

**RIGHT-OF-WAY USE AGREEMENT BETWEEN
THE CITY OF YORBA LINDA AND LENNAR HOMES OF CALIFORNIA, INC.**

This Right-of-Way Use Agreement ("**Agreement**") is entered into as of _____, 2022 ("**Effective Date**") by and between the City of Yorba Linda (hereinafter referred to as "**City**"), a California municipal corporation, and Lennar Homes of California, Inc. a California Corporation. City and Lennar Homes of California, Inc. are sometimes collectively referred to herein as "**Parties**."

RECITALS

- A. Lennar Homes of California, Inc. owns certain real property within the City of Yorba Linda that is identified in Exhibit A attached hereto as "Project Boundary" ("**Property**"). Lennar Homes of California, Inc. intends to develop the Property as a residential subdivision ("**Cielo Vista Project**" or "**Project**"); and
- B. The Cielo Vista Project will be developed as a common interest subdivision with a governing Homeowners Association ("**HOA**"). Upon completion of the Project, the HOA and individual homeowners will be successors in interest to Lennar Homes of California, Inc.; and
- C. Local access to the Project will be provided from Via del Agua within street right of way which exists between the southernly boundary of the Project and Via del Agua ("**Public Right Of Way**"). The Public Right Of Way will be improved by a developer of the Project as a roadway providing access to the Project and will include various improvements and utilities that will serve the future residents of the Project. It is intended that the HOA upon formation will maintain certain improvements within the Public Right Of Way, including the streets, curb, sidewalk, landscaping, a bridge abutment, and retaining walls ("**Improvements**"), while other agencies will be responsible for sewer, water, and dry utilities within the Public Right Of Way; and
- D. The entitlements for the Project included but were not limited to approval of the Cielo Vista Project Alternative 5 Area Plan and Environmental Impact Report, a Vesting Tentative Tract Map, and a Pre-Annexation Agreement ("**Project Entitlements**"); and
- E. The encroachment permit for the Improvements requires execution of a right of way use agreement for all improvements within the Public Right Of Way to be maintained by the HOA; and
- F. The Parties acknowledge that this Agreement satisfies the encroachment permit requirement for such agreement as between the Parties.
- G. Until the legal formation of the HOA, Lennar Homes of California, Inc. or a subsequent owner of the Property shall satisfy the requirements of this Agreement.

In consideration of the Recitals set forth above which are incorporated herein, the terms and conditions of this Agreement and other valuable consideration, the adequacy of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1

MAINTENANCE & USE

1.1 Maintenance, Repair, Replacement, and Removal. The HOA shall, at the HOA's sole cost and expense, perform all maintenance and repairs reasonably needed to maintain the Improvements within the Public Right Of Way in good condition, and in compliance with all applicable federal, state, and local laws, regulations, and official policies. In the event any of the Improvements require repair, replacement, or removal, the HOA shall, at the HOA's sole cost and expense, replace, repair, or remove the Improvements, or portions thereof, as necessary in compliance with all federal, state, and local laws, regulations, and official policies and to the satisfaction of the City's Director of Public Works.

The HOA shall not allow any person maintaining, repairing, replacing, or removing the Improvements to (1) functionally obstruct or impair vehicular or pedestrian travel or visibility on or along the City's property, as determined by the City Engineer; (2) restrict transit and public services, including loading zones, bus stops, and public benches; or (3) obstruct handicapped accessibility. The HOA shall comply with and cause all of its employees, independent contractors, and agents to comply with all safety rules and regulations as may be prescribed by the City's Public Works Director or his/her designee. If the HOA desires to change, expand or enlarge the Improvements, the HOA shall first be required to obtain written approval of the City's Public Works Director or his/her designee, which approval may not be unreasonably withheld.

1.2 License to HOA. Subject to all of the terms and conditions set forth in this Agreement, the City hereby grants the HOA a non-exclusive license to enter onto the Public Right Of Way to maintain, replace, repair, and/or remove the Improvements. The License may be modified or terminated by the City.

