

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



**ITEM: 3.38
(ID # 20896)**

MEETING DATE:

Tuesday, March 28, 2023

FROM : TLMA-TRANSPORTATION:

SUBJECT: TRANSPORTATION AND LAND MANAGEMENT AGENCY/TRANSPORTATION:
Approval of the Assignment and Assumption of, and Amendment to Cooperative Agreement Between the County of Riverside, the Riverside County Flood Control and Water Conservation District, La Ventana 242, LLC and Forestar (USA) Real Estate Group Inc. for Winchester Hills Line F, Stage 1, Salt Creek – Camino De Las Flores Storm Drain, Stage 1, Salt Creek – Luga Del Sur Storm Drain, Stage 1, Salt Creek – Camino Santiago Storm Drain, Stage 1, Salt Creek – La Ventana Storm Drain, Stage 1 (Tract No. 31100), Project Nos. 4-0-00372, 4-0-00373, 4-0-00374, 4-0-00375 and 4-0-00376, Not a Project per State CEQA Guidelines Section 15378(b)(5). District 3. [\$0] (Companion Item to MT Item No. 20881)

RECOMMENDED MOTION: That the Board of Supervisors:

1. Find the Assignment and Assumption of, and Amendment to Cooperative Agreement to be not a project Under CEQA pursuant to section 15378(b)(5) of the State CEQA Guidelines;

Continued on Page

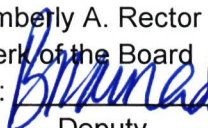
ACTION:Policy


Mark Lancaster, Director of Transportation 3/9/2023

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Perez, seconded by Supervisor Spiegel and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Washington, Perez, and Gutierrez
Nays: None
Absent: None
Date: March 28, 2023
xc: Trans., Flood and Water District

Kimberly A. Rector
Clerk of the Board
By: 
Deputy

(Companion item 11.2)

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

RECOMMENDED MOTION: That the Board of Supervisors:

2. Approve the Assignment and Assumption of, and Amendment to Cooperative Agreement between the County of Riverside ("County"), the Riverside County Flood Control and Water Conservation District ("District"), La Ventana 242, LLC ("Assignor"), and Forestar (USA) Real Estate Group Inc. ("Assignee");
3. Authorize the Chair of the Board to execute the Approval of the Assignment and Assumption of, and Amendment to Cooperative Agreement documents on behalf of the County; and
4. Authorize the Director of Transportation or designee to take all necessary steps to implement the Approval of the Assignment and Assumption of, and Amendment to Cooperative Agreement including, but not limited to negotiating, approving and executing any non-substantive amendments and any assignment and assumption associated with change of ownership of the property, subject to approval by County Counsel.

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 0	\$ 0	\$ 0	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: The Assignee is funding all construction and construction inspection costs (100%). No General Funds will be used on this project.			Budget Adjustment: No	
			For Fiscal Year: 22/23	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

The Approval of the Assignment and Assumption of, and Amendment to Cooperative Agreement ("Agreement") transfers the rights and responsibilities as established by the cooperative agreement executed on October 31, 2017, (Agenda Item No. 3.27), from La Ventana 242, LLC ("Assignor") to Forestar (USA) Real Estate Group Inc. ("Assignee"). Once executed, the Assignee will assume responsibility for the construction of the storm drain facilities, as originally required as a condition of development for Tract No. 31100.

Upon completion of the facility's construction, the County will assume ownership and responsibility for the operation and maintenance of (i) an 8' x 4' reinforced concrete box; (ii) the project's associated catch basins, inlets, concrete swale, connector pipes and laterals that are 36-inches or less in diameter and height located within County rights of way.

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

The District will assume ownership, operation and maintenance of the underground storm drain system, trapezoidal channel, mainline storm drains greater than 36-inches in diameter, riprap structure, three (3) storm drains that are 36-inches or less in diameter and a maintenance access road. The Assignee will retain ownership, operation and maintenance of (i) a 6' x 4' reinforced concrete box; (ii) three (3) basins and landscape features; and (iii) various lateral storm drains that are 36-inches or less in diameter that are located within its rights of way.

County Counsel has approved the Agreement as to legal form and the Assignor and Assignee have executed the Agreement. A companion item appears on the Riverside County Flood Control and Water Conservation District's agenda this same date.

Environmental Findings

The transfer of rights and responsibilities from the Assignor to the Assignee is not a "project" pursuant to Section 15378(b)(5) of the California Environmental Quality Act ("CEQA") Guidelines which states that a "project" does not include "organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment."

