

**UNDERTAKING AGREEMENT
(SUBDIVISION IMPROVEMENTS)
TRACT NO. 061206**

THIS AGREEMENT made this _____ day of _____, 2016, by and between the City of Lancaster, (the “City”) and Forestar Dorado Skies, L.L.C., a Delaware limited liability company (the “Subdivider”).

RECITALS

A. The City approved Tentative Map No. 061206 on April 18, 2005 (the “Tentative Map”), subject to certain conditions of approval set forth in Resolution No. 91-08, which conditions include construction of certain public improvements as set forth herein below.

B. The City and Western Pacific Housing, Inc./D. R. Horton, Inc., (the “Original Subdivider”), entered into an Undertaking Agreement dated June 12, 2007, in order to obtain approval of a final subdivision map prior to completion of the required public improvements. The City subsequently approved a final subdivision map for Tract No. 061206 on June 12, 2007 (the “Map”).

C. The Map and associated real property were purchased by the Subdivider from the Original Subdivider. Subsequently, ninety (90) lots identified in the Map (lots 1-34 and 114-169) were improved and sold, which is designated as Tract No. 061206 Phase 1 as shown in the attached Exhibit “A”.

D. Subdivider has retained seventy-nine (79) of the lots identified in the Map (lots 35-113), including all real property associated therewith, which is designated as Tract No. 061206 Phase 2 and is more particularly shown in Exhibit “B” attached hereto and made part of hereof (the “Subdivision”).

E. The City and the Subdivider entered into an Undertaking Agreement on December 11, 2012, for the improvements associated with these remaining lots (the “Previous Agreement”). The Previous Agreement expired on December 11, 2014.

F. The Previous Agreement, including all extensions thereto, required that all work specified therein be completed on or before December 11, 2014. As of the date of this agreement only a portion of the work required to be constructed pursuant to the Previous Agreement has been completed.

G. The City and Subdivider desire to enter into this Agreement in order to clarify the extent of Subdivider’s responsibility and liability with respect to completion of the work required under the Previous Agreement and the other matters set forth herein. This Agreement is executed pursuant to the provisions of the Subdivision Map Act of the State of California and applicable City ordinances.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and of the approval of the Map and of the acceptance of the dedications therein offered, and in order to

insure satisfactory performance by Subdivider of Subdivider's obligations under the Subdivision Map Act and applicable City ordinances, the parties agree as follows:

1. Performance of Work

Subdivider, at its sole cost and expense, will improve Tract No. 061206 Phase 2 by the grading and paving of streets, construction of curbs and gutters, crossgutters and sidewalks, installation of drainage and sanitary sewerage facilities, provision of an underground utility and street lighting system, installation of street signs, parkway trees, a water system and all related facilities, and such other improvements required by the ordinances of the City and/or the City Council in the approval of said Tract/Parcel Map, together with appurtenances, contingencies and engineering costs and as more particularly shown in the improvement plans for contingencies and engineering costs and as more particularly shown in the improvement plans for said Tract/Parcel Map (the "Improvements"). Subdivider will do all work and furnish all materials necessary, in the opinion of the City Engineer, to complete said Improvements in accordance with the plans and specifications on file in the office of the City Engineer or with any changes or modifications required or ordered by the City Engineer which, in his opinion, are necessary or required to complete the Improvements (the "Work"). Subdivider shall maintain the Improvements and adjacent public facilities clear of all debris, weeds, and other materials which inhibit the performance of the Improvements or become a public nuisance. Should the Subdivider fail to act promptly in accordance with this requirement the City may, at its option, perform the necessary work and the Subdivider shall pay to the City the actual cost of such maintenance plus fifteen percent (15%).

2. Work, Places, and Grades to be Fixed by Engineer

All of said Work is to be done at the places, of the materials, in the manner and at the grades, all as shown upon the plans and specifications therefor, heretofore approved by City Engineer and which are now on file in his office, and to the satisfaction of said City Engineer.

