

Developer Member Side Agreement

This agreement is entered into this 24th day of September, 2003 by and between the undersigned, Fairfield Green Valley, Inc. (Fairfield), Fairfield Canoa Ranch, LLC (Canoa), WLC Green Valley Limited Partnership (WLC) (collectively referred to as the Developer) and Green Valley Recreation, Inc. (GVR) (all of whom are referred to, collectively, as the Parties) for the reasons set forth below:

RECITALS

The following Recitals are true and correct:

1. On or about November 16, 1995, the Parties entered into a Developer Member Agreement (DMA).
2. On or about January 11, 2000, WLC entered into that certain Real Estate Sale Agreement with Hughes Development LC (Hughes) wherein Hughes acquired certain portions of Las Campanas (Hughes Agreement). Under the terms of the Hughes Agreement, Hughes is obligated to pay the Initial Fees for all Dwelling Units that it sells on Las Campanas to WLC as a reimbursement to WLC for WLC's "prepayment" of the Initial Fees for all of the Dwelling Units sold on Las Campanas through WLC's construction of, or contribution of funds towards the construction of, the Las Campanas Recreational Center pursuant to the terms of the DMA
3. On or about October 15, 2001, Fairfield and Canoa entered into that certain Amended and Restated Purchase and Sale Agreement and Option Agreement and Escrow Instructions with Monterey Homes Construction,

Inc. (Monterey) wherein Monterey acquired certain portions of Canoa West and received an option to acquire certain additional portions of Canoa West (Canoa Agreement). The Canoa Agreement provides that Fairfield, Canoa and Monterey will each contribute the Initial Fees for the Dwelling Units that each party respectively sold or would thereafter sell on Canoa West to an escrow account established with Lawyers Title of Arizona, Inc. (Lawyers Title).

4. On or about September 19, 2001, WLC entered into that certain Option Agreement and Escrow Instructions For Las Campanas with Monterey wherein Monterey acquired certain portions of Las Campanas and received an option to acquire portions of Las Campanas (Las Campanas Agreement). The Las Campanas Agreement provides that Monterey will contribute the Initial Fees for Dwelling Units on Las Campanas which it sells to an escrow account established with Lawyers Title until WLC constructs or funds the construction of the third and final phase of the Las Campanas Recreational Center; and thereafter, Monterey is obligated to continue to pay such Initial Fees for Dwelling Units that it sells on Las Campanas to WLC as a reimbursement to WLC for WLC's "prepayment" of the Initial Fees for the Dwelling Units sold on Las Campanas through WLC's construction of, or contribution of funds towards the construction of, the Las Campanas Recreational Center pursuant to the terms of the DMA. (The Initial Fees deposited into the escrow accounts established with Lawyers Title pursuant to the Canoa Agreement and the Las

Campanas Agreement are collectively referred to as the Escrow Deposits).

5. As a result of the Hughes Agreement, Canoa Agreement and the Las Campanas Agreement (collectively the Builder Transactions), certain issues have arisen between GVR and Developer which are ambiguous, were subsequently discovered issues, or are issues not covered by the DMA.
6. The parties hereto wish to leave the provisions of the DMA in effect and unmodified and re-affirm the intent of the DMA, except as otherwise specifically set forth herein. This Developer Member Side Agreement (DMSA) is meant to resolve some of the ambiguity and to definitively interpret only those provisions of the DMA which it directly addresses and resolve the additional new issues directly addressed herein.

AGREEMENT

Therefore, the Parties agree as follows:

ARTICLE ONE: ESCROW DEPOSITS

- 1.1 The Developer has not sought to be released under Paragraph E-2 of the DMA from Developer's obligations under the DMA as a part of the Builder Transactions; and this liability is not modified by this DMSA. However, in the event a purchaser of a part of Canoa West or Las Campanas assumes Developer's obligations under DMA in the future, Developer reserves its rights under said Paragraph E-2 to obtain the release of its

obligations under the DMA as such obligations relate to the part of the Canoa West or Las Campanas then purchased.