1.3 Damage to Right Of Way. The HOA shall be responsible for any damage to street pavement, existing facilities and utilities, curbs, gutters, sidewalks, landscaping, signage and or all other public facilities to the extent caused by the HOA's maintenance, access, use, repair, replacement, relocation, or removal of the Improvements within the Public Right of Way. The HOA shall promptly immediately repair such damage and return the Public Right Of Way and any affected adjacent property to a safe and satisfactory condition to the City in accordance with the City's applicable street restoration standards or to the property owner if not the City.

1.4 Developer Responsibility. Until such time as the HOA is formed and is legally obligated to perform the obligations in this Agreement, Lennar Homes of California, Inc. or a subsequent owner of the Property shall satisfy the requirements of this Agreement.

ARTICLE 2

INDEMNIFICATION AND LIABILITY

2.1 Indemnity. The HOA shall indemnify, defend, and hold harmless the City, its councilmembers, officers, employees, agents, and contractors, from and against liability, claims, demands, losses, damages, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, and the costs and expenses incurred in connection therewith, including reasonable attorneys' fees and costs of defense, to the extent directly or proximately resulting from the HOA's activities undertaken pursuant to this Agreement, except to the extent arising from or caused by the negligence or willful misconduct of the City, its councilmembers, officers, employees, agents, or contractors.

The City shall promptly notify the HOA of any claim, action or proceeding covered by this Section 2.1.

2.2 Limitation of Liability. The HOA acknowledges that under no circumstance, including but not limited to condemnation or breach of this agreement, shall City be liable to the HOA for any incidental, consequential, or punitive damages, including but not limited to any loss of income, business or profits, arising out of the HOA's use of the Public Right Of Way or City-owned property or City's performance or non-performance under this Agreement, even if City has been advised of the possibility of such damages. Nothing in the foregoing sentence limits the HOA's indemnity obligations under this Agreement. The HOA, Lennar Homes of California, Inc., and any subsequent owner of the Property is not entitled to monetary damages by any City breach of this Agreement and is limited to injunctive relief against the City to enforce the City's obligations in this Agreement.

2.3 Insurance. The HOA, Lennar Homes of California, Inc. or a subsequent owner of the Property shall procure and maintain insurance in an amount and type sufficient to satisfy its obligations under this Agreement as determined in the reasonable discretion of the City.

2.4 Developer Responsibility. Until such time as the HOA is formed and is legally obligated to perform the obligations in this Agreement, Lennar Homes of California, Inc. or a subsequent owner of the Property shall satisfy the indemnity, defense, hold harmless, and insurance requirements of this Agreement. Furthermore, Lennar Homes of California, Inc. or subsequent owner of the Property is bound by the Limitation of Liability provisions in Section 2.2.

ARTICLE 3 **MISCELLANEOUS**

3.1 Notices. All notices which shall or may be given pursuant to this Agreement shall be in writing and personally served or transmitted through first class United States mail, or by private delivery systems, postage prepaid, to the following address or such other address of which a party may give written notice:

City of Yorba Linda: City of Yorba Linda
Attn: Director of Public Works
4845 Casa Loma Avenue
Yorba Linda, CA 92886

With a copy to:
Rutan & Tucker, LLP
18575 Jamboree Road, 9th Floor
Irvine, CA 92612
Attention: Todd Litfin

Lennar Homes of California, Inc.: Lennar Homes of California, Inc.

Attn: Brett Hamara
2000 FivePoint, Suite 365
Irvine, CA 92618

Any notice required or provided for under this Agreement shall be deemed served at the time of personal service. Mailed notices will be deemed served as of the day of receipt.

3.2 **Attorneys' Fees.** If legal action is brought by either party because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing party is entitled to recover reasonable attorneys' fees and court costs.

3.3 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, successors, assigns and transferees. Specifically, this Agreement shall be binding on the Cielo Vista Project HOA.

3.4 **Entire Agreement; Modification; Waiver.** This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof. Other than as outlined herein, all prior and contemporaneous agreements, representations, negotiations, and understandings of the Parties, oral or written, relating to the subject matter hereof, are merged into and superseded by this Agreement. Any modification or amendment to this Agreement shall be of no force and effect unless it is in writing and signed by the Parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit either party to provide a waiver in the future except to the extent specifically set forth in writing. No waiver shall be binding unless executed in writing by the party making the waiver. Nothing within this Agreement modifies or supersedes the Pre-Annexation Agreement between the City and North County BRS dated October 21, 2019, or alters the legal requirements for activities in the Public Right of Way. In case of a conflict between this Agreement and the Pre-Annexation Agreement or legal requirements for activities in the Public Right of Way, the Pre-Annexation Agreement and such legal requirements shall govern.

