

## PERMANENT UTILITY EASEMENT AGREEMENT

This PERMANENT UTILITY EASEMENT AGREEMENT (the "Agreement") is made and executed this \_\_\_\_\_ day of \_\_\_\_\_, 2020 (the "Effective Date"), by and between Lennar Colorado, LLC, a Colorado limited liability company, with an address of 9193 S. Jamaica Street, 4th Floor, Englewood, CO 80112 ("Grantor"), and the Town of Erie, a Colorado municipal corporation with an address of P.O. Box 750, 645 Holbrook Street, Erie, CO 80516 (the "Town") (each a "Party" and collectively the "Parties").

WHEREAS, Grantor is the owner of the real property in the Town of Erie, Boulder County, Colorado more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Easement Property");

WHEREAS, the Town wishes to construct and install, and thereafter use, operate, inspect, maintain and repair sewer, water and storm sewer facilities and related appurtenances and facilities on, over, across and under the Easement Property, as depicted in **Exhibit B**, attached hereto and incorporated herein by this reference (the "Facilities");

WHEREAS, for this purpose, Grantor is willing to convey this permanent easement to the Town, which allows the Town to install, operate, use, repair and maintain sewer, water and storm sewer facilities upon and beneath the surface of the property described in **Exhibit A**, as the Easement Property; and

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained here, Grantor and the Town mutually agree as follows:

1. Grant of Easement. Grantor hereby grants to the Town, its successors and assigns, lessees, licensees and agents, a permanent, perpetual, non-exclusive easement (the "Easement") to enter, re-enter, occupy and use the Easement Property to construct, reconstruct, use, operate, maintain, repair, patrol, replace, enlarge and remove water, sewer and storm sewer lines, conduits, vaults, accessories, improvements, or manholes and all necessary appurtenances thereto, (the "Improvements") in, through, over, across, under and above the Easement Property.
2. Town's Rights. The Town and its employees, agents, contractors, representatives, successors and assigns shall have and exercise the right of ingress and egress in, to, through, over, under, above and across the Easement Property for access to perform construction, reconstruction, operation, installation, use, maintenance, repair, replacement, upkeep, monitoring, and removal of the Improvements.
3. Non-exclusive Use. The Town agrees, following written request to and approval by the Town, that other public utilities may be installed in the Easement Property if such utilities do not interfere with the Town's rights as herein granted or the Town's use of the Easement and Easement Property. All surface and subsurface uses of the Easement Property must be approved in writing by the Town prior to installation.
4. Maintenance. The Town shall be solely responsible for maintaining the Facilities and the Improvements. All Improvements installed by the Town on the Easement Property shall remain the Town's property.

5. No Interference. Grantor shall not construct or place any structure or building, shrub, tree, woody plant or nursery stock, whether temporary or permanent, of any kind or nature situated on the Easement Property that will interfere with or obstruct the access or Easement granted herein. Any such prohibited structure or item placed on the Easement Property may be removed by the Town at Grantor's expense and without liability to the Town for damages arising therefrom. Grantor shall retain the right to the use and occupancy of the Easement Property to the extent that it does not interfere with the Town's rights or its use of the Easement.

6. Maintenance of Grantor's Improvements. Grantor shall be solely responsible for the maintenance of all Grantor's improvements located within the Easement Property.

7. Retained Rights. Grantor shall have all rights to the Easement Property not granted hereby.

8. Warranty. Grantor warrants that it has the full right and legal authority to make the grant of this Easement.

9. Recordation. Except as otherwise expressly provided herein, all provisions of this Agreement, including the benefits, burdens and covenants, are intended to run with the land and shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. The Town shall record this Agreement in timely fashion in the official records of Boulder County and may re-record it at any time as may be required to preserve its rights in this Agreement.

10. No Merger. It is the express intent of the Parties that the doctrine of merger shall not apply to this Agreement and there will be no merger of estate between the Easement granted by this Agreement and the Property.