The transfer of rights and responsibilities will not, in and of itself, result in a physical change to the environment and does not authorize to any extent whatsoever actual physical development. Any future development, if it occurs at all, will be the result of subsequent actions subject to further CEQA review. Therefore, the transfer of rights and responsibilities is not a project within the meaning of CEQA. No further CEQA analysis is required for this action.

Impact on Residents and Businesses

Assignee's planned development will benefit from the storm drain facilities that are to be constructed by the Assignee. Ancillary benefits will accrue to the public who will utilize the tract's roadways.

Additional Fiscal Information

The Assignee is funding all construction and construction inspection costs. Future operation and maintenance costs of the County maintained storm drain facilities will accrue to the County. Future operation and maintenance costs of the District maintained storm drain facilities will accrue to the District.

ATTACHMENTS:

Vicinity Map

Assignment, Assumption and Amendment Agreement

SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA



Jason Farin, Principal Management Analyst 3/20/2023



Aaron Gettis, Deputy County Counsel 3/15/2023

ASSIGNMENT AND ASSUMPTION OF AND
AMENDMENT TO COOPERATIVE AGREEMENT

Winchester Hills Line F, Stage 1
Salt Creek - Camino De Las Flores Storm Drain, Stage 1
Salt Creek - Luga Del Sur Storm Drain, Stage 1
Salt Creek - Camino Santiago Storm Drain, Stage 1
Salt Creek - La Ventana Storm Drain, Stage 1
Project Nos. 4-0-00372, 4-0-00373, 4-0-00374, 4-0-00375 and 4-0-00376
Tract Map No. 31100

This Assignment and Assumption of and Amendment to Cooperative Agreement ("ASSIGNMENT") is made by and between (i) the Riverside County Flood Control and Water Conservation District, a body politic ("DISTRICT"); (ii) the County of Riverside, a political subdivision of the State of California ("COUNTY"); (iii) La Ventana 242, LLC, a California limited liability company ("ASSIGNOR"); and (iv) Forestar (USA) Real Estate Group, Inc., a Delaware corporation ("ASSIGNEE") (together, referred to as the "Parties" and individually as "Party"). The Parties hereto agree as follows:

RECITALS

A. DISTRICT, COUNTY and ASSIGNOR have previously entered into that certain Cooperative Agreement which was executed on October 31, 2017 (DISTRICT Board Agenda Item No. 11.1; COUNTY Board Agenda Item No. 3.27) and recorded as Document No. 2017-0495636 in the Official Records of the County of Riverside ("AGREEMENT"), setting forth the Parties' respective rights and obligations concerning ASSIGNOR's proposed design and construction of certain flood control and drainage facilities required as a condition of approval for Tract Map No. 31100, located in an unincorporated area of western Riverside County in the State of California, hereinafter called ("PROPERTY"); and

B. Subsequent to the execution of said AGREEMENT, ASSIGNEE has acquired fee title to PROPERTY pursuant to a certain Grant Deed dated April 7, 2022 and plans to proceed in accordance with AGREEMENT; and

MAR 28 2023 3.38/11.2

C. A true and correct copy of AGREEMENT has been provided to ASSIGNEE. AGREEMENT describes the terms and conditions by which those certain flood control and drainage improvements that are required in connection with the development of Tract Map No. 31100 are to be designed and constructed by ASSIGNOR, and inspected and accepted for operation and maintenance by DISTRICT, COUNTY and ASSIGNOR; and

D. Section IV.16 of AGREEMENT stipulates that ASSIGNOR may assign its rights and responsibilities as set forth therein subject to the written consent of the Parties thereto; and

E. The totality of ASSIGNOR's rights, title, interests, benefits and privileges pursuant to AGREEMENT are hereinafter collectively called "ASSIGNOR RIGHTS", and the totality of ASSIGNOR's obligations or responsibilities pursuant to AGREEMENT are hereinafter collectively called "ASSIGNOR OBLIGATIONS"; and

F. ASSIGNOR RIGHTS and ASSIGNOR OBLIGATIONS are hereinafter altogether called "RIGHTS AND OBLIGATIONS"; and

G. ASSIGNOR, ASSIGNEE, COUNTY and DISTRICT intend that, by execution of this ASSIGNMENT, ASSIGNEE shall assume and agrees to perform all RIGHTS AND OBLIGATIONS as stated in AGREEMENT; and

H. Concurrently with the assignment and assumption of AGREEMENT, DISTRICT desires to make certain amendments to AGREEMENT in its entirety, which includes the ASSIGNMENT; and

I. Section IV.18 of AGREEMENT specifies that AGREEMENT may be changed or modified subject to the written consent of the Parties thereto; and

NOW, THEREFORE, in consideration of the preceding Recitals and the mutual covenants hereinafter contained, the Parties hereto do hereby mutually agree as follows:

1. The above Recitals are true and correct and incorporated into the terms of this ASSIGNMENT.

2. By execution of this ASSIGNMENT, ASSIGNOR hereby assigns all of its RIGHTS AND OBLIGATIONS to ASSIGNEE, and ASSIGNEE accepts RIGHTS AND OBLIGATIONS.