3.5 **Severability.** If any one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision or provisions shall, to the extent permitted by California law, be deemed separable from the remaining provisions of this Agreement and shall in no way affect the validity of the remaining portions of this Agreement.

3.6 **Governing Law.** This Agreement shall be interpreted and enforced according to, and the parties rights and obligations governed by, the domestic law of the State of California, without regard to its laws regarding choice of applicable law. Any proceeding or action to enforce this Agreement shall occur in the federal court with jurisdiction over Orange County or the state courts located in Orange County, California.

3.7 **Survival of Terms.** All of the terms and conditions in this Agreement related to removal due to termination, indemnification, limits of City's liability, attorneys' fees and waiver shall survive termination of this Agreement.

3.8 **Captions and Paragraph Headings.** Captions and paragraph headings used herein are for convenience only. They are not a part of this Agreement and shall not be used in construing this Agreement.

3.9 **Drafting.** The parties agree that this Agreement is the project of joint draftsmanship and that should any of the terms be determined by a court, or in any type of quasi-judicial or other proceeding, to be vague, ambiguous and/or unintelligible, that the

same sentences, phrases, clauses or other wording or language of any kind shall not be construed against the drafting party in accordance with California Civil Code Section 1654, and that each party to this Agreement waives the effect of such statute.

3.10 Execution in Counterparts. This Agreement may be executed in one or more identical counterparts and all such counterparts together shall constitute a single instrument for the purpose of the effectiveness of this Agreement.

3.11 Authority to Execute This Agreement. Each person or persons executing this Agreement on behalf of a party, warrants and represents that he or she has the full right, power, legal capacity and authority to execute this Agreement on behalf of such party and has the authority to bind such party to the performance of its obligations under this Agreement without the approval or consent of any other person or entity.

3.12 Further Assurances. Each Party agrees to execute and acknowledge, where required, such other further documents and instruments as may be necessary in order to consummate the transactions contemplated by this Agreement.

3.13 Runs With The Land. The covenants, conditions, restrictions and rights contained in this Agreement, whether affirmative or negative in nature are covenants running with the land and bind and inure to the benefit of the respective heirs, personal representatives, successors and assigns of the Parties hereto, including, without limitation, successive owners of the Property.

3.14. Recordation. After execution hereof, an executed copy of this Agreement shall be recorded in the official records of the Orange County Recorder.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date stated in the introductory clause.

[Signatures on Following Page]

CITY OF YORBA LINDA

By: _____
Name: _____
Title: _____

Lennar Homes of California,

Inc.

Inc. By: Brett Hamara
C3779B50C09A472

Name: Brett Hamara

Title: Authorized Agent

ATTEST:

Marcia Brown, City Clerk

APPROVED AS TO FORM:

Todd Litfin, City Attorney

City of Yorba Linda – Lennar Right-of-Way/Maintenance Agreement

CERTIFICATE HOLDER BOX (City Address)

City of Yorba Linda
4845 Casa Loma Avenue
Yorba Linda, CA 92885-8714

Expiration Dates for all policies (policies are in effect)

Commercial General Liability. Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 0001, with minimum limits of at least \$5,000,000 per occurrence, and a products completed operations aggregate that shall be two times the per occurrence limit (\$10,000,000.)

Automobile Liability. Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1) with minimum limits of \$1,000,000 each accident.

Workers' Compensation. Corporation shall procure and maintain workers' compensation insurance with limits as required by the Labor Code of the State of California and Employers' Liability Insurance of not less than \$1,000,000 per accident for bodily injury and disease.

Endorsements.

The policy or policies of insurance required for **Commercial General Liability** and **Automobile Liability** shall be endorsed to provide the following:

Additional Insured: The City, its officials, officers, employees, agents, shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of this Agreement.

Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

Primary and Non-Contributing Insurance. **All liability insurance coverages shall be primary and any other insurance,** deductible, or self-insurance maintained by the indemnified parties shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

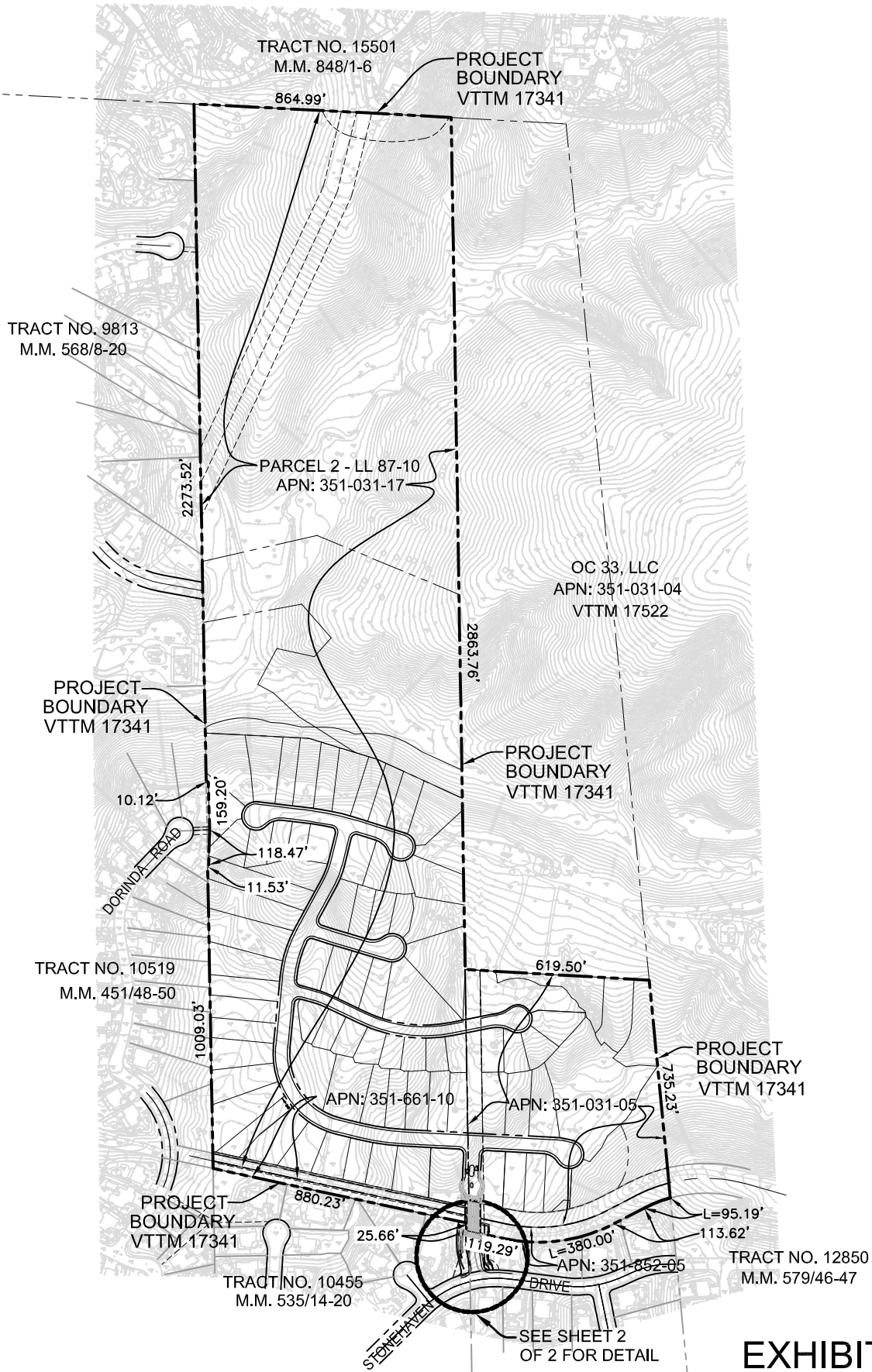
Waiver of Subrogation Lennar Homes of California, Inc. a California corporation, shall waive all subrogation rights against the City of Yorba Linda. Policies shall contain or be endorsed to contain such provisions.

