

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

Cameron Estates Community Services District  
Attn: Karen Moonitz, General Manager  
P.O. Box 171  
Shingle Springs, CA 95682

**ANNEXATION AGREEMENT**

This Annexation Agreement (the “Agreement”) is made and entered into this 17<sup>th</sup> day of November, 2017, by and between CAMERON ESTATES COMMUNITY SERVICES DISTRICT, a political subdivision of the State of California formed and operated pursuant to California Government Code Section 61000 et seq., (hereinafter “District”) and Deubel Enterprises, LP, (hereinafter “Property Owner”), with respect to the request by Property Owner that District annex into the District a parcel of property consisting of approximately 40 acres owned by Property Owner and located in El Dorado County, contiguous to the Southwestern boundary of the District, identified by APN 109-010-031 (the “Property”).

**RECITALS**

1. On January 3, 2007, Property Owner acquired the Property from the Mercy Foundation. The Property is identified as “the Northeast ¼ of the Northwest ¼ of Section 16, Township 9 North, Range 9 East, M.D.M”, and is depicted as Parcel 3 on the Assessor’s Map dated August 21, 2007, a copy of which is attached hereto as Exhibit A and is incorporated by reference.

2. As a result of land divisions by predecessors in interest to Property Owner, the Property does not have access to any improved roads and Property Owner has been advised by El Dorado County Planning Department that road access will be a condition of approval on any subdivision or other future development of the Property. Property Owner holds easements (as described in Section 18, below) that will provide a connection to existing roads located within the District, which roads are capable of providing access to the Property, contingent upon Property Owner constructing new road improvements to connect the Property to existing District roads.

3. The District has the power to build, own, and maintain streets or roads within its jurisdiction, and has the same powers, duties and authority over its roads as a County pursuant to Government Code section 61103. The District is deemed the local authority and has exclusive jurisdiction under Vehicle Code section 21101-21104 over roads within its jurisdiction which it maintains. Therefore, the District has the right to regulate certain aspects of traffic control upon roads within its jurisdiction. In addition, Government Code section 61100(1) provides that the District may acquire, construct, improve, and maintain streets, roads, rights-of-way, bridges, culverts, drains, curbs, gutters, sidewalks, and any incidental works to the maintenance of roads.

4. The District has the power to adopt ordinances limiting access to and use of the roads within its jurisdiction to land owners and residents of the district pursuant to Government Code section 61105, and has adopted Ordinance No. 2016-01 for that purpose.

5. By District Resolution No. 2013-01 (dated March 21, 2013), the District has adopted procedures related to potential annexations into the District. Among other matters, Resolution No. 2013-01 requires that property must be annexed to the District before permission will be granted to owners of such parcels to access and use the roads of the District.

6. In September 2014, Property Owner filed an Application for Annexation with the District, and action on that application is pending. Property Owner has also filed an application for annexation into the District with the El Dorado County Local Agency Formation Commission ("EDC LAFCO"), identified as Project No. 2012-03. Property Owner has not filed an application for parcel map or tentative subdivision map with the County of El Dorado and, subject to approval of this Agreement by the District and approval of the Application for Annexation, does not intend to file any such application until road access to the Property is established to its satisfaction and the annexation approvals are received from the District and EDC LAFCO. Property Owner reserves its right to file applications for parcel map or tentative subdivision map, utilizing other road access routes, in the event this Agreement or the annexation are disapproved by either District or EDC LAFCO.

7. The Board of Directors of the District and Property Owner, in anticipation of annexation of the Property into the District, have entered into a Pre-Annexation Agreement dated August 15, 2017 (the "Pre-Annexation Agreement") for the purpose of agreeing to a process for consideration of annexation of the Property into the District. The Pre-Annexation Agreement remains in effect until approval of the Application for Annexation by EDC LAFCO and recordation of an Annexation Agreement. The Pre-Annexation Agreement includes the following material terms, each contingent upon approval of annexation of the Project by the District and EDC LAFCO:

(a) Imposes limitations on development of the Property to no more than four (4) parcels (the "Project"), a reduction from its current zoning of RE-5, Residential, which zoning provides Property Owner with the legal right to apply to the County to subdivide the Property into eight (8) parcels of no less than five (5) acres each or,

alternatively, to seek approval from the County for a re-zone for higher density or different land use on the Property;

(b) Restricts access to District roads through the Property, to exclude any other persons or property owners including owners of parcels adjacent to the Property including the developments known as Marble Valley and Lime Rock Valley, without the express written consent of the District;

(c) Specifies the process and scope of environmental review of the Application for Annexation for the Project;

(d) Confirms the terms of the obligation of Property Owner to reimburse the District for its administrative, legal and environmental consulting costs incurred in connection with the processing of the Application for Annexation, negotiating the terms and conditions of the Pre-Annexation Agreement and this Agreement, participation in development and approval of the applicable CEQA documents and approvals, and participation in the EDC LAFCO approval process; and

(e) Provides that District shall not impose any additional payment obligations on Property Owner other than those specified in the Pre-Annexation Agreement prior to or as a condition of consideration of the Annexation Application.

8. Property Owner and District acknowledge that subsequent to the execution of this Agreement, Property Owner (or its successor in interest) will be required to consent to certain conditions of approval and may be required to enter into one or more agreements with El Dorado County in order to obtain approval of a parcel map subdividing the Property and prior to recordation of a final parcel and/or subdivision map for the Project. Property Owner has agreed on behalf of itself and any successors in interest in the Pre-Annexation Agreement to provide written notice to District of any applications filed with El Dorado County for approval of a parcel map or other subdivision of the Property. Property Owner further agreed to advise El Dorado County that District should be provided with special written notice of any proposed conditions of approval related to use or maintenance of roads within the District for the benefit of the Property prior to finalization of any such conditions of approval. Property Owner acknowledged the intent of providing the District the opportunity to review and comment upon proposed conditions of approval prior to finalization of those conditions and to cooperate with District in achieving the intent of the notice requirement.

9. Property Owner and District acknowledge that subsequent to the execution of this Agreement, Property Owner will be required to conduct additional environmental review and documentation pursuant to the California Environmental Quality Act (“CEQA”) with respect to any application to the County for approval of a parcel map or proposed subdivision for the Project, in addition to the CEQA environmental review and documentation conducted by the District and Property Owner with respect to the sole issue of annexation of the Property into the District.

10. Property Owner and District acknowledge that District will require execution of a Subdivision Improvement Agreement by Property Owner (or its successors in interest) for those Improvements that will be constructed to provide access to District roads and which will be dedicated to District for maintenance.

11. To facilitate the annexation of the Project into the District, Property Owner and District have agreed to enter into this Agreement in order to (1) specify the terms and conditions of the Annexation of the Property into the District, between the parties indefinitely, unless EDC LAFCO disapproves the proposed annexation; (2) specify the Plan of Services required by EDC LAFCO for its approval of the Application for Annexation for Project No. 2012-03; (3) specify the terms and conditions upon which the District is willing to provide road access, road improvement, maintenance and drainage services to the Property Owner and its successors-in-interest for the benefit of the Project; (4) specify the terms of the conditions subsequent to the annexation of the Property that Property Owner and District must satisfy to avoid default under this Agreement, namely, provision of plans and specifications for road and related drainage improvements and construction of such improvements required to serve the Project as approved by District and County at Property Owner's sole expense and, subsequent thereto, District's allowance of use and enjoyment of roads within its jurisdiction.

12. District and Property Owner recognize and agree that each party's performance under this Agreement is in reliance upon and in consideration of the covenants and conditions provided for in this Agreement.

## **AGREEMENT**

NOW, THEREFORE, the parties hereto in consideration of the mutual performance of the covenants and conditions hereinafter set forth agree as follows:

### **1. Definitions**

1.1 The terms used in this Agreement listed below shall have the following meanings:

a. "District" shall mean the Cameron Estates Community Services District;

b. "County" shall mean the County of El Dorado.

c. "County Approvals" shall mean approval by El Dorado County of the parcel map(s) or subdivision for or of the Project together with all conditions of approval, approval of the plans and specifications for the Improvements, approval of final construction of the Improvements, and approval of all environmental documents and mitigation measures required by CEQA with respect to the approval of

the parcel map, and approval of the planning, design and construction of the Improvements;

d. “EDC LAFCO Approvals” shall mean approval by El Dorado County Local Agency Formation Commission of the extension of the sphere of influence of the District and annexation of the Project into the District which includes the terms and conditions specified in this Agreement;

e. “Improvements” shall mean all road and related road drainage improvements required by District and County to be constructed in compliance with County and District standards, both on the Property (On-site Road Improvements) and those road improvements to be constructed on property owned by others necessary to secure access to the Property from existing District roads, as well as required improvements to existing District roads as specified herein (Off-site Road Improvements);

f. “Project” shall mean all of the Property, with the limitation stated in this Agreement that the Property may be subdivided into not more than four (4) parcels;

g. “Property Owner,” for all purposes of this Agreement and all obligations agreed to herein, shall mean Deubel Enterprises, LP, the owner of the Property at the time of the execution of this Agreement, or the subsequent successors in interest to fee simple title to the Property or any portion thereof, whether obtained by gift, grant, devise, purchase, or otherwise. Unless otherwise specified herein, the rights and obligations assigned to a “Property Owner” under this Agreement shall apply only to the record title owner of all or any portion of the Property. District acknowledges that the Property may be developed by more than one Property Owner.

Any terms not specifically defined in this Section shall have the meaning set forth in this Agreement.

## **2. Annexation of Property into District.**

2.1 Property Owner hereby agrees that this Agreement shall constitute Property Owner’s agreement to annex the property constituting the Project into the District. Property Owner further agrees to execute any further documents necessary to consent to such annexation if the District so requests or if required by District or EDC LAFCO and shall consent to terms and conditions imposed by EDC LAFCO consistent with this Agreement. Property Owner retains its right to object to any terms and conditions that may be imposed by EDC LAFCO that are inconsistent with this Agreement, and to thereafter exercise those rights of termination set forth in Section 15 of this Agreement.

2.2 Property Owner hereby agrees to perform the following with respect to any portion of the Property that Property Owner seeks to develop pursuant to any County Approvals: (a) at the time of making application to County for approval of

any development on the Property, to provide County with the form of the Subdivision Improvement Agreement and to enter into a Subdivision Improvement Agreement, as described in more detail in Section 6.2 of this Agreement and in substantially the form set forth in Exhibit B prior to application for a grading permit or the commencement of any development activity on the Property; (b) to design, plan, engineer, and construct all on-site and off-site road improvements required by County to serve the Project at Property Owner's sole cost and expense pursuant to existing adopted County standards and those plans and specifications approved by the District and as incorporated by the County into any County Approvals; (c) to dedicate to District any real property or easements upon which the Improvements are located to enable District to perform regular maintenance and repair of the Improvements for the benefit of the Project; and (d) to reimburse District for its administrative, legal and environmental consulting costs and expenses incurred in conducting the annexation process, negotiating, drafting and implementing this Agreement, participating in the approval process required by the County for any development on the Property (including the approval, execution and, if necessary, enforcement of the Subdivision Improvement Agreement), reviewing the engineering analyses and the plans and specifications for the Improvements, and inspecting construction of the Improvements prior to acceptance by the District. The parties intend that except for reimbursement of the costs and expenses incurred in connection with the annexation process and this Agreement, the obligations to reimburse District costs stated in Section 2.2 shall be applied to individual parcels within the Project and against the Property Owner(s) seeking development of any parcel within the Project from the County.

