

THIS INSTRUMENT PREPARED BY AND  
UPON RECORDATION RETURN TO:

JEFF COOPERMAN, ESQ.  
SOLOMON, COOPERMAN & RECONDO, LLP  
1101 BRICKELL AVENUE, SUITE N1101  
MIAMI, FLORIDA 33131

**FIFTH AMENDMENT TO DECLARATION  
FOR  
VERONA TRACE**

THIS FIFTH AMENDMENT TO DECLARATION FOR VERONA TRACE (this “**Fifth Amendment**”) is made by LENNAR HOMES, LLC, a Florida limited liability company, f/k/a Lennar Homes, Inc., a Florida corporation (“**Lennar**”), and joined in by VERONA TRACE HOMEOWNERS ASSOCIATION, INC., a Florida not-for-profit corporation.

**R E C I T A L S**

A. Lennar recorded that certain Declaration for Verona Trace on September 22, 2006, in Official Records Book 2081, at Page 1860 of the Public Records of Indian River County, Florida (the “**Original Declaration**”) respecting the community known as Verona Trace (the “**Community**”). On May 8, 2009, Lennar recorded that certain First Amendment to Declaration for Verona Trace in Official Records Book 2340, at Page 662 of the Public Records of Indian River County, Florida (the “**First Amendment**”). On June 4, 2010, Lennar and MS Rialto Verona Trace FL, LLC, a Delaware limited liability company (“**MS Rialto**”) entered into that certain Assignment and Assumption of Developer Rights and Liabilities Agreement, whereby MS Rialto became the Developer of the Community. On October 25, 2010, MS Rialto recorded that certain Second Amendment to Declaration for Verona Trace in Official Records Book 2453, at Page 1732 of the Public Records of Indian River County, Florida (the “**Second Amendment**”). On May 16, 2017, MS Rialto recorded that certain Third Amendment to Declaration for Verona Trace in Official Records Book 3025, at Page 438 of the Public Records of Indian River County, Florida (the “**Third Amendment**”). On December 7, 2017, MS Rialto recorded that certain Fourth Amendment to Declaration for Verona Trace in Official Records Book 3076, at Page 815 of the Public Records of Indian River County, Florida (the “**Fourth Amendment**”). The Original Declaration, the First Amendment, the Second Amendment, the Third Amendment, and the Fourth Amendment shall hereinafter be collectively referred to as the “**Declaration**”.

B. On June 15, 2021, MS Rialto and Lennar entered into that certain Assignment and Assumption of Developer Rights and Liabilities Agreement, a copy of which is attached as **Exhibit A** hereto, whereby Lennar became the Developer of the Community.

C. Pursuant to Section 4.3 of the Declaration, prior to and including the Turnover Date (as defined in the Declaration), Lennar, as Developer under the Declaration, shall have the right to amend the Declaration as it deems appropriate, without the joinder or consent of any person or entity whatsoever.

D. The Turnover Date has not yet occurred.

E. Lennar wishes to modify the Declaration as further set forth herein.

NOW THEREFORE, Lennar hereby declares that every portion of Verona Trace is to be held, transferred, sold, conveyed, used and occupied subject to the covenants, conditions and restrictions hereinafter set forth.

1. **Recitals.** The foregoing Recitals are true and correct and are incorporated into and form a part of this Fifth Amendment.

2. **Conflicts.** In the event that there is a conflict between this Fifth Amendment and the Declaration, this Fifth Amendment shall control. Whenever possible, this Fifth Amendment and the

Declaration shall be construed as a single document. Except as modified hereby, the Declaration shall remain in full force and effect.

3. Formatting. In this Fifth Amendment, words in the text which are lined through (———) indicate deletions from the present text of the Declaration; words in the text which are underlined indicate additions to the present text of the Declaration.

