Upon recording return to:

Rachel E. Conrad

Dorough & Dorough, LLC

Attorneys At Law

Cross Reference: Deed Book:

Cross Reference: Deed Book:

3705

160 Clairemont Avenue, Suite 650

Decatur, Georgia 30030

(404) 687-9977

EASEMENT AND COST SHARING AGREEMENT

(USE OF RECREATIONAL AMENITIES)

WITNESSETH

WHEREAS, certain real property lying and being in Land Lots 746, 747, 766 and 767 of the 2nd District, 3rd Section, Paulding County, Georgia, is subject to the provisions of that certain Declaration of Protective Covenants, Conditions, Restrictions and Easements for Regency Park, recorded December 16, 2005 at Deed Book 2049, Page 292, et seq., Paulding County, Georgia land records (hereinafter, as amended and/or supplemented from time to time, the "Regency Park Declaration") (the real property encumbered by the Regency Park Declaration, as described on Exhibit "A" thereto and as supplemented from time to time, is hereinafter referred to as "Regency Park"); and

WHEREAS, Regency Park is comprised of two phases of development containing approximately one hundred seventy-nine (179) single family detached homes and open space areas, as more particularly identified on that certain Final Plat for Phase I Regency Park, recorded December 4, 2006 in Plat Book 51, Page 2, et seq., of the Paulding County, Georgia

land records (hereinafter, the "Regency Park Phase I Plat") and that certain Final Plat for Regency Park Phase II, recorded January 17, 2007 at Deed Book 51, Page 86, et seq., aforesaid records (hereinafter, the "Regency Park Phase II Plat"); and

WHEREAS, the Regency Park Association is the mandatory membership homeowners association described in the Regency Park Declaration to have the power and authority set forth therein and the obligation to administer Regency Park; and

WHEREAS, Regency Park contains recreational amenities consisting of a swimming pool, a clubhouse, tennis courts, a playground, and related parking areas and improvements, as shown on the Regency Park Phase I Plat (said recreational amenities areas are hereinafter collectively referred to as the "Regency Park Recreational Amenities"); and

WHEREAS, Lennar is the owner of certain real property lying and being in Land Lots 746 and 747 of the 2nd District, 3rd Section, Paulding County, Georgia, which is subject to the provisions of that certain Declaration of Protective Covenants, Conditions, Restrictions and Easements for Regency Park Phase III, recorded May 16, 2017 in Deed Book 3705, Page 696, et seq., Paulding County, Georgia land records (hereinafter, as amended and/or supplemented from time to time, the "Regency Park Phase III Declaration") (the real property encumbered by the Regency Park Phase III Declaration is described on Exhibit "A" thereto and is hereinafter referred to as "Regency Park Phase III"); and

WHEREAS, Regency Park Phase III is located adjacent to Regency Park and is intended to be developed as a residential subdivision containing approximately ninety-two (92) single family detached dwelling sites and open space; and

WHEREAS, the Regency Park Phase III Association is the mandatory membership homeowners association described in the Regency Park Phase III Declaration to have the power and authority set forth therein and the obligation to administer Regency Park Phase III; and

WHEREAS, the Regency Park Association desires for the owners of single family dwelling sites (hereinafter, individually referred to as a "<u>Lot</u>" and collectively, as "<u>Lots</u>") in Regency Park Phase III to have the benefit and use of the Regency Park Recreational Amenities in accordance with the terms and conditions set forth herein; and

WHEREAS, the Regency Park Association desires to create certain easements and cost sharing obligations to benefit and burden Regency Park Phase III, Lennar and the Regency Park Phase III Association; and

WHEREAS, Lennar, the Regency Park Phase III Association and the Regency Park Association wish to provide for the continued maintenance of the Regency Park Recreational Amenities and the easement areas so established;

NOW, THEREFORE, for and in consideration of the foregoing premises, the sum of Ten and No/100 Dollars (\$10.00), the receipt and sufficiency whereof are hereby acknowledged, the parties hereby agree upon the following terms and conditions:

- 1. Grant, Conveyance, Creation and Declaration of Regency Park Recreational Amenities Easement. The Regency Park Association, as the owner of the Regency Park Recreational Amenities and the land upon which the Regency Park Recreational Amenities are located, hereby grants, conveys, declares, creates, imposes and establishes a perpetual, non-exclusive and joint easement in perpetuity for the benefit of Regency Park Phase III, Lennar, the Regency Park Phase III Association, the members thereof and their respective guests, tenants, invitees and occupants over and across that portion of Regency Park as may be reasonably necessary for pedestrian and/or vehicular access, ingress, egress, use and enjoyment of the Regency Park Recreational Amenities (the "Regency Park Recreational Amenities Easement"). The easement granted herein shall not be construed as granting any party an easement over any portion of a Lot located in Regency Park.
- 2. <u>Maintenance</u>. The Regency Park Association shall maintain, operate, repair and replace the Regency Park Recreational Amenities and the Regency Park Recreational Amenities Easement area in accordance with the Regency Park Declaration; provided, however, in the event that any maintenance, repair or replacement is caused by the willful or negligent act of the Regency Park Association, Lennar, the Regency Park Phase III Association or their respective members, successors, assigns, employees, representatives, agents, occupants, guests or invitees, then such maintenance, repair or replacement shall be made at the sole cost and expense of the responsible party.

In the event that the Board of Directors of the Regency Park Association reasonably determines that any maintenance, repair or replacement to the Regency Park Recreational Amenities is caused by the willful or negligent act of a Regency Park Phase III Lot Owner, occupant, or their guests or invitees, the Regency Park Association shall provide an invoice for the maintenance, repair or replacement to the Regency Park Phase III Association. Thereafter, the Regency Park Phase III Association shall specifically assess said maintenance, repair, or replacement cost to the affected Lot Owner in accordance with the Regency Park Phase III Declaration. The Regency Park Phase III Association shall pay to the Regency Park Association any such invoices in full on the earlier of: (a) receipt of payment from the affected Owner; or (b) 180 days from the date said invoice is sent to the Regency Park Phase III Association. Any Owner specifically assessed maintenance, repair or replacement costs pursuant to this paragraph shall have the right to request, in writing, a hearing with the Regency Park Association Board of Directors to dispute the conduct leading to the imposition of the specific assessment. All rights to request a hearing are waived if a hearing is not requested within thirty (30) days of the date that the written invoice is submitted to the Regency Park Phase III Association. If a written request for a hearing is timely received, the Board of Directors of the Regency Park Association shall schedule and hold in executive session a hearing affording the Owner a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing, which shall thereafter be provided to the Regency Park Phase III Board of Directors.

In the event that the Regency Park Phase III Association determines that the Regency Park Association has failed or refused to discharge properly any of the Regency Park Association's obligations with regard to the maintenance, repair or replacement of the Regency Park Recreational Amenities or the Regency Park Recreational Amenities Easement area, the Regency Park Phase III Association shall, except in an emergency situation, give the Regency Park Association written notice of the Regency Park Phase III Association's intent to provide such maintenance, repair or replacement. The notice shall set forth with reasonable particularity the maintenance, repair or replacement to be performed. The Regency Park Association shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair or replacement, or, in the event that such maintenance, repair or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable period of time. If the Regency Park Association does not comply with the provisions hereof, the Regency Park Phase III Association may provide such maintenance, repair or replacement to the Regency Park Recreational Amenities or the Regency Park Recreational Amenities Easement area and the costs thereof shall be shared pro-rata as provided in Paragraph 3 hereof. In the event the parties hereto do not agree as to what constitutes required or necessary maintenance, repairs or replacement to the Regency Park Recreational Amenities or Regency Park Recreational Amenities Easement area, the parties hereby agree and consent to the dispute resolution procedures contained in Paragraph 7 of this Agreement.