2.3 District hereby agrees that upon approval of the annexation by EDC LAFCO, reimbursement to District by Property Owner of all of its costs and expenses incurred in the annexation process, compliance with Sections 3, 4 and 6 of this Agreement, execution of a Subdivision Improvement Agreement by the Property Owner developing the Property, and execution and recordation of this Agreement as set forth in Sections 3.1 and 4.1 of this Agreement, District agrees to provide public road access to the Project. District hereby agrees to provide, and Property Owner shall have the right to receive from District, road and road drainage maintenance services for the benefit of the Project on the same basis as do other owners of properties within the District, so long as Property Owner complies with the terms and conditions of Sections 3, 4 and 6 of this Agreement, the LAFCO Approvals, and the terms and conditions of any executed Subdivision Improvement Agreement.

### **3. Limitation on Development of Property.**

3.1 The Property presently is zoned RE-5, Residential, and under the El Dorado County Zoning Code Property Owner currently possesses the legal right to apply to the County to subdivide the Property into eight (8) parcels of no less than five (5) acres or, alternatively, to seek application for a re-zone for higher density or different land use on the Property. In consideration of the approval by District of annexation of the Property into the District on the terms and conditions specified in this Agreement, as evidenced by Resolution No. 2017-06 adopted by majority vote of the Board of Directors

at a duly noticed public meeting on November 16, 2017, Property Owner hereby agrees, during the term of this Agreement, and as a condition of annexation on behalf of himself and all successors and assigns to ownership of the Property, to maintain zoning at RE-5, Residential, and to limit development to no more than four (4) parcels until such time as all necessary annexation approval processes and hearings have been completed by EDC LAFCO. The continuation of this limitation is contingent upon the approval by EDC LAFCO of Project No. 2012-03 upon terms and conditions consistent with this Agreement. Once the EDC LAFCO Approvals have issued, District and Property Owner intend that this limitation on development of the Property shall be binding in perpetuity on all successors and assigns of Property Owner, and that this Agreement shall be promptly recorded in the Official Records of El Dorado County to provide notice of this limitation on development. This limitation on development is only subject to termination as specified in Section 15 of this Agreement.

#### **4. Limitation on Access to Roads by Other Properties Adjacent to Property.**

4.1 In consideration of the approval by District of annexation of the Property into the District on the terms and conditions specified in this agreement, as evidenced by Resolution No. 2017-06 adopted by majority vote of the Board of Directors at a duly noticed public meeting on November 16, 2017, Property Owner hereby also agrees, during the term of this Agreement, and as a condition of annexation, on behalf of himself and all successors and assigns to ownership of the Property, that no access shall be provided to District roads through the Property to the owners, invitees or guests of any property owners outside of the Project boundaries without the express written consent of District. This includes, but is not limited to, any request for access to District roads through the Property by the current or future owners of the project developments presently known as Marble Valley and Lime Rock Valley. The continuation of this limitation on access is contingent upon the approval by EDC LAFCO of Project No. 2012-03 upon terms and conditions consistent with this Agreement. Once the EDC LAFCO Approvals have issued, District and Property owner intend that this limitation on access through the Property shall be binding in perpetuity on all successors and assigns of Property Owner, and that this Agreement shall be promptly recorded in the Official Records of El Dorado County to provide notice of this limitation on access. This limitation is not applicable to owners, invitees or guests of any development within the Project. This limitation on development is only subject to termination as specified in Section 15 of this Agreement.

#### **5. Environmental Review.**

##### **5.1 Definition of Project for Purposes of Environmental Review and Completion of Environmental Analysis**

In light of the limitations on development identified in Sections 3 and 4 of this Agreement, the Project, as defined under the California Environmental Quality Act (“CEQA”), Public Resources Code section 21065, is the Application for

Annexation of a 40-acre parcel to the District, as that property is depicted on Exhibit A to this Agreement, with the annexation of not more than four (4) parcels of a size not less than five (5) acres (hereafter the “Project”). The Project, for purposes of CEQA, does not include any actual development application to the County for development of the Property or the Improvements, or proposal to the County for a parcel map, as District has no statutory power to approve or disapprove land use development applications. Therefore, additional environmental review under CEQA will be required by the County as the land-use planning authority and as the lead agency under CEQA at the time of filing by Property Owner of a development application or other proposal for a parcel map(s) with respect to the Property.

### 5.2 Scope of Environmental Analysis.

The District and Property Owner acknowledge that Property Owner has not made an application to the County for a parcel map and/or any subdivision or development of the Property and that additional environmental analysis by the County of El Dorado will be required whenever any application for a parcel map, entitlement request or application for development is filed by Property Owner with the County of El Dorado. The nature, extent and location of the ultimate On-site and Off-site Road Improvements necessary to serve the Project have not been defined with sufficient specificity at the time of this Agreement to provide for meaningful environmental review under CEQA. Therefore, a full and complete environmental analysis as required by CEQA for the Improvements will be considered at the time that site specific impacts of the Improvements can be adequately and accurately assessed. Accordingly, the scope of analysis of the Project for purposes of CEQA and this Agreement shall be limited to the potential environmental effects of the annexation alone including the limitations on development and access described in Sections 3 and 4 hereof. The Parties do not intend that the limited environmental review of this Project shall serve as the environmental review required for any future development application filed with the County with respect to the Property, although the environmental analysis may be considered and relied upon in the future by the County as allowed for under CEQA.

### 5.3 Technical Studies.

District has identified potential impacts to roads within the District from vehicles related to construction of homes on the Property and from the use of District roads by future residents with homes on the Property, or their invitees or guests. District has requested completion of technical analyses related to the condition of Native Lane and Flying C Road and Flying C Court, as depicted on Exhibit A, as the primary route to be used by residents on the Property to access roads outside of the District boundaries. The Parties acknowledge, however, that until an application is filed with the County for subdivision of the Property it would be speculative to evaluate the number of cars that will travel on the identified District roads. In addition, since the Project (as defined herein) does not include an application for any development, the Parties have agreed that such technical studies shall be conducted as part of the future environmental analysis required for an application to the County for a parcel map and development of the

Property by Property Owner. Property Owner expressly acknowledges this requirement for subsequent environmental review in connection with a parcel map and development application.

Property Owner and District hereby agree that Property Owner shall retain a qualified consultant, at its sole cost and expense, to conduct a study consisting of a survey and evaluation of the existing condition of all District roads susceptible to impacts from construction and development activity, as well as future use of District roads by future inhabitants, guests or invitees of or on the Property. Such District road evaluation study shall include engineering details regarding the physical impact on District roads from such activities, and recommendations regarding the nature and extent of improvements to District roads after cessation of construction and development activities required to ensure the structural integrity of such roads. Such road evaluation study shall be completed no later than the completion of required additional environmental documentation pursuant to CEQA with respect to any Property Owner application to County for a parcel map and development of the Property.

#### 5.4 Environmental Analysis of Project.

The District is acting as the lead agency under CEQA with respect to the proposed annexation of the Property into the District and approval of the Project. The District has contracted with Raney Planning and Management, Inc., a qualified environmental consultant, (hereinafter “Raney”), to perform an Initial Study of the Project pursuant to CEQA. Property Owner hereby agrees to reimburse District for all the costs and expenses incurred for the services rendered by Raney with respect to the Project. Through its consultant, the District has prepared an Initial Study and Mitigated Negative Declaration and Mitigation Monitoring and Reporting Plan dated October 2017 (“ISMND” and “MMRP”) and has determined that no exemptions apply under CEQA. The ISMND and MMRP have determined that the potential environmental effects of the Project are less than significant, except for the following potential environmental effects that require mitigation in order to reduce the impact to a less than significant level: (1) biological resources; (2) cultural resources; (3) geology and soils; (4) transportation and circulation; and (5) tribal cultural resources. The ISMND and MMRP identify specific required mitigation measures with respect to each of these potential environmental effects of the Project which relate to future development of the Property, not the annexation of the Property into the District. Property Owner hereby agrees to include its compliance with each of such identified mitigation measures in any conditions of approval issued by County in response to any development application or application for parcel map submitted to County by Property Owner. Property Owner further agrees to comply with each of the mitigation measures specified in the ISMND and MMRP at its sole cost and expense, and to provide District a compliance report as each such mitigation measure is implemented and completed.

#### 5.5 Environmental Impacts of Future Development of Project.

This Agreement and the environmental analysis related thereto is limited to the Project as described in Section 5.2, and therefore does not in any way involve or imply District approval of the design or construction of the On-site and Off-site Road Improvements (as defined in Section 6.1 of this Agreement) which may be required to provide access and roads to the Project. Therefore, the Parties hereto contemplate a full and complete environmental analysis as required by CEQA for the Improvements will be considered when Property Owner files an application with County for a parcel map and approval of development activities on the Property and the site-specific impacts of the Improvements can be adequately and accurately assessed. No subsequent District discretionary approvals of the Plans and Specifications and/or construction of the On-site and Off-site Road Improvements, as may be applicable by law or as provided for in this Agreement, shall be granted by the District unless and until a full, complete and accurate CEQA analysis has been performed, processed and certified, identifying all of the significant impacts of the construction of the Improvements and providing appropriate environmental mitigation measures. Property Owner hereby agrees to comply with any and all environmental mitigation measures identified in any subsequent CEQA evaluation conducted by the County as the lead agency in connection with Property Owner's application for development and parcel map(s). Property Owner further agrees to provide District a compliance report as each such mitigation measure is implemented and completed.

#### 5.6 Transmittal of Environmental Analysis to EDC LAFCO.

District shall transmit to EDC LAFCO the completed ISMND and MMRP and the District Notice of Determination approving the ISMND and MMRP environmental analysis as required by EDC LAFCO to enable it to take action on the proposed annexation application in compliance with CEQA.

### **6. Subdivision Improvement Agreement and Plans and Specifications for Road Improvements.**

6.1 The Property Owner making application to the County for Approvals for development of all or any portion of the Property shall be responsible for funding all the costs for design, engineering, and construction of road improvements necessary to serve the Project with the intent of maintaining approved levels of service on existing customers of the District. Construction of road improvements will be done in a manner to minimize any impacts to access to roads within the District by existing customers. The anticipated road improvements will consist of both improvements within the Property for road access and related road drainage facilities for the benefit of future owners of the Property (the "On-site Road Improvements"), and those road improvements to be constructed by Property Owner on property outside the Project area owned by others necessary to connect with existing District roads, and those improvements to existing District roads determined necessary by the technical studies specified in Section 5.3 hereof to serve the Project (the "Off-site Road Improvements"). If a Property Owner with County Approvals is developing only a portion of the Property,

the costs shall be allocated on a fair share basis to other developers of the Property, or shall otherwise be subject to a reimbursement agreement based on a fair share apportionment of costs.

