project at any time before award of the bid, but that Lennar and BCS will be assessed that portion of the Project Cost spent up to that reasonable stoppage regardless of whether the Improvements are constructed.
- (c) To grant to the City at no cost, prior to the City ordering installation of the Improvements to proceed, all construction easements, right of way dedication, and rights of entry on the Property, or other interests as the City shall determine to be reasonably necessary for the purpose of installing the Improvements.
- (d) To pay the amounts assessed to the Lennar Property and BCS Property for the Project Cost as provided in this Petition and Agreement after the Improvements are completed.

6. Lennar and BCS specifically waive any objection to the City's design and installation of the Improvements, including any objection to the final design of the Improvements, any objection to the final location of the Improvements, any objection to the procedure pursuant to which the City orders the Improvements installed, and any objection to the

City's failure to strictly follow the notice and other requirements of Minnesota Statutes, Chapter 429 with respect to ordering the Improvements installed, specifically including the following:

- (a) any objection to the City's failure to strictly follow the notice and other requirements of Minnesota Statutes, Chapter 429 (or such successor statutes as may be promulgated dealing with the right of a municipality to levy special assessments for improvements) with respect to ordering the performance of the Project and ordering the Improvements or the Project by which they will be constructed;
- (b) any objection to any irregularity with regard to the assessment of the Property;
- (c) all rights of appeal, including any rights under Minnesota Statutes, Chapter 429, from the assessment by the City for the costs of the Project;
- (d) any right to contest the amount assessed against the Property or lots included in the Property; and
- (e) all notice of hearing, the right to be heard, the right to appeal and other procedural rights and formalities that may be mandated by Minnesota Statutes, Chapter 429 (or such successor statutes as may be promulgated dealing with the right of a municipality to levy special assessments for improvements) with respect to these special assessments for the Improvements to be levied against the Property, including the cost of issuance and interest on bonds levied to pay for the Improvements.

7. Lennar and BCS expressly waive objection to any irregularity with regard to the assessment of the Property for the Improvements, expressly waive any claim that the amount assessed is excessive, expressly waive all rights of appeal, including any rights under Chapter 429, Minnesota Statutes, from the assessment by the City for the cost of installing the Improvements, and expressly agree:

- (a) to each pay when due their respective portions of assessments levied for the Improvements;
- (b) that the Improvements will increase the fair market value of the Lennar Property and BCS Property by an amount equal to or in excess of the amount to be assessed hereunder;
- (c) that such increase in fair market value is a special benefit to the Lennar Property and BCS Property;
- (d) that the amount to be assessed hereunder is reasonable, fair and equitable; and

- (e) that there are no other properties which should be assessed for the Improvements.

8. Lennar and BCS received Final Development Approval from the Bloomington City Council for the Lennar residential development on December 2, 2013.

9. Lennar and BCS recognize Section 4.7 in the Contract which acknowledges that some of the assessments may not be reimbursable with Tax Increment Financing, and BCS and Lennar elect to move forward with the Project regardless.

10. Lennar must provide to the City consents from any lien holders in substantially the form set forth in Exhibit C, prior to the award of the Project.

11. This Petition, Waiver and Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, including without limitation any and all future and present owner and secondary developer, tenants, occupants, licensees, mortgagees and any other parties with any interest in the Lennar Property or the BCS Property. Upon sale or conveyance of any portion of the Lennar Property or the BCS Property, the transferee shall be liable for all obligations of Lennar and BCS which relate to such portions of the Lennar Property or the BCS Property, as applicable, and the transferor shall be automatically released from any further obligation, liability, right or responsibility under this Petition, Waiver and Agreement relating to the transferred portion of the Lennar Property or the BCS Property, as applicable.

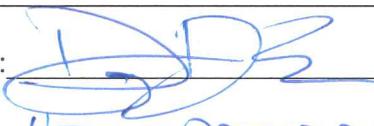
12. In the event that Lennar does not start construction on the Minimum Improvements, as defined in the Contract by September 30, 2015, and the City exercises its remedies as provided in the Contract, this Petition, Waiver and Agreement, shall terminate without further action by the parties. At that time, the City shall take all necessary steps to terminate the pending assessment on City records.

13. All terms of this Agreement shall survive and be enforceable against all parties after the closing of any financial transaction(s) related to the Contract.

This Petition, Waiver and Agreement may be executed in one or more counterparts, each of which shall be deemed the original.

[Signature pages to follow]

Dated this 27TH day of May, 2015.

Property to be Assessed	LMC BLOOMINGTON HOLDINGS, LLC
Lot 1, Block 1 BLOOMINGTON CENTRAL STATION 4TH ADDITION	By:  Its: <u>VICE PRESIDENT</u>

Dated this 27 day of May, 20 15.

Property to be Assessed	BCS
OUTLOT N BLOOMINGTON CENTRAL STATION 2 ND ADDITION	By: <u>[Signature]</u> Its: <u>secretary and Vice President</u>

EXHIBIT A

Legal Description Of Property to be Assessed after closing	Maximum Amount to be Assessed Against this Property
Lot 1, Block 1 BLOOMINGTON CENTRAL STATION 4TH ADDITION	\$875,000

EXHIBIT B

Legal Description Of Property to be Assessed	Maximum Amount to be Assessed Against this Property
Outlot N BLOOMINGTON CENTRAL STATION 2 ND ADDITION	\$500,000

EXHIBIT C

CONSENT OF MORTGAGEE

The undersigned, mortgagee of the Property in that certain mortgage dated _____, and filed _____, in the office of the Hennepin County _____ as Document # _____, does hereby consent to the attached Petition, Waiver and Agreement, and the terms thereof.

Dated: _____

By: _____

Its _____

STATE OF _____)

) ss

COUNTY OF _____)

This Agreement was acknowledged before me this _____ day of _____,

201____, by _____, the _____ of _____, a _____, of behalf of the _____.

Notary Public