3. Time of Essence - Extension

Time is of the essence with respect to the performance by Subdivider of each and every obligation and condition of this Agreement; provided that in the event good cause is shown therefor, the City Council may in its sole and absolute discretion extend the time for completion of the improvements hereunder. Any such extension may be granted without notice to any surety securing all or any portion of Subdivider's obligations hereunder (a "Surety"), and extensions so granted shall not relieve any Surety of its liability under the Improvement Security or Monument Security (as hereinafter defined) or this Agreement to guarantee the faithful performance of this Agreement. The City Council shall be the sole and final judge as to whether or not good cause has been shown to entitle Subdivider to an extension.

4. Repairs and Replacements

Subdivider shall replace, or have replaced, or repair, or have repaired, as the case may be, all survey monuments, shown on the Map which have been damaged, disturbed, or destroyed, and shall replace, or have replaced, repair, or have repaired, as the case may be, or pay to the owner, the entire cost of replacement or repairs, of any and all property damaged or destroyed by reason of any work done hereunder. Any such repair or replacement or payment pursuant to this Section 4 shall be to the satisfaction of and subject to the approval of the Development Services Director.

5. Permits: Compliance with Law

Subdivider shall, at Subdivider's expense, obtain all necessary permits and licenses for the construction of such Improvements, give all necessary notices and pay all fees and taxes required by law.

6. Supervision by Subdivider

Subdivider shall personally supervise the Work on said Improvements, or have a competent foreman or superintendent on the Work at all times during progress, with authority to act for Subdivider.

7. Inspection by City

City shall have the right at all times during performance of the Work to enter onto the Subdivision as necessary, and without charges or fees, to inspect the Work, so long as City representatives comply with all safety rules.

Subdivider shall at all times maintain proper facilities, and provide safe access for inspection by City, to all parts of the Work, and to the shops wherein the Work is in preparation. Inspection by the City or City representatives shall not constitute acceptance by the City nor shall such inspection result in a waiver.

8. Improvement Security

Concurrently with the execution hereof, Subdivider shall deposit with City an adequate and satisfactory improvement security which fully secures all the Subdivider's obligations under this Agreement (the "Improvement Security") in accordance with the provisions of Section 66499 of the Government Code of California, the City of Lancaster Subdivision Ordinance, Sections 16.32.020 of the Lancaster Municipal Code, and this Section. The Improvement Security shall be executed by a surety acceptable to the City and shall include the following:

(1) security in an amount equal to at least one hundred percent (100%) of the estimated cost to complete the remaining Improvements (as evidenced by a Bond Estimate Form approved by the City Engineer), including City inspection costs and costs of enforcement of this Agreement (the "Cost of Improvements") as security for the faithful performance of this Agreement; (2) separate security in an amount equal to at least fifty percent (50%) of the estimated Cost of Improvements as security for the payment of all persons performing labor and furnishing materials in connection with this Agreement; (3) separate security in an amount equal to Fifty Eight Thousand Dollars (\$58,000.00) as security for grading; and (4) security in the amount of ten percent (10%) of the Cost of Improvements to guarantee the Improvements against defective work, labor or material for one (1) year following City's acceptance of the Improvements (which may be provided by a retention provision in the security as set forth in Section 9). If, at any time after deposit of the Improvement Security, the surety on said securities is no longer acceptable to the City, Subdivider agrees to replace said securities with securities of equal or greater value or penal sum, issued by an acceptable surety within ten days after receiving notice that said surety is unacceptable.

9. Retention of Improvement Security

Unless otherwise provided for under the Improvement Security, the City shall retain at least ten percent (10%) of the Improvement Security for faithful performance for a period of one (1) year after final acceptance of the work performed under this Agreement, to guarantee corrective work throughout the warranty period described in Section 12 herein. The security for

payment of labor and materials shall be retained by City for a period of ninety (90) days after final acceptance of the Improvement, after which the security for payment of labor and materials may be reduced to an amount equal to the amount of all claims, for which claims of lien have been recorded and notice given in writing to the City Council. The retained portion of the security for payment of labor and materials shall continue to be retained until the settlement of all such claims and obligations for which security was given.