4. Definitions. All initially capitalized terms not defined herein shall have the meanings set forth in the Declaration, except that the following defined term is hereby modified as follows:

**“Developer”** shall mean ~~MS Rialto Verona Trace FL, LLC~~ Lennar Homes, LLC, a Florida limited liability company, f/k/a Lennar Homes, Inc., a Florida corporation, and any of its designees (including its affiliated or related entities which conduct land development, homebuilding and sales activities), successors and assigns who receive a written assignment of all or some of the rights of Developer hereunder. Developer shall have the right to assign all or a portion of any rights granted to the Developer in this Declaration. Developer shall also have the right to assign all or a portion of any obligations of the Developer in the Declaration. Such assignment need not be recorded in the Public Records in order to be effective. In the event of such a partial assignment of some, but not all, Developer rights and/or obligations, the assignee shall not be deemed Developer, but may exercise those rights or shall be responsible for those obligations of Developer specifically assigned to it. Any such assignment may be made on a non-exclusive basis. All assignments of Developer rights and/or obligations (whether full or partial) must be in writing. The rights of Developer under this Declaration are independent of Developer’s right to control the Board and, accordingly, shall not be deemed waived, transferred or assigned to the Owners, the Board or the Association upon the transfer of control of the Association.

5. Setback. Section 14.1 of the Declaration is hereby modified as follows:

14.1 Alterations and Additions. No alteration, addition or modification to a Parcel, Lot or Home, or change in the appearance thereof, shall be made without the prior written approval thereof being first had and obtained from the ACC as required by this Declaration. Notwithstanding the foregoing, any pavers and/or decks installed upon the yard of a Home or any portion thereof (including Front Yards and back and side yards) shall be set back from the property line at least five (5) feet.

6. Fencing. Section 14.17 of the Declaration is hereby modified as follows:

14.17 Fences and Walls. No walls or fences shall be erected or installed without prior written consent of the ACC. No chain link fencing of any kind shall be allowed except for perimeter areas screened by landscaping as permitted by this Declaration and with the prior written consent of the ACC. No Lot shall have any chain link fencing within its boundaries. Fencing of Single Family Homes shall be six (6) feet in height and white PVC or stained or natural wood or picket style PVC or aluminum material ~~four (4) feet in height~~, except that for lakefront Single Family Homes, the rear fence of such Single Family Home shall be four (4) feet in height and made of a picket style PVC or aluminum material. Fencing of Townhome yards shall be six (6) feet in height and shall be made of white PVC material, except that for lakefront Townhomes, the rear fence of such Townhomes, commencing at the end of the existing six (6) foot high privacy fence, shall be four (4) feet in height and made of picket style PVC or aluminum material. All screening and screened enclosures shall have the prior written approval of the ACC and shall be constructed utilizing white or bronze aluminum. Screening shall be charcoal in color. All enclosures of balconies or patios including, without limitation, addition of vinyl windows, shall be approved by the ACC and all decks shall require the prior written approval of the ACC. In the event a fence is installed (with prior ACC approval being obtained) within a drainage easement area, the Owner is solely responsible for fence repair or replacement if the drainage easement area needs to be accessed or as otherwise provided in Section 14.13 hereof.

7. Garages. Section 14.19 of the Declaration is hereby modified as follows:

14.19 Garages. Each Home may have its own garage. No garage shall be converted into a general living area or used as living quarters by any person unless specifically approved by the ACC. Garage doors may be left open during use for vehicular and

pedestrian ingress and egress, in addition to other uses, and while performing activities in and around the garage, Home or Lot, so long as such additional uses and activities do not become a nuisance. At all other times, garage doors shall remain closed at all times except when vehicular or pedestrian access is required.

8. Resolution of Disputes. Section 22.12 of the Declaration is hereby deleted in its entirety and replaced as follows (Substantial rewording. See governing documents for current text):

22.12 Resolution of Disputes. All claims, disputes and other matters in question between the Association, any Owner and the Developer and/or any Builder arising out of or relating to this Declaration or any alleged the breach of any terms or conditions hereof, the transition of Association control or any alleged failures relating thereto, or any other matter contemplated under this Declaration, shall be decided by mandatory and binding arbitration in accordance with the rules of the American Arbitration Association (“AAA”) currently in effect unless the parties mutually agree otherwise. The following procedures shall apply:

22.12.1 Demand for arbitration shall be filed in writing with the other party or parties subject to the Declaration and with the AAA. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. “Construction Rules” will be utilized in any arbitration proceeding under this Section.

