

RECORDING REQUESTED BY:

First American Title Company

AND AFTER RECORDING RETURN TO:

TH Centre Investors LLC
3001 Bishop Drive, Suite 100
San Ramon, CA 94593
Attention: Legal Department

(Space Above for Recorder's Use)

**PARTIAL ASSIGNMENT AND ASSUMPTION
OF DEVELOPMENT AGREEMENT**

(TruLiving Manteca Neighborhood 5)

THIS PARTIAL ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT (this "**Assignment**") is dated for identification purposes only as of the **3rd** day of June, 2019, by and between TRUMARK HOMES LLC, a California limited liability company ("**Assignor**"), and TH CENTRE INVESTORS LLC, a Delaware limited liability company ("**Assignee**").

RECITALS

A. Assignor entered into that certain Second Amendment and Restated Development Agreement with the City of Manteca (the "**City**") that was approved by the City Council, dated February 2, 2016 and recorded on March 22, 2016 as Instrument No. 2016-032337 in the Official Records of San Joaquin County, California ("**Official Records**"), as the same may be modified or amended in accordance with its terms (the "**Development Agreement**"), with respect to approximately 122 acres of land within the City (the "**Property**"), commonly known as "Shadowbrook" (the "**Project**").

B. The Development Agreement governs the condition and obligations relating to Assignor's development of the Property.

C. Assignee and an affiliate of Assignor, TH Shadowbrook Investors LLC, a Delaware limited liability company ("**TH Shadowbrook**"), have entered into that certain Agreement for Purchase of Real Property and Preliminary Escrow Instructions dated to be effective as of March 11, 2019 (as may be further amended from time to time, the "**Purchase Agreement**"). Pursuant to the Purchase Agreement, Assignee has the right to purchase that certain portion of the Property more particularly identified and described on Exhibit A attached to this Assignment and incorporated herein by this reference (the "**Assigned Parcel**"), commonly referred to as "Neighborhood 5", together with the right to construct up to fifty-nine (59) residential dwelling units thereon (the "**Allocated Units**").

D. In connection with the transfer of the Assigned Parcel, Assignor desires to assign to Assignee, and Assignee desires to accept from Assignor (i) all rights, interests and benefits under the Development Agreement generally or specifically applicable to the Assigned Parcel, on a non-exclusive basis, and (ii) only those site-specific duties and obligations under the Development Agreement that are related to the construction of the Allocated Units on the Assigned Parcel (“**Site-Specific Burdens**”) (collectively, “**Site-Specific Benefits and Burdens**”). The Site-Specific Benefits and Burdens shall not include any obligation to construct, provide or install any infrastructure, improvements, amenities and/or facilities required by the Development Agreement which are not located on the Assigned Parcel.

AGREEMENT

IN WITNESS WHEREOF, Assignor and Assignee, each in consideration of the covenants of the other and for other good and valuable consideration, the receipt of which is hereby acknowledged, hereby agree as follows:

1. Defined Terms. Except as otherwise provided, all defined terms used in this Assignment shall correspond to the defined terms in the Development Agreement.

2. Assignment and Assumption. Assignor hereby assigns, and Assignee hereby assumes, all of the Site-Specific Benefits and Burdens; provided, however, that as to the Site Specific Burdens, Assignee’s assumption of such matters is only applicable to the Site Specific Burdens applicable to the Assigned Parcel arising from and after the Effective Date (as defined below) and except as set forth in Section 3 below. Assignee hereby agrees to observe and fully perform all of the duties and obligations of Assignor under the Development Agreement which are part of the Site-Specific Benefits and Burdens, and to be subject to the terms and conditions of the Development Agreement with respect to the Site Specific Benefits and Burdens, it being the express intention of both Assignor and Assignee that, upon the Effective Date, Assignee shall become substituted for Assignor as “Developer” and “party” under the Development Agreement solely with respect to the Site-Specific Benefits and Burdens. Notwithstanding anything to the contrary herein, under no circumstances shall Assignee be responsible for any default under the Development Agreement arising (a) with respect to the Assigned Parcel prior to the Effective Date, or (b) with respect or relating to any other land described in the Development Agreement, other than the Assigned Parcel, regardless of when such default occurred.