- 1.2 Developer hereby agrees that the Escrow Deposits will only be used to satisfy the Developer's or its Affiliates' New Home Sales Contribution obligations under the DMA (Developer's Contribution Obligations). In order to clarify GVR's position with respect to the Escrow Deposits and to provide GVR with a security interest in such Escrow Deposits in the event that such Escrow Deposits are not used by Developer to satisfy the Developer's Contribution Obligations, the Parties agree that:

- 1.2.a. The funds held in the Escrow Deposits are trust funds which are being held by the Developer and Monterey for the purpose of satisfying Developer's Contribution Obligation; and Developer specifically acknowledges and agrees that GVR is a third party beneficiary of said Escrow Deposits.

- 1.2.b. Developer hereby grants to GVR a present security interest under Article 9 of the Uniform Commercial Code in such Escrow Deposits for the purpose of securing Developer's obligations herein to only use such Escrow Deposits to satisfy Developer's Contribution Obligation for those Dwelling Units which have been or will hereafter be sold by Developer, its Affiliates or by Monterey. Lawyers Title, by its execution of this DMSA, hereby acknowledges GVR's interest in the funds in the Escrow Deposits subject to the terms and conditions of this DMSA. If GVR forecloses on its interest in such Escrow Deposits, the amounts of such Escrow Deposits

shall be credited against Developer's Contribution Obligations for Dwelling Units which have been or will hereafter be sold by Developer, its Affiliates or by Monterey; and in such event, GVR agrees to only use such Escrow Deposits applicable to Las Campanas for the purpose of constructing or completing the construction of the Las Campanas Recreational Center, and to only use such Escrow Deposits applicable to Canoa West for the purpose of construction or completing the construction of the Canoa West Recreational Center.

1.3 GVR agrees that Developer and Monterey shall continue to have the right to modify the terms of the Las Campanas Agreement and the Canoa Agreement (collectively the Monterey Agreements) as they relate to such Escrow Deposits, including the right to change the title company holding such Escrow Deposits, without the requirement of obtaining the prior consent of GVR; provided, however, notwithstanding the above provisions, Developer agrees it will not modify the Monterey Agreements so as to terminate the Escrow Deposits with respect to those Initial Fees then held in such Escrow Deposits, and that it will provide GVR with notice of any change in the terms of the Monterey Agreements to the extent such change relates to the Escrow Deposits or results in the change of the title company holding such Escrow Deposits.

1.4 GVR agrees that it has no control over the Escrow Deposits other than as third party beneficiary and as holder of a security interest; and that it has no withdrawal rights with respect to such funds held in the Escrow

Deposits.

- 1.5 GVR agrees that (i) nothing in this Agreement requires or is intended to require (A) Developer and Monterey to continue to escrow future Initial Fees, or (B) Developer to establish an escrow account with any other builder or contractor for Initial Fees for Dwelling Units sold within Las Campanas or Canoa West pursuant to the DMA, and (ii) GVR shall not have any security interest in or claim to any funds which are held by Developer which may represent Initial Fees set aside by Developer for eventual use in satisfying Developer's Contribution Obligation or which are Initial Fees received by WLC from Hughes or Monterey as a reimbursement to WLC for WLC "prepayment" of the Initial Fees for all Dwelling Units sold on Las Campanas through WLC's construction of, or contribution of funds towards the construction of, the Las Campanas Recreational Center pursuant to the terms of the DMA. However, in the event that Developer does establish an escrow account with any other builder or contractor for Initial Fees for Dwelling Units sold within Las Campanas or Canoa West, then in such event (A) the provisions of this DMSA shall apply to such funds actually escrowed, including those provisions herein granting GVR a beneficial security interest in such escrowed funds, and (B) Developer shall cause such other builder or contractor, and any title insurance company holding such escrowed funds, to execute an acknowledgment of this DMSA.
- 1.6 Attached hereto as Exhibit "A" is an accounting of Escrow Deposits held

by the Lawyers Title with respect to Las Campanas as of December 31, 2002, along with a reconciliation by date of closing of the owners' names, lot numbers and the amounts deposited therein for each Dwelling Unit sold. Attached hereto as Exhibit "B" is an accounting of Escrow Deposits held by the Lawyers Title with respect to Canoa West as of December 31, 2002, along with a reconciliation by date of closing of the owners' names, lot numbers and the amounts deposited therein for each Dwelling Unit sold. Thereafter on a quarterly basis, with respect to each Dwelling Unit sold on the Canoa West or Las Campanas, Developer shall provide GVR with the owner's name, lot number, date of closing, amount of Initial Fee, and whether such Initial Fee is placed in the Escrow Deposit, retained by Developer or paid directly to GVR. Developer shall instruct Lawyer's Title or any subsequent title insurance company which holds such Escrow Deposits to copy GVR on all of its future correspondence, reports and accounting relating to such Escrow Deposits, and shall further instruct Lawyer's Title or subsequent title insurance company to hold all such funds in an interest bearing account.

