

**JOINT COMMUNITY FACILITIES AGREEMENT**

**by and among**

**ORANGE COUNTY FLOOD CONTROL DISTRICT,**

**CITY OF IRVINE,**

**and**

**HERITAGE FIELDS EL TORO, LLC**

**relating to**

**CITY OF IRVINE  
COMMUNITY FACILITIES DISTRICT NO. 2013-3  
(GREAT PARK)**

## Attachment B

### JOINT COMMUNITY FACILITIES AGREEMENT

**THIS JOINT COMMUNITY FACILITIES AGREEMENT** (the “**Agreement**”) is entered into effective as of the \_\_\_<sup>th</sup> day of \_\_\_\_\_, 2014, by and among the ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic (the “**District**”), the CITY OF IRVINE, a charter city (the “**City**”), and HERITAGE FIELDS EL TORO, LLC, a Delaware limited liability company (the “**Company**”), and relates to the City of Irvine Community Facilities District No. 2013-3 (Great Park) (the “**CFD**”) for the purpose of financing from proceeds of bonds issued by, and special taxes collected within the boundaries of, the CFD certain flood control facilities and related improvements to be owned and operated by District pursuant to separate Improvement Agreements which the District and the Company intend to enter into subsequent to the date of this Agreement (“**District Facilities**”).

#### RECITALS:

A. The Company is the master developer of the land shown on the boundary map attached hereto in Exhibit “A” hereto (the “**Property**”), and by this reference incorporated herein, which is located in the City.

B. As a part of the development of the Property, the Company will be constructing certain flood control improvements and facilities that the Parties intend will be owned and operated by the District pursuant to separate Improvements Agreements. The District Facilities will be defined based solely upon the applicable Improvement Agreement, however a representative example of possible District Facilities is described on Exhibit “B” hereto, and by this reference incorporated herein. If an Improvement Agreement is never executed for particular District Facilities, District shall have no liability or obligation pursuant to this Agreement for those District Facilities.

C. Pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, consisting of Section 53311 et seq. of the California Government Code (the “**Act**”), the City has established the CFD in order to finance certain public facilities and improvements, including the District Facilities.

D. Subsection (a) of Section 53316.2 of the Act provides that a community facilities district may finance facilities to be owned or operated by a public agency other than the agency that created the district only pursuant to a joint community facilities agreement adopted pursuant to said section.

E. Subsection (b) of Section 53316.2 of the Act provides that at any time prior to the adoption of the resolution issuing bonds pursuant to Section 53356 of the Act, the legislative bodies of two or more local agencies may enter into a joint communities facilities agreement pursuant to said section and Sections 53316.4 and 53316.6 of the Act to exercise any power authorized by the Act with respect to the community facilities district if the legislative body of each entity adopts a resolution declaring that the joint agreement would be beneficial to the residents of that entity.

F. On March 26, 2013, the City Council of the City adopted resolutions forming the CFD, designating three improvement areas therein (the improvement areas designated by the

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City Council upon formation of the CFD, any new improvement area created out of an existing improvement area, and any property annexed to an improvement area shall be referred to herein as an “**Improvement Area**”), and authorizing the financing of various facilities and services, including the District Facilities. The CFD and each Improvement Area therein is authorized to finance, among other things, the District Facilities.

G. In connection with the development of the project, the City and the Company entered into the ARMIA and the Acquisition Agreement which collectively govern the financing of facilities by the CFD.

H. The provision of the District Facilities is necessitated by the development of the Property, and the Parties hereto find and determine that the residents residing within the boundaries of the CFD (including each Improvement Area therein) will be benefited by the District Facilities and that this Agreement is beneficial to the interests of such residents.

I. The City has sole discretion and responsibility for the administration of the CFD.

J. The City is authorized by Sections 53313 and 53313.5 of the Act to assist in the financing of the acquisition and/or construction of the District Facilities. This Agreement constitutes a joint community facilities agreement, within the meaning of Section 53316.2 of the Act, by and among District, the Company, and the City, pursuant to which the CFD is authorized to finance the acquisition and/or construction of all or a portion of the District Facilities.