22.12.2 No arbitration arising out of or relating to this Declaration shall include, by consolidation, joinder or any other manner, an additional person or entity not a party to this Declaration, except by written consent containing a specific reference to this Declaration signed by the parties hereto and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented by the parties to this Declaration shall be specifically enforceable in accordance with applicable law and any court having jurisdiction thereof.

22.12.3 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

22.12.4 All filing fees and AAA costs associated with the arbitration itself shall be paid for by the party who files the notice of arbitration; provided, however, that all such expenses shall be recovered by the filing party in the event such party prevails. Any issues regarding who is the prevailing party shall be determined by the arbitration panel. The prevailing party also shall recover from the non-prevailing party all attorneys’ fees and costs, including fees and costs for legal assistants and expert witnesses, and including all fees and costs incurred relative to any challenge or appeal of the arbitration award, or confirmation by a court of law.

22.12.5 If and only to the extent a matter arising under this Declaration cannot be resolved by arbitration pursuant to this Section, the prevailing party shall be entitled to collect from the non-prevailing party reasonable attorneys’ fees and costs at the trial level and at all levels of appeal. In such event, to the maximum extent permitted by law, each of the Developer, Association, Builders, and Owners, voluntarily, intentionally and irrevocably waive all right to trial by jury in respect of any action, proceeding, or counterclaim (whether based on contract, tort, or otherwise) arising out of or related to any of the provisions of this Declaration, or any course of conduct, course of dealing, statements (whether oral or written) or actions of any party hereto or to any document pertaining to this Declaration. This provision is a material inducement of all parties taking title to real property subject to this Declaration. The parties hereby submit to the jurisdiction of the Civil Courts of the State of Florida and the United States District Courts located in the State of Florida in respect of any suit or other proceeding brought in connection with or arising out of this Declaration and venue shall be in the County.

9. Interpretation. The following language is hereby added to the Declaration as Section 26.12 thereof:

26.12 Interpretation. The Board shall be responsible for interpreting the provisions hereof and of any of the exhibits attached hereto. Such interpretation shall be binding upon all parties unless wholly unreasonable. An opinion of counsel that any interpretation adopted by Association is not unreasonable shall conclusively establish the validity of such interpretation. Article, section, and paragraph captions, headings and titles inserted throughout the Association Documents are intended as a matter of convenience only and in no way shall such captions, headings or titles define, limit or in any way affect the subject matter or any of the terms and provisions thereunder or the terms and provisions of the Association Documents. Whenever the context so requires or permits, any pronoun used herein may be deemed to mean the corresponding masculine, feminine or neuter form thereof, and the singular form of any nouns and pronouns herein may be deemed to mean the corresponding plural form thereof and vice versa.

10. FHA/VA/USDA. Section 27.4 of the Declaration is hereby modified as follows:

27.4 Exceptions. The foregoing provisions of this Section shall not apply to a transfer or purchase by a Lender or other approved mortgagee which acquires its title as the result of owning a mortgage upon the Home concerned, and this shall be so whether the title is acquired by deed from the mortgagor or its successor in title or through foreclosure proceedings; nor shall such provisions apply to a transfer, sale or lease by a Lender or other approved mortgagee which so acquires its title. Neither shall such provisions require the approval of a purchaser who acquires the title to a Home at a duly advertised public sale with open bidding which is provided by law including, but not limited to, an execution sale, foreclosure sale, judicial sale or tax sale. The provisions of this Section shall not apply to Developer. Notwithstanding any inconsistent or contrary provision, or portion thereof, in this Declaration, if there are any FHA, VA or USDA insured loans affecting a Lot, and only for so long as any such loans affect the Lot, any provisions, or portions thereof, in this Declaration on renting, subleasing, or reconveyance that violate any FHA, VA or USDA requirements shall not apply to such Lot or its Owner.