- 1.7 Paragraph B-1 of the DMA regarding the Initial Fee refers to increasing the Initial Fee by the CPI that is defined as All Items, All Cities. This Index does not truly reflect the CPI for our region. It is agreed that the reference be changed to All Items, Western Urban Region; and that this new Index be placed into effect for determining the annual increase, if any, in the Initial Fee beginning in January of 2004.

ARTICLE TWO: CANOA WEST RECREATION CENTER & COMPLETION OF LAS CAMPANAS FACILITY.

- 2.1 Under the terms of the DMA, WLC has the obligation to eventually build the third and final Phase of the Las Campanas Recreational Center when, under the provisions of the Las Campanas Facility Plan, 850 Dwelling Units have been sold on Las Campanas. WLC hereby agrees that GVR may, at its sole option, assume responsibility with respect to building this final phase of the Las Campanas Recreation Center at the time that WLC is otherwise required to do so. GVR may provide WLC with a written notice that GVR will assume the responsibility of constructing the final phase of the Las Campanas Recreational Center at any time; provided, however, in the event that GVR has not previously provided WLC with such notice, GVR must provide WLC with a written notice that it will assume the responsibility of constructing the final phase of the Las Campanas Recreational Center within thirty (30) days of WLC's written notice to GVR of WLC's decision to proceed with the construction of such final phase; or it shall be deemed that GVR has not exercised its option to build such final phase, and that WLC will retain the obligation to do so.
- 2.2 Under the DMA, Canoa has the obligation to construct the Canoa West Recreational Center at such times and in such phases as GVR, Fairfield and Canoa mutually agree. Fairfield and Canoa hereby agree that GVR may, at its sole option, assume responsibility with respect to building the Canoa West Recreation Center or such initial phase or phases thereof as

agreed upon by the Parties in its conceptual Facility Plan for said center. GVR may provide Fairfield and Canoa with a written notice that it will assume the responsibility of constructing such initial phase or phases of the Canoa West Recreational Center at any time; provided, however in the event that GVR has not previously provided Fairfield and Canoa with such notice, GVR must provide Fairfield and Canoa with a written notice that GVR will assume the responsibility of constructing such initial phase or phases of the Canoa West Recreational Center within thirty (30) days of Fairfield's written notice to GVR of Fairfield's decision to proceed with the construction of the initial phase or phases of such center; or it shall be deemed that GVR has not exercised its option to build such initial phase or phases, and that Fairfield will retain the obligation to do so. If GVR exercises its option to assume responsibilities of constructing the initial phase or phases of the Canoa West Recreational Center, it shall be responsible only for such initial phase or phases of the center as then approved by the Parties; and GVR shall retain its option as to whether or not it will construct any subsequent phases. Each of the Parties hereto agree that whichever Party constructs the Canoa West Recreational Center shall be entitled to draw upon the Escrow Deposits applicable to Canoa West for the purpose of funding such construction, and shall further provide a full and complete accounting of all funds expended on such construction to the other Parties and to Monterey.

2.3 GVR has retained an architect to design the site plan and conceptual

Facility Plan for the Canoa West Recreation Center with input from Fairfield and Monterey. The conceptual Facility Plan will contain conceptual elements of building(s), elevation, floor plans, budget and phasing schedules. Prior to finalizing such plans for the Canoa West Recreation Center, GVR will obtain the prior approval of such plans from Fairfield, Canoa and Monterey. Each of the Parties agree to use their best efforts to approve said conceptual Facilities Plan no later than ninety (90) days following the execution of this Agreement, subject to such reasonable delays beyond the control of any Party.