### AGREEMENT:

**NOW, THEREFORE**, in consideration of the mutual promises and covenants set forth herein, the Parties hereto agree as follows:

1. Recitals. Each of the above recitals is incorporated herein and is true and correct.
2. Definitions. Unless the context clearly otherwise requires, the terms defined in this Section shall, for all purposes of this Agreement, including the Recitals, have the meanings herein specified.
  - (a) “Acquisition Agreement” means that certain Acquisition Agreement, dated as of March 26, 2013, by and between the City and the Company, as it may be amended from time to time.
  - (b) “Act” shall have the meaning given such term in Recital C.
  - (c) “ARMIA” means the Amended and Restated Master Implementation Agreement, dated December 27, 2010, by and between the City and the Company, as it may be amended from time to time.
  - (d) “Authorized District Facilities” means those District Facilities that are the subject of an Improvement Agreement, the acceptance of which by the District will be defined pursuant to the terms of the applicable Improvement Agreement.

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(e) “Bee Canyon Improvement Agreement” means the Improvement Agreement to be executed by the District, the Company, and the City in connection with the flood control facilities being constructed for Bee Canyon.

(f) “Bond Proceeds” or “Proceeds of the Bonds” means those net funds generated by the sale of any series of Bonds, and investment earnings thereon.

(g) “Bonds” means one or more series of bonds, or other securities, issued by the CFD on behalf of any Improvement Area.

(h) “District Facilities” means those facilities and improvements to be constructed by the Company that the Parties intend will be owned by the District pursuant to the terms of an Improvement Agreement executed by the Company and the District. Representative examples of such improvements that may be provided for in an Improvement Agreement are set forth in Exhibit “B” hereto.

(i) “Facilities Financing Fund” means the fund created to hold Special Taxes not needed to service Bonds, as described in Section 5.21 of the ARMIA.

(j) “Fiscal Agent Agreement” means a Fiscal Agent Agreement, Resolution, Resolution Supplement, Indenture of Trust, or other equivalent document(s) providing for the issuance of a series of Bonds.

(k) “Improvement Agreement” means an Improvement Agreement between the Company and the District regarding the construction and terms of District’s acceptance of one or more District Facilities. The inspection and conveyance terms of each Improvement Agreement will be substantially similar to those provisions in the Bee Canyon Improvement Agreement.

(l) “Improvement Area” shall have the meaning given such term in Recital F.

(m) “Party” or “Parties” means any one or all of the parties to this Agreement.

(n) “PayGo Proceeds” means the Special Taxes levied and collected in the CFD and each Improvement Area that are available to directly fund the District Facilities.

(o) “Project Fund” means the fund created pursuant to a Fiscal Agent Agreement to hold Bond Proceeds, as described in Section 5.2 of the ARMIA.

(p) “Property” shall have the meaning set forth in Recital A.

(q) “Rate and Method” means the Rate and Method of Apportionment of the Special Tax for each Improvement Area authorizing the levy and collection of Special Taxes within the respective Improvement Area of the CFD pursuant to proceedings undertaken for the formation of the CFD pursuant to the Act.

(r) “Reasonable Costs and Expenses” has the meaning given such term in the ARMIA.

(s) “Special Taxes” means the special taxes authorized to be levied and collected within the CFD pursuant to a Rate and Method.

(t) “State” means the State of California.

3. Formation of the CFD. The City has established the CFD and designated each Improvement Area under the terms of the Act, and authorized each Improvement Area to

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finance, among other things, the District Facilities. The District is not directly or indirectly approving or responsible in any way whatsoever for the levy of Special Taxes within the CFD nor is the District directly or indirectly approving or responsible in any way whatsoever for the issuance or administration of the Bonds. The District shall have no liability with respect to any act or omission of the City or the Company with respect to the CFD, the Bonds, the ARMIA, or the Acquisition Agreement. The City shall control, receive, and allocate proceeds of the Special Taxes in accordance with the proceedings to form the CFD, the Act, the ARMIA, and the Acquisition Agreement.

