

BK: 5069 PG: 585

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Hunter S. Conrad, Clerk of the Circuit Court St. Johns County FL Recording \$103.50

Prepared by and return to:
Spencer N. Cummings, Esq.
Gunster, Yoakley & Stewart, P.A.
225 Water Street, Suite 1750
Jacksonville, FL 32202

AMENITY USE EASEMENT AND COST SHARING AGREEMENT

This **AMENITY USE EASEMENT AND COST SHARING AGREEMENT** (the "**Agreement**") is made as of the 10th day of October, 2019, by and between **LENNAR HOMES, LLC**, a Florida limited liability company, whose address is 9440 Philips Highway, Suite 7, Jacksonville, Florida 32256, ("**Lennar**"), and **RICHMOND AMERICAN HOMES OF FLORIDA, LP**, a Colorado limited partnership, whose address is 10255 Fortune Parkway, Suite 150, Jacksonville, Florida 32256 ("**Richmond**").

RECITALS

A. Lennar owns certain real property located in St. Johns County, Florida, more particularly described on **Exhibit "A"** (the "**Lennar Property**"), on which it intends to plat residential lots (the "**Lennar Lots**").

B. Richmond owns certain real property located in St. Johns County, Florida, more particularly described on **Exhibit "B"** (the "**Richmond Property**"), on which it intends to plat residential lots (the "**Richmond Lots**") (the Lennar Lots and the Richmond Lots are collectively referred to as the "**Lots**").

C. The Lennar Property and the Richmond Property (each a "**Property**", and collectively, the "**Properties**") are adjacent to one another.

D. Pursuant to that certain Agreement for the Purchase and Sale of Property by and between Lennar and Grand Creek Partners, LLC dated May 21, 2019, as amended (collectively, the "**Purchase Agreement**"), Lennar is constructing on the Lennar Property, an Amenity Center as defined in the Purchase Agreement (the "**Amenity Center**"), a portion of the costs of which shall be paid by Richmond pursuant to the Purchase Agreement as a condition to use of the Amenity Center by the Richmond Lot Owners defined below.

E. Lennar and Richmond desire to enter into this Agreement (i) to provide that the cost of ownership, operation and maintenance of the Amenity Center will be shared by all owners of the Lennar Lots ("**Lennar Lot Owners**") and all owners of the Richmond Lots ("**Richmond Lot Owners**") (the Richmond Lot Owners and the Lennar Lot Owners are sometimes hereinafter collectively referred to herein as the "**Lot Owners**"), and (ii) to provide the Richmond Lot Owners with a perpetual non-exclusive easement to access, use and enjoy the Amenity Center, subject to the terms of this Agreement.

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BK: 5069 PG: 586

BK: 4812 PG: 791

NOW THEREFORE, in consideration of the mutual covenants set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties, for themselves, their successors and assigns, agree as follows:

1. **Recitals.** The statements contained in the recitals of fact set forth above (the "**Recitals**") are true and correct and the Recitals are, by this reference, made a part of this Agreement.

2. **Exhibits.** The exhibits attached to this Agreement are, by this reference, made a part of this Agreement.

3. **Grant of Non-Exclusive Easement for Amenity Center.** Lennar hereby grants to Richmond for the benefit of the Richmond Lot Owners, a perpetual non-exclusive easement over the trails, sidewalks, streets and other access areas located on Lennar Property, and the portion of the Lennar Property on which the Amenity Center is located, to access and use the Amenity Center for the following purposes, subject to the terms herein:

a. **Amenity Center.** For the use and enjoyment of the Amenity Center in accordance with its intended use.

b. **Manner of Use.** The Richmond Lot Owners shall exercise the rights conveyed herein in a manner which will not unreasonably interfere with the intended use of the Lennar Property. Further, Lennar and its successors and assigns (including the Lennar Association defined below) shall have the right to promulgate reasonable rules governing the use of the Amenity Center, provided such rules are applied in a non-discriminatory manner to all Lot Owners.

c. **Access.** Access by the Richmond Lot Owners over and across the Lennar Property to the Amenity Center shall include pedestrian access and parking at the Amenity Center parking lot. The Richmond Lot Owners shall enter the Lennar Property and use the Amenity Center subject to the same rules and regulations that apply to the members of the Lennar Association.