11. Miscellaneous.

a. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Boulder County, Colorado.

b. Integration. This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

c. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligation of this Agreement.

d. Third Parties. There are no intended third-party beneficiaries to this Agreement.

e. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent prepaid, first-class United States Mail to the Party at the address set forth on the first page of this Agreement.

f. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

g. Modification. This Agreement may only be modified upon written agreement of the Parties.

h. Governmental Immunity. The Town and its officers, attorneys and employees are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town, its officers, attorneys or employees.

i. Subject to Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**TOWN OF ERIE, COLORADO**

\_\_\_\_\_  
Jennifer Carroll, Mayor

ATTEST:

\_\_\_\_\_  
Heidi Leatherwood, Town Clerk

**GRANTOR**

Lennar Colorado, LLC,  
a Colorado limited liability company

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

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

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

STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was subscribed, sworn to, and acknowledged before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_ as \_\_\_\_\_  
of \_\_\_\_\_.

My commission expires:

(S E A L)

\_\_\_\_\_  
Notary Public

## **EXHIBIT A**

### **Legal Description of Easement Property**

SANITARY SEWER EASEMENT  
EXHIBIT "A"

PAGE 1 OF 2

A PARCEL OF LAND BEING A PORTION OF TRACT D, WILDROSE-FINAL PLAT, RECEPTION NO. 03749196, LOCATED IN THE NORTHEAST QUARTER OF SECTION 13, TOWNSHIP 1 NORTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, TOWN OF ERIE, COUNTY OF BOULDER, STATE OF COLORADO AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEARINGS ARE BASED ON THE SOUTHERLY LINE OF LOT 13, BLOCK 5 OF SAID WILDROSE-FINAL PLAT, BEARING NORTH 85°35'23.37" EAST, A DISTANCE OF 76.09 FEET AS SHOWN ON SAID WILDROSE-FINAL PLAT;

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 13, BEING ALSO A POINT ON THE RIGHT-OF-WAY OF MEADOWLARK DRIVE;

THENCE ALONG SAID RIGHT-OF-WAY, BEING ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 48.00 FEET, A CENTRAL ANGLE OF 07°30'59", WHOSE CHORD BEARS SOUTH 08°10'06" EAST A DISTANCE OF 6.29 FEET, FOR A DISTANCE OF 6.30 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID RIGHT-OF-WAY BEING ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 48.00 FEET, A CENTRAL ANGLE OF 42°19'23", WHOSE CHORD BEARS SOUTH 33°05'17" EAST A DISTANCE OF 34.66 FEET, FOR A DISTANCE OF 35.46 FEET

THENCE SOUTH 26°52'10" WEST, A DISTANCE OF 29.49 FEET;

THENCE NORTH 63°07'50" WEST, A DISTANCE OF 30.00 FEET;

THENCE NORTH 26°52'10" EAST, A DISTANCE OF 46.84 FEET TO THE POINT OF BEGINNING.

CONTAINING 1,070 SQUARE FEET OR 0.025 ACRES, MORE OR LESS.

I, ROBERT J. HENNESSY, A SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT THE ABOVE DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND TO THE BEST OF MY KNOWLEDGE AND BELIEF IT COMES IN ACCORDANCE WITH THE REQUIREMENTS OF THE COLORADO SURVEYING ACT.

ROBERT J. HENNESSY, PLS NO. 34580 DATE

FOR AND ON BEHALF OF JENKINS ENGINEERING INC.