4. Only Authorized District Facilities May Be Financed. Only Authorized District Facilities may be financed by the Bond Proceeds and PayGo Proceeds of the CFD. A District Facility shall become an Authorized District Facility for purposes of qualifying for CFD financing eligibility when it is the subject of an Improvement Agreement executed by the Company and the District, with the Parties understanding that District ownership and operation responsibilities for said District Facility shall be in accordance with that Improvement Agreement. The Company and the District expect to enter into three or more Improvement Agreements over time as development of the Property progresses each of which will include the terms and conditions upon which Company will construct certain District Facilities, at no cost to District, and the circumstances under which the District will accept said District Facilities, all as more particularly set forth in the applicable Improvement Agreement. The first Improvement Agreement is expected to cover improvements to the Bee Canyon area of the Property. Once an Improvement Agreement is executed by the Company and the District, the District Facilities described in said Improvement Agreement shall for purposes of qualifying for CFD financing eligibility automatically become Authorized District Facilities (without any further action by any Party) and shall thereafter be eligible for financing from the CFD in the manner set forth in this Agreement. Eligibility for CFD funding shall not require or be deemed acceptance of the Authorized District Facility by the District. District acceptance shall in all cases be governed by the applicable terms of the Improvement Agreement.

5. Sale of Bonds and Use of Proceeds; PayGo Proceeds. The CFD may from time to time issue one or more series of Bonds in one or more Improvement Areas and apply a portion of the Bond Proceeds along with PayGo Proceeds to finance, among other things, the Reasonable Costs and Expenses of the Authorized District Facilities. Bond Proceeds will be deposited into the Project Fund. PayGo Proceeds will be deposited in the Facilities Financing Fund. Bond Proceeds on deposit in the Project Fund and PayGo Proceeds on deposit in the Facilities Financing Fund may be applied by the City for the Reasonable Costs and Expenses of the Authorized District Facilities in the manner, and subject to the restrictions, set forth in the ARMIA and the Acquisition Agreement.

6. Disbursements for Authorized District Facilities. Disbursements from the Project Fund and from the Facilities Financing Fund shall be governed by the ARMIA and the Acquisition Agreement, and will be made by way of a disbursement request signed by the CFD. However, before making any payment for an Authorized District Facility from the Project Fund or the Facilities Financing Fund, the CFD shall request that the District either (i) execute a certificate, letter, or other written instrument or (ii) counter-sign a disbursement request, in both either case which provides that the District is satisfied that the Authorized District Facility to be financed has been inspected and approved in accordance with the terms of the applicable

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Improvement Agreement. If the District determines that the Authorized District Facility has been inspected and approved in accordance with the terms of the applicable Improvement Agreement, the District shall sign the requested certificate, letter, or written instrument or countersign the applicable disbursement request.

7. Construction of Authorized District Facilities. The Company shall construct the Authorized District Facilities in accordance with an applicable Improvement Agreement. District shall not be required to accept, own, or operate any facilities or improvements which are constructed without a fully executed Improvement Agreement. In constructing the Authorized District Facilities and performing this Agreement, the Company is not the agent of the City, the CFD, or the District. None of the City, the CFD, or the District shall have any responsibility for payment to any contractor or supplier of the Company. It is not intended by the Parties hereto that this Agreement create a partnership or joint venture among them, and this Agreement shall not otherwise be so construed.

8. Inspection and Approval; Ownership of Authorized District Facilities. District agrees to inspect the construction of the Authorized District Facilities in accordance with the terms of the applicable Improvement Agreement. Provided that the Company has complied with the terms of the applicable Improvement Agreement, upon completion of construction of the Authorized District Facilities, the District agrees to accept dedication of the Authorized District Facilities and the ownership and responsibility for operation and maintenance of the Authorized District Facilities in accordance with the terms of the applicable Improvement Agreement. Acceptance of the Authorized District Facilities as contemplated in the applicable Improvement Agreements is not a condition to the reimbursement of the Company for the Reasonable Costs and Expenses of the Authorized District Facilities, which is subject to the terms and conditions of Section 6 above. Once accepted by District in accordance with the terms of the applicable Improvement Agreement, the Authorized District Facilities shall be and remain the property of District and District shall assume all ongoing maintenance responsibilities with respect to the Authorized District Facilities, unless otherwise provided in an applicable Improvement Agreement. Additionally, nothing set forth herein shall alter or amend any terms or provisions of the separate Improvement Agreements and in all cases the terms of the Improvement Agreement shall govern the construction by the Company and acceptance of any District Facility. In the event of a conflict between this Agreement and an Improvement Agreement, the applicable Improvement Agreement shall control.

