

**DOMINION - PHASE FIVE
DEVELOPMENT AGREEMENT**

**Between Lennar Homes of Texas Land and Construction, Ltd. and the City
of Eules, Texas**

September 27, 2016

DOMINION – PHASE V DEVELOPMENT AGREEMENT

This Development Agreement (this "Agreement") is executed between Lennar Homes of Texas Land and Construction, Ltd. ("Owner") and the City of Euless, Texas ("City").

RECITALS

WHEREAS, City is a home-rule municipal corporation located in Tarrant County, Texas; and

WHEREAS, Owner proposes to develop 16.6 acres of real property located at the southeast corner of Midway Drive and Fuller-Wiser Road in the City as depicted on Exhibit A and described by metes and bounds on Exhibit B (the "Property"); and

WHEREAS, The Dominion is part of the RiverWalk at Euless Development and has been developed in accordance with the Riverwalk! Planned Development District #10-02-PD (the "Riverwalk! PD") approved by City Ordinance No. 1904; and

WHEREAS, The Dominion is subject to the terms and conditions of that certain Development Agreement between SLF IV- Euless RiverWalk JV, L.P., A TEXAS LIMITED PARTNERSHIP, and the City of Euless, Texas, effective March 11, 2011 ("SLF Development Agreement"); and,

WHEREAS, Owner desires to develop the Property as a single-family residential development in accordance with the development criteria applicable to the Dominion as set forth the Planned Development #16-01-PD (the "Dominion – Phase V PD") approved by City Ordinance No. 2107 and in accordance with Site Plan 16-01-SP; and

WHEREAS, Owner agrees to develop the Property under the same terms and conditions as those applicable to single family residential property under the SLF Development Agreement; and

NOW THEREFORE, pursuant to the terms and conditions of this Agreement, for good and valuable consideration, City and Owner agree as follows:

AGREEMENT

Section 1. Planned Development. City has approved the Dominion – Phase V PD in accordance with Site Plan 16-01-SP which implements zoning, platting, and other regulations on the Property in accordance with specific guidelines set forth in the Dominion – Phase V PD. Under the Dominion – Phase V PD, the Property is intended to be a single family residential neighborhood which will be benefitted by its development as a part of the Dominion and its proximity to the riverwalk amenity.

Section 2. SLF Development Agreement Standards. With respect to the development of the Property, Owner agrees to be bound by and to adhere to all of the standards, terms, and conditions pertaining to single family residential property outlined in the SLF Development

Agreement.

Section 3. Assessments. In accordance with Section 3(a) of the SLF Development Agreement, assessments to the Property shall be \$1,000 for each single family residential lot. Assessments shall be collected at the time of building permit issuance by City for the applicable lot or parcel and shall be deposited into the Escrow Fund described in the SLF Development Agreement. The escrowed funds will be used as set forth in the SLF Development Agreement, as may be amended from time to time.

Section 4. Notices. All notices required or contemplated by this Agreement (or otherwise given in connection with this Agreement) (a "Notice") shall be in writing, shall be signed by or on behalf of the Party giving the Notice, and shall be effective as follows: (a) on the third business day after being deposited with the United States mail service, Certified Mail, Return Receipt Requested with a confirming copy sent by FAX; (b) on the day delivered by a private delivery or private messenger service (such as FedEx or UPS) as evidenced by a receipt signed by any person at the delivery address (whether or not such person is the person to whom the Notice is addressed); or (c) otherwise on the day actually received by the person to whom the Notice is addressed, including, but not limited to, delivery in person and delivery by regular mail. Notices given pursuant to this section shall be addressed as follows:

To City: City Manager
City of Euless
201 N. Ector Dr.
Euless, Texas 76039
Fax: (817) 685-1416

With a copy to: Taylor Olson Adkins Sralla Elam, LLP, City Attorney
6000 Western Place, Suite 200
Fort Worth, Texas 76107
Attn: Wayne Olson
FAX: 817-332-4740

To Owner: Lennar Homes of Texas Land and Construction, Ltd.
1707 Marketplace Boulevard, Suite #250
Irving, Texas 75063
Attn: David Aughinbaugh
Fax:

Section 5. Memorandum of Agreement. Promptly following the execution of this Agreement and its approval as contemplated in Section 7 below, City and Owner will execute and record in the Real Property Records of Tarrant County a Memorandum of this Agreement in substantially the form of the Memorandum of Agreement attached as Exhibit C to this Agreement. The Memorandum of Agreement, when recorded, shall provide record notice that this Agreement is binding upon the Parties and their successors and assigns and upon the Property.

Section 6. Binding Agreement. This Agreement includes all Exhibits enumerated and identified in this Agreement. The Exhibits are incorporated into and made a part of this Agreement

by this reference thereto. This Agreement and the terms, covenants, agreements, reservations, and conditions provided for in this Agreement benefit and bind Owner and Assignees and the City.