(a) Processing Fees. From and after the Effective Date, Assignee shall be obligated to pay any and all Processing Fees (as defined in Section 4.02(e) of the Development Agreement) charged by the City pursuant to the Development Agreement for Applications (as defined in Section 4.02(e) of the Development Agreement) submitted in connection with Assignee’s construction of the Allocated Units on the Assigned Parcel (“**Assignee’s Processing Fees**”). Assignor shall remain obligated to pay any and all Processing Fees charged by the City pursuant to the Development Agreement in connection with (i) Applications submitted in connection with Assignor’s completion of the Owner’s Improvements (as defined in the Purchase Agreement) on the Assigned Parcel, and (ii) Applications submitted in connection with the Remaining Property, except to the extent such obligations are otherwise assigned to another builder on the Project pursuant to an assignment instrument approved by the City.

(b) Development Agreement Fees. The parties acknowledge that, in recognition of the Five Million Two Hundred Ninety-Two Thousand Seven Hundred Ninety Five and No/100ths Dollars (\$5,292,795.00) in Development Fees previously paid for the Project, the City considers the following fees fully satisfied and will not collect any outstanding amounts for the Development Agreement Fee, Public Facilities Fee, Public Safety Endowment Fee, Development Services Fee or Recreation Amenities Fee described in the Original Development Agreement (as defined in the Development Agreement).

(c) Impact Fees. From and after the Effective Date, Assignee shall be obligated to pay any and all Impact Fees (as defined in Section 4.02(f) of the Development Agreement) required by the City pursuant to the Development Agreement related to the Assigned Parcel, including, without limitation, the storm drain fee of One Thousand Five Hundred and No/100ths Dollars (\$1,500.00) per acre (the “**Storm Drain Fee**”) that is required to be paid pursuant to the Development Agreement prior to the issuance of a building permit for a production home within the Assigned Parcel. Except to the extent such obligations are otherwise assigned to another builder in the Project pursuant to an assignment instrument approved by the City, Assignor shall remain obligated to pay for any and all Impact Fees charged by the City pursuant to the Development Agreement related to the Remaining Property, including, without limitation, the Storm Drain Fee.

(d) Project Allocations. Assignor hereby assigns to Assignee 41 2017 Project Allocations and 18 2018 Project Allocations (as defined in Section 4.02(g) of the Development Agreement).

(e) Improvements Required by Conditions of Approval. Assignor shall remain obligated for construction of all on-site and off-site improvements or amenities set forth in the Conditions of Approval (as defined below) that are required to be completed pursuant to Section 4.02(h) of the Development Agreement.

3. Release. From and after the Effective Date, and subject to Assignor obtaining any separate consent required by the City in connection therewith, which shall not affect the effectiveness of this Assignment (regardless of whether obtained), Assignor shall be unconditionally and irrevocably released from all Site-Specific Benefits and Burdens arising subsequent to the Effective Date; provided, however, that Assignee has not assumed and will not assume liability for any Site Specific Burdens arising prior to the Effective Date. Assignor shall remain responsible for all duties and obligations under the Development Agreement not assumed by Assignee hereunder or by another assignee of the Development Agreement. Notwithstanding anything to the contrary herein, TH Shadowbrook shall retain and shall not be released from its obligation to complete the Owner Improvements (as defined in the Purchase Agreement) as required by the Purchase Agreement.

4. Public Facilities Implementation Plan (PFIP) Fee Disclosure. Assignee hereby acknowledges the requirements of Engineering Division Condition #18 of the Conditions of Approval and covenants to be bound thereby to the extent relating to the Assigned Parcel. Such condition provides as follows:

“Developer shall pay all fees and taxes required by the Manteca Municipal Code, including those fees required by the City Council Resolution No. RI999-210. The fees shall be

paid in the amount that is in effect at the time that the fees become due pursuant to the Manteca Municipal Codes. This amount may include, but is not limited to, increases in the fees due to the increases in construction costs, due to changes in growth patterns of the City or due to the other unanticipated costs associated with construction of the City's PFIP improvements. Additionally, in recognition of the need for expanded public facilities to meet the demand of cumulative development, including the proposed Subdivision, the Developer agrees to comply with and participate in any additional funding mechanisms adopted for the purposes of providing adequate sewer treatment facilities, adequate water distribution facilities, and adequate sewer collection facilities to serve future development within the City. The funding mechanism shall be adopted for the purpose of allowing the City to provide adequate sewer treatment, sewer collection, and water distribution facilities and may include, but shall not be limited to, the payment of development fees, the payment of taxes, and the payment of special taxes in connection with the community facilities districts. Nothing in this condition shall be interpreted as a limitation on the exercise of the City's police power or taxing power through future legislation or the impositions of development conditions. The Developer shall pay fees and taxes as set forth in the Development Agreement. These fees and taxes will be paid at the rates that are current at the time of building permit except for fees outlined and agreed upon for payment in the Development Agreement. Where there is a discrepancy between the building permit fee or the Development Agreement fee, the Development Agreement shall prevail."

5. Effective Date. Provided that this Assignment has been fully executed by Assignor and Assignee, the assignment and assumption provisions of this Assignment shall be effective upon the date (the "**Effective Date**") of recordation of the grant deed conveying the Assigned Parcel from TH Shadowbrook to Assignee.

6. Term of Development Agreement and Conditions of Approval Not Affected. Except that Assignee shall be subject to and benefitted by, and Assignor released (subject to the terms of Section 3) from, the Site-Specific Benefits and Burdens, as specified in this Assignment, the provisions of the Development Agreement shall remain in full force and effect and shall not be modified by this Assignment. Assignee acknowledges that the Project conditions of approval issued by the City on January 20, 2016 in City Council Resolution No. R2016-8 must be satisfied.

7. Entire Agreement; Modifications. This Assignment is the entire agreement between Assignor and Assignee concerning assignment of the Site-Specific Benefits and Burdens. This Assignment may be amended, terminated or otherwise modified in any respect only by a writing duly executed by Assignor and Assignee.

8. Attorneys' Fees. In the event of any controversy, claim, dispute, or litigation between the parties hereto to enforce or interpret any of the provisions of this Assignment or any right of either party hereto, the non-prevailing party to such litigation agrees to pay to the prevailing party all costs and expenses, including, without limitation, reasonable attorneys' fees, incurred therein by the prevailing party, including, without limitation, fees incurred during a trial of any action, any affirmative defenses and any fees incurred as a result of an appeal from a judgment entered in such litigation. To so recover, it shall not be necessary that the prevailing party prevail in each and every one of its claims. Rather, the amount of the award of attorneys'

fees shall, in the court's discretion, reflect the degree to which the prevailing party or parties have prevailed in some of their claims.

9. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of California, as they apply to contracts executed in and to be carried out entirely within California.

10. Counterparts. This Assignment may be executed in one or more counterparts. All counterparts so executed shall constitute one agreement, binding on all parties, even though all parties are not signatory to the same counterpart.

11. Cooperation. Each party hereto covenants and agrees to perform all acts to prepare, execute, and deliver such written agreements, documents, instruments, statements, filings, and notices as may be reasonably necessary to carry out the terms and provisions of this Assignment.

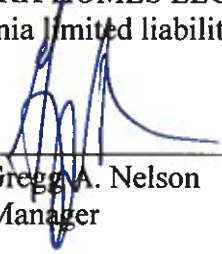
12. Recordation. Assignor shall ensure that this Assignment is recorded in the Official Records of the County of San Joaquin concurrently with the Effective Date.

[Signatures on the following page]

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment to be effective as of the Effective Date.