9. Liability for Costs. The sole source of funds to pay the Reasonable Costs and Expenses of the Authorized District Facilities shall be the Bond Proceeds and the PayGo Proceeds made available for such purpose pursuant to the ARMIA and the Acquisition Agreement. If for any reason the Company may not be fully reimbursed with the Bond Proceeds and the PayGo Proceeds for the Reasonable Costs and Expenses of the Authorized District Facilities, the Company shall complete the design and construction of the Authorized District Facilities as required by the applicable Improvement Agreement. District shall have no liability to the Company for any shortfall in funding the Authorized District Facilities.

10. Amendment. This Agreement may be amended at any time but only in writing signed by each Party hereto.

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11. Entire Agreement. This Agreement, along with any and all subsequent Improvement Agreements, contain the entire agreement between the Parties with respect to the matters provided for herein and supersede all prior agreements and negotiations between the Parties with respect to the CFD funding which is the subject of this Agreement.

12. Notices. Any notice, payment or instrument required or permitted by this Agreement to be given or delivered to any Party shall be deemed to have been received when personally delivered or seventy-two hours following deposit of the same in any United States Post Office in California, registered or certified, postage prepaid, addressed as follows:

City:	City of Irvine One Civic Center Plaza Irvine, CA 92606-4104 Attn: City Clerk
District:	Orange County Flood Control District c/o County of Orange/OC Public Works P.O. Box 4048 Santa Ana, CA 92702-4048 Attn: Director
Company:	Heritage Fields El Toro, LLC 25 Enterprise Aliso Viejo, CA 92656 Attn: Richard Leigh

A Party may change its address for delivery of notice by delivering written notice of such change of address to the other Parties hereto.

13. Exhibits. All exhibits attached hereto are expressly made a part of this Agreement.

14. Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

15. Governing Law. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California.

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

17. No Third Party Beneficiaries. No person or entity other than the CFD shall be deemed to be a third party beneficiary hereof, and nothing in this Agreement (either express or

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implied) is intended to confer upon any person or entity, other than the District, the City, the CFD, and the Company (and their respective successors and assigns, exclusive of individual homebuyers), any rights, remedies, obligations, or liabilities under or by reason of this Agreement.

18. Singular and Plural; Gender. As used herein, the singular of any word includes the plural, and terms in the masculine gender shall include the feminine.

19. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute but one instrument.

[signature pages follow]



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IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written above.

CITY OF IRVINE

By: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY OF THE  
CITY OF IRVINE

[signatures continue on next page]

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ORANGE COUNTY FLOOD CONTROL  
DISTRICT, a body corporate and politic

By: \_\_\_\_\_  
Chair, Board of Supervisors

SIGNED AND CERTIFIED THAT A COPY  
OF THIS DOCUMENT HAS BEEN  
DELIVERED TO THE CHAIRMAN OF THE  
BOARD PER GC SECTION 25103, RESO.  
79-1535

APPROVED AS TO FORM:  
COUNTY COUNSEL

ATTEST:

By:  \_\_\_\_\_  
Deputy

\_\_\_\_\_  
Susan Novak  
Clerk of the Board of Supervisors,  
Orange County Flood Control District  
Orange County, California

[signatures continue on next page]

**Attachment B**

HERITAGE FIELDS EL TORO, LLC,  
A Delaware limited Liability Company

By: Heritage Fields El Toro Sole Member LLC,  
a Delaware limited liability company  
Its: Sole Member

By: Heritage Fields LLC,  
a Delaware limited liability company  
Its: Sole Member

By: Lennar Heritage Fields, LLC,  
a California limited liability company,  
Its: Administrative Member

By: Lennar Homes of California, Inc.,  
a California corporation,  
Its: Sole Member