- 3. <u>Budget; Billing; and Assessments</u>. Owners of Lots in Regency Park Phase III shall have the right to use and enjoy the Regency Park Recreational Amenities in accordance with the terms and conditions and payment schedule set forth herein.
- (a) General. The Regency Park Association shall provide a copy of its annual operating budget for the year to be delivered to the Regency Park Phase III Association at least thirty (30) days prior to the date that the Regency Park Phase III Association adopts its annual operating budget, such date to be provided in writing to the Regency Park Association. The Regency Park Association's annual budget shall include as line items the estimated costs of operating, maintaining and insuring the Regency Park Recreational Amenities and the Regency Park Recreational Amenities Easement area(s) during the coming year. Each year, the Regency Park Phase III Association shall pay an amenities assessment to the Regency Park Association for each Lot in Regency Park Phase III subject to assessment as provided herein ("Recreational Amenities Assessment").
- (b) <u>Commencement of Recreational Amenities Assessment</u>. The Recreational Amenities Assessment applicable to a Lot in Regency Park Phase III shall commence on the first day of the month following the date that such Lot has been improved with a dwelling for which a certificate of occupancy has been issued and has been conveyed to an owner who intends to occupy or lease the dwelling, or, if the dwelling is occupied as a residence before such conveyance, the date of such occupancy.

Any Lot in Regency Park Phase III which is used by Lennar as a model home for marketing and sales purposes shall not be deemed to be occupied for residential purposes and

shall not be subject the Recreational Amenities Assessment provided for herein so long as such Lot is used as a model home.

(c) <u>Calculation of Recreational Amenities Assessment</u>. The amount of the Recreational Amenities Assessment applicable to a Lot in Regency Park Phase III in a given year shall be eighty percent (80 %) of the amount of the annual general assessment paid by the owner of a Lot in Regency Park for that year. Notwithstanding the foregoing, the first Recreational Amenities Assessment levied against a Lot in Regency Park Phase III shall be adjusted according to the number of months remaining in the fiscal year at the time that assessments commence as to such Lot as provided in subsection (b) above.

(d) Payment of Recreational Amenities Assessment

- (i) The total amount of the Recreational Amenities Assessment to be paid to the Regency Park Association shall be a line item in the annual budget for the Regency Park Phase III Association and shall be: (1) divided equally among all of the Lots in Regency Park Phase III which are subject to assessment as provided herein; (2) included in the annual, general assessments paid to the Regency Park Phase III Association; and (3) paid in such manner and on such dates as may be fixed by the Board of Directors of the Regency Park Phase III Association for general assessments in accordance with the Regency Park Phase III Declaration.
- (ii) The Regency Park Phase III Association shall pay to the Regency Park Association the Recreational Amenities Assessment for all Lots in Regency Park Phase III subject to assessment on or before April 1 of each calendar year or such other time as may be mutually agreed upon by the Board of Directors of the Regency Park Association and the Board of Directors of the Regency Park Phase III Association. In the event that members of Regency Park Phase III fail to pay all or a portion of their annual assessment in accordance with the Regency Park Phase III Declaration, the total amount of the Recreational Amenities Assessment shall nevertheless be due and paid by the Regency Park Phase III Association to the Regency Park Association.

Nonuse of the Regency Park Recreational Amenities by an owner or occupant in Regency Park Phase III shall not constitute a waiver or exemption from liability for payment of the Recreational Amenities Assessment provided for herein, or for payment of any Special Recreational Amenities Assessment levied pursuant to the terms of this Agreement.

(e) <u>Special Recreational Amenities Assessment</u>. In the event that there are expenses associated with the operation, repair and/or maintenance of the Regency Park Recreational Amenities which are not contemplated by the Recreational Amenities Assessment or are in excess of the Recreational Amenities Assessment, the Regency Park Association shall have the authority to levy a special assessment against the owners of all Lots subject to assessment in Regency Park and Regency Park Phase III ("<u>Special Recreational Amenities Assessment</u>"), in accordance with the terms of the Regency Park Declaration. In the event that the amount of the Special Recreational Amenities Assessment is less than Two Hundred and No/100 Dollars (\$200.00) per Lot, the Regency Park Association may levy said Special Recreational Amenities

Assessment in accordance with the terms of the Regency Park Declaration and without a vote of the members of the Regency Park Phase III Association. A Special Recreational Amenities Assessment in an amount greater than Two Hundred and No/100 Dollars (\$200.00) per Lot must be approved by: (i) the requisite number of members within Regency Park for the passage of special assessments, as required by the Regency Park Declaration; (ii) a majority of Lot owners in Regency Park Phase III; and (iii) Lennar so long as it owns any property in Regency Park Phase III in order to be effective.