6.2 At the time Property Owner makes application to the County for approvals for a parcel map and development of all or a portion of the Property, the Property Owner shall provide the County with a copy of the Subdivision Improvement Agreement with District, in substantially the form attached hereto as Exhibit B, and incorporated herein by this reference. Property Owner will thereafter execute the Subdivision Improvement Agreement upon approval of all improvement plans and prior to issuance of any grading permit by County. Property Owner expressly agrees that no development activity shall commence on the Property without the execution of the Subdivision Improvement Agreement. The provisions of this Section are subject to specific enforcement by the District, with the remedy of issuances of stop work orders as well as prohibitions against issuance of a certificate of occupancy for any Property Owner violating the terms of this Section. The Assignment and Assumption Agreement between Property Owner and any successors in interest shall specifically reference this Section.

6.3 Property Owner and District hereby agree that the requirements set forth in this Section 6 regarding execution of a Subdivision Improvement Agreement by any Property Owner seeking County approval of development of all or any portion of the Property, and preparation of plans and specifications for road Improvements in connection therewith, shall be included as Conditions of Approval specified by County in response to any such development application.

**7. Maintenance of Improvements.**

7.1 In consideration for the Improvements constructed by Property Owner for the benefit of District, and dedicated to District pursuant to the terms of the Subdivision Improvement Agreement, District will perform all necessary maintenance of the Improvements commencing immediately upon completion of construction, dedication by Property Owner, and acceptance of dedication by District. After the date of acceptance, District shall be solely responsible for all costs of maintenance of the Improvements.

**8. Default.**

8.1 Event of Default. Subject to any applicable extension of time, failure by any party to perform any term or provision of this Agreement required to be performed by such party shall constitute an event of default (“Event of Default”). For purposes of this Agreement a party claiming another party is in default shall be referred to as the “Complaining Party” and the party alleged to be in default shall be referred to as the “Party in Default.”

8.2 Procedure Regarding Defaults.

8.2.1 Notice. The Complaining Party shall give written notice of default to the Party in Default, specifying the default complained of by the Complaining Party. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

8.2.2 Cure. The Party in Default shall diligently endeavor to cure, correct or remedy the matter complained of, provided such cure, correction or remedy shall be completed within the applicable time period set forth in the notice of default, (or such additional time as may be deemed by the Complaining Party to be reasonably necessary to correct the matter).

8.2.3 Failure to Assert. Any failures or delays by a Complaining Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by a Complaining Party in asserting any of its rights and remedies shall not deprive the Complaining Party of its right to institute and maintain any actions or proceedings, which it may deem necessary to protect, asset or enforce any such rights or remedies,

8.2.4 Notice of Default. If an Event of Default occurs prior to exercising any remedies, the Complaining Party shall give the Party in Default written notice of such default. If the default is reasonably capable of being cured within thirty (30) days, the Party in Default shall have such period to effect a cure prior to exercise of remedies by the Complaining Party. If the nature of the alleged default is such that it cannot practicably be cured within such 30 day period, the cure shall be deemed to have occurred within such 30 day period if: (a) the cure shall be commenced at the earliest practicable date following receipt of the notice; (b) the cure is diligently prosecuted to completion at all times thereafter; (c) at the earliest practicable date (in no event later than thirty (30) days after the curing party's receipt of the notice), the curing party provides written notice to the other party that the cure cannot practicably be completed within such 30 day period; and (d) the cure is completed at the earliest practicable date. In no event shall Complaining Party be precluded from exercising remedies if a default is not cured within one hundred twenty (120) days after the first notice of default is given.

8.2.5 Legal Proceeding. Subject to the foregoing, if the Party in Default fails to cure a default in accordance with the foregoing, the Complaining Party, at its option, may institute legal proceedings to enforce specific performance of this Agreement or, in the event of a material default, terminate this Agreement. Upon the occurrence of an event of default, the parties may pursue all other remedies at law or in equity, which are not otherwise provided for or prohibited by this Agreement.

8.2.6 Effect of Termination. If this Agreement is terminated following any Event of Default of Property Owner or for any other reason, such termination shall not affect the validity of the Improvements required to be constructed by Property Owner pursuant to this Agreement, which are completed as of the date of termination, provided that such Improvements have been constructed pursuant to the County Approvals. Furthermore, no termination of this Agreement shall prevent Property

Owner from completing any Improvements to be constructed pursuant to this Agreement pursuant to a valid building permit previously issued by the County that is under construction at the time of termination, provided that any such Improvement is completed in accordance with said building permit and all other County Approvals in effect at the time of such termination of this Agreement.

8.2.7 **Remedies.** Upon the occurrence of an Event of Default, each party hereto shall have the right, in addition to all other rights and remedies available under this Agreement to: (1) bring any proceeding in the nature of specific performance, injunctive relief or mandamus and/or (2) bring any action at law or in equity as may be permitted by California law or this Agreement; (3) if a Subdivision Improvement Agreement has been executed, should the Property Owner developing all or a portion of the Property, or successor in interest, fail or refuse to complete the construction of the Improvements pursuant to the terms and conditions of such Agreement, the District may, as one of its remedies, request the County of El Dorado to issue a stop work order or otherwise halt the issuance of any additional grading or occupancy permits for the applicable portion of the Property owned by that Property Owner until the required Improvements are funded and completed as contemplated by the terms of this Agreement and the Subdivision Improvement Agreement. Notwithstanding the foregoing, however, neither party shall ever be liable to the other party for any consequential damages on account of the occurrence of an Event of Default (including claims for lost profits, loss of opportunity, lost revenues, or similar consequential damage claims). The parties hereto waive and relinquish any claims for consequential damages on account of an Event of Default, which waiver and relinquishment the parties acknowledge has been made after full and complete disclosure and advice regarding the consequences of such waiver and relinquishment by counsel to each party.

## **9. Estoppel Certificate.**

9.1 Either party may, at any time, and from time to time, request written notice from the other party requesting such party to certify in writing that, (a) this Agreement is in full force and effect and a binding obligation of the parties, (b) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments, and (c) to the knowledge of the certifying party the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults. A party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof, or such longer period as may reasonably be agreed to by the parties. General Manager of District shall be authorized to execute any certificate requested by Property Owner. Should the party receiving the request not execute and return such certificate within the applicable period, this shall not be deemed to be a default.

## **10. Mortgagee Protection; Certain Rights of Cure.**

10.1 Mortgagee Protection. This Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof after the date of recording this Agreement, including the lien for any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all the terms and conditions contained in this Agreement shall be binding upon and effective against any person or entity, including any deed of trust beneficiary or mortgagee ("Mortgagee") who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

10.2 Mortgagee Not Obligated. Notwithstanding the provisions of Section 10.1 above, no Mortgagee, unless such Mortgagee becomes a transferee or assignee of this Agreement, shall have any obligation or duty under this Agreement, before or after foreclosure or a deed in lieu of foreclosure, to construct or complete the construction of Improvements, or to guarantee such construction or completion of the Improvements, or to pay, perform or provide any fee, dedication, Improvements or other exaction or imposition. However, the Mortgagee shall not be entitled to undertake any new construction or improvement projects, or to otherwise have the benefit of any rights of Property Owner under this Agreement, or to devote the Property comprising the Project to any uses or to construct any improvements other than those uses or improvements authorized by this Agreement, the EDC LAFCO Approvals and the County Approvals.

10.3 Notice of Default to Mortgagee and Extension of Right to Cure. If District receives notice from a Mortgagee requesting a copy of any notice of default given Property Owner hereunder and specifying the address for service thereof, then District shall deliver to such Mortgagee, concurrently with service thereon to Property Owner, any notice given to Property Owner with respect to any claim by District that Property Owner has committed an Event of Default. Each Mortgagee shall have the right during the same period available to Property Owner to cure or remedy, or to commence to cure or remedy, the Event of Default claimed set forth in the District's notice. District, through its General Manager, may extend the cure period provided in Section 8.2.2 for not more than an additional sixty (60) days upon request of Property Owner or a Mortgagee.

## **11. Transfers and Assignments.**

11.1 From and after recordation of this Agreement against the Property comprising the Project, Property Owner shall have the full right to assign this Agreement as to the Property comprising the Project, or any portion thereof, in connection with any sale, transfer or conveyance thereof, subject to written notice to the District. Any assignment shall specifically reference the requirements for execution of a Subdivision Improvement Agreement as provided for in Section 6.2 of this Agreement. District shall have 20 business days after the receipt of notice to object, in writing, to any transfer or assignment based upon an alleged Event of Default of one of the terms of this

Agreement. District shall have approval authority with respect to the transfer or assignment of the Property or the obligations created under this Agreement only if there is an Event of Default, which is not cured as provided for in Section 8. The requirement for execution of the Subdivision Improvement Agreement by the transferee of all or a portion of the Property and assignee of this Agreement is a material term of any such assignment agreement, and if not included therein, shall permit the District to reject approval of the assignment. For these reasons, the parties agree that any written assignment of this Agreement by Property Owner and assumption by the assignee shall be in the form of the Assignment and Assumption Agreement attached hereto as Exhibit C (the "Assignment Agreement"). Upon execution of the Assignment Agreement by the assignee, Property Owner shall thereafter be released from any further liability or obligation hereunder related to the portion of the Property comprising the Project so conveyed, and the assignee shall be deemed to be the "Property Owner", pursuant to the terms of this Agreement, and the Subdivision Improvement Agreement, with all rights and obligations specified therein with respect to the conveyed portion of the Property. In addition to all rights and obligations set forth in this Agreement, the parties specifically intend, by this section, to provide that any assignee shall be subject to the obligations set forth in Sections 2.2, 3.1, 4.1, 5.1-5.5, and 6.1-6.3 of this Agreement and shall have the rights set forth in Sections 2.3 of this Agreement.

## **12. Agreement Runs with the Land.**

12.1 All of the provisions, rights, powers, standards, terms, covenants, and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors and assignees, representatives, lessees, and all other persons acquiring any interest in the Property comprising the Project, or any portion thereof, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors and assigns. All of the provisions of this Agreement shall be enforceable as an equitable servitude and shall constitute covenants running with the land pursuant to applicable laws, including, but not limited to, Section 1468 of the Civil Code of the State of California. Each covenant to do, or refrain from doing, some act on the Property comprising the Project hereunder (a) is for the benefit of such properties and is a burden upon such properties, (b) runs with the properties, and (c) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and shall be a benefit to and a burden upon each party and its property hereunder and each other person succeeding to an interest in such properties. This provision expressly includes, but is not limited to, the requirement for execution of a Subdivision Improvement Agreement prior to the issuance of any grading permits or commencement of development activity on all or any portion of the Property.