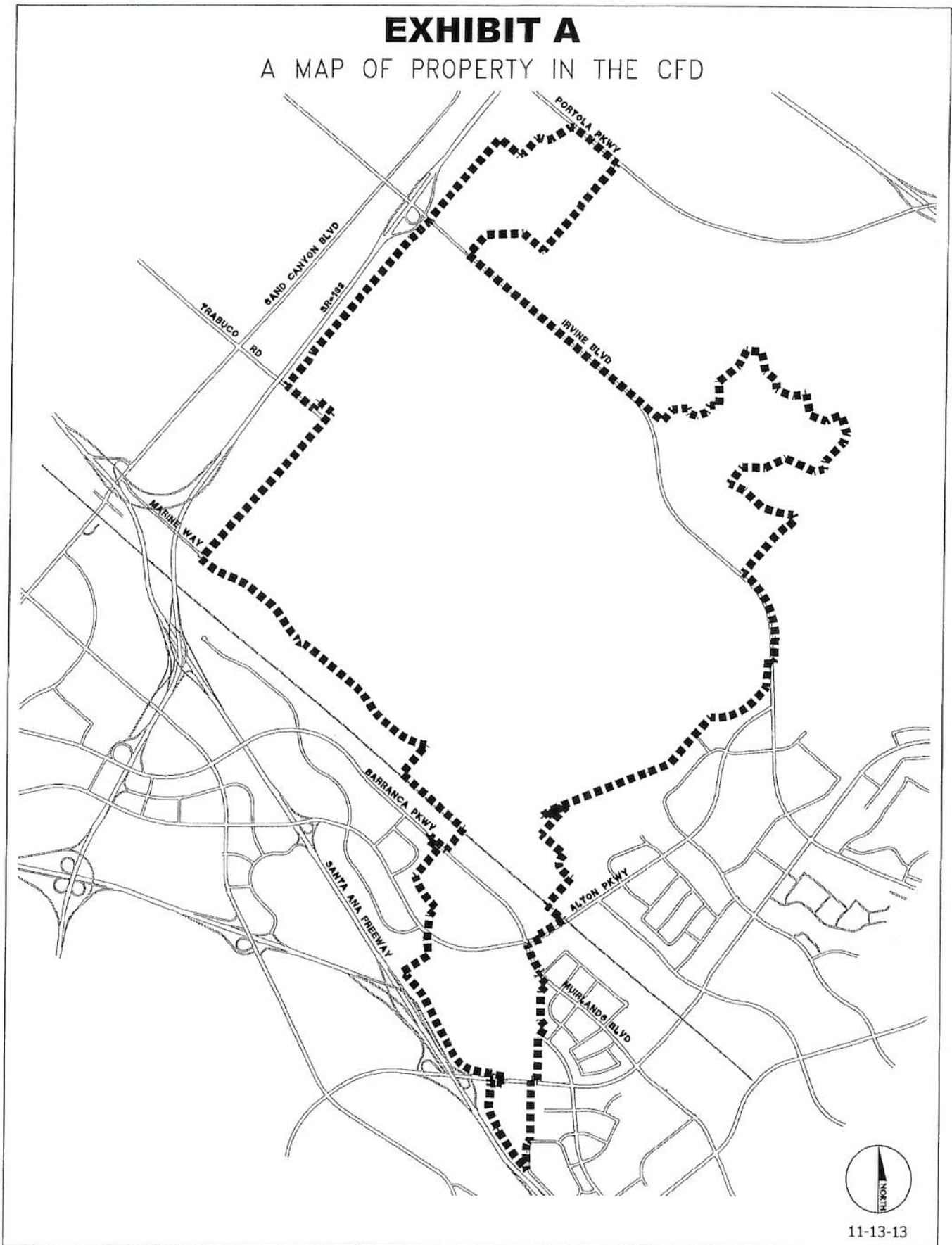
By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

# EXHIBIT A

A MAP OF PROPERTY IN THE CFD



## **Attachment B**

### **EXHIBIT B EXAMPLES OF POSSIBLE DISTRICT FACILITIES**

As more fully set forth in an Improvement Agreement, facilities which are to be constructed by the Company at no cost to the District in connection with the development of the Property, and all costs of site acquisition, planning, design, engineering, legal services, materials testing, coordination, surveying, construction staking, construction inspection and any and all appurtenant facilities and appurtenant work relating thereto only to the extent included in an Improvement Agreement, may include, but not be limited to:

- Flood control pipelines and channels, including but not limited to, reinforced concrete boxes;
- Storm drains;
- Laterals;
- Junction structures;
- Culverts and culvert crossings; and
- Appurtenant improvements to any of the foregoing, including, but not limited to, access roads, access hatches, manholes, fences, and gates that are necessary to operate and maintain District Facilities.