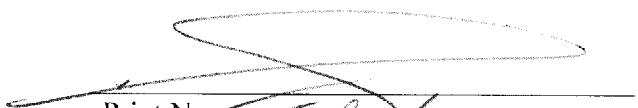
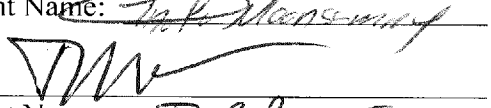
*Additional text and signatures appear on the following page*

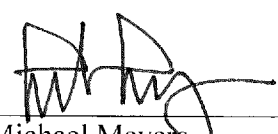
11. Covenant. This Fifth Amendment shall be a covenant running with the land.

IN WITNESS WHEREOF, the undersigned, being Developer under the Declaration, has hereunto set its hand and seal this 29<sup>th</sup> day of June, 2021.

**WITNESSES:**

**LENNAR HOMES, LLC**, a Florida limited liability company, f/k/a LENNAR HOMES, INC., a Florida corporation


  
Print Name: T.R. Beer  
  
Print Name: T.R. Beer

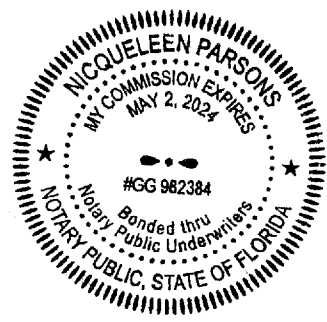
By:   
Name: Michael Meyers  
Title: Vice President  
[SEAL]

STATE OF FLORIDA )  
COUNTY OF Palm Beach ) SS.:

The foregoing instrument was acknowledged before me, by means of ☒ physical presence or ☐ online notarization, this 29<sup>th</sup> day of June, 2021, by Michael Meyers, as Vice President of LENNAR HOMES, LLC, a Florida limited liability company, f/k/a LENNAR HOMES, INC., a Florida corporation. He/she is personally known to me or has produced \_\_\_\_\_ as identification, on behalf of the company.

My commission expires: 05/02/24

  
NOTARY PUBLIC, State of Florida at Large  
Print Name: Nicqueleen Parsons



JOINDER

VERONA TRACE HOMEOWNERS ASSOCIATION, INC.

VERONA TRACE HOMEOWNERS ASSOCIATION, INC. ("Association") does hereby join in the Fifth Amendment to Declaration for Verona Trace (the "Fifth Amendment"), to which this Joinder is attached, and the terms thereof are and shall be binding upon the undersigned and its successors in title. Association agrees that this Joinder is for convenience purposes only and does not apply to the effectiveness of the Fifth Amendment as Association has no right to approve the Fifth Amendment.

IN WITNESS WHEREOF, the undersigned has executed this Joinder on this 29<sup>th</sup> day of June, 2021.

WITNESSES:

VERONA TRACE HOMEOWNERS  
ASSOCIATION, INC., a Florida not-for-profit  
corporation

Print Name: [Signature]

By: [Signature]

Print Name: Gregory J. Pettit

Name: T.R. Beer

Title: President

{SEAL}

STATE OF FLORIDA )

COUNTY OF Palm Beach )

SS.:

The foregoing instrument was acknowledged before me, by means of ☒ physical presence or ☐ online notarization, this 29<sup>th</sup> day of June, 2021 by T.R. Beer, as President of VERONA TRACE HOMEOWNERS ASSOCIATION, INC., a Florida not-for-profit corporation. He is personally known to me or produced \_\_\_\_\_ as identification, on behalf of the corporation.

My commission expires: 05/02/24



NOTARY PUBLIC, State of Florida at Large

Print Name: Nicqueleen Parsons

Exhibit AASSIGNMENT AND ASSUMPTION OF DEVELOPER RIGHTS AGREEMENT

**THIS ASSIGNMENT AND ASSUMPTION OF DEVELOPER RIGHTS AGREEMENT** (this "**Assignment and Assumption Agreement**"), is made effective as of the 15 day of June, 2021, by and between MS RIALTO VERONA TRACE FL, LLC, a Delaware limited liability company ("**MS Rialto**"), and LENNAR HOMES, LLC, a Florida limited liability company, f/k/a LENNAR HOMES, INC., a Florida corporation ("**Lennar**"). MS Rialto and Lennar shall hereafter collectively be referred to as the "**Parties**".