4. **Construction and Maintenance Easement.** Lennar grants to Richmond a non-exclusive easement construct and maintain on the Lennar Property, access improvements, such as a boardwalk, connecting the Richmond Property to the Lennar Property, provided that Richmond shall, at its expense, obtain all necessary permits and approvals for such construction and comply with all such permits and approvals and all applicable laws, rules and regulations and maintain such improvements in good condition and repair. All improvements constructed by Richmond and the location thereof shall be subject to Lennar's prior written consent prior to construction thereof by Richmond, provided, however, that the parties agree a pedestrian crossing may be constructed at the location point depicted on **Exhibit "C"** attached hereto without additional consent. Richmond shall assume all risks involved in entering upon the Lennar Property for the performance of the activities contemplated by this Section and shall indemnify and hold Lennar and its officers, directors, employees and agents harmless against all claims, costs, damages and liability sustained by or asserted against them related to the acts or omissions of Richmond or its contractors, employees or agents, including, but not limited to, personal injury, property damage and construction liens, and Lennar's attorneys' fees and costs. Richmond shall maintain insurance coverage in accordance with

BK: 5069 PG: 587

BK: 4812 PG: 792

the requirements of **Exhibit "D"**. It is specifically understood and intended that Richmond may assign the maintenance obligation provided in this Section to the homeowners association for the Richmond Lot Owners (the "**Richmond Association**"). Upon such assignment, Richmond shall be released from all such maintenance obligations.

5. **Maintenance of Amenity Center.** Lennar or its successors and assigns shall be responsible for maintaining the Amenity Center in good condition and repair. It is specifically understood and intended that Lennar may assign the maintenance obligation provided herein to the homeowners association for the Lennar Lot Owners (the "**Lennar Association**"). Upon such assignment, Lennar shall be released from all obligations herein. Lennar shall be deemed to have assigned such obligation upon formation of the Lennar Association and any Lennar Association formed shall be deemed to have accepted such assignment.

6. **Cost Sharing.** All expenses incurred in connection with the ownership, maintenance, repair, replacement and operation of the Amenity Center, including, without limitation, real estate and property taxes and insurance, and costs of maintenance, repair and replacements to the Amenity Center building, pool, pool deck, landscaping and playground, and any improvements or equipment associated therewith, and reserves for replacement and deferred maintenance (the "**Amenity Dues**") shall be proportionately shared between the Lennar Association and the Richmond Association based on the number of Lennar Lots and Richmond Lots located on the Properties from time to time. For example, if there are 137 Richmond Lots and 400 total Lots, the share of the Richmond Association shall be 34.25%. In no event shall the amount payable for any Richmond Lot exceed the Maximum Assessment set forth below in this Section 6. Each such Association shall be responsible for assessing and collecting the amounts necessary to fund their share of the expenses from their respective Lot Owners. Until such time as Richmond has formed the Richmond Association and the Richmond Association has accepted the payment obligations of the Richmond Association in a writing delivered to Lennar or the Lennar Association, Richmond shall be responsible for the prorata share of its expenses described in this Section.

Once the Amenity Center is completed, on or before November 1st of each year, Lennar (or the Lennar Association if it has been formed) shall prepare and deliver to the Richmond Association, a budget (the "**Annual Budget**") of anticipated Amenity Dues for the next calendar year. Thereafter on or before January 1st of each year, the Richmond Association shall pay to Lennar (or the Lennar Association) its proportionate share of the Amenity Dues as estimated by the Annual Budget. From and after the first year of payment by the Richmond Association under this paragraph above, or before March 1st of each year thereafter, Lennar (or the Lennar Association) shall prepare and deliver to the Richmond Association, a reconciliation (the "**Annual Reconciliation**") of actual Amenity Dues incurred the previous calendar year for the Amenity Center. If any Annual Reconciliation shall indicate that the Richmond Association has paid less than its proportionate share of the actual Amenity Dues for such year, the Richmond Association shall pay such shortfall to Lennar or the Lennar Association within thirty (30) days of the date that the applicable Annual Reconciliation is finalized, subject to the Maximum Assessment set forth below in this Section 6. In the event that any Annual Reconciliation shall indicate that the Richmond Association has paid more than its proportionate share of the actual Amenity Dues for such year, such overpayment shall be credited against its payment obligations for the next year based upon the applicable Annual Budget.

BK: 5069 PG: 588

BK: 4812 PG: 793

As used herein, the term "**Maximum Assessment**" means \$300.00 per Richmond Lot per year for the year that the community building and pool are first opened and have any necessary certificate of occupancy or completion. For each subsequent year, Maximum Assessment shall increase by 10% over the prior calendar year. The Maximum Assessment shall not include any interest that may be due under Section 7 below.