3. For the benefit of DISTRICT and COUNTY, ASSIGNEE hereby agrees to be fully bound by the terms of AGREEMENT that are stated and imposed on ASSIGNOR in AGREEMENT, as amended herein. ASSIGNOR is referred to as DEVELOPER in AGREEMENT.

4. AGREEMENT is hereby amended as follows:

I. RECITALS "C" is revised to read:

"The required DISTRICT flood control facilities and drainage improvements, are shown in concept in blue on Exhibit "B" attached hereto and a part hereof, and on District Drawing No. 4-1113, include construction of:

- (i) Approximately 125 lineal feet of 14' x 6' reinforced concrete box, 40 lineal feet of concrete transition structure, and 540 lineal feet of trapezoidal channel, rap structure and an associated maintenance access road ("CHANNEL"). Approximately 113 lineal feet of 18-inch reinforced concrete pipe ("LOW FLOW LINE"). CHANNEL and LOW FLOW LINE are called ("LINE F"). At its downstream terminus, LINE F will drain into DISTRICT'S Salt Creek Channel;
- (ii) Approximately 108 lineal feet of double cell 6' x 5' reinforced concrete box, 20 lineal foot transition structure, 67 lineal feet triple cell 11' x 3' reinforced concrete box, and concrete outlet structure ("LINE G");
- (iii) Approximately 986 lineal feet of reinforced concrete pipe ("LINE A");
- (iv) Approximately 335 lineal feet of reinforced concrete pipe and 181 lineal feet of reinforced concrete box ("LATERAL C-2");

- (v) Approximately 1,023 lineal feet of both reinforced concrete pipe and reinforced concrete box ("LINE C");
- (vi) Two (2) storm drains that are thirty-six inches or less in diameter that are located with DISTRICT held easements or rights of way ("STORM DRAINS"). Together LINE F, LINE G, LINE A, LATERAL C-2, LINE C and STORM DRAINS are called "DISTRICT FACILITIES"; and"

II. Section IV.4 is revised to read:

"If DEVELOPER fails to commence construction of PROJECT within twenty-four (24) consecutive months after execution of this Agreement, then DISTRICT reserves the right to withhold issuance of the Notice to Proceed after this period of time pending a review of the existing site conditions as they exist at the time DEVELOPER provides written notification to DISTRICT of the start of construction as set forth in Section I.8. In the event of a change in the existing site conditions that materially affects PROJECT function or DISTRICT's ability to operate and maintain DISTRICT FACILITIES, DISTRICT may require DEVELOPER to modify IMPROVEMENT PLANS as deemed necessary by DISTRICT."

II. Section IV.5 is revised to read:

"DEVELOPER shall complete construction of PROJECT within twelve (12) consecutive months after commencement of construction of PROJECT, unless DISTRICT and COUNTY agree to extend the time to complete construction. Failure of DEVELOPER to perform the work within the agreed upon time shall constitute authority (i) for DISTRICT to terminate the Agreement and (ii) for COUNTY to require DEVELOPER's surety to pay to COUNTY the penal sum

of any and all bonds for DISTRICT to complete construction and perform any other remaining work on DISTRICT FACILITIES and APPURTENANCES. In the event COUNTY and DISTRICT elect to proceed under Section IV.5.ii, the following provisions (a) and (b) apply:

- a. DEVELOPER grants to DISTRICT and DISTRICT's officers, deputies, employees, agents, representatives, contractors and other designees the irrevocable permission to enter upon Tract Map No. 31100 to complete construction and perform any other remaining work on DISTRICT FACILITIES and APPURTENANCES. This right of entry shall terminate when such construction and any other remaining work is complete.
- b. COUNTY shall enforce the bonds and subsequently reimburse DISTRICT for DISTRICT costs incurred. If funds from the bond are insufficient to cover both COUNTY and DISTRICT's costs, COUNTY and DISTRICT shall negotiate an allocation of funds between them and determine whether COUNTY or DISTRICT shall cover the remaining costs."