## **13. Other Governmental Approvals.**

13.1 The parties acknowledge that the timing for obtaining County Approvals is undetermined. Property Owner agrees that it will apply for and diligently pursue all required governmental agency approvals from governmental agencies other

than District, such as El Dorado County, as and when each such governmental approval is required during the course of design, development, and construction of the Improvements specified in this Agreement and the delivery of road services to the Project. Property Owner shall diligently take all reasonable steps necessary to obtain all such governmental approvals and shall bear all costs and expenses for obtaining such governmental approvals. Property Owner shall comply with, and shall cause the Project to comply with all applicable local government agency regulations and laws related to the development, use and operation of, and provision of services to the Project.

13.2 Property Owner and District acknowledge that subsequent to the execution of this Agreement, Property Owner (or its successor in interest) will be required to consent to certain conditions of approval and may be required to enter into one or more agreements with El Dorado County in order to obtain approval of a parcel map subdividing the Property and prior to recordation of a final parcel and/or subdivision map for the Project. Property Owner hereby agrees on behalf of itself and any successors in interest to provide written notice to District of any applications filed with El Dorado County for approval of a parcel map or other subdivision of the Property. Property Owner further agrees that (1) the terms and conditions of this Agreement shall be included as Conditions of Approval for the Project; and (2) District will be provided with special written notice of all proposed conditions of approval related to use or maintenance of roads within the District for the benefit of the Property at such time as such conditions of approval are proposed to County; and (3) Property Owner acknowledges the intent of providing the District the opportunity to review and comment upon proposed conditions of approval prior to consideration of those conditions by County, and to cooperate with District in achieving the intent of this notice requirement.

13.3 District shall reasonably cooperate with Property Owner in such endeavors upon Property Owner's written request for such cooperation. Property Owner shall be solely responsible for undertaking any investigation and acquiring necessary knowledge of local government agency regulations and laws applicable to or affecting the Project, including existing or imposed restrictions, environmental and land use laws and regulations to which the Project may be subject. Property Owner shall reimburse District for all reasonable costs and expenses, including those of District staff, legal counsel and/or other consultants incurred in connection with obtaining local government agency approvals other than the EDC LAFCO Approvals and the County Approvals.

#### **14. Indemnification.**

14.1 With respect to the construction of the Improvements, and as set forth in the Subdivision Improvement Agreement, the Property Owner constructing any Improvements shall assume the defense of, and indemnify and save harmless, the District, its officers, employees and agents, and each and every one of them from and against all actions, liability, damages, claims, losses or expenses of every type and description to which they may be subjected or put to by reason of or resulting from: (1) the performance of, or failure to perform, the work or any other obligations of this

Agreement by Property Owner, any subcontractor of Property Owner, or its agents or employees; (2) any alleged negligent act or omission of Property Owner, any subcontractor, Property Owner's agents or employees, in connection with any acts performed or required to be performed pursuant to this Agreement; (3) any dangerous or defective condition arising or resulting from any of the actions or omissions of Property Owner's agents or employees in carrying out the provisions of this Agreement. This indemnification is effective and shall apply whether or not any such action is alleged to have been caused in part by the District as a party indemnified hereunder. This indemnification shall not include any claim arising from the sole negligence or willful misconduct of the District or its employees.

14.2 With respect to the Agreement to Annex the Property into the District, Property Owner agrees to indemnify, defend, and hold harmless the District, its officials, officers, employees, agents and consultants from (1) any and all administrative, legal or equitable actions or other proceedings instituted by any person not a party to this Agreement challenging the validity of the Agreement, or otherwise arising out of or stemming from this Agreement, its approval and/or the process relating thereto, including compliance with all CEQA requirements for this Project; and (2) against all actions, liability, damages, claims, losses or expenses of every type and description to which District and its employees and agents may be subjected or put to by reason of or resulting from approval of this Agreement and the Project. Property Owner may select its own legal counsel to represent Property Owner's interests at Property Owner's sole cost and expense. The Parties shall cooperate in defending such action or proceeding. Property Owner shall pay for District's costs of defense, whether directly or by timely reimbursement on a monthly basis. Such costs shall include, but not be limited to, all court costs and attorneys' fees expended by District in defense of any such action or other proceeding, plus staff and District's attorney time spent in regard to defense of the action or proceeding. The Parties shall use best efforts to select mutually agreeable defense counsel but, if the Parties cannot reach agreement, District may select its own legal counsel and Property Owner agrees to pay directly or timely reimburse on a monthly basis District for all court costs, attorney fees, and time referenced herein. The provisions of Section 17 of the Pre-Annexation Agreement are hereby incorporated by reference. In the event of any inconsistency, the provisions of this Agreement control.

14.3 The parties agree that this Section 14 shall constitute a separate agreement entered into concurrently, and that if any other provision of this Agreement, or the Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the parties agree to be bound by the terms of this Section 14, which shall survive such invalidation, nullification or setting aside.

## **15. Term of Agreement.**

15.1 This Agreement is effective only upon the approval by EDC LAFCO of the sphere of influence and annexation application related to the Property. Property Owner and District acknowledge that, pursuant to the Pre-Annexation Agreement, Sections 6 and 7, all terms of the Pre-Annexation Agreement remain in full

force and effect until approval of the sphere of influence and annexation application by EDC LAFCO and recordation of this Agreement.

15.2 This Agreement shall not be recorded sooner than seven (7) business days following the approval by EDC LAFCO of Project 2012-03. Property Owner and District retain the right to terminate this Agreement after the action by EDC LAFCO upon the following conditions: (1) by Property Owner, if District imposes conditions on approval of the Annexation Application that are in addition to those specified in this Agreement and the Subdivision Improvement Agreement, and unacceptable to Property Owner; (2) by Property Owner or District, if EDC LAFCO places conditions on the annexation that are in addition to those specified in this Agreement and the Subdivision Improvement Agreement, and unacceptable to either party. In the event Property Owner or District elects to exercise this right of termination, notice of termination shall be delivered as provided in Section 17.5 within five (5) business days of the official vote by District or EDC LAFCO, as applicable. The delivery of notice of termination suspends all provisions of this Agreement, including but not limited to Sections 3.1 and 4.1 of this Agreement, and the Agreement is null and void and shall not be recorded by either party. If no notice of termination is delivered by either party, this Agreement shall be recorded no later than ten business days following the approval by EDC LAFCO.

15.3 Property Owner retains the right to withdraw the annexation application in the event of a legal challenge to (1) this Agreement, (2) to any decision by District to approve annexation of the Property into the District, or (3) by EDC LAFCO to extend the sphere of influence and annex the Property into the District, if such legal challenge is filed prior to the final effective date of any action by EDC LAFCO to approve the annexation. If litigation is commenced and Property Owner determines to withdraw the annexation application, District and Property Owner shall work cooperatively and diligently to execute any necessary documents or adopt any required resolutions to terminate the annexation of the Property within the District. Property Owner may elect to invoke the right to withdraw the Annexation Application and terminate this Agreement whether or not such litigation has been resolved by settlement or adjudicated to a final judgment. The delivery of notice pursuant to this Section and an official withdrawal of the annexation application, followed by the completion by District and EDC LAFCO (as may be necessary) to terminate all proceedings on the Annexation suspends all provisions of this Agreement, including but not limited to Sections 3.1 and 4.1 of this Agreement. If the Agreement has been recorded prior to termination and withdrawal of the Annexation Application pursuant to this Section, the parties agree to thereafter execute a notice of cancellation of this agreement in a legally acceptable form.

15.4 However, if any such legal challenge is filed after the final effective date of approval of the annexation by EDC LAFCO, then Property Owner has no right to terminate the Annexation Agreement, and such Agreement shall remain in full force and effect pending the outcome of such legal challenge to the Agreement. Property Owner shall defend and indemnify District with respect to any such action contesting the validity of the annexation and Annexation Agreement filed after the effective date of

EDC LAFCO final approval pursuant to the provisions of Section 14.2 and 14.3 of this Agreement, and District shall cooperate and join in the defense of such action, including but not limited to raising any applicable defenses that may exist to bar the action on the basis of statutes of limitations, or otherwise.

15.5 Upon execution, the term of this Agreement shall commence on the Effective Date. Except for the provisions set forth in Sections 2.1, 2.2, 2.3, 3.1, 4.1, 5.3, 6, 7 and 14.1 and 14.2 of this Agreement (which shall have no date of termination) (the Continuing Obligations”), all other terms of this Agreement extend for a period of ten (10) years, unless said term is terminated, modified or extended by circumstances set forth in this Agreement. Following the expiration of the term, this Agreement shall be deemed terminated and of no further force and effect as to all provisions other than the Continuing Obligations; provided, however, that if a building permit has not been issued by the County for any of the contemplated Improvements comprising the Project by that time, then this Agreement shall continue in full force and effect until all such Improvements comprising the Project have been completed in compliance with the terms and conditions of this Agreement, and the dedication of such Improvements has been accepted by District.

**16. Payment of District Costs.**

16.1 Property Owner shall reimburse the District for all reasonable costs and expenses incurred in negotiating and approving this Agreement, the EDC LAFCO Approvals and the County Approvals. Such costs shall include, but not be limited to the time and related expenses of District staff, consultants, and District legal counsel.

**17. General Provisions.**

17.1 Incorporation of Recitals. The Recitals with all defined terms set forth herein are hereby incorporated into this Agreement.

17.2 Representation of Ownership. Property Owner has a legal or equitable interest in all real property comprising the Project which is the subject of this Agreement, the description of which is attached hereto marked Exhibit A and incorporated herein by this reference (the “Property”). Property Owner represents that all persons holding legal or equitable interest in the Property shall be bound by this Agreement.

17.3 Relationship of District and Property Owner. It is understood that this Agreement is a contract that has been negotiated and voluntarily entered into by Property Owner and District and that Property Owner is not an agent of District. The District and Property Owner hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making the District and Property Owner joint venturers or partners.

17.4 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective heirs, successors, assigns and subsequent purchasers. Property Owner shall not assign its interest in this Agreement without District's prior written approval, which approval shall not be unreasonably withheld.

17.5 Notice. Notice shall be sent to the parties at the addresses set forth below. Either party may change the address by giving written notice to the other. Notice shall be deemed received upon personal delivery or delivery by certified mail, with date of delivery noted by the United States Postal Service:

PROPERTY OWNER:

DISTRICT:

Deubel Enterprises, L.P.  
P.O. Box 4257  
El Dorado Hills, CA 95762

Cameron Estates Community Services District  
P.O. Box 171  
Shingle Springs, CA 95682

And

And

Attn: Martha Lofgren  
Authorized Representative  
Brewer Lofgren LLP  
650 University Avenue, Suite 220  
Sacramento, CA 95825  
(916) 993-6973  
[mlofgren@brewerlofgren.com](mailto:mlofgren@brewerlofgren.com)

Attn: David W. McMurchie  
MCMURCHIE LAW  
101 Parkshore Drive Suite 100  
Folsom, CA 95630  
(916)983-8000  
dmcurchie@mcmurchie.com

and Any Assignees as Identified to District pursuant to the Assignment and Assumption Agreement attached hereto as Ex. C.