- 2.4 If GVR exercises its option to build the third and final phase of the Las Campanas Recreational Center, at such time that WLC is obligated under the DMA to fund the construction of such phase, WLC agrees to establish to GVR's satisfaction that WLC then has the funds and/or financing available to fund the construction of such phase (up to the remaining balance of its Developer's Contribution Obligation for Las Campanas), and shall pay, or cause to be paid, such construction costs as GVR, or its contractor, submits draw requests for, as the construction of such final phase is then completed. In such event, GVR, or its contractor, shall provide such documentation as required by WLC's lender to support such draw requests. In the event that the estimated cost to complete such third and final phase exceeds the remaining balance of the Developer's Contribution Obligation due by WLC for Las Campanas, GVR must establish to WLC's and its lender's satisfaction that GVR will have

thereafter placed in the Escrow Deposits shall be paid to GVR at such time or times as GVR requests on the above terms and conditions until the total of all such Initial Fees (including the funds originally held in the Escrow Deposits) equal the total costs of such initial phase or phases of the center that GVR has agreed to construct. If GVR exercises its option to build the entire or final phases of the Canoa West Recreational Center, and Fairfield, Canoa and Monterey have directed that the funds held in the Escrow Deposits be paid to GVR in accordance with the above provisions, the Initial Fees for all additional Dwelling Units sold on Canoa West that are thereafter placed in the Escrow Deposits shall be paid to GVR at such time or times as GVR requests; and if there are any funds from Initial Fees for Dwelling Units sold on Canoa West in excess of the total cost of completing the Canoa West Recreational Center in accordance with the plans approved by the Parties, such excess funds shall be paid to GVR.

2.5 Notwithstanding any other provisions herein, GVR's decisions to assume the obligations of constructing the final phase of the Las Campanas Recreational Center and/or the Canoa West Recreational Center shall not increase or accelerate the Developer's Contribution Obligations; and if GVR assumes such obligations to construct such facilities, it specifically agrees that the recreational facilities will only be constructed in accordance with facility plans specifically approved by the Parties hereto and by Monterey.

2.6 Prior to entering into a contract with a general contractor for the

sufficient funds to complete such phase. In the event that the actual cost to complete such third and final phase is eventually determined to be less than the remaining balance of the Developer's Contribution Obligation due by WLC for Las Campanas, then after WLC is fully reimbursed for its "prepayment" of the Initial Fees for the Dwelling Units sold on Las Campanas through WLC's construction of, or contribution of funds towards the construction of, the Las Campanas Recreational Center pursuant to the terms of the DMA, the Initial Fees from any remaining Dwelling Units sold on Las Campanas shall be paid to GVR. If GVR exercises its option to build the Canoa West Recreational Center, Fairfield, Canoa and Monterey shall direct that the funds held in the Escrow Deposits representing the Initial Fees for Dwelling Units sold on Canoa West be paid to GVR provided (1) such funds are credited towards the Developer's Contribution Obligations, (2) Fairfield, Canoa, Monterey and GVR have approved the final plans for the Canoa West Recreation Center, (3) Fairfield, Canoa, Monterey and GVR have agreed upon and approved the time line for constructing the Canoa West Recreation Center, and (4) GVR agrees that such funds will only be used for the construction of the Canoa West Recreation Center. If GVR exercises its option to build the initial phase or phases of the Canoa West Recreational Center, and Fairfield, Canoa and Monterey have directed that the funds held in the Escrow Deposits be paid to GVR in accordance with the above provisions, the Initial Fees for all additional Dwelling Units sold on Canoa West that are

construction of the final phase of the Las Campanas Recreation Center and/or the construction of the initial phase or phases of Canoa West Recreation Center, the Party which has the obligation to construct such improvements shall submit the contract with the general contractor for such improvements to the other Parties for such Parties' approval; and each of the Parties agree to use their best efforts to approve said contract within twenty (20) days following the receipt of such contract, which approval shall not be unreasonably withheld. Such approval shall be deemed to have been given unless a Party provides the contracting Party with written notice of disapproval within said twenty (20) days, and specifically set forth in such written notice the basis for such disapproval.