10. Monument Security

Concurrently with the execution hereof, Subdivider shall deposit with the City a cash deposit or cashier's check in the amount of Twenty One Thousand Two Hundred Fifty Dollars (\$21,250.00) (the "Monument Security") as security for the faithful performance of all work of setting monuments and as security for the payment of the engineer(s) or surveyor(s) who set said monuments. If Subdivider refuses or fails to complete the work of setting monuments, or if Subdivider refuses or fails to pay the engineer(s) or surveyor(s) for setting the monuments, the City shall have the right to expend all, or a portion of, the Monument Security without notice to Subdivider, for purposes of completing the setting of said monuments and/or paying said engineer(s) or surveyor(s). The Monument Security shall be retained by City until all of the following conditions have been met: (1) all work of setting monuments has been completed; (2) all work of setting monuments has been approved and accepted by City Council; and (3) City has received written verification from surveyor(s) or engineer(s) that he/she/they have been paid in full for such work.

11. Hold-Harmless Agreement

Subdivider hereby binds itself, its executors, administrators, successors, and assigns and agrees to indemnify, defend and hold City, its elective and appointive boards, commissions, officers, agents and employees, harmless from any liability for or claims for damage for personal injury, including death, as well as from any liability for or claims for damage to property, both real and personal, which may arise from or be caused by Subdivider's or Subdivider's contractor's, subcontractor's, agent's or employee's operations under this Agreement. Subdivider agrees to, and shall, defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damage caused, or alleged to have been caused, by reason of any of the aforesaid operations. It is understood that City does not, and shall not waive any right against Subdivider which it may have by reason of the aforesaid hold-harmless agreement, because of the acceptance by City, or the deposit with City by Subdivider, of the Improvement Security or Cash Charges (as hereinafter defined). It is further understood that this Section shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this Section, regardless of whether the City has prepared, supplied or approved of, plans and/or specifications for the Subdivision.

12. Warranty, Repair or Reconstruction of Defective Work

Subdivider warrants that all Work and Improvements shall be free from defects, in material or workmanship, and shall perform satisfactorily for a period of one (1) year from the date on which the City accepts the Work and Improvements as complete, in accordance with the plans and specifications, approved by the City Engineer. If, within a period of one (1) year after final acceptance of the work performed under this Agreement, any structure or part of any structure furnished and/or installed or constructed, or caused to be installed or constructed by

Subdivider, or any of the work done under this Agreement, fails to fulfill any of the requirements of the Agreement or the specifications referred to herein, Subdivider shall, without delay and without cost to City, repair or replace or reconstruct any defective or otherwise unsatisfactory part or parts of the work or structure. Should Subdivider fail to act promptly or in accordance with this requirement, or should the exigencies of the case require repairs or replacements to be made before Subdivider can be notified, City may, at its option, make the necessary repairs or replacements or perform the necessary work and Subdivider shall pay to the City the actual cost of such repairs plus fifteen percent (15%).

13. Subdivider Not Agent of City

Neither Subdivider nor any of the Subdivider's agents or contractors are or shall be considered to be agents of City in connection with the performance of Subdivider's obligations under this Agreement.

14. Cash Charges

Subdivider shall pay to the City in cash such subdivision fees ("Cash Charges") that have been established by ordinance or by the City Council in conferring approval or extension of time to said Subdivision.

15. Notice of Breach and Default

Subdivider shall be in default of this Agreement if Subdivider refuses or fails to commence and diligently prosecute to completion the Work, or any severable part thereof, with such diligence as will insure its completion within the time specified, or any extensions thereof, or fails to obtain completion of said Work within such time or if the Subdivider should be adjudged a bankrupt, or if the Subdivider should make a general assignment for the benefit of Subdivider's creditors, or if a receiver should be appointed in the event of Subdivider's insolvency, or if Subdivider, or any of Subdivider's contractors, subcontractors, agents or employees, should violate any of the provisions of this Agreement. In such case, City Engineer or City Council may serve written notice upon Subdivider and Subdivider's surety in accordance with Section 23, of Subdivider's default.