5. In regard to the assignment of RIGHTS AND OBLIGATIONS set forth herein, DISTRICT and COUNTY hereby consent and agree to (i) the assignment of RIGHTS AND OBLIGATIONS in favor of ASSIGNEE and (ii) the assumption by ASSIGNEE of said RIGHTS AND OBLIGATIONS. In further clarification of the intent of the Parties, ASSIGNEE and ASSIGNOR specifically agree with DISTRICT that access and/or grant of real property interests required by DISTRICT pursuant to AGREEMENT, if any, shall be satisfied by ASSIGNEE, and in regard to all financial obligations, DISTRICT shall invoice ASSIGNEE for all charges incurred pursuant to AGREEMENT.

6. The assignment and assumption of RIGHTS AND OBLIGATIONS pursuant to this ASSIGNMENT shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, heirs and legatees of the respective Parties hereto.

7. In the event that any action or suit by the Party hereto is brought against another Party hereunder by reason of any breach of any of the covenants, conditions, agreements or provisions on the part of the other Party arising out of this ASSIGNMENT, the prevailing Party shall be entitled to have and recover of and from the other Party all costs and expenses of the action or suit, including reasonable attorneys' fees.

8. This ASSIGNMENT is to be construed in accordance with the laws of the State of California.

9. If any provision in this ASSIGNMENT is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

10. Nothing in the provisions of this ASSIGNMENT is intended to create duties or obligations to or rights in third parties not Parties to this ASSIGNMENT.

11. This ASSIGNMENT may be changed or modified only upon the written consent of the Parties hereto.

12. Any and all notices sent or required to be sent to ASSIGNEE arising from either this ASSIGNMENT or the obligations contained in AGREEMENT will be mailed by first class mail, postage prepaid, to the following addresses:

RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT
1995 Market Street
Riverside, CA 92501
Attn: Contract Services Section

COUNTY OF RIVERSIDE
4080 Lemon Street 8th Floor
Riverside, CA 92502-1090
Attn: Transportation Department
Plan Check Section

LA VENTANA 242, LLC
41391 Kalmia Street, Suite 200
Murietta, CA 92562
Attn: Jim Lytle

FORESTAR (USA) REAL ESTATE
GROUP, INC.
1300 Mopac Expressway
Austin, TX 78746
Attn: Daniel Bartok

13. The individuals executing this ASSIGNMENT on behalf of ASSIGNEE hereby certify that they have the authority within their respective companies to enter into and execute this ASSIGNMENT, and have been authorized to do so by any and all boards of directors, legal counsel and/or any other board, committee or other entity within their respective companies which have the authority to authorize or deny entering into this ASSIGNMENT.

14. Any action at law or in equity brought by any of the Parties hereto for the purpose of enforcing a right or rights provided for by the ASSIGNMENT shall be tried in a court of competent jurisdiction in the County of Riverside, State of California, and the Parties hereto waive all provisions of law providing for a change of venue in such proceedings to any other county.

15. This ASSIGNMENT is the result of negotiations between the Parties hereto and the advice and assistance of their respective counsel. The fact that this ASSIGNMENT was prepared as a matter of convenience by DISTRICT shall have no importance or significance. Any uncertainty or ambiguity in this ASSIGNMENT shall not be construed against DISTRICT because DISTRICT prepared this ASSIGNMENT in its final form.

16. This ASSIGNMENT may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall constitute but one and the same instrument.

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IN WITNESS WHEREOF, the Parties hereto have executed this ASSIGNMENT on

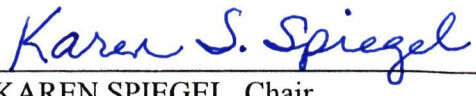
3/28/23

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

**RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT**

By 
JASON E. UHLEY
General Manager-Chief Engineer


By 
KAREN SPIEGEL, Chair
Riverside County Flood Control and Water
Conservation District Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

MINH TRAN
County Counsel

KIMBERLY RECTOR
Clerk of the Board

By 
CAROLINE K. MONROY
Deputy County Counsel

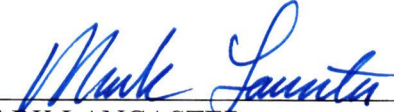
By 
Deputy

(SEAL)

Assignment and Assumption Agreement:
Winchester Hills Line F, Stage 1
Salt Creek - Camino De Las Flores Storm Drain, Stage 1
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Tract No. 31100
MS:AMR:blm
02/09/23

RECOMMENDED FOR APPROVAL:

COUNTY OF RIVERSIDE

By 
MARK LANCASTER
Director of Transportation

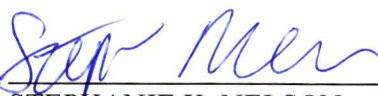
By 
KEVIN JEFFRIES, Chairman
Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

MINH C. TRAN
County Counsel

KIMBERLY RECTOR
Clerk of the Board

By 
STEPHANIE K. NELSON
Deputy County Counsel

By 
Deputy


(SEAL)