Section 7. Authority and Enforceability. City represents and warrants that this Agreement has been approved by the City Council in accordance with all applicable public notice requirements (including, but not limited to, notices required by the Texas Open Meetings Act) and that the individual executing this Agreement on behalf of City has been duly authorized to do so. Owner represents and warrants that this Agreement has been approved by appropriate action of Owner and that the individual executing this Agreement on behalf of Owner has been duly authorized to do so. Each Party acknowledges and agrees that this Agreement is binding upon such Party and enforceable against such Party in accordance with its terms and conditions.

Section 8. Entire Agreement; Severability. This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, whether oral or written, covering the subject matter of this Agreement. This Agreement shall not be modified or amended except in writing signed by Owner and City (and any Assignee, with respect to rights and obligations pertaining to such Assignee). If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable for any reason, then (a) such unenforceable provision shall be deleted from this Agreement; (b) the unenforceable provision shall, to the extent possible, be rewritten to be enforceable and to give effect to the intent of the Parties; and (c) the remainder of this Agreement shall remain in full force and effect and shall be interpreted to give effect to the intent of the Parties.

Section 9. Applicable Law; Venue. This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Texas, and all obligations of the Parties are performable in Tarrant County. Venue for any action to enforce or construe this Agreement shall be Tarrant County.

Section 10. Non Waiver. Any failure by a Party to insist upon strict performance by another Party of any material provision of this Agreement shall not be deemed a waiver thereof, and the Party shall have the right at any time thereafter to insist upon strict performance of any and all provisions of this Agreement. No provision of this Agreement may be waived except by writing signed by the Party waiving such provision. Any waiver shall be limited to the specific purposes for which it is given. No waiver by any Party of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

Section 11. No Third Party Beneficiaries. Except as otherwise provided herein, this Agreement only inures to the benefit of, and may only be enforced by, the Parties. No other person or entity shall have any right, title, or interest under this Agreement or otherwise be deemed to be a third-party beneficiary of this Agreement.

Section 12. Force Majeure. Each Party shall use good faith, due diligence and reasonable care in the performance of its respective obligations under this Agreement, and time shall be of the essence in such performance; however, in the event a Party is unable, due to force majeure, to perform its obligations under this Agreement, then the obligations affected by the force majeure shall be temporarily suspended. Within three business days after the occurrence of a force majeure, the Party claiming the right to temporarily suspend its performance, shall give Notice to the other Party, including a detailed explanation of the force majeure and a description of the action

that will be taken to remedy the force majeure and resume full performance at the earliest possible time. The term “force majeure” shall include events or circumstances that are not within the reasonable control of the Party whose performance is suspended and that could not have been avoided by such Party with the exercise of good faith, due diligence and reasonable care. In no event shall force majeure apply to the City’s obligation to make the Escrow Funds available in accordance with the terms of this Agreement.

Section 13. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

Section 14. Further Documents. Each Party shall, upon request of the other Party, execute and deliver such further documents and perform such further acts as may reasonably be requested to effectuate the terms of this Agreement and achieve the intent of the Parties provided that the same does not impose any cost, expense, liability or adverse effect on Owner or any Assignee.

Section 15. Interpretation. This Agreement will be governed by and interpreted in accordance with the laws of the State of Texas. The word “include” does not exclude items not mentioned or listed. Multiple counterparts of this Agreement and any exhibit documents may be executed but shall be deemed one and the same instrument.

This Agreement is executed by City and Owner on the respective dates indicated below to be effective as of September 27, 2016, the Effective Date.

CITY OF EULESS

By: _____
Loretta Getchell, City Manager

Date: _____, 2016

OWNER:

Lennar Homes of Texas Land and Construction, Ltd.