2.7 Specifically related to the Canoa West Recreation Center, Fairfield, Canoa and GVR will establish the exact location for the parcel upon which the Canoa Ranch Recreation Center is to be built within thirty (30) days following the approval of the conceptual Facilities Plan by the Parties and Monterey; and Fairfield will thereafter prepare a legal description for the site which shall be acceptable to GVR.

2.8 Fairfield, Canoa and Monterey have already consented to the release of \$15,000 to GVR for the purpose of paying an architect to begin the initial planning for the Canoa West Recreational Center, and GVR hereby acknowledges the receipt of such funds. However, the disbursement of any further funds from the Escrow Deposits for the benefit of the Canoa West Recreational Center must either be approved by all of the parties

hereto and by Monterey in advance of such disbursement, or must be in accordance with a time line for GVR to incur such expenditures as approved by the Parties hereto and by Monterey; and if GVR incurs planning costs prior to receiving such approvals, it acknowledges that it is doing so at its own risk.

- 2.9 Anything to the contrary notwithstanding contained herein, GVR, Fairfield and Canoa agree that the following initial time-line is reasonable for the planning of Canoa West Recreational Center:

Second Quarter of 2003: A Conceptual Facilities Plan Produced
and Agreed upon

Third Quarter of 2003: Completion of Working Drawings

Phases of construction shall be commenced when the Parties determine there will be sufficient funds in the Escrow Deposits to fund such construction.

- 2.10 Regarding the Las Campanas Recreation Center, attached hereto as Exhibit "C" is an accounting for all Dwelling Units sold on Las Campanas as of December 31, 2002, and attached hereto as Exhibit "D" is an accounting of all contributions made to GVR or expended on the construction of Phases I & 2 of said facility.

- 2.11 Each of the parties hereto acknowledge and agree that (i) Monterey is not a party to this Agreement; (ii) Monterey is a third party beneficiary of the terms and provisions of this Agreement; (iii) in such capacity as a third party beneficiary, Monterey shall be provided a copy of all notices sent

pursuant to this Agreement by any party hereto; (iv) any acts under this Agreement which require the consent of Developer shall also require the consent of Monterey; and (v) Monterey has no obligation to perform any of the obligations of any Party hereto with respect to either the Las Campanas Recreational Center or the Canoa West Recreational Center except for the obligations of making those obligations which Monterey agreed to pursuant to the Monterey Agreements; provided, however, notwithstanding the above provisions, during the terms of the Monterey Agreements, Monterey does agree, by its execution of this DMSA that it will use its good faith efforts to provide those consents and approval required herein of Developer or of Monterey within the time periods provided.

ARTICLE THREE: MISCELLANEOUS

- 3.1 Conflict. In the event of a conflict between the provisions of this DMSA and the DMA, the provisions of this DMSA shall be controlling.
- 3.2 Notice. All notices to be given herein shall be given to the parties at their respective addresses as set forth below:

a. If to GVR, to:

Green Valley Recreation, Inc.
Post Office Box 586
1070 Calle de las Casitas
Green Valley, AZ 85622-0586
Attn: Jeffrey Ziegler, Executive Director

With additional copy to:

Jeffrey M. Neff, Esq.
6375 E. Tanque Verde Road, Suite 130
Tucson, Arizona 85715

b. If to Fairfield, to:

6420 East Tanque Verde
Tucson, Arizona 85715

With additional copies to:

Douglas R. Vande Krol, Esq.
Santerre & Vande Krol, Ltd.
7920 E. Thompson Peak Parkway, Suite 150
Scottsdale, Arizona 85255

c. If to Canoa, to:

6420 East Tanque Verde
Tucson, Arizona 85715

d. If to WLC, to:

7100 East Lincoln Drive, Suite C-136
Scottsdale, Arizona 85253

With additional copies to:

Douglas R. Vande Krol, Esq.
Santerre & Vande Krol, Ltd.
7920 E. Thompson Peak Parkway, Suite 150
Scottsdale, Arizona 85255

e. If to Monterey, to:

4742 N. Oracle Road, Suite 111
Tucson, Arizona 85705
Attn.: Ms. Lisa Hoskins and Mr. Jeff Grobstein

With additional copies to:

C. Timothy White, Esq.
Greenberg, Traurig, LLP
2375 E. Camelback Road, Suite 700
Phoenix, Arizona 85016

Notice shall be given in writing, deposited with the United States Postal Service, by certified or registered mail, return receipt requested, or delivered personally. Such notice, if deposited with the United States