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ASSIGNOR

LA VENTANA 242, LLC,
a California limited liability company

By 

KYUNG MOO KIM
Manager

(ATTACH NOTARY WITH CAPACITY
STATEMENT)

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Winchester Hills Line F, Stage 1
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CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

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 Los Angeles }

On Feb 16, 2023 before me, Kyong Hun Kim, notary public
(Here insert name and title of the officer)

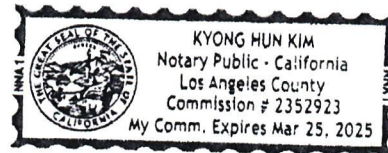
personally appeared KYUNG MOO KIM
 who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) 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]
 Notary Public Signature

(Notary Public Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

Assignment and
(Title or description of attached document)

Assumption
(Title or description of attached document continued)

Number of Pages 10 Document Date _____

CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
- Corporate Officer

(Title)

- Partner(s)
- Attorney-in-Fact
- Trustee(s)
- Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

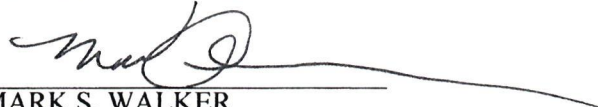
This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they- is/are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.

ASSIGNEE

**FORESTAR (USA) REAL ESTATE GROUP
INC., a Delaware corporation**

By: 
DANIEL C. BARTOK
Chief Executive Officer

By: 
MARK S. WALKER
Executive Vice President and Chief
Operating Officer

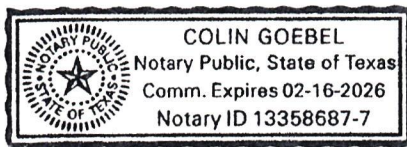
(ATTACH NOTARY WITH CAPACITY
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MS:AMR:blm
02/09/23

STATE OF TEXAS

COUNTY OF TARRANT

The foregoing instrument was acknowledged before me this 1st day of March 2023, by Daniel C. Bartok, as Chief Executive Officer of Forestar (USA) Real Estate Group Inc.



Notary Public


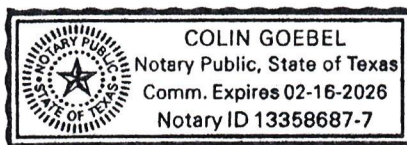
Printed Name: Colin Goebel

My Commission Expires: 2/16/2026

STATE OF TEXAS

COUNTY OF TARRANT

The foregoing instrument was acknowledged before me this 1st day of March 2023, by Mark S. Walker, as Executive Vice President and Chief Financial Officer of Forestar (USA) Real Estate Group Inc.