By: _____

Date: _____, 2016

Exhibit A - Dominion Phase V

1 inch = 342 feet



September 2016

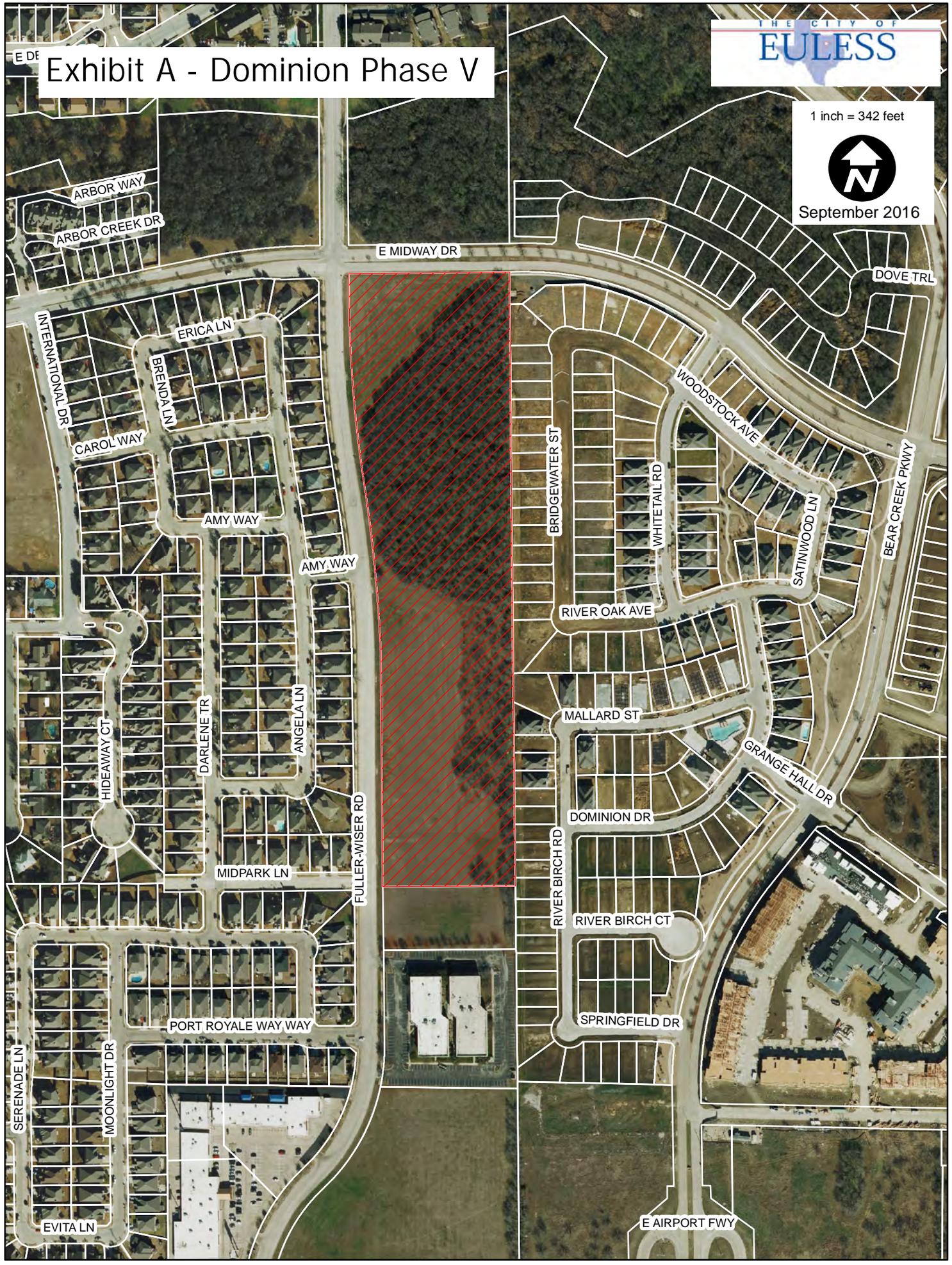


EXHIBIT B

METES AND BOUNDS DESCRIPTION – DOMINION PHASE V

WHEREAS LENNAR HOMES OF TEXAS LAND AND CONSTRUCTION, LTD., acting by and through the undersigned, its duly authorized agent, is the owner of the following described tract of land, part of the Adam Bradford Survey, Abstract No. 152, City of Euless, Tarrant County, Texas, being a remaining part of Lot 2, Block B of Midway Square Addition, Phase Two, an addition to the City of Euless, Tarrant County, Texas as recorded in Volume 388-132, Page 43 of the Plat Records of Tarrant County, Texas (P.R.T.C.T.), and being more completely described as follows, to-wit:

BEGINNING at a 1/2" iron pin found, said iron pin being on the south right-of-way line of Midway Drive (80' R.O.W.), said iron pin also being the northwest corner of The Dominion at Bear Creek, Phase Three, an addition to the City of Euless, Tarrant County, Texas as recorded in Clerk's File No. 0215256661, P.R.T.C.T., said iron pin also being the northeast corner of said Lot 2, Block B;

THENCE South 00 deg. 25 min. 40 sec. East along the west line of said The Dominion at Bear Creek, Phase Three and the east line of said Lot 2, Block B, a distance of 762.56 feet to a capped 1/2" iron previously set said iron pin also being the northwest corner of Lot 50, Block A of the said The Dominion at Bear Creek, Phase 3;

THENCE North 89 deg. 28 min. 37 sec. East along the north line of said Lot 50, Block A, a distance of 116.27 feet to a capped 1/2" iron pin previously set. Said iron pin also being on the west right-of-way line of Bridgewater Street (58' R.O.W.);