Evidence of Insurance. Lennar Homes of California, Inc. a California corporation, concurrently with the execution of the Temporary Use Permit, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates and endorsements on forms approved by the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

Failure to Maintain Coverage. Lennar Homes of California, Inc. a California corporation, agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to the City.

Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.
<http://www.ambest.com/>

EXHIBIT "A"



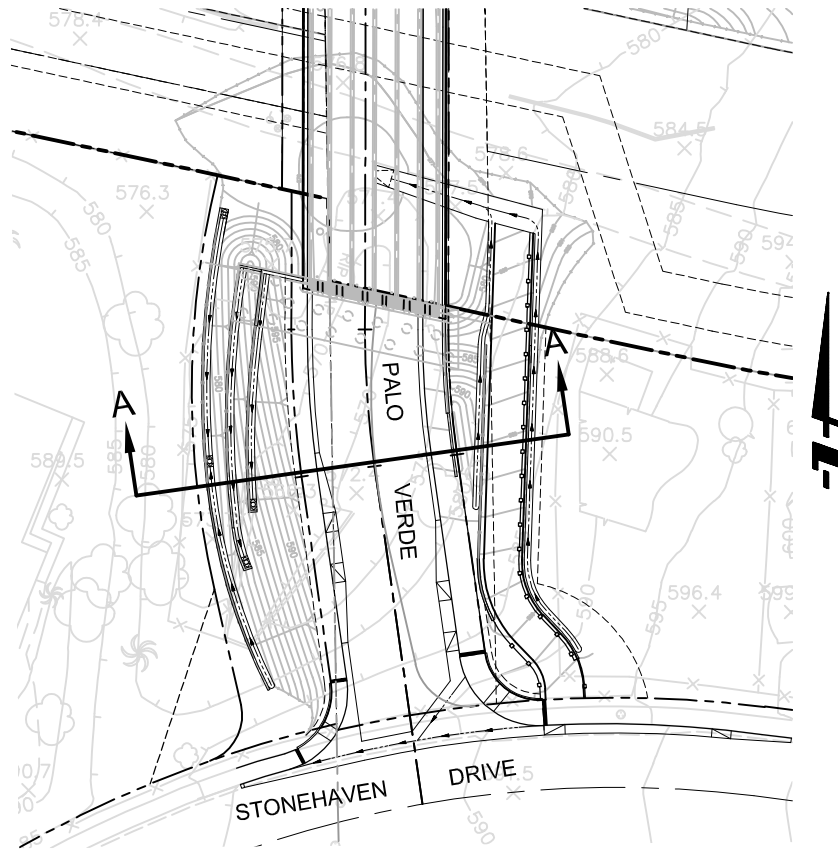
LEGEND:

----- PROJECT BOUNDARY
LINE

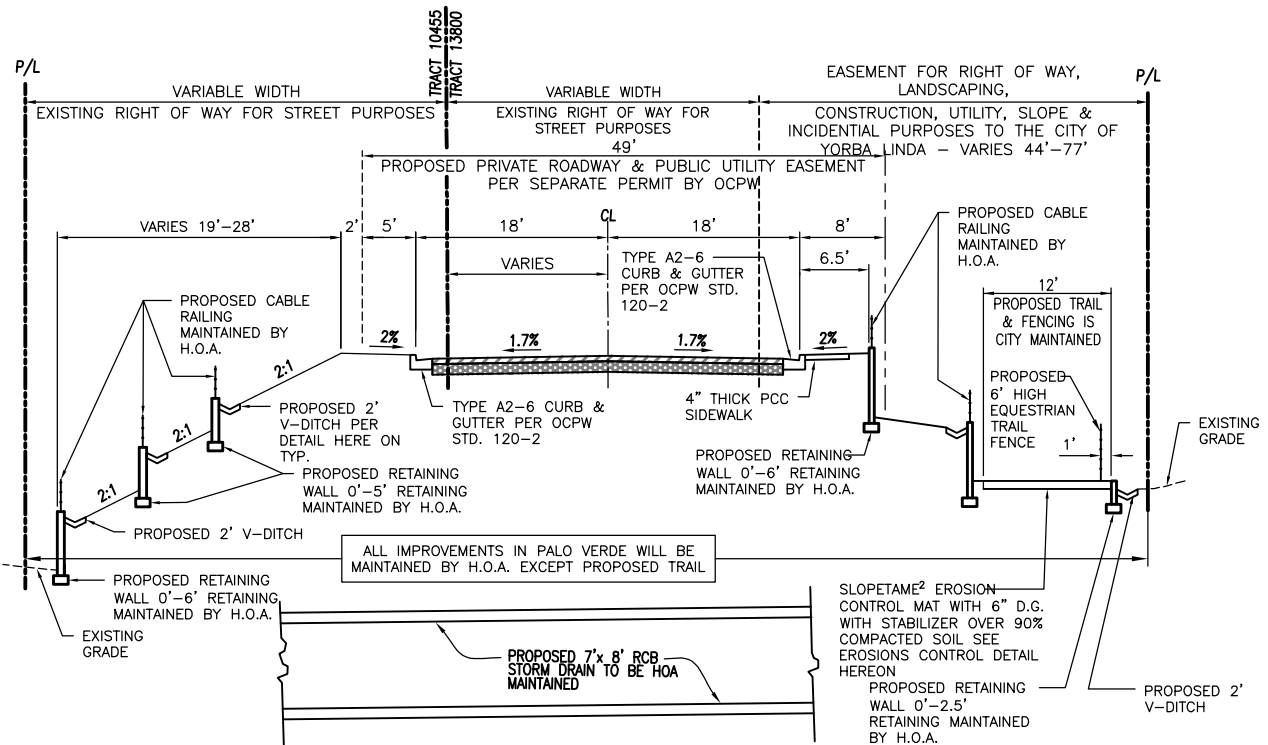
EXHIBIT "A"
Project Boundary
VTTM 17341

Sheet 1 of 2
February 16, 2022

EXHIBIT "A"



PLAN VIEW
NOT TO SCALE



(PRIVATE) PALO VERDE SECTION A-A
NOT TO SCALE

EXHIBIT "A" Project Boundary VTTM 17341

Sheet 2 of 2
February 16, 2022



FUSCOE
ENGINEERING
16795 Von Karman, Suite 100
Irvine, California 92606
tel 949.474.1960 • fax 949.474.5315
www.fuscoecorp.com

Certificate Of Completion

Envelope Id: E095E438A5CD4CE1B7797AB7527F85A1

Status: Completed

Subject: Please DocuSign: Cielo ROW Agreement - Final .pdf

Source Envelope:

Document Pages: 10

Signatures: 1

Envelope Originator:

Certificate Pages: 2

Initials: 0

Brett Hamara

AutoNav: Disabled

700 NW 107th Ave Ste 400

Enveloped Stamping: Disabled

Miami, FL 33172-3154

Time Zone: (UTC-08:00) Pacific Time (US & Canada)

Brett.Hamara@Lennar.com

IP Address: 99.57.180.204

Record Tracking

Status: Original

Holder: Brett Hamara

Location: DocuSign

2/28/2022 4:07:10 PM

Brett.Hamara@Lennar.com

Signer Events

Brett Hamara

Brett.Hamara@Lennar.com

Authorized Agent

Lennar Corporation

Security Level: Email, Account Authentication
(None)**Signature**

DocuSigned by:


C3779B50C09A472...Signature Adoption: Pre-selected Style
Using IP Address: 99.57.180.204**Timestamp**

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Signed: 2/28/2022 4:09:14 PM

Freeform Signing

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

In Person Signer Events**Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp****Carbon Copy Events****Status****Timestamp**

Brett Hamara

brett.hamara@lennar.com

Authorized Agent

Lennar Corporation

Security Level: Email, Account Authentication
(None)

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Viewed: 2/28/2022 4:09:39 PM

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Witness Events**Signature****Timestamp****Notary Events****Signature****Timestamp****Envelope Summary Events****Status****Timestamps**

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Hashed/Encrypted

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Certified Delivered

Security Checked

2/28/2022 4:07:38 PM

Signing Complete

Security Checked

2/28/2022 4:09:14 PM

Completed

Security Checked

2/28/2022 4:09:15 PM

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