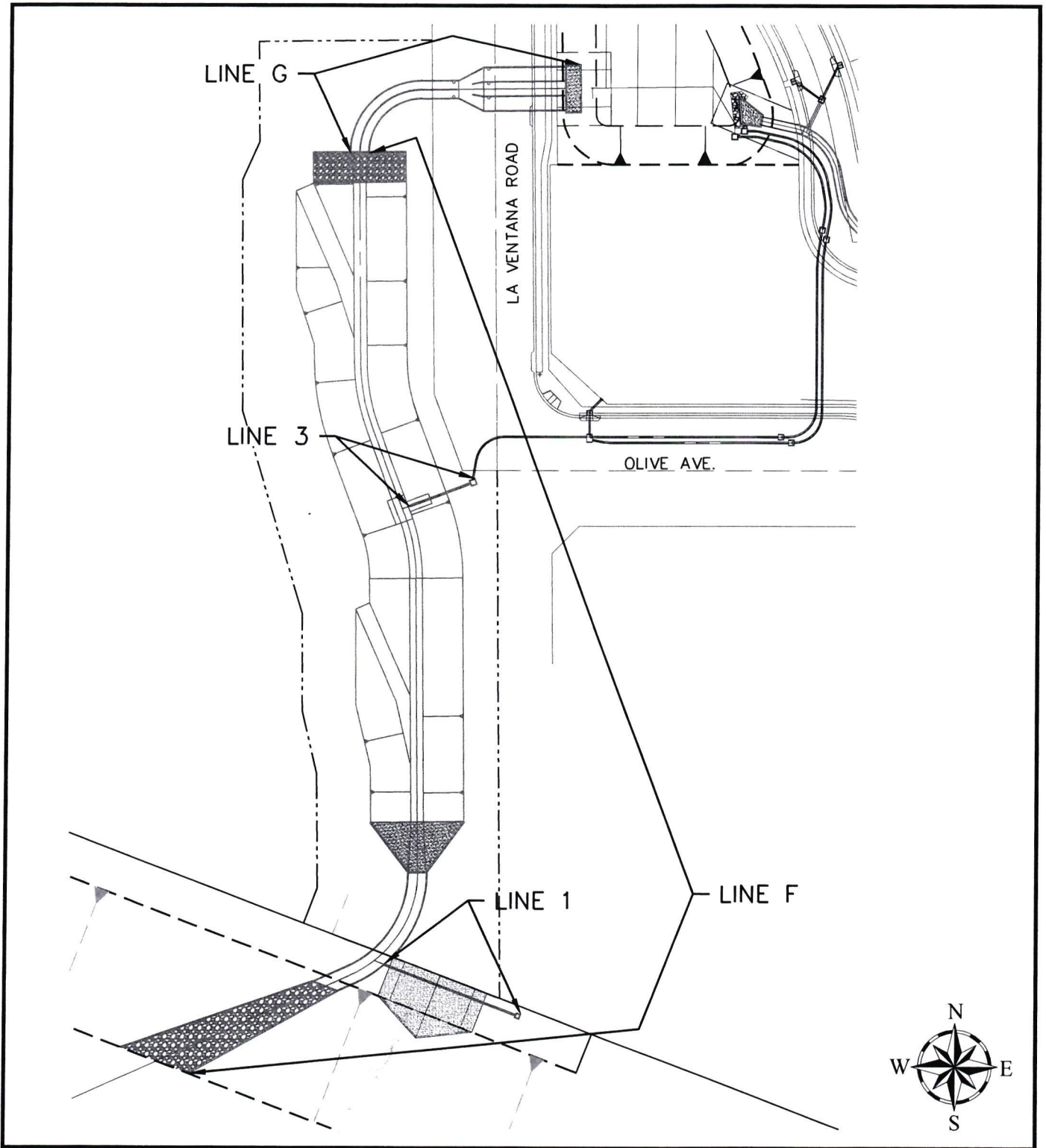


Notary Public

Printed Name: Colin Goebel

My Commission Expires: 2/16/2026

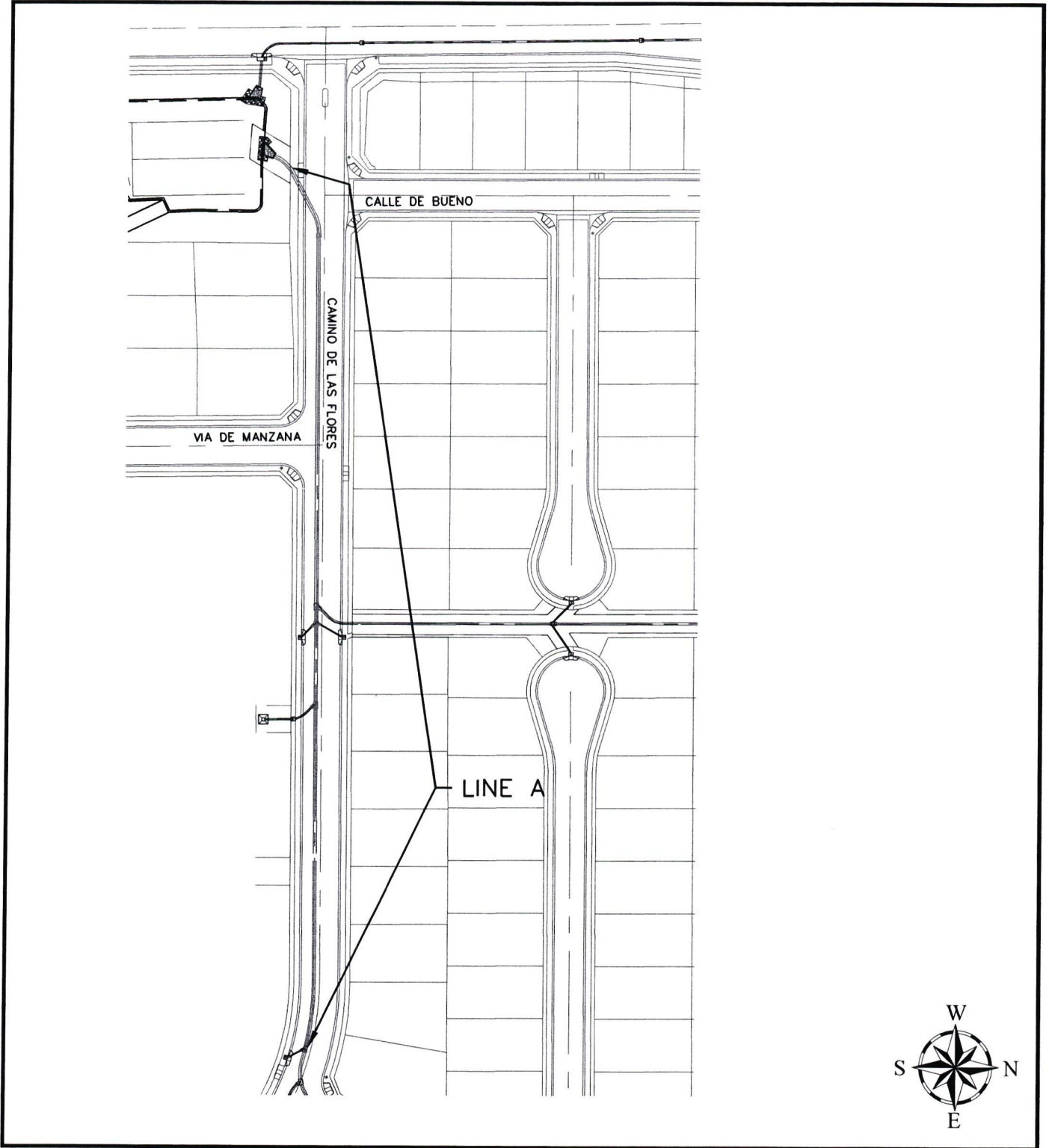
Exhibit B