17.6 Time of Performance. Time is of the essence in the performance of this agreement.

17.7 Integration. Unless otherwise specified herein, this Agreement and the documents incorporated herein by reference constitute the sole and only agreement between the parties concerning the matters set forth herein. This Agreement supersedes any and all other agreements, either oral and in writing, between the parties hereto with respect to the annexation of the Property (including but not limited to the Pre-Annexation Agreement) Each party to this Agreement acknowledges that no representations or promises have been made by any party hereto which are not embodied herein, and that no other agreement or promise not contained in this Agreement shall be valid or binding.

17.8 Waiver. The failure or omission by District to terminate this Agreement for any violation of its terms or conditions shall in no way bar, stop or prevent the District from terminating this Agreement thereafter, either for such or for any

subsequent violation of any such term, condition or covenant. The filing of a Notice of Completion or acceptance of the Project shall not be, and shall not be construed to be a waiver of any breach of any term, covenant or condition of this Agreement.

17.9 Severability. If a court of competent jurisdiction finds or rules that any provisions of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

17.10 Amendments. The terms of this Agreement may be modified only in writing by mutual agreement on signature of the District and Property Owner. Said amendment shall be attached to this Agreement.

17.11 Counterparts. This Agreement may be executed in counterparts.

18. **Existing Easements.**

18.1 District acknowledges that Property Owner is the grantee under two (2) existing easements that benefit the Property: (1) Access and Utility Easement Agreement dated November 15, 2007, between Property Owner and Traci Atwood as Successor Trustee of the Brunello Family Trust, Dated November 7, 1990 (“Brunello Easement”) and (2) Agreement of Temporary Access dated May 15, 2008 between Cameron Estates Community Services District and Property Owner (“Temporary Access Easement”). The parties acknowledge and agree that both the Brunello Easement and the Temporary Access Easement remain in place and that each contains certain covenants and restrictions that remain in place. District acknowledges that the Brunello Easement is necessary for Property Owner to access Native Lane and shall remain in full force and effect whether or not an application for annexation is approved by EDC LAFCO.

Executed in El Dorado County, California, as of the date set forth above.

**DISTRICT:**

**PROPERTY OWNER**

CAMERON ESTATES COMMUNITY SERVICES DISTRICT, a political subdivision of the State of California

By: \_\_\_\_\_  
Deubel Enterprises L.P.

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

Karen Moonitz, General Manager

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

President of the Board of Directors

**EXHIBIT A**  
**Map Depicting APN 109-010-031**

**EXHIBIT B**  
**APPROVED FORM OF**  
**SUBDIVISION IMPROVEMENT AGREEMENT**

## SUBDIVISION IMPROVEMENT AGREEMENT

This Subdivision Improvement Agreement (“Agreement”) is entered into between [ ] (“Constructing Owner”) and the Cameron Estates Community Services District, a political subdivision of the State of California formed and operated pursuant to California Government Code section 61000 et seq., (“District”) with respect to certain road and drainage improvements (“Improvements”) to be constructed by Constructing Owner on the parcel of land identified as APN [ ] and identified on Exhibit A to this Agreement, located in El Dorado County, California (referenced herein as the “Property”).

### RECITALS

1. Constructing Owner acquired the Property for development from Deubel Enterprises, L.P. on [ ] for good and valuable consideration and this Subdivision Improvement Agreement is entered into between Constructing Owner and District pursuant to the terms of the Annexation Agreement, recorded on [insert date] at [insert recordation information], which Agreement contains requirements and limitations related to (1) the use and development of the Property; (2) access to and maintenance of roads within the jurisdictional boundaries of the District; and (3) construction of improvements that may be required as a result of entitlements and or land use approvals issue by the County of El Dorado (“County”). Among other conditions, the Annexation Agreement requires that any developer of all or a portion of the Property enter into a Subdivision Improvement Agreement with District on terms acceptable to District. It is the intent of Constructing Owner and District that this Agreement satisfy the requirement of the Annexation Agreement.

2. Constructing Owner has complied with the requirements of the California Environmental Quality Act (“CEQA”) with respect to development of the Property, as evidenced by [description of environmental analysis to be inserted], approved and certified by the County on [ ]. Thereafter, Constructing Owner has obtained all required approvals for the development of the Property, referenced as “the Project,” as further described herein, and referenced as the “County Approvals.” [This detail will be added later based on actual County approvals.]

3. Pursuant to and as required by the County Approvals and the CEQA analysis, Constructing Owner is required to construct those Improvements identified on Exhibit B to this Agreement. The Improvements identified on Exhibit B as within the boundaries of the District are subject to the terms of this Agreement.

### AGREEMENT

NOW, THEREFORE, the parties hereto agree as follows in consideration of the mutual performance of the covenants and restrictions set forth below:

1. Definitions.

1.1 Any terms not defined in this Agreement shall have the meaning set forth in the Annexation Agreement.

2. Scope of Agreement.

2.1 The rights and obligations set forth in this Agreement pertain to the Property identified on Exhibit A, and those Improvements identified on Exhibit B within the boundaries of the District.

2.2 The parties intend, by this Agreement, to satisfy the obligation of Constructing Owner to enter into a Subdivision Improvement Agreement, as set forth in Section 6.2 of the Annexation Agreement.

3. Plans and Specifications for Improvements.

3.1 Constructing Owner shall be responsible for funding all the costs for design, engineering, and construction of road improvements necessary to serve the Property with the intent of maintaining approved levels of service for existing customers of District. Construction of Improvements will be done in a manner to minimize any impacts to access to roads within the District by existing customers. The Improvements identified on Exhibit B include both improvements within the Property for road access and related drainage facilities for the benefit of the Property (the "On Site Road Improvements"), and those road improvements to be constructed by Constructing Owner on property outside the Property owned by others necessary to connect with existing District roads, and those improvements to existing District roads determined necessary by the CEQA analysis and technical studies identified in the Annexation Agreement to serve the Property (the "Off-site Road Improvements").

3.2 Constructing Owner shall prepare construction plans and specifications at Constructing Owner's sole cost and expense for the On-site and Off-site Road Improvements (the "Plans and Specifications") in the manner required for approval by the County, as the land use authority. The Plans and Specifications shall comply with all applicable County and District standards, unless there is a demonstrated conflict between the standards, which shall be subject to resolution by the County and the District Engineer. The Plans and Specifications shall be consistent with any approved conditions of approval, and in addition to required approvals by the County's engineer, shall also be subject to review and approval in writing by the District's engineers. The Plans and Specifications shall also comply with the recommendations of the technical studies specified in the Annexation Agreement. Constructing Owner agrees that construction of the On-site and Off-site Road Improvements shall not commence until the Plans and Specifications for said improvements have been approved in writing by District, so long as that approval is provided within 20 business days of submittal to District. If District notifies Constructing Owner of any objections to the Plans and Specifications within 20 business days from the receipt of such Plans and Specifications, the Constructing Owner and District shall thereafter meet and confer to resolve any issues within 5 business days, unless otherwise extended by both parties. If District fails to provide written comments

or objections to the Plans and Specifications within 20 business days of receipt of the Plans and Specifications as set forth herein, the Plans and Specifications shall be deemed approved.

#### **4. Construction of Road Improvements.**

4.1 Constructing Owner shall, without expense to District, furnish all labor, materials, equipment, mechanical workmanship, appliances, supervision, coordination, building permits, other required permits, sales taxes, and samples to complete construction of the Improvements in a workmanlike manner.

4.2 Constructing Owner shall complete construction of the On-site and Off-site Road Improvements within the boundaries of the District in accordance with the Plans and Specifications to the satisfaction of the District for each approved phase of the Project for which a final map has been recorded in accordance with the requirements of applicable law and the applicable County Approvals. Should Constructing Owner fail to complete construction of the On-site and Off-site Road Improvements within the boundaries of the District as required, or perform work that does not comply with the Plans and Specifications, the District may terminate Constructing Owner's right to perform construction of all or any portion of said Improvements within the boundaries of the District and complete the work itself at the sole expense of Constructing Owner, subject to the rights of those sureties which have bonded performance and completion of construction of the Improvements. The cost of completion by the District shall include reasonable reimbursement for additional executive and administrative expense including legal fees together with all damages for delay and other damages sustained by District as a result of Constructing Owner's default in construction of the Improvements within the boundaries of the District.

4.3 Constructing Owner, and/or Constructing Owner's agent or general contractor, shall, at the time of entering into a contract for the construction of the Improvements, for each phase of such Improvements, file two (2) separate bonds with the District, each made payable to the District. These bonds shall be issued by a surety company admitted to do business in the State of California as an insurer and shall be maintained during the entire life of this Agreement at the expense of Constructing Owner. One bond shall be in the amount of One Hundred Percent (100%) of the construction cost estimate for each phase of the Improvements approved by District's engineer and shall guarantee the faithful performance of all aspects of the construction contract. The second bond shall be the payment bond required by Division Three, Part 4, Title 15, Chapter 7 of the Civil Code of the State of California, and shall be in the amount of One Hundred Percent (100%) of the construction cost estimate approved by District's engineer for each phase of construction of the Improvements, to guarantee the payment of wages and for materials, supplies or equipment used in the performance of the construction contract. Any alterations made in the specifications for the Improvements shall not operate to release any surety from liability on any bond required hereunder, and the consent to make such alterations is hereby given, and any surety on said bonds hereby waives the provisions of Section 2819 of the Civil Code. Prior to commencing work under this

Agreement, Constructing Owner shall provide a Certificate of Fact issued by the County of El Dorado, County Clerk, or Certificate of Authority issued by the State of California, Department of Insurance for any and all sureties issuing the bonds required under this Agreement. By execution of this Agreement, Constructing Owner further certifies and represents that any and all sureties issuing the bonds required under this Agreement are authorized to do business in the State of California and that the bonds fully comply with Civil Code Sections 3247 and 3248, and the Bond and Undertaking Law, Code of Civil Procedure Section 995.010, et seq.

4.4 Constructing Owner, at its sole cost and expense, shall perform all necessary survey work to prepare a legal description for and dedicate to District twenty-foot (20-ft) wide perpetual easements for the purpose of construction, installation, operation, maintenance and replacement of the On-site and Off-site Road Improvements constructed by Constructing Owner pursuant to this Agreement, other than those Improvements constructed by Constructing Owner to existing District roads. Constructing Owner shall dedicate such easements to the District at no cost to the District and free and clear of all liens and encumbrances. All such easements shall include District rights of ingress and egress to the easements in order to perform operation, maintenance and repair of the Road Improvements.

## **5. Permits and Inspections.**

5.1 Constructing Owner agrees and understands that it is the responsibility of Constructing Owner to obtain and pay for all necessary permits required for the construction of the Improvements from any and all jurisdictions that have authority over the work. Constructing Owner also agrees and understands that it is the responsibility of Constructing Owner to call for and obtain all required inspections from any and all governmental agencies having jurisdiction over the work during the course of the construction of the Improvements. Constructing Owner is not relieved of its obligations to secure all permits and obtain all inspections by virtue of District's assistance, if any, in procuring the necessary permits, or its review of the Plans and Specifications related to the Improvements.