THENCE South 00 deg. 31 min. 23 sec. East along the said west right-of-way line of Bridgewater Street, a distance of 160.00 feet to a capped 1/2" iron previously set, said iron pin also being the southeast corner of Lot 48, Block A of the said The Dominion at Bear Creek, Phase 3;

THENCE South 89 deg. 28 min. 37 sec. West along the south line of said Lot 48, Block A, a distance of 116.20 feet to a capped 1/2" iron previously set. Said iron pin also being on the east line of said Lot 2, Block B of Midway Square Addition;

THENCE South 00 deg. 34 min. 27 sec. East along the west line of said The Dominion at Bear Creek, Phase Three and the west line of The Dominion at Bear Creek, Phase Two, an addition to the City of Euless, Tarrant County, Texas as recorded in Clerk's File No. 0214207166, P.R.T.C.T. and the east line of said Lot 2, Block B, a distance of 803.77 feet to a 1/2" iron pin found, said iron pin also being the northeast corner of Lot 2R2, Block B of Midway Square Addition, Phase Two, an addition to the City of Euless, Tarrant County, Texas as recorded in Volume 388-153, Page 1, P.R.T.C.T.;

THENCE South 89 deg. 32 min. 31 sec. West along the north line of said Lot 2R2, Block B, a distance of 370.24 feet to a capped 1/2" iron pin set, said iron pin also being on the east right-of-way line of Fuller-Wiser Road (80' R.O.W. at this point);

THENCE North 00 deg. 30 min. 29 sec. West along the said east right-of-way line of Fuller-Wiser Road. a distance of 532.28 feet to a capped 1/2" iron pin set. said iron pin being a Point of Curvature of a circular curve to the left. having a radius of 3153.15 feet, a central angle of 9 deg. 10 min. 57 sec .. and being subtended by a chord which bears North 05 deg. 05 min. 57 sec. West - 504 .80 feet;

THENCE in a northerly direction along said curve to the left and along the said east right-of-way line of Fuller-Wiser Road. a distance of 505.34 feet to a capped 1/2" iron pin set. said iron pin being a Point of Curvature of a reverse circular curve to the right. having a radius of 3073.15 feet. a central angle of 9 deg. 10 min. 57 sec And being subtended by a chord which bears North 05 deg. 05 min. 57 sec. West - 491.99 feet;

THENCE in a northerly direction along said curve to the right and along the said east right-of-way line of Fuller-Wiser Road, a distance of 492.52 feet to a capped 1/2" iron pin set;

THENCE North 00 deg. 30 min. 29 sec. West tangent to said curve and along the said east right-of-way line of Fuller-Wiser Road. a distance of 99.09 feet to a capped 1/2" iron pin set. said iron pin also being on the said south right-way line of Midway Drive;

THENCE North 89 deg. 21 min. 34 sec. East along the said south right-way line of Midway Drive, a distance of 450 .05 feet to the POINT OF BEGINNING. Containing 704,003 square feet or 16 .162 acres of land .

EXHIBIT C

MEMORANDUM OF DEVELOPMENT AGREEMENT

This MEMORANDUM OF DEVELOPMENT AGREEMENT dated as of September ____, 2016 (this "*Memorandum*") is executed between the **CITY OF EULESS** ("*City*") and **LENNAR HOMES OF TEXAS LAND AND CONSTRUCTION, LTD** ("*Owner*").

1. City and Owner are parties to that certain currently effective Dominion – Phase V Development Agreement dated effective as of September ____, 2016 (the "*Development Agreement*") regarding certain property governed by the Dominion Planned Development Ordinance #16-01-PD (the "*Planned Development*") approved by City Ordinance No. 2107 and as depicted on **Exhibit A** and described by metes and bounds on **Exhibit B** attached hereto ("the Property").

2. This Memorandum serves as notice of the Development Agreement which concerns covenants and conditions regarding the construction of and assessments for certain Riverwalk amenities within the Property and dedications of property to be made to City for such Riverwalk amenities.

3. This Memorandum is subject to, and is qualified in its entirety by reference to, the Development Agreement. The Development Agreement controls in the event of any conflict between its terms and the terms of this Memorandum.

4. The Development Agreement benefits and binds the City, Owner and Assignees (as defined in the Development Agreement).

IN WITNESS WHEREOF, City and Owner executed this Memorandum on the respective dates indicated below but effective as of the date first above written.

City:

City of Euless

By: _____
Loretta Getchell, City Manager

Date: _____, 2016

OWNER:

Lennar Homes of Texas Land and Construction, LTD

By: _____

Name: _____

Title: _____

Date: _____, 2016

THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

This Memorandum of Agreement was acknowledged before me on _____, 2016 by Loretta Getchell, on behalf of the City of Euless.

Notary Public, State of Texas

THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

This Memorandum of Agreement was acknowledged before me on _____, 2016 by _____, on behalf of Lennar Homes of Texas Land and Construction, LTD

Notary Public, State of Texas