COOPERATIVE AGREEMENT

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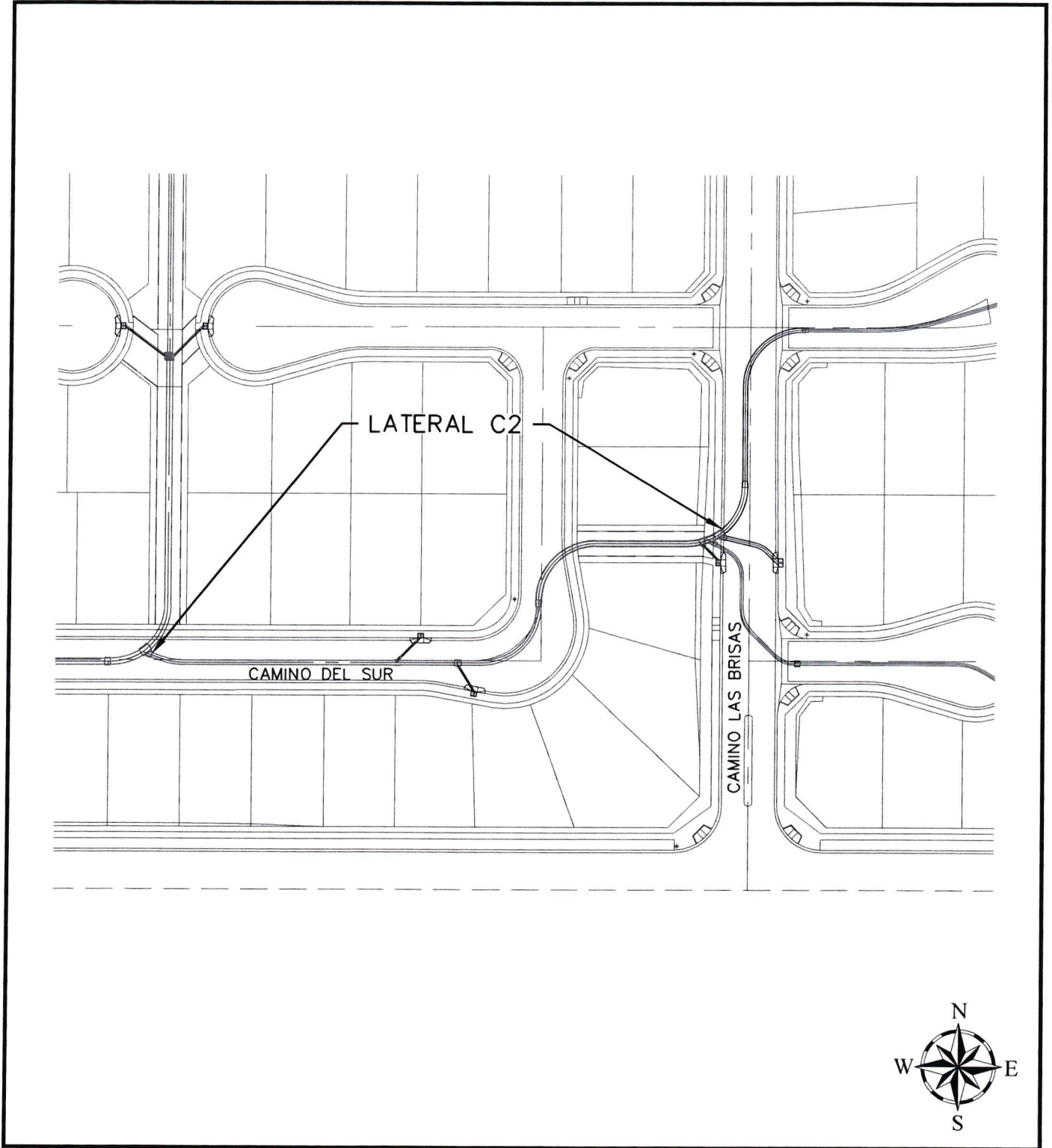
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