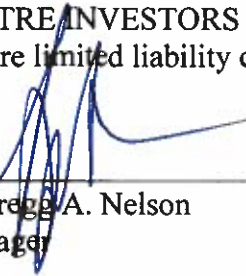
“ASSIGNOR”

TRUMARK HOMES LLC,
a California limited liability company

By: 
Name: Gregg A. Nelson
Its: Manager

“ASSIGNEE”

TH CENTRE INVESTORS LLC,
a Delaware limited liability company

By: 
Name: Gregg A. Nelson
Its: Manager

CALIFORNIA ALL-PURPOSE NOTARY ACKNOWLEDGEMENT
--

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.
--

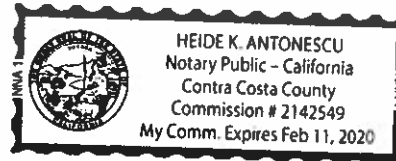
STATE OF CALIFORNIA) SS

COUNTY OF CONTRA COSTA)

On June 3, 2019 before me, **Heide K. Antonescu, Notary Public**, personally appeared **Gregg A. Nelson**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under **PENALTY OF PERJURY** under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Heide K. Antonescu (Seal)

CALIFORNIA ALL-PURPOSE NOTARY ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

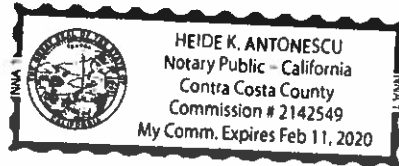
STATE OF CALIFORNIA) SS

COUNTY OF CONTRA COSTA)

On June 3, 2019 before me, **Heide K. Antonescu, Notary Public**, personally appeared **Gregg A. Nelson**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under **PENALTY OF PERJURY** under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Heide K. Antonescu (Seal)

CITY OF MANTECA CONSENT AND RELEASE

The City of Manteca hereby approves and consents to the covenants, terms and conditions of the foregoing Partial Assignment and Assumption of Development Agreement (TruLiving Manteca Neighborhood 5) ("**Partial Assignment**"). As of the Effective Date, except as expressly set forth in the Partial Assignment, Assignor shall be released from all Site-Specific Burdens under the Development Agreement and the Assignee shall be substituted for "Developer" with respect to the Site-Specific Burdens under the Development Agreement.

By execution of this Consent, the City certifies that the Development Agreement is presently in full force and effect. To the best knowledge of the City, Assignor is not in default of any of its obligations under the Development Agreement. City consents to the addition of "City" at the end of Section 4.02(f)(1) of the Development Agreement in order to correct a typographical error.

The undersigned is duly authorized to sign, acknowledge and deliver this Consent to Assignment on behalf of the City, and no other signatures are required or necessary in connection with the execution and validity of this Consent.

CITY OF MANTECA,
a California Municipal Corporation

By: _____

Name: _____

Title: _____

Dated: _____

ATTEST:

CLERK OF THE CITY COUNCIL

By: _____

Name: _____

Title: _____

Dated: _____

APPROVED AS TO FORM:

CITY OF MANTECA CITY ATTORNEY

By: _____

Name: _____

Dated: _____

ACKNOWLEDGEMENTS

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, _____, before me, _____
(here insert name and title of the officer)

personally appeared _____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(Seal)

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

That certain real property located in the City of Manteca, County of San Joaquin, State of California, more particularly described as:

PARCEL ONE:

LOTS 11, 12, 13, 14, 15, AND 16 AS SHOWN ON MAP ENTITLED, TRACT NO. 3449 SHADOWBROOK UNIT NO. 1 FILED FOR RECORD MAY 4, 2018 IN BOOK 43 OF MAPS AT PAGE 30, SAN JOAQUIN COUNTY RECORDS.

APNs: 218-130-01-000, 218-130-040-000, 218-130-050-000, 218-130-070-000, 218-150-010-000, 218-130-190-000 through 218-130-240-000 (affects this and other property)

PARCEL TWO:

A RIGHT OF WAY (NOT TO BE EXCLUSIVE) AS AN APPURTENANCE TO PARCEL ONE ABOVE AND ANY SUBDIVISION OR SUBDIVISION THEREOF, FOR THE PURPOSE OF PRIVATE ACCESS, INGRESS AND EGRESS OVER, UNDER AND UPON LOTS A, B, C, D AND E ON MAP ENTITLED, TRACT NO. 3449 SHADOWBROOK UNIT NO. 1 FILED FOR RECORD MAY 4, 2018 IN BOOK 43 OF MAPS AT PAGE 30, SAN JOAQUIN COUNTY RECORDS.