7. **Failure to Pay.** Notwithstanding any other provision contained in this Agreement to the contrary, Lennar and/or the Lennar Association shall have the unrestricted and absolute right to deny ingress to and use of the Amenity Center to the Richmond Lot Owners in the event (i) the Richmond Association (or Richmond as the case may be) fails to make any payment pursuant to this Agreement, in addition to any other rights and remedies to collect available to Lennar and/or the Lennar Association, and (ii) fails to cure such payment within ninety (90) days of receipt of written notice of such failure from the Lennar Association. Interest shall accrue on unpaid amounts in an amount equal to 9% per annum.

8. **No Other Benefited Lands.** In no event shall any easement or right granted by this Agreement be construed to serve any property other than the Properties, and nothing contained in this Agreement shall create any rights to the general public. Additionally, it is agreed to by the parties that only the Lot Owners shall be entitled to use the Amenity Center and neither party may assign or permit any other party to use the Amenity Center.

9. **Number and Gender.** The captions and headings are for convenience only and are not intended to be used in construing any provision of this Agreement. Singular and plural shall each include the other where appropriate, and words of any gender shall include other genders when the context so permits.

10. **Governing Law and Venue.** The laws of the State of Florida shall govern this Agreement.

11. **Severability.** In the event any provision of this Agreement shall be determined to be void, unlawful or otherwise unenforceable, such provision shall be deemed severable from the remainder of this Agreement and such void, unlawful or unenforceable provision shall be replaced automatically by a provision containing terms as nearly as possible to the void, unlawful or unenforceable provision, but which still remains valid and enforceable; and this Agreement as so modified shall continue to be in full force and effect.

12. **Reserved Rights of Assignment.** Both Lennar and Richmond shall have the right to assign its rights under this Agreement to any property owner's association for their respective Property, and Lennar shall further have the right to assign its obligations hereunder to any party acquiring fee simple ownership of the Amenity Center. Any such assignment by either of the parties shall be conditioned upon the assumption of the assigning party's obligations under this Agreement by the applicable assignee. Except as permitted by this paragraph, or elsewhere in this Agreement, neither party shall have the right to assign this Agreement to any party without the prior written consent of the other party.

BK: 5069 PG: 589

BK: 4812 PG: 794

13. **Attorneys' Fees.** In the event that any party is required to enforce this Agreement by litigation, then the prevailing party in such litigation shall be entitled to collect its costs and reasonable attorneys' fees incurred in connection with such litigation from the non-prevailing party, for pretrial preparation, trial and appeal.

14. **Amendment.** This Agreement shall not be changed, amended, modified or terminated except by an instrument in writing, executed by Lennar and Richmond or their respective successors or assigns.

15. **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of Lennar, Richmond, and their respective successors and assigns and shall run with title to the Lennar Property and Richmond Property; provided, however, that the provisions of this Agreement (including, without limitation, any easements or maintenance obligations set forth in this Agreement) shall not encumber any of the Lennar Lots and shall be deemed released as to all Lennar Lots upon platting thereof.

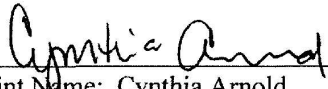
[Signatures commence on following page]

BK: 5069 PG: 590

BK: 4812 PG: 795

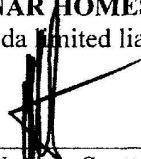
IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

Signed, sealed and delivered
in the presence of:


Print Name: Cynthia Arnold

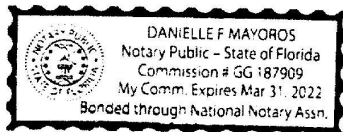

Print Name: Danielle Mayoros


LENNAR HOMES, LLC,
a Florida limited liability company

By: 
Print Name: Scott Keiling
Title: Vice President

STATE OF FLORIDA
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this 9th day of October, 2019, by Scott Keiling, the Vice President of Lennar Homes, LLC, a Florida limited liability company, on behalf of the company.




Print Name: Danielle F. Mayoros
NOTARY PUBLIC
State of Florida at Large
Commission No. GG 187909
My Commission Expires 3/31/2022
☒ Personally Known Or ☐ Produced I.D.
[check one of the above]
Type of Identification Produced: _____