Any Special Recreational Amenities Assessment levied pursuant to this sub-paragraph shall be due at such time and payable on such terms as reasonably determined by the Board of Directors of The Regency Park Association. Notwithstanding the foregoing, all Regency Park Phase III owners shall pay levied Special Recreational Amenities Assessments to the Regency Park Phase III Association. The Regency Park Phase III Association shall be responsible to pay to the Regency Park Association the levied Special Recreational Amenities Assessments applicable to Lots within Regency Park Phase III on such terms and at such times as reasonably determined by the Regency Park Association Board of Directors, regardless of whether or not Regency Park Phase III owners have paid such assessment to the Regency Park Phase III Association. Any Special Recreational Amenities Assessment levied pursuant to this subparagraph shall be levied equally amongst all Lots within Regency Park and Regency Park Phase III that are subject to such assessments.

4. Insurance.

(a) Regency Park. The Regency Park Association shall have the authority to and shall obtain insurance for the Regency Park Recreational Amenities and the Regency Park Recreational Amenities Easement area, as provided in the Regency Park Declaration. Said insurance shall cover loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Additionally, the Regency Park Association shall obtain a public liability policy applicable to the Regency Park Recreational Amenities. The public liability policy shall have a combined single limit of at least One Million and No/100 Dollars (\$1,000,000.00) and shall name Lennar and the Regency Park Phase III Association as additional insureds. Policies may contain a reasonable deductible as determined by the Regency Park Association. Premiums for all insurance shall be included in the Regency Park's Association's budget and may be a portion of the Recreational Amenities Assessment.

In the event the Regency Park Association does not obtain the insurance policies required herein, Lennar or the Regency Park Phase III Association, respectively, may obtain said insurance policies and bill the Regency Park Association for said costs and expenses accordingly.

5. Rules and Regulations.

(a) Rules and Regulations Adopted by Regency Park Association. The Board of Directors of the Regency Park Association shall have the right, power and authority to promulgate, modify or delete reasonable rules and regulations applicable to the use and enjoyment of the Regency Park Recreational Amenities as authorized under the Regency Park Declaration; provided, however, no rule or regulation enacted by the Regency Park Association shall have the effect or impact of or be construed as treating the Lot owners in Regency Park Phase III different from Lot owners in Regency Park and; provided, further, no action shall be taken by the Regency Park Association which shall impair any of the rights and obligations granted herein.

Any rules and regulations adopted by the Regency Park Association governing the Regency Park Recreational Amenities shall be distributed, via First Class U.S. mail, electronic mail, or personal delivery, to all Lot owners in Regency Park and Regency Park Phase III prior to the date that they are to become effective and shall thereafter be binding upon all owners and occupants unless overturned, cancelled or modified: (i) at a regular or special meeting of the Regency Park Association by a majority of the total eligible vote thereof; (ii) at a regular or special meeting of the Regency Park Phase III Association by a majority of the total eligible vote thereof; and (iii) upon the written consent of Lennar so long as it owns any property in Regency Park Phase III. Notice of rules and regulations adopted pursuant to this Paragraph to Regency Park Phase III Lot owners shall be effective upon notice of the same by the Regency Park Association to the Regency Park Phase III Association in accordance with Paragraph 8 of this Agreement. The Regency Park Phase III Association shall thereafter notice the Regency Park Phase III owners in accordance with the Regency Park Phase III Declaration and Bylaws of the Regency Park Phase III Homeowners Association, Inc.

Notwithstanding the foregoing, any rules and regulations pertaining to the Regency Park Recreational Amenities in effect prior to execution of this Agreement shall remain in full force and effect, and shall be binding on all owners and occupants in Regency Park and Regency Park Phase III, including their guests, family members, and invitees.

(b) Enforcement Rights of Regency Park Association.