## **6. Inspection of Construction.**

6.1 The District General Manager, District Engineer or their agent may inspect the construction of the Improvements to assure that they are installed in accordance with the approved Plans and Specifications. Said inspection shall be funded by an inspection fee paid by Constructing Owner which fee shall be reasonable and based upon actual costs incurred by the District, only. District is not, by inspection of the construction or installation of the Improvements, providing a substitute for inspection and control of the work by Constructing Owner. Any failure of District to note variances in the work from the Plans and Specifications does not excuse or exempt Constructing Owner from complying with all of the provisions of the Plans and Specifications. The fact that District inspects the construction of the Improvements and fails to discover deviations or failures to construct them pursuant to the Plans and Specifications shall not

be deemed to constitute a guarantee by District that the Improvements have been built in accordance with the Plans and Specifications. At no time shall the District be responsible for any settlement or road failure associated with such work, which shall be the sole responsibility of Constructing Owner, unless such settlement or road failure results from inadequate maintenance of the Improvements after acceptance of the Improvements by the District. Construction of the Improvements shall not commence until the estimated inspection fee is deposited with the District. The District General Manager or his/her designated agent shall notify Constructing Owner of a failure to construct the Improvements in accordance with the Plans and Specifications, or defective work pursuant to District standards as soon as such failure or defect is brought to its attention. Constructing Owner shall immediately correct any such failure or defect, including removal and replacement of any non-conforming work at Constructing Owner's expense. In no event shall any of the work of installing the Improvements be covered until District has inspected all of the work and has approved the covering of the work.

## **7. Dedication of Improvements.**

7.1 Upon completion of construction of the Improvements, Constructing Owner agrees to dedicate all such Improvements to District to become a part of the District's road system. District shall accept the offer of dedication of the Improvements if it finds all of the following: (1) that the design and construction of the Improvements complies with all applicable building codes, the Plans and Specifications, all applicable District policies and ordinances, all CEQA mitigation measures, and the County Approvals; (2) that Constructing Owner has reimbursed District for all administrative, legal and consulting costs and expenses incurred in reviewing, approving, and inspecting the design and construction of the Improvements, negotiating and drafting this Annexation Agreement, participating in the EDC LAFCO approval process of the proposed annexation, and participating in the County parcel map and development application approval process for the Project; and (3) that the form of dedication of property as either fee simple title or easement and/or right-of-way interests in real property are acceptable to District. At such time as the District finds that Developer has fully complied with each of the foregoing three (3) criteria, District shall accept the offer of dedication of the Improvements in writing and assume responsibility for all maintenance, repair, and operation of the Improvements constructed by Constructing Owner.

7.2 Constructing Owner shall dedicate the Improvements to District by conveying title to the completed Improvements to District at Constructing Owner's sole cost and expense, free and clear of all liens and encumbrances, in the form of either fee simple title in the property or a perpetual easement, as determined by District. Constructing Owner shall be responsible for preparing the appropriate documents for conveying title to the Improvements to District in a form reasonably acceptable to District and pursuant to the County Approvals.

7.3 Constructing Owner shall provide District with one set of twenty-four inch by thirty-six inch original (24" x 36") and one set of reproducible "as built" drawings of the completed Improvements on matte mylar (5 mil minimum).

7.4 District shall accept the conveyance of title of the completed Improvements by Resolution of the Board of Directors of District, and at that time the Improvements will become part of the District's road system.

**8. Maintenance of Facilities.**

8.1 In consideration for the Improvements constructed by Constructing Owner for the benefit of District, and dedicated to District, District will perform all necessary maintenance of the Improvements commencing immediately upon completion of construction, dedication by Constructing Owner, and acceptance of dedication by District. After the date of acceptance, District shall be solely responsible for all costs of maintenance of the Improvements.

**9. Project as Private Undertaking.**

9.1 It is specifically understood and agreed by and between the Parties hereto that the development of the Property is a separately undertaken private development. No partnership, joint venture, or other association of any kind between Constructing Owner, on the one hand, and the District on the other, is formed by this Agreement. The only relationship between the District and Constructing Owner is that of a governmental entity providing road maintenance services to the Project.

**10. Project Phasing.**

10.1 The parties acknowledge that uncertainties associated with market conditions, availability of financing, and other factors may alter the timing of Constructing Owner's ability to submit an application for a parcel map or maps, or otherwise construct the Project. After annexation and at the time of submittal of development application(s) to the County, Constructing Owner shall use all reasonable efforts to provide District with a phasing plan in order to assist District in its planning and Constructing Owner shall advise District of any changes in anticipated phasing.

**11. Applicable District Rules, Regulations and Policies.**

11.1 Rules Regarding Design and Construction. All construction of the Improvements shall comply with all District ordinances, resolutions and policies in effect as of the date of this Agreement.

11.2 Changes in State or Federal Law. Any changes in District ordinances, policies, regulations, or rules, the terms of which are specifically mandated and/or required by changes in federal or state laws and/or regulations shall be applicable to construction of Improvements to be dedicated to District pursuant to this Agreement.

11.3 Uniform Codes Applicable. Unless otherwise expressly provided in this Agreement, or as may be provided by District policy, all Improvements constructed pursuant to the terms of this Agreement shall comply with the provisions of the Uniform Building, Mechanical, Plumbing, Electrical and Fire Codes, County and District Standard Construction Specifications, and Title 24 of the California Code of Regulations relating to Building Standards, in effect at the time of approval of the appropriate grading, building or other construction permits necessary for the Project.

**12. Subsequently Enacted Fees, Dedications, Assessments and Taxes.**

12.1 Processing Fees and Charges. Constructing Owner shall pay those processing, inspection and plan checking fees and charges required by District and uniformly applicable to all property owners in the District under then current regulations for processing development applications and requests for permits, approvals and other actions, and monitoring compliance with any permits issued or approvals granted by District, or the performance of any conditions or obligations required of Constructing Owner pursuant to this Agreement.

12.2 Development Exactions and Dedications. Except as otherwise provided herein, any and all dedications of land, mitigation fees or other exactions required by District to be paid by Constructing Owner to support the construction of the Improvements or the provision of any public road access to the Project (hereinafter the "Exactions") shall be the Exactions authorized as of the Effective Date of this Agreement. However, Constructing Owner shall be obligated to pay any Exactions authorized by District after the effective date hereof provided that said Exactions otherwise comply with applicable law and are (1) required on a District-wide basis; or (2) apply uniformly to all properties within the District which are zoned consistent with the property comprising the Project; or (3) which apply uniformly to all properties which are similarly situated within the District, whether by geographic location, drainage patterns, or other distinguishing characteristics and (4) do not duplicate Exactions provided for herein for the same purpose.

12.3 Mitigation Measures. Notwithstanding any other provision of this Agreement to the contrary, as and when Constructing Owner elects to develop the Project, Constructing Owner shall be bound by, and shall perform in a timely manner, all mitigation measures required by the ISMND, the EDC LAFCO Approvals, and the County Approvals.

**13. Amendment or Cancellation.**

13.1 Modification Because of Conflict with State or Federal Laws. In the event that state or federal laws or regulations enacted after the effective date of this Agreement prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by the District, the parties shall meet and confer in good faith in a reasonable attempt to modify this

Agreement to comply with such federal or state law or regulation. Any such amendment shall be approved by the Board of Directors of District and Constructing Owner in the form of a written Addendum to this agreement, executed by both parties, and attached hereto.

13.2 Amendment by Mutual Consent. This Agreement may be amended in writing from time to time by mutual written consent of the parties in the form of an addendum to this agreement, attached hereto.

13.3 Cancellation by Mutual Consent. Except as otherwise permitted herein, this Agreement may be cancelled in whole or in part only by the mutual written consent of the parties or their successors-in-interest. Any fees or costs reimbursements paid to District pursuant to this Agreement prior to the date of cancellation shall be retained by District.

#### **14. Default.**

14.1 Event of Default. Subject to any applicable extension of time, failure by any party to perform any term or provision of this Agreement required to be performed by such party shall constitute an event of default (“Event of Default”). For purposes of this Agreement a party claiming another party is in default shall be referred to as the “Complaining Party” and the party alleged to be in default shall be referred to as the “Party in Default.”

#### 14.2 Procedure Regarding Defaults.

14.2.1 Notice. The Complaining Party shall give written notice of default to the Party in Default, specifying the default complained of by the Complaining Party. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

14.2.2 Cure. The Party in Default shall diligently endeavor to cure, correct or remedy the matter complained of, provided such cure, correction or remedy shall be completed within the applicable time period set forth in the notice of default, (or such additional time as may be deemed by the Complaining Party to be reasonably necessary to correct the matter).

14.2.3 Failure to Assert. Any failures or delays by a Complaining Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by a Complaining Party in asserting any of its rights and remedies shall not deprive the Complaining Party of its right to institute and maintain any actions or proceedings, which it may deem necessary to protect, asset or enforce any such rights or remedies.

14.2.4 Notice of Default. If an Event of Default occurs prior to exercising any remedies, the Complaining Party shall give the Party in Default written notice of such default. If the default is reasonably capable of being cured within thirty

(30) days, the Party in Default shall have such period to effect a cure prior to exercise of remedies by the Complaining Party. If the nature of the alleged default is such that it cannot practicably be cured within such 30 day period, the cure shall be deemed to have occurred within such 30 day period if: (a) the cure shall be commenced at the earliest practicable date following receipt of the notice; (b) the cure is diligently prosecuted to completion at all times thereafter; (c) at the earliest practicable date (in no event later than thirty (30) days after the curing party's receipt of the notice), the curing party provides written notice to the other party that the cure cannot practicably be completed within such 30 day period; and (d) the cure is completed at the earliest practicable date. In no event shall Complaining Party be precluded from exercising remedies if a default is not cured within one hundred twenty (120) days after the first notice of default is given.

14.2.5 Legal Proceeding. Subject to the foregoing, if the Party in Default fails to cure a default in accordance with the foregoing, the Complaining Party, at its option, may institute legal proceedings to enforce specific performance of this Agreement or, in the event of a material default, terminate this Agreement. Upon the occurrence of an event of default, the parties may pursue all other remedies at law or in equity, which are not otherwise provided for or prohibited by this Agreement.

14.2.6 Effect of Termination. If this Agreement is terminated following any Event of Default of Constructing Owner or for any other reason, such termination shall not affect the validity of the Improvements required to be constructed by Constructing Owner pursuant to this Agreement, which are completed as of the date of termination, provided that such Improvements have been constructed pursuant to the County Approvals. Furthermore, no termination of this Agreement shall prevent Constructing Owner from completing any Improvements to be constructed pursuant to this Agreement pursuant to a valid building permit previously issued by the County that is under construction at the time of termination, provided that any such Improvement is completed in accordance with said building permit and all other County Approvals in effect at the time of such termination of this Agreement.