16. Default Remedies; Performance by Surety or City

In the event of any such notice of default, Subdivider's surety shall have the duty to take over and complete the Work and the Improvements herein specified; provided, however, that if the surety, within five (5) days after the serving upon it of such notice of default, does not give City written notice of its intention to take over the performance of said Work or does not, within five (5) days after giving City notice of such election, commence to complete the Work, City may take over the work and prosecute the same to completion, by contract or by any other method City may deem advisable, for the account and at the expense of Subdivider, and Subdivider's surety shall be liable to City for any costs or damages occasioned City thereby; and, in such event, City, without liability for so doing, may take possession of, and utilize in completing the Work, such materials, appliances, plant and other property belonging to Subdivider as may be on the site of the Work and necessary therefor.

17. Emergencies

If, in the judgment of the City Engineer, conditions exist that cause, or may cause, a

hazard to life or property, the City Engineer may cause such conditions to be modified on an emergency basis without notice to the Subdivider. Neither the City Engineer, the City or its agents shall be held liable to the Subdivider for damages arising out of such emergency actions and to the extent that the actions taken are for the maintenance of safety to life and property that would not have existed had the Subdivider's operations not been in progress, the cost of such emergency measures so taken by the City shall be reimbursed to the City by the Subdivider.

18. Completion

Subdivider shall complete all of said Work on or before _____, [Date to be 2 years from Council Mtg.] or within such further time as may be granted by the City Council.

19. Attorney's Fees

In addition to any other amounts to be paid by Subdivider hereunder, Subdivider shall pay all costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the City in successfully enforcing the Improvement Security furnished by Subdivider hereunder.

20. Alteration of Agreement

Subdivider hereby stipulates and agrees that no addition, alterations or modifications to this Agreement or to the plans and specifications referred to herein, including any extension of time within which the Work hereunder may be completed, shall in any way affect its obligations on the Improvement Security furnished hereunder.

21. Surety to Include Issuer of Letter of Credit or Bond

The term surety as used herein shall include the issuer of any letter of credit or bond which is acceptable to the City as Improvement Security under this Agreement.

22. Severability

If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect.

23. Notices

All notices and other communications hereunder shall be in writing and mailed or personally delivered to the appropriate party at the address set forth in this Section 23, or, as to any party, at any other address in the State of California as shall be designated by it in a written notice sent to the other party.

To City:

City of Lancaster
44933 North Fern Avenue
Lancaster, California 93534-2461
Attention: City Engineer

To Subdivider:

Forestar Dorado Skies, LLC
4590 MacArthur Blvd. Suite #600
Newport Beach, CA 92660
Attn: Stephen Cameron, President

24. Successors and Assigns

All of the terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of the parties, their respective heirs, successors, representatives, assigns, officers, directors, agents, partners, servants, employees, and affiliated corporations or companies.

25. Headings

The headings contained in this Agreement have been inserted for convenience only and in no way define or limit the scope of interpretation of the Agreement.

26. Law

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

[Signatures begin on next page.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

APPROVED:

CITY OF LANCASTER

DEVELOPER

By: _____
City Engineer

(Subdivider's Name)