- (i) The Regency Park Association shall have the right to suspend the right of any owner or occupant in Regency Park or such owner or occupant's family members, guests and invitees to use and enjoy the Regency Park Recreational Amenities for: (i) noncompliance with any rules and regulations regarding the Regency Park Recreational Amenities; (ii) violations of the Regency Park Declaration, including, without limitation, nonpayment of assessments; or (iii) noncompliance with any other rules and regulations promulgated by the Regency Park Association, in accordance with the terms of the Regency Park Declaration and the Bylaws of Regency Park in Paulding County Homeowners Association, Inc.
- (ii) Upon a breach of any rules and regulations applicable to the Regency Park Recreational Amenities, the Regency Park Association, may upon ten (10) days written notice,

suspend the right of any owner or occupant in Regency Park Phase III or such owner or occupant's family members, guests and invitees to use and enjoy the Regency Park Recreational Amenities for a reasonable period of time. Prior to any suspension, the Regency Park Association shall provide the violating owner with written notice of the violation and the right, upon ten (10) days written notice, to request a hearing before the Regency Park Association regarding such suspension.

- (iii) Upon written request from the Board of Directors of the Regency Park Phase III Association, the Regency Park Association shall suspend the right of a Lot owner in Regency Park Phase III to use and enjoy the Regency Park Recreational Amenities. Such suspension may result from nonpayment of assessments arising under the Regency Park Phase III Declaration, including nonpayment of all or any portion of the Recreational Amenities Assessment, or for any violation of the rules and regulations, use restrictions or architectural guidelines of the foregoing.
- 6. <u>Default</u>. A party shall be deemed to be in default of this Agreement if it fails or refuses to comply with the terms and conditions set forth herein for any reason. In the event of a default ("<u>Event of Default</u>"), the non-defaulting party shall give the defaulting party a notice of default that shall describe in reasonable detail the condition causing the Event of Default. The defaulting party shall then have thirty (30) days from the receipt of notice under this Agreement, to cure the condition causing the Event of Default. If the defaulting party fails to cure the Event of Default within such time period, the non-defaulting party may, in its discretion, invoke the dispute resolution procedures set forth below.
- Dispute Resolution Procedures. The parties agree first to attempt to resolve disputes arising out of this Agreement through mediation in lieu of initially filing suit in a court of law. For any claim arising out of the terms of this Agreement, other than any action taken to obtain temporary emergency relief or any action arising out of the collection of all or any portion of the Recreational Amenities Assessment, the complaining party shall provide the other party with written notice of the claim and the basis for the claim. If the parties are unable by themselves to resolve the dispute within ten (10) days after receipt of the written notice, then upon the written request of any party to the dispute, made within ten (10) days after the end of the 10-day period of private resolution, the disputing parties, in good faith, shall attempt to resolve the dispute through an independent mediation agency in the State of Georgia. If any party to the dispute requests mediation, the dispute shall be submitted to mediation within thirty (30) days of such request. If mediation is commenced, but the dispute is not resolved within thirty (30) days after submission of the matter to the mediation process, or such longer time as may be mutually agreed upon by each party to the dispute, the mediation shall terminate and the Parties may pursue any and all available legal and equitable remedies, including, but not limited to, specific performance or termination of the Agreement. If a dispute arises regarding this Agreement, and such dispute is not settled through mediation or by the parties as outlined above, and a lawsuit is filed to enforce the provisions of this Agreement, the prevailing party in such a lawsuit shall be entitled to all costs, including, but not limited to, reasonable attorneys' fees actually incurred, from the non-prevailing party.