14.2.7 Remedies. Upon the occurrence of an Event of Default, each party hereto shall the right, in addition to all other rights and remedies available under this Agreement to: (1) bring any proceeding in the nature of specific performance, injunctive relief or mandamus and/or (2) bring any action at law or in equity as may be permitted by California law or this Agreement; (3) should the Property Owner developing all or a portion of the Property, or successor in interest, fail or refuse to complete the construction of the Improvements pursuant to the terms and conditions of this Agreement, the District may, as one of its remedies, request the County of El Dorado to issue a stop work order or otherwise halt the issuance of any additional grading or occupancy permits for the applicable portion of the Property owned by that Property Owner until the required Improvements are funded and completed as contemplated by the terms of this Agreement. Notwithstanding the foregoing, however, neither party shall ever be liable to the other party for any consequential damages on account of the occurrence of an Event of Default (including claims for lost profits, loss of opportunity, lost revenues, or similar consequential damage claims). The parties hereto waive and

relinquish any claims for consequential damages on account of an Event of Default, which waiver and relinquishment the parties acknowledge has been made after full and complete disclosure and advice regarding the consequences of such waiver and relinquishment by counsel to each party.

**15. Estoppel Certificate**

15.1 Either party may, at any time, and from time to time, request written notice from the other party requesting such party to certify in writing that, (a) this Agreement is in full force and effect and a binding obligation of the parties, (b) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments, and (c) to the knowledge of the certifying party the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults. A party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof, or such longer period as may reasonably be agreed to by the parties. General Manager of District shall be authorized to execute any certificate requested by Constructing Owner. Should the party receiving the request not execute and return such certificate within the applicable period, this shall not be deemed to be a default.

**16. Mortgagee Protection; Certain Rights of Cure.**

16.1 Mortgagee Protection. This Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof after the date of recording this Agreement, including the lien for any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all the terms and conditions contained in this Agreement shall be binding upon and effective against any person or entity, including any deed of trust beneficiary or mortgagee ("Mortgagee") who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

16.2 Mortgagee Not Obligated. Notwithstanding the provisions of Section 19.1 above, no Mortgagee, unless such Mortgagee becomes a transferee or assignee of this Agreement, shall have any obligation or duty under this Agreement, before or after foreclosure or a deed in lieu of foreclosure, to construct or complete the construction of Improvements, or to guarantee such construction or completion of the Improvements, or to pay, perform or provide any fee, dedication, Improvements or other exaction or imposition. However, the Mortgagee shall not be entitled to undertake any new construction or improvement projects, or to otherwise have the benefit of any rights of Constructing Owner under this Agreement, or to devote the Property comprising the Project to any uses or to construct any improvements other than those uses or improvements authorized by this Agreement, the EDC LAFCO Approvals and the County Approvals.

16.3 Notice of Default to Mortgagee and Extension of Right to Cure.

If District receives notice from a Mortgagee requesting a copy of any notice of default given Constructing Owner hereunder and specifying the address for service thereof, then District shall deliver to such Mortgagee, concurrently with service thereon to Constructing Owner, any notice given to Constructing Owner with respect to any claim by District that Constructing Owner has committed an Event of Default. Each Mortgagee shall have the right during the same period available to Constructing Owner to cure or remedy, or to commence to cure or remedy, the Event of Default claimed set forth in the District's notice. District, through its General Manager, may extend the cure period provided in Section 14.2.4 hereof for not more than an additional sixty (60) days upon request of Constructing Owner or a Mortgagee.

**17. Transfers and Assignments.**

17.1 From and after recordation of this Agreement against the Property comprising the Project, Constructing Owner shall have the full right to assign this Agreement as to the Property comprising the Project, or any portion thereof, in connection with any sale, transfer or conveyance thereof, subject to notice to the District. District shall have 20 business days after the receipt of notice to object, in writing, to any transfer or assignment based upon an alleged Event of Default of one of the terms of this Agreement. Unless there is an Event of Default, which is not cured as provided for in Section 17, District shall have no approval authority with respect to the transfer or assignment of the Property. The written assignment by Constructing Owner and assumption by the assignee shall be in the form of the Assignment and Assumption Agreement attached hereto as Exhibit C. Constructing Owner shall thereafter be released from any further liability or obligation hereunder related to the portion of the Property comprising the Project so conveyed and the assignee shall be deemed to be the "Constructing Owner", pursuant to the terms of this Agreement, with all rights and obligations with respect to the conveyed portion of the Property.

**18. Agreement Runs with the Land.**

18.1 All of the provisions, rights, powers, standards, terms, covenants, and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors and assignees, representatives, lessees, and all other persons acquiring any interest in the Property comprising the Project, or any portion thereof, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors and assigns. All of the provisions of this Agreement shall be enforceable as an equitable servitude and shall constitute covenants running with the land pursuant to applicable laws, including, but not limited to, Section 1468 of the Civil Code of the State of California. Each covenant to do, or refrain from doing, some act on the Property comprising the Project hereunder (a) is for the benefit of such properties and is a burden upon such properties, (b) runs with the properties, and (c) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and shall be a benefit to and a

burden upon each party and its property hereunder and each other person succeeding to an interest in such properties.

**19. Other Governmental Approvals.**

19.1 After obtaining County Approvals, the timing of which is undetermined, Constructing Owner shall promptly and timely apply for and diligently pursue all required governmental agency approvals from governmental agencies other than District, such as El Dorado County, as and when each such governmental approval is required during the course of design, development, and construction of the Improvements specified in this Agreement and the delivery of road services to the Project. Constructing Owner shall diligently take all reasonable steps necessary to obtain all such governmental approvals and shall bear all costs and expenses for obtaining such governmental approvals. Constructing Owner shall comply with, and shall cause the Project to comply with all applicable local government agency regulations and laws related to the development, use and operation of, and provision of services to the Project. District shall reasonably cooperate with Constructing Owner in such endeavors upon Constructing Owner's written request for such cooperation. Constructing Owner shall be solely responsible for undertaking any investigation and acquiring necessary knowledge of local government agency regulations and laws applicable to or affecting the Project, including existing or imposed restrictions, environmental and land use laws and regulations to which the Project may be subject. Constructing Owner shall reimburse District for all reasonable costs and expenses, including those of District staff, legal counsel and/or other consultants incurred in connection with obtaining local government agency approvals other than the EDC LAFCO Approvals and the County Approvals.

**20. Insurance.**

20.1 Constructing Owner shall carry and maintain during the construction of the Improvements, such public liability, property damage and contractual liability insurance and workers' compensation insurance as specified below, and related to the construction of the Improvements:

A. Public Liability, Property Damage and Contractual Liability Insurance. Constructing Owner shall furnish public liability and property damage insurance which includes, but is not limited to, personal injury, property damage, losses relating to independent contractors, products and equipment, explosion, collapse and underground hazards in a minimum amount of not less than a combined single limit of Two Million Dollars (\$2,000,000.00) for one or more persons injured and property damaged in each occurrence.

The public liability and property damage insurance furnished by Constructing Owner shall also name the District as an additional insured and shall directly protect, as well as provide the defense for the District, its officers, agents and employees, as well as Constructing Owner, all subcontractors and suppliers, if any, from all suits, actions, damages, losses or claims of every type and description to which they

may be subjected by reason of, or resulting from Constructing Owner's construction of the Improvements pursuant to this Agreement, and all insurance policies shall so state. Said insurance shall also specifically cover the contractual liability of Constructing Owner. Said insurance shall also specify that it acts as primary insurance.

B. Workers' Compensation Insurance. Constructing Owner shall be permissibly self-insured or shall carry full workers' compensation insurance coverage for all persons employed, either directly or through subcontractors, in carrying out the work contemplated by this Agreement, in accordance with the Workers' Compensation Act contained in the Labor Code of the State of California.

By execution of this Agreement, Constructing Owner certifies as follows:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, I will comply with such provisions before commencing the performance of the work of this contract."

As part of the execution of this Agreement, Constructing Owner agrees to furnish to the District a certified copy of the insurance policies it has taken out for public liability, property damage and workers' compensation insurance set forth above for the period covered by this Agreement. Such insurance shall be placed with an insurance carrier acceptable to the District under terms satisfactory to the District. Said certified policies of insurance shall be furnished to the District prior to commencing the work contemplated by this Agreement. Each such certified policy shall bear an endorsement precluding the cancellation or reduction in coverage of any such policy before the expiration of thirty (30) days after the District shall have received written notification of such cancellation or reduction.

Should Constructing Owner fail to obtain and keep in force the insurance coverage hereinabove required, the District shall, subject to the cure provisions set forth in Section XX, have the right to cancel and terminate this Agreement forthwith and without regard to any other provisions of this Agreement.

## **21. Indemnification.**

21.1 With respect to the construction of the Improvements, the Constructing Owner shall assume the defense of, and indemnify and save harmless, the District, its officers, employees and agents, and each and every one of them from and against all actions, liability, damages, claims, losses or expenses of every type and description to which they may be subjected or put to by reason of or resulting from: (l) the performance of, or failure to perform, the work or any other obligations of this

Agreement by Constructing Owner, any subcontractor of Constructing Owner, or its agents or employees; (2) any alleged negligent act or omission of Constructing Owner, any subcontractor, Constructing Owner's agents or employees, in connection with any acts performed or required to be performed pursuant to this Agreement; (3) any dangerous or defective condition arising or resulting from any of the actions or omissions of Constructing Owner's agents or employees in carrying out the provisions of this Agreement. This indemnification is effective and shall apply whether or not any such action is alleged to have been caused in part by the District as a party indemnified hereunder. This indemnification shall not include any claim arising from the sole negligence or willful misconduct of the District or its employees.

21.2 Constructing Owner agrees to indemnify, defend, and hold harmless the District, its officials, officers, employees, agents and consultants from (1) any and all administrative, legal or equitable actions or other proceedings instituted by any person not a party to this Agreement challenging the validity of the Agreement, or otherwise arising out of or stemming from this Agreement, its approval and/or the process relating thereto, including compliance with all CEQA requirements for this Project; and (2) against all actions, liability, damages, claims, losses or expenses of every type and description to which District and its employees and agents may be subjected or put to by reason of or resulting from approval of this Agreement and the Project. Constructing Owner may select its own legal counsel to represent Constructing Owner's interests at Constructing Owner's sole cost and expense. The Parties shall cooperate in defending such action or proceeding. Constructing Owner shall pay for District's costs of defense, whether directly or by timely reimbursement on a monthly basis. Such costs shall include, but not be limited to, all court costs and attorneys' fees expended by District in defense of any such action or other proceeding, plus staff and District's attorney time spent in regard to defense of the action or proceeding. The Parties shall use best efforts to select mutually agreeable defense counsel but, if the Parties cannot reach agreement, District may select its own legal counsel and Constructing Owner agrees to pay directly or timely reimburse on a monthly basis District for all court costs, attorney fees, and time referenced herein.

21.3 The Parties agree that this Section 21 shall constitute a separate agreement entered into concurrently, and that if any other provision of this Agreement, or the Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the Parties agree to be bound by the terms of this Section 21, which shall survive such invalidation, nullification or setting aside.