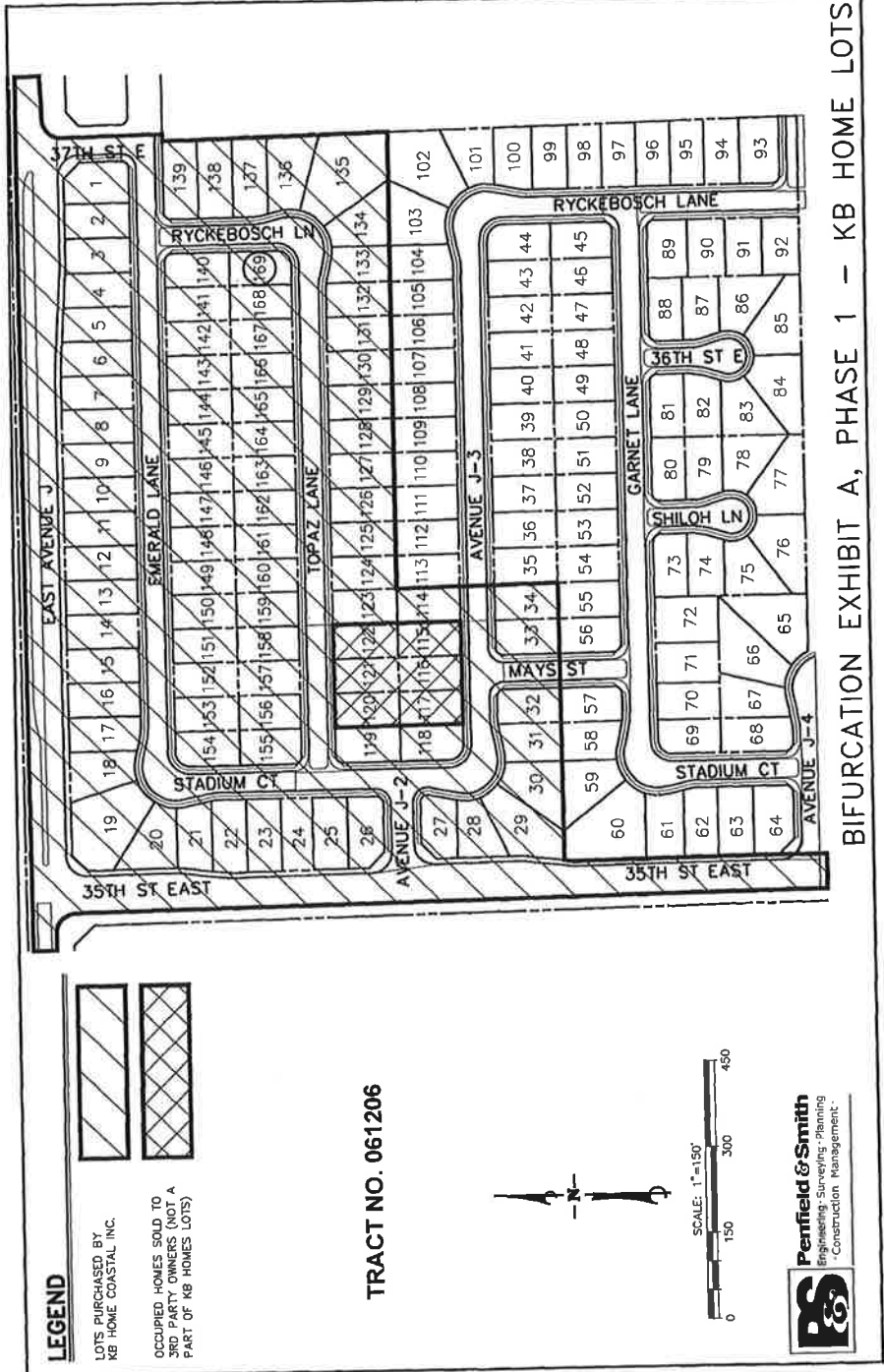
(Subdivider's Title)

**DEVELOPER SIGNATURES MUST BE
ACKNOWLEDGED BY NOTARY**

APPROVED AS TO FORM:

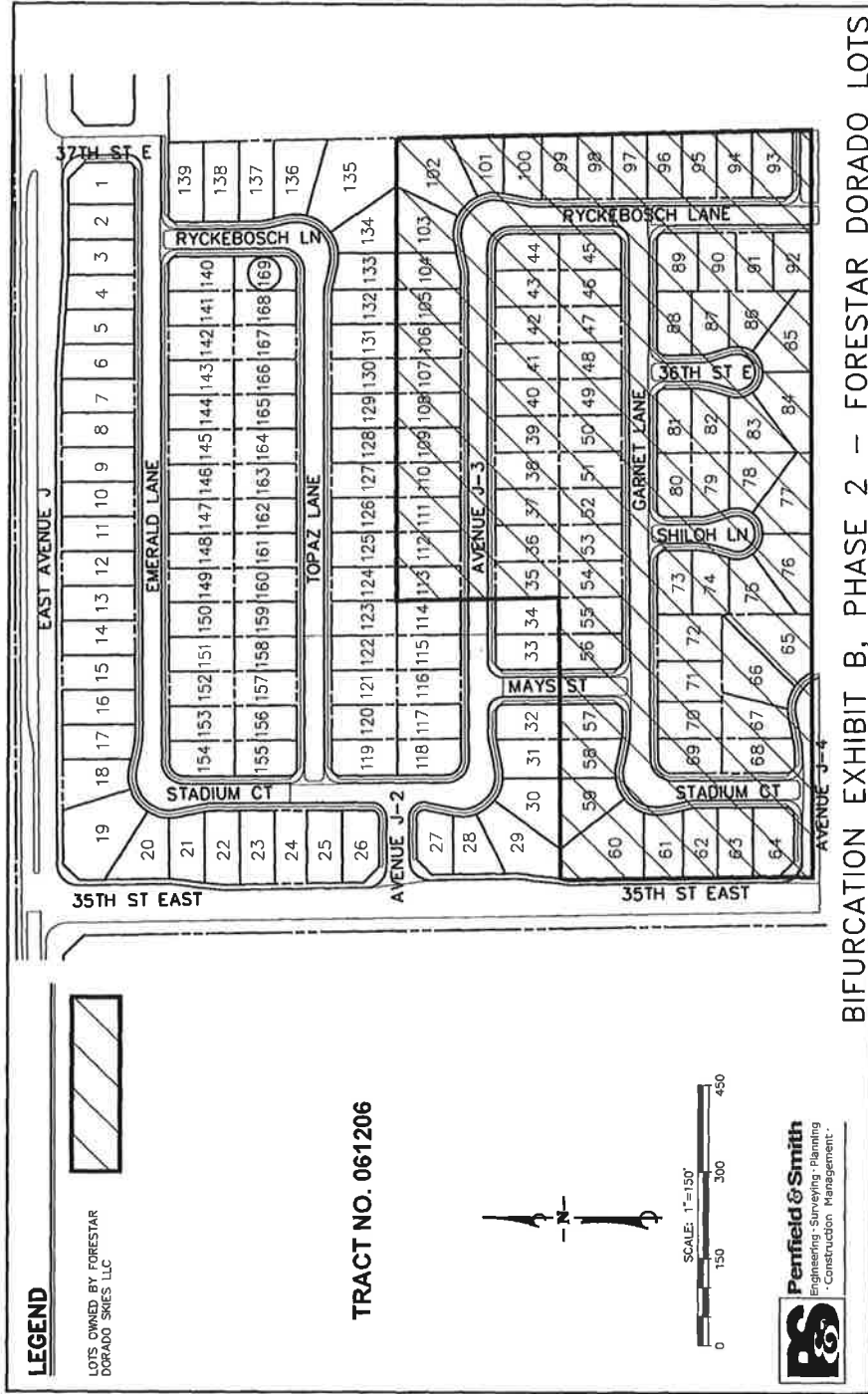
By: _____
City Attorney

Exhibit " A " Phase 1 Map



BIFURCATION EXHIBIT A, PHASE 1 - KB HOME LOTS

Exhibit " B " Phase 2 Map

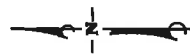


LEGEND



LOTS OWNED BY FORESTAR
DORADO SKIES LLC

TRACT NO. 061206



SCALE: 1"=150'



Perfield & Smith
Engineering - Surveying - Planning
Construction Management

BIFURCATION EXHIBIT B, PHASE 2 -- FORESTAR DORADO LOTS