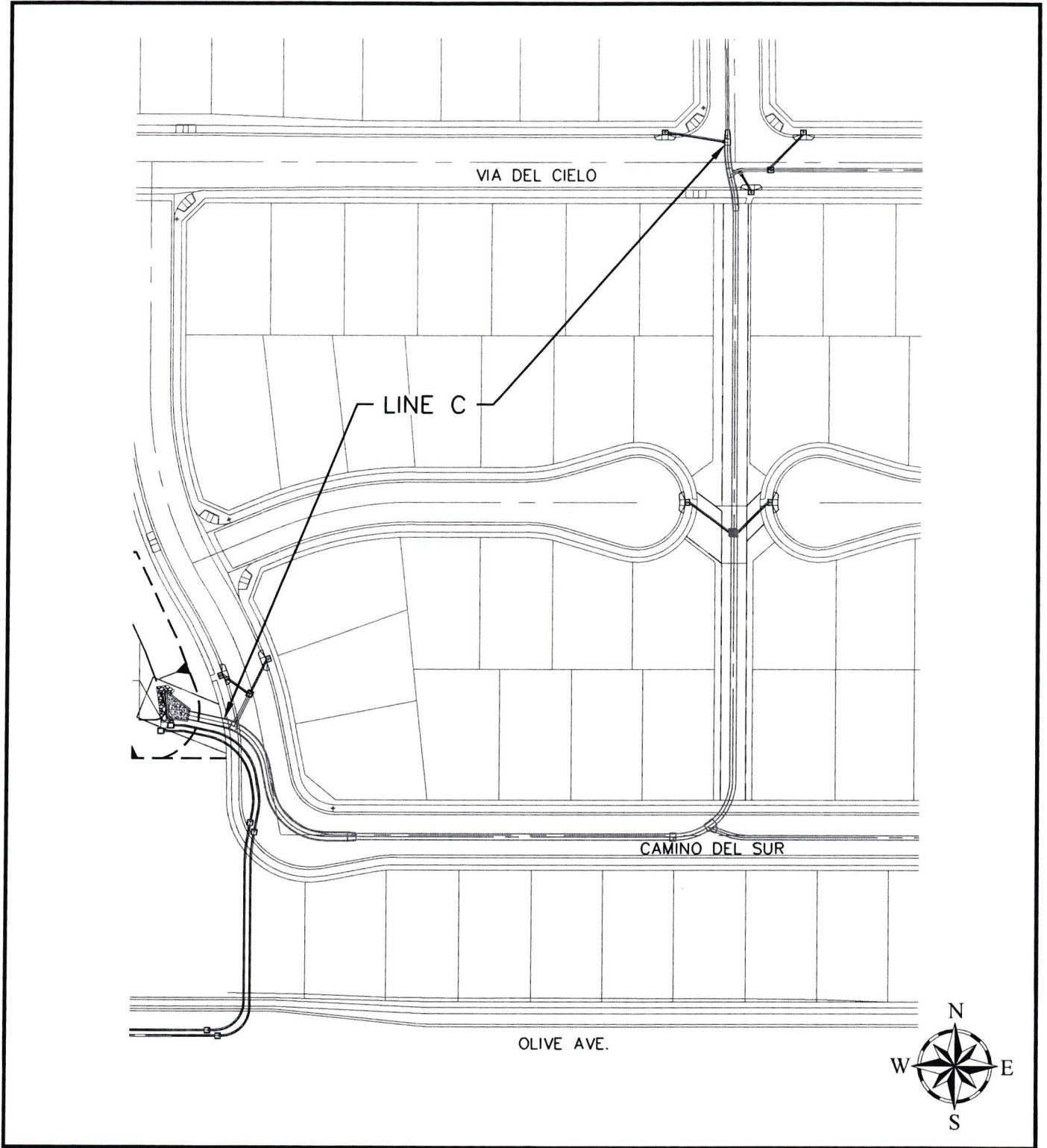
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COOPERATIVE AGREEMENT

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