- Notice. Each notice or document (collectively referred to in this Section as "Notice") required or permitted to be given hereunder must comply with the requirements of this Section. Notices shall be mailed by United States First Class Mail Registered or Certified Mail, return receipt requested, postage paid, or delivered in person, including delivery by Federal Express or other reputable commercial courier service, or issued electronically in accordance with Chapter 12 of Title 10 of the Official Code of Georgia Annotated, the "Uniform Electronic Transactions Act". Such Notice shall be deemed delivered at the time of personal delivery or, if mailed, when it is deposited as provided above, but the time period in which a response to any such Notice must be given or any action taken with respect thereto shall commence to run from the date it is personally delivered or, if mailed, the date of receipt of the Notice by the addressee thereof, as evidenced by the return receipt. Rejection or other refusal by the addressee to accept the Notice shall be deemed to be receipt of the Notice. In addition, the inability of the United States Postal Service to deliver the Notice because of a change of address of the party of which no Notice was given to the other party as provided below shall be deemed to be the receipt of the Notice sent. The initial address of each party shall be the office of their respective registered agent as on file with the Secretary of State of the State of Georgia. The address for receipt of Notice may be changed by any party by designating the change of address to the other parties in writing.
- Amendment; Termination. This Agreement may be amended or terminated only upon: (a) the affirmative vote, written consent or any combination thereof of members of the Regency Park Association holding two-thirds (2/3) of the total eligible vote; and (b) the affirmative vote or written consent or any combination thereof of members of the Regency Park Phase III Association holding at least two-thirds (2/3) of the total eligible vote; provided, however so long as Lennar has the authority to appoint and remove the directors and officers of the Regency Park Phase III Association as provided in the bylaws of the Regency Park Phase III Association, the consent of the members of the Regency Park Phase III Association shall not be required and Lennar shall have the right to unilaterally amend this Agreement on behalf of the Regency Park Phase III Association. In addition to the foregoing, any amendment to this Agreement shall require the written consent of Lennar so long as it owns any property in Regency Park Phase III. The execution of an amendment by the president and secretary of the respective associations containing the affidavit by the secretary of such association that the amendment was properly approved shall be prima facie evidence of the approval by the requisite number of members within the respective associations. Amendments to this Agreement shall become effective upon the filing for record in the Office of the Clerk of Superior Court of Paulding County, Georgia unless a later effective date is specified therein.
- 10. <u>Compliance With Governmental Authority</u>. Each party hereto agrees to comply with all laws, ordinances, statutes, rules and regulations of any governmental authority relating to the use, condition, or maintenance of the property described herein.
- 11. <u>Severability</u>. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Agreement to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision

which can be given effect without the invalid provision or application, and, to this end, the provisions of this Agreement are declared to be severable.

12. Easements Perpetual. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, successors, heirs, grantees, assigns and successors in title. All of the easements, rights and privileges set forth herein shall be appurtenant to and shall run with the title to Regency Park and Regency Park Phase III, perpetually, and are intended to be easements and not covenants restricting land to certain uses. Any conveyance of all or any portion of Regency Park or any portion of Regency Park Phase III shall also convey the rights, privileges, duties and obligations contained in this Agreement regardless of whether or not specific mention is made of this Agreement and regardless of whether or not a specific conveyance is made of, or subject to, the rights, privileges, duties and obligations herein.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned have executed this Agreement under seal as of the date first above written.

REGENCY PARK:

ASSOCIATION: REGENCY PARK IN PAULDING

COUNTY HOMEOWNERS

ASSOCIATION, INC., a Georgia nonprofit

corporation

By:

Print Name:

President

Attest:

Its:

Secretary

Signed, sealed, and delivered

in the presence of

WITNESS

NOTARY PÜBÜLC

[AFFIX NOTARY SEAL]

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

REGENCY PARK PHASE III:

ASSOCIATION:

REGENCY PARK PHASE III

HOMEOWNERS ASSOCIATION, INC.,

a Georgia nonprofit corporation

By:

Chris Recker, President

Attest:

James Bowersox, Secretary

Signed, sealed, and delivered

in the presence of:

WITNESS

NOTARY PUBLIC

[AFFIX NOTARY SEAL]

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

LENNAR:

LENNAR GEORGIA, INC., a Georgia

corporation

By:

Print Name:

Title:

Signed, sealed, and delivered

in the presence of:

[CORPORATE SEAL]

WITNESS

NOTARY PUBLIC

[AFFIX NOTARY SEAL]

P:\Clients\3436\Georgia\Southside Projects\Regency Park\Easement and Cost Sharing Agreement\Easement and Cost Sharing - Guilmette Edits (redlined) - Final.docx