Postal Service, shall be deemed to be given on the third day following deposit with the United States Postal Service. If the interest of either party be, in any manner, transferred in whole or in part so that more than one person or entity assumes the rights and liabilities of either party, the giving of notice as herein provided to any one of such persons or entities shall be notice to all. Any notice to be given to Lawyers Title or to such other title insurance company holding escrowed funds (Escrow Agent) hereunder shall either be personally delivered, mailed or sent by overnight delivery service, in the manner provided above, to the Escrow Agent at the Escrow Agent's main office in Tucson, Arizona. Any notice to the Escrow Agent shall be deemed to be given at the same time as provided above with respect to notices to the parties hereto. Where approval is requested by any party, approval or disapproval shall be given on a timely basis and if not received within ten (10) days following the delivery of notice as defined by this paragraph, the request shall be deemed to be approved.

- 3.3 Defined Terms. Except for those terms specifically defined herein, all capitalized words herein shall have the meaning ascribed to such defined term in the DMA.
- 3.3 Governing Law. The laws of the State of Arizona shall govern the validity, performance and enforcement of this Agreement.
- 3.4 Time of Essence. Time shall be considered to be of the essence as to all provisions of this Agreement.
- 3.5 Use of Pronouns. Wherever from the context it appears appropriate, each

term stated in either the singular or the plural shall include the singular and the plural; and, pronouns stated in either the masculine, the feminine or the neuter gender shall include the masculine, feminine and neuter.

- 3.6 Binding Effect. The covenants and conditions herein contained shall apply to and bind the parties' respective heirs, personal representatives, successors and assigns.
- 3.7 Modification. This Agreement may not be changed, modified or rescinded, except in writing, signed by all parties hereto, and any attempt at oral modification of this Agreement shall be void and of no force and effect.
- 3.8 Execution by Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument. In addition, this Agreement may contain more than one counterpart of the signature pages and this Agreement may be executed by the affixing of the signature pages and all of such counterpart signature pages shall be read as though one, and they shall have the same force and effect as though all the signers had signed a single signature page.
- 3.9 Section Headings. The section headings of this Agreement are inserted as a matter of convenience and reference only, and in no way define, limit, or describe the scope or intent of this Agreement, or in any way affect the terms and provisions hereof.
- 3.10 Waiver. The waiver by any party of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any

subsequent breach of the same or any other term, condition or covenant herein contained. Any and all rights, remedies and options given in this Agreement to any party shall be cumulative and in addition to and without waiver of or in derogation of any right or remedy given under any law now or hereafter in effect.

3.11 Implementing Documents. Each party agrees to prepare, execute and deliver such further and additional documents, instruments and writings as may be necessary, proper, required or convenient for the purpose of fully effectuating the terms and provisions of this Agreement. In the event that it shall be necessary, proper, required, desirable or convenient that an instrument or document be executed in connection with or in further of the terms and provisions of this Agreement, and the form of such document or instrument is not attached hereto as an exhibit, such document or instrument shall be in a form customarily utilized in Pima County, Arizona.

3.12 Assignment. The rights under this DMSA are not assignable or delegatable by any Party hereto.

GVR

GREEN VALLEY RECREATION, INC.

By: Fred Lawrence

Its: President

FAIRFIELD

FAIRFIELD GREEN VALLEY, INC.

By: [Signature]

Its: President

CANOA

FAIRFIELD CANOA RANCH, L.L.C.

BY FAIRFIELD GREEN VALLEY, INC.,

MEMBER

By: *Paul Allen*

Its: *Managing Member*

WLC

WLC GREEN VALLEY LIMITED

PARTNERSHIP

BY WILLIAMSON LAND COMPANY,

GENERAL PARTNER

By: *Paul Allen*

Its: *Vice President*

Agreement only as to Paragraph 2.11 hereof

MONTEREY HOMES CONSTRUCTION, INC.

By:

Jeffery R. Proff

Its:

President - Tucson

9/24/03

Receipt of which is acknowledged

LAWYERS TITLE OF ARIZONA, INC.

By:

Arleta Zuch

Its:

Vice-President