## RECITALS:

A. MS Rialto is the "**Developer**" under that certain Declaration for Verona Trace, recorded in Official Records Book 2081, at Page 1860 of the Public Records of Indian River County, Florida, as amended (the "**Declaration**").

B. Lennar desires to become the Developer under the Declaration.

C. MS Rialto will agree to assign all of the Developer's rights under the Declaration to Lennar provided that Lennar assumes all of the liabilities and obligations of the Developer under the Declaration including but not limited to, all liability arising from actions or events which occurred prior to this Assignment and Assumption Agreement (collectively, the "**Developer's Rights and Liabilities**").

**NOW, THEREFORE**, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable considerations, the receipt and sufficiency of which are acknowledged, the Parties hereby agree as follows:

1. The foregoing Recitals are true and correct and are incorporated herein by this reference.

2. All initially capitalized terms not defined herein shall have the meanings set forth in the Declaration.

3. MS Rialto hereby assigns and Lennar hereby assumes the Developer's Rights and Liabilities.

4. Upon the full execution of this Assignment and Assumption Agreement by the Parties, Lennar shall become the Developer under the Declaration.

5. In connection with its assumption of the Developer's Rights and Liabilities, Lennar does hereby remise, release, acquit, satisfy, and forever discharge MS Rialto, and its officers, directors, shareholders, employees, attorneys, agents, affiliates, and all other related parties other than Lennar who may be jointly liable with them (collectively, "**MS Rialto's Affiliates**") of and from all, and all manner of, action and actions, cause and causes of action, suits, debts, sums of money, accounts, bills, covenants, controversies, agreements, promises, damages (including consequential, incidental, punitive, special or other), judgments, executions, claims, liabilities and demands, whatsoever, at law and in equity (including, but not limited to, claims founded on tort, contract, contribution, indemnity or any other theory whatsoever), for, upon or by reason of any matter, cause or thing, whatsoever, from the beginning of the world to the day of these presents, which matter, cause, or thing, relates, in any manner, directly or indirectly, to the Developer of Verona Trace. This release is intended to be construed as broadly as possible and to release MS Rialto and MS Rialto's Affiliates from all claims related to the planning, design, construction and maintenance of Verona Trace, any actions, inactions, representations, statements, made or taken by MS Rialto and/or MS Rialto's Affiliates while Developer under the Declaration, and all financial matters respecting the operation of Verona Trace Homeowners Association, Inc. by MS Rialto, as Developer.

6. This Assignment and Assumption Agreement shall be recorded in the Public Records of Indian River County, Florida as an exhibit to an amendment to the Declaration.

7. This Assignment and Assumption Agreement shall be construed according to the laws of the State of Florida. In the event legal action shall become necessary, venue shall be in Indian River County, Florida.

8. Any modification to this Assignment and Assumption shall be in writing, executed by both Parties, and shall be recorded in the Public Records of Indian River County, Florida.

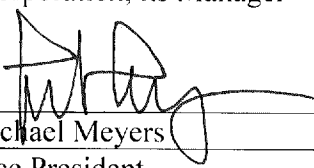
IN WITNESS WHEREOF, the parties hereto have executed this Assignment and Assumption Agreement on the date first set forth above.

**MS RIALTO VERONA TRACE FL, LLC**, a  
Delaware limited liability company

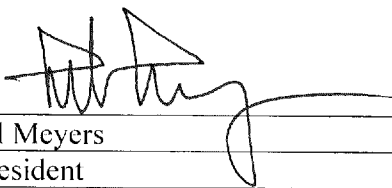
By: **MS RIALTO RESIDENTIAL HOLDINGS, LLC**, a Delaware limited liability company, its  
member

By: **MSR HOLDING COMPANY, LLC**, a  
Delaware limited liability company, its  
member

By: **U.S. HOME CORPORATION**, a  
Delaware corporation, its Manager

By:   
Name: Michael Meyers  
Title: Vice President  
[SEAL]

**LENNAR HOMES, LLC**, a Florida limited liability  
company

By:   
Name: Michael Meyers  
Title: Vice President  
[SEAL]