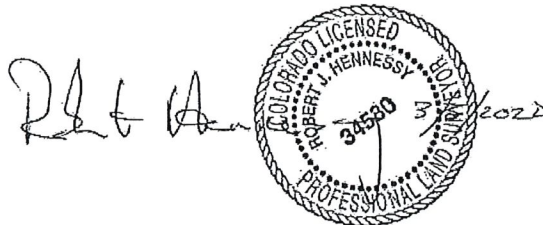
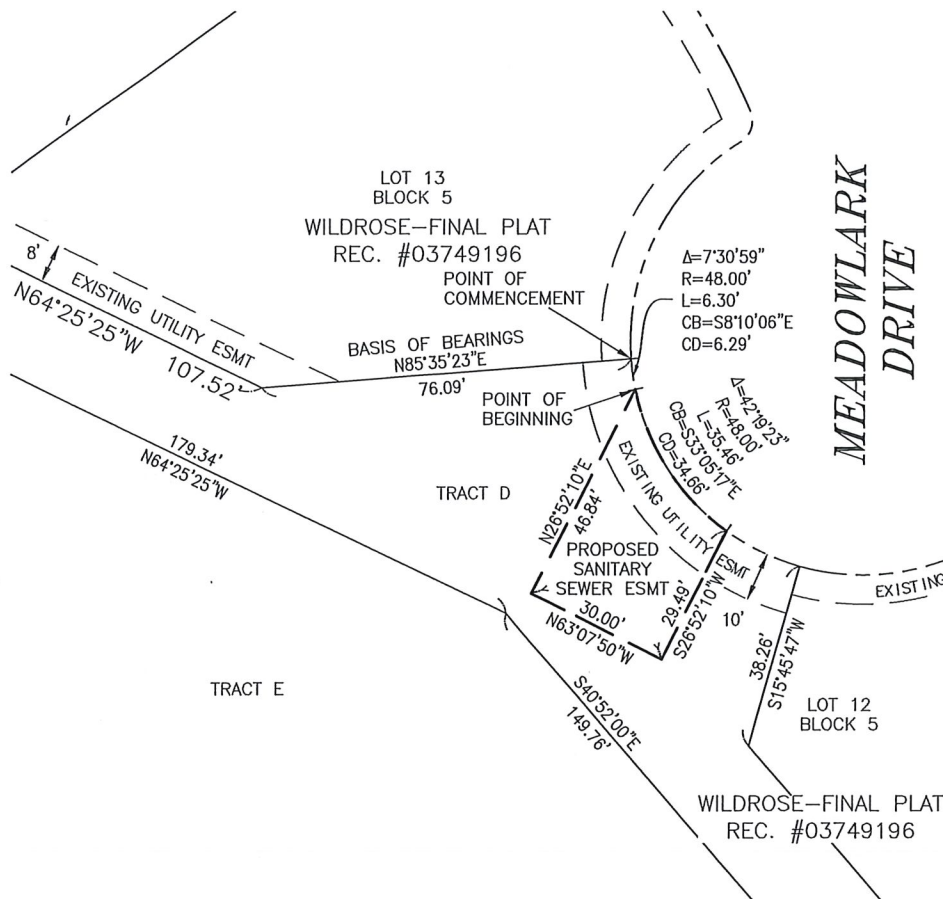
5690 WEBSTER STREET, ARVADA, CO 80002

\\PICKENG.COM\PROJECTS\DV\_ARV\_11814\217-089\SURVEY\EXHIBITS\SANITARY EASEMENT TRACT D AT LOT 13 BLK 5  
LEGAL.DOCX

# SANITARY SEWER EASEMENT

## EXHIBIT "A"

PAGE 2 OF 2



NOTE:  
THIS EXHIBIT DOES NOT  
REPRESENT A MONUMENTED LAND  
SURVEY. IT IS INTENDED TO  
DEPICT ONLY THE ATTACHED  
LEGAL DESCRIPTION.

\\CP.RICKENG.COM\PROJECTS\0\_ARV\_A\1814\217-089\SURVEY\EXHIBITS\ADDITIONAL UTIL. ESMTS.DWG



**RICK**  
ENGINEERING COMPANY

LOCATION:

A PORTION OF THE NE 1/4 OF SECTION 13,  
TOWNSHIP 1 NORTH, RANGE 69 WEST 6TH P.M.  
TOWN OF ERIE, COUNTY OF BOULDER, STATE OF COLORADO

0.025 ACRES±

TITLE: WILDROSE ADDITIONAL EASEMENTS

SCALE: 1" = 30'

REVISED: 3.02.20

D01041

## **EXHIBIT B**

### **Depiction of Utilities**