## **22. Warranty.**

22.1 Constructing Owner agrees that construction of the Improvements shall be in accordance with the Plans and Specifications and industry standards. The Constructing Owner unconditionally guarantees all materials and workmanship furnished under this Agreement, and agrees to replace at its sole cost and expense, and to the satisfaction of District, any and all materials which may be defective through faulty, improper or inferior workmanship or materials. Constructing Owner shall repair or

replace to the satisfaction of District any or all such work that may prove defective in workmanship or materials, ordinary wear and tear excepted, together with any other work which may be damaged or displaced in so doing. This guarantee shall remain in effect for three years from the date of District's acceptance of the work. This guarantee does not excuse Constructing Owner for any other liability related to defective work discovered after the guarantee period. Constructing Owner shall transfer to District all manufacturer and supplier warranties relating to the Improvements, if any, upon completion of the work. Constructing Owner shall provide a warranty bond in the amount of ten per cent (10%) of the final cost of the installed Improvements, which bond shall be released at the expiration of the three- year warranty period.

22.2 In the event of failure of Constructing Owner to comply with the above stated conditions within a reasonable time, District may have the defective work repaired and made good at the expense of Constructing Owner who will pay the costs and charges therefor immediately upon demand, including any reasonable management and administrative costs, and engineering, legal and other consultant fees incurred by District in enforcing this guarantee.

**23. Disputes.**

23.1 If any dispute arises regarding the meaning of the drawings or Contract Documents, the quality or quantity of materials or workmanship, or Change Orders, the dispute shall be decided by District's engineer whose decision shall be final and binding on both parties.

**24. Term of Agreement.**

24.1 Upon execution of this Agreement, the term of this Agreement shall commence on the Effective Date. The term of this Agreement shall last until the end of the Warranty Period as specified in Section 22 of this Agreement, except for the indemnification provisions of this agreement in Section 21, which obligation shall survive the termination of this Agreement.

**25. Payment of District Costs.**

25.1 Constructing Owner shall reimburse the District for all reasonable costs and expenses incurred in negotiating and approving this Agreement, the EDC LAFCO Approvals and the County Approvals, and the construction of and final acceptance of dedication of the Improvements Such costs shall include, but not be limited to the time and related expenses of District staff, consultants, and District legal counsel.

25.2 Constructing Owner shall, prior to commencement of construction of the Improvements, deposit as security with District the sum of \_\_\_\_\_ Thousand Dollars (\$00,000.00) from which amount the District shall deduct all of its costs, fees, and expenses incurred as a result of the Project including, but not limited to administrative

and staff costs, overhead, engineering costs, legal expenses, consultant expenses and inspection fees incurred by District in connection with reviewing and approving the design, construction and inspection of the Improvements to be constructed by Constructing Owner.

25.3 If the amount on deposit with District at any time prior to final acceptance of all the Improvements to be constructed by Constructing Owner pursuant to this Agreement is reduced below a balance of Five Thousand Dollars (\$5,000.00, Constructing Owner shall, upon notice from District, deposit with District funds sufficient to restore the amount on deposit to the sum of \_\_\_\_ Thousand Dollars (\$00,000.00). Failure of Constructing Owner to make any such additional deposits within ten (10) days after notice from the District will cause the District to suspend performance of the terms and conditions of this Agreement by Constructing Owner.

25.4 Upon completion of construction of the Improvements by Constructing Owner, acceptance of dedication of the Improvements by District and the expiration of the warranty period or the satisfactory resolution of any and all warranty claims, the District will determine the final actual amount of its administrative, engineering, consulting and legal costs and expenses incurred with respect to the design, construction, inspection and acceptance of the Improvements comprising Project. If the actual amount of such costs and expenses exceeds the deposits made by the Constructing Owner pursuant to this Agreement, the Constructing Owner shall pay to District the amount of any such expenses promptly upon demand. If the actual amount of costs and expenses incurred by District is less than the deposits previously made by Constructing Owner, the District shall refund any excess funds deposited by Constructing Owner to Constructing Owner, without interest. The District's determination of its costs and expenses incurred with respect to the Project shall be final and binding, provided that such determination shall be made upon the basis of generally accepted accounting principles consistently applied.

## **26. General Provisions.**

26.1 The Recitals with all defined terms set forth herein are hereby incorporated into this Agreement.

26.2 Constructing Owner has a legal or equitable interest in all real property comprising the Project which is the subject of this Agreement, the description of which is attached hereto marked Exhibit A and incorporated herein by this reference (the "Property"). Constructing Owner represents that all persons holding legal or equitable interest in the Property shall be bound by this Agreement.

26.3 Relationship of District and Constructing Owner. It is understood that this Agreement is a contract that has been negotiated and voluntarily entered into by Constructing Owner and District and that Constructing Owner is not an agent of District. The District and Constructing Owner hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any

document executed in connection herewith shall be construed as making the District and Constructing Owner joint venturers or partners.

26.4 This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective heirs, successors, assigns and subsequent purchasers. Constructing Owner shall not assign its interest in this Agreement without District's prior written approval, which approval shall not be unreasonably withheld.

26.5 Notice shall be sent to the parties at the addresses set forth below. Either party may change the address by giving written notice to the other:

CONSTRUCTING OWNER:  
[To be added.]

DISTRICT:

26.6 Time is of the essence in the performance of this Agreement.

26.7 This Agreement constitutes the sole and only agreement between the parties concerning the matters set forth herein. Except for the Annexation Agreement, this Agreement supersedes any and all other agreements, either oral and in writing, between the parties hereto and any other agreement pertaining to the rendering of services by Constructing Owner to the District, and contains all the covenants and agreements between the parties with respect to such services. The Annexation Agreement takes priority with respect to any inconsistency that may exist between this Agreement and the Annexation Agreement. Each party to this Agreement acknowledges that no representations or promises have been made by any party hereto which are not embodied herein, and that no other agreement or promise not contained in this Agreement shall be valid or binding.

26.8 Waiver. The failure or omission by District to terminate this Agreement for any violation of its terms or conditions shall in no way bar, stop or prevent the District from terminating this Agreement thereafter, either for such or for any subsequent violation of any such term, condition or covenant. The filing of a Notice of Completion or acceptance of the Project shall not be, and shall not be construed to be a waiver of any breach of any term, covenant or condition of this Agreement.

26.9 Severability. If a court of competent jurisdiction finds or rules that any provisions of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

26.10 Amendments. The terms of this Agreement may be modified only in writing by mutual agreement on signature of the District and Constructing Owner. Said amendment shall be attached to this Agreement.

26.11 Counterparts. This Agreement may be executed in counterparts.

[Signature information to be added.]

**EXHIBIT C**  
**FORM OF APPROVED**  
**ASSIGNMENT AND ASSUMPTION AGREEMENT**

Exhibit C

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

FOR THE BENEFIT OF THE CAMERON  
ESTATES COMMUNITY SERVICES DISTRICT  
PURSUANT TO GOVERNMENT CODE §  
6103

RECORDING REQUESTED BY

WHEN RECORDED MAIL TO:

General Manager  
Cameron Estates Community Services  
District  
P.O. Box 171  
Shingle Springs, CA 95682

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

**ASSIGNMENT AND ASSUMPTION AGREEMENT RELATIVE TO  
ANNEXATION AGREEMENT**

This Assignment and Assumption Agreement (hereafter the "Assignment Agreement") is entered into this \_\_\_ day of \_\_\_\_, 20\_\_, by and between \_\_\_\_\_ (hereafter "Landowner" or "Transferring Landowner" and \_\_\_\_\_ (hereafter "Assignee").

**RECITALS**

A. On November 17, 2017, the Cameron Estates Community Services District ("District") and Landowner entered into an Annexation Agreement relative to the Annexation of the Property (identified on Exhibit A to the Annexation Agreement and described in the Recitals of the Annexation Agreement) into the District. The Annexation Agreement contains material terms that were conditions precedent to District's adoption of a Resolution No. 2017-06 approving the Annexation, which resolution was adopted by District Board of Directors at a duly noticed public hearing on November 16, 2017. The Local Agency Formation Commission for the County of El Dorado (EDC LAFCO) thereafter approved the annexation of the Property into the District, subject to Landowner's agreement that the conditions restricting development and access to roads owned and maintained by District would continue in perpetuity.

B. The Annexation Agreement was recorded on [insert date] in the Official Records of El Dorado County on [insert recordation details].

C. Landowner intends to convey that portion of the Property identified as follows, and hereafter referred to as the "Assigned Parcel":

\_\_\_\_\_[Insert Property Description]

D. Upon transfer of the Property, Landowner will be the Transferring Landowner, and thereafter intends to assign and Assignee intends to assume all of Transferring Landowner's right, title, interest, burdens and obligations under the Annexation Agreement with respect to the Assigned Parcel.

#### ASSIGNMENT AND ASSUMPTION

NOW, THEREFORE, Transferring Landowner and Assignee agree as follows:

1. Transferring Landowner hereby assigns, effective as of Transferring Landowner's conveyance of the Assigned Parcel to Assignee, all of the rights, title, interest, burdens and obligations of Transferring Landowner under the Annexation Agreement with respect to the Assigned Parcel. Transferring Landowner retains all the rights, title, interest, burdens and obligations under the Development Agreement with respect to all other property within any portion of the Property owned by Transferring Landowner.

2. Assignee hereby assumes all of the rights, title, interest, burdens and obligations of Transferring Landowner under the Annexation Agreement with respect to the Assigned Parcel, and agrees to observe and fully perform all of the duties and obligations of Transferring Landowner under the Annexation Agreement with respect to the Assigned Parcel, and to be subject to all of the terms and conditions thereof with respect to the Assigned Parcel. The parties intend hereby that upon the execution of this Assignment Agreement and conveyance of the Assigned Parcel to Assignee, Assignee shall become substituted for "Property Owner" as the "Property Owner" under the Annexation Agreement with respect to the Assigned Parcel. Assignee acknowledges and agrees that the assumptions of Transferring Landowner's rights and obligations under the Annexation Agreement include, without limitation, the limitations on the use of the Assigned Parcel and limitations on access to roads owned and maintained by the District as specified in Sections 3.1 and 4.1 of the Annexation Agreement, and the requirement to enter into a Subdivision Improvement Agreement prior to the commencement of any development activity on all or any portion of the Property pursuant to the provisions of Section 6 of the Annexation Agreement.

3. All of the covenants, terms and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

4. Notice to the District is required by the Annexation Agreement and Landowner shall provide notice as follows:

Cameron Estates Community Services District  
P.O. Box 171  
Shingle Springs, CA. 95682

5. The Notice Address described in Section 17.5 of the Annexation Agreement for the Property Owner with respect to the Assigned Parcel shall be:

Deubel Enterprises, L.P.  
P.O.Box 4257  
El Dorado Hills, CA 95762

6. This Assignment shall be ineffective if District provides Notice of an Event of Default on Landowner within twenty (20) business days of delivery of this Assignment Agreement. The provisions for resolving an Event of Default are governed by Section 8 of the Annexation Agreement.

IN WITNESS HEREOF, the parties hereto have executed this Assignment Agreement as of the day and year first above written. This Assignment Agreement may be executed in counterparts.

LANDOWNER:

By:  
Print Name:  
Title:

ASSIGNEE

By:  
Print Name:  
Title