

APPENDIX B

PROPERTY RIGHTS DOCUMENTATION

- Lozano Lane and De Palma Lane Tract Map
- Joint Use Agreement for Bike/Pedestrian Pathway
- Amendment to Joint Use Agreement for Bike/Pedestrian Pathway
- Excerpt from Declaration of Covenants, Conditions, and Restrictions for Campo De Lozano

PTN. S.E. 1/4 SEC. 13 T. 7 S. R. 2 W.

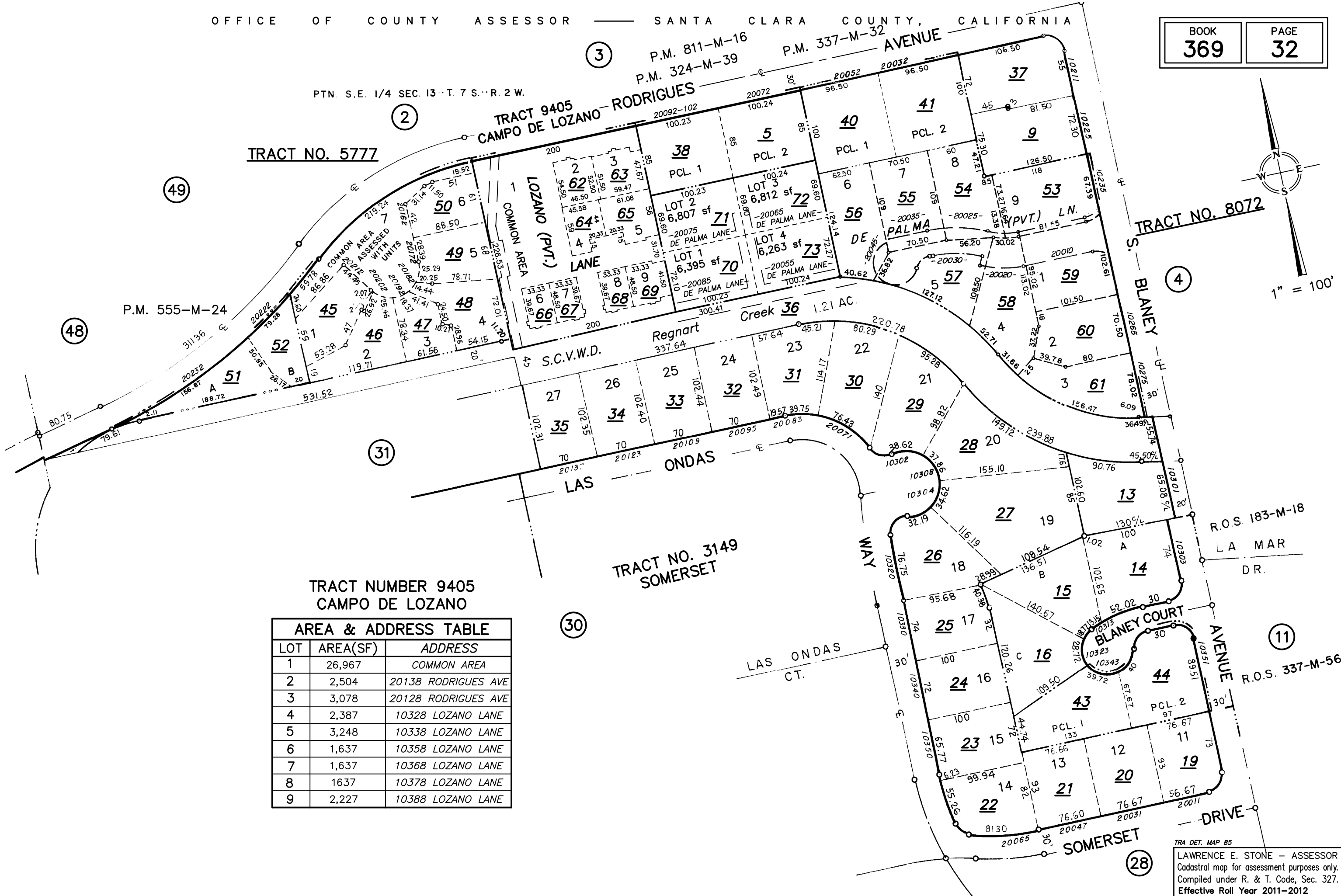
TRACT NO. 5777

TRACT 9405
CAMPO DE LOZANO — RODRIGUES

TRACT NO. 3149
SOMERSET

TRACT NUMBER 9405
CAMPO DE LOZANO

AREA & ADDRESS TABLE		
LOT	AREA(SF)	ADDRESS
1	26,967	COMMON AREA
2	2,504	20138 RODRIGUES AVE
3	3,078	20128 RODRIGUES AVE
4	2,387	10328 LOZANO LANE
5	3,248	10338 LOZANO LANE
6	1,637	10358 LOZANO LANE
7	1,637	10368 LOZANO LANE
8	1,637	10378 LOZANO LANE
9	2,227	10388 LOZANO LANE



JOINT USE AGREEMENT

*District File No.
CPRU 28312*

SANTA CLARA VALLEY WATER DISTRICT, a public corporation, hereinafter referred to as "District;" and the City of Cupertino, hereinafter referred to as "City," AGREE this 20th day of January 2004, as follows:

RECITALS:

- A. District is the owner of certain real property (hereinafter "the Premises"), described on "Exhibit A" hereto, so marked and by this reference made a part hereof.
- B. City and District recognize that the Premises are regulated by a variety of federal, state, and local agencies.
- C. City and District, in cooperation with the California Department of Water Resources, the U.S. Army Corps of Engineers, and the California Department of Fish and Game, agree to use the Premises for nonvehicular (except for maintenance, emergency, and enforcement vehicles) and recreational purposes and for flood control and water conservation purposes.
- D. City has ascertained that adequate funds have been appropriated to construct and operate its proposed facilities on the Premises and that adequate funds have been appropriated to meet all of its obligations contained in this agreement.
- E. The parties find it to be in the public interest to provide for joint use of the Premises by means of an Agreement thereof under the following terms and conditions:

AGREEMENT:

- 1. District shall and does hereby grant permission to City to use the Premises for the following purpose or purposes and subject to the following special restrictions:
 - Bicycle and pedestrian access
- 2. Except for District-owned facilities, City shall provide and maintain recycling and garbage receptacles for public use, and provide for adequate waste removal service with respect to City-owned improvements. City shall also provide graffiti removal in compliance with City's graffiti abatement program, including graffiti removal from signs installed in conjunction with and/or accessory to the establishment of a public park and pathway consistent with its implementation of the same program at comparable City facilities.
- 3. The public pathway and corridor, the subject of this Agreement, may be patrolled by City personnel and ranger services under contract with City and/or volunteers supervised by City. District shall have no obligation whatsoever to provide or pay for such services.

ENACTED COPY - Contract Admin. Unit
ACMT. # A276EM Req. # 2730

4. City must remove and if it so chooses, replace recreational improvements installed by the City in the event District is required to improve, maintain or repair Regnart Creek in any manner for District purpose's. District shall inform City in preconstruction planning, as described in Paragraph 7, in the event a District flood control project is needed, to minimize District's project impact on City's improvements to the Premises.
5. Damage to District's or City's facilities arising from public use of the Premises under this Agreement shall be the responsibility of City.
6. City and District staff shall meet whenever necessary for the purpose of scheduling routine maintenance, including, but not limited to:
 - Maintenance issues related to improvements;
 - Method and timing of issues related to affected wildlife;
 - Non-emergency work requiring the use of heavy equipment, barricading, and/or restricting access to the Premises. District and City further agree to notify one another's designated representative as required prior to commencement of such work, in order to minimize public impacts.
 - The requirements of this section do not apply in emergency situations.
7. In non-emergency situations, City and District staff shall meet whenever necessary for the purpose of scheduling routine maintenance, including, but not limited to:
 - (a) Maintenance issues related to improvements;
 - (b) Method and timing of issues related to affected wildlife;
 - (c) Non-emergency work requiring the use of heavy equipment, barricading, and/or restricting access to the Premises. District and City further agree to notify one another's designated representative as required prior to commencement of such work, in order to minimize public impacts;

City shall bear the cost and expense of any security, police or other expenditure necessary to temporarily prohibit or control public access to the Premises, which expenditure District would not ordinarily incur in order to complete scheduled routine maintenance pursuant to this provision.

Damage occurring to City's structures or paving by reason of District's non-negligent maintenance or other activity during scheduled routine maintenance pursuant to this provision, or by reason of natural forces, will not be the responsibility of District to repair or restore. All such costs for such repair or restoration are to be born by City.

In emergency situations, District shall respond without notice or a requirement to meet or consult with City. City's information will be available through community emergency response systems, which are not the subject of this Agreement.

8. Native plants selected by a licensed landscape architect with native habitat experience should be used for revegetation purposes.
9. Construction work during spring nesting season will be avoided whenever possible. The parties acknowledge that the spring nesting season occurs between February 1 and July 1. If construction must be done during the nesting season, a survey by a qualified biologist will be undertaken to determine the presence of nesting. If no nesting activity is reported, then the work may proceed. If nesting activity is reported,

the biologist is expected to recommend the implementation of adequate mitigation measures. Environmental impact shall be considered prior to all work. Any and all work related to this clause shall be completed in accordance with applicable federal, state, and local environmental health and safety regulations including the federal Migratory Bird Act of 1918 and any amendments thereto.

10. The parties shall cooperate to create and install signage, which benefits the programs of each party such as warnings, entrance signage, interpretive signs and benches, and joint uses when applicable. The Chief Executive Officer of the District and the Director of Public Works of the City or their designees shall meet and confer on a periodic basis to plan and install appropriate signage which serves the needs of both parties.

All signs excepting existing ones or publications that identify the facility (e.g. park, trail) by name should include the District's logo in equal size and symmetric relationship to any other logos. All signs or publications that are intended to interpret the water resources should be developed in cooperation with the District's Public Information Office and should also include the District's logo in equal size and symmetric relationship to any other logos. Maintenance responsibility for signage and benches shall be the responsibility of either the District or the City, according to which entity has installed the improvements.

11. This Agreement shall be for a period of 30 (thirty) years beginning on the date it is approved by the District Board of Directors. City may, upon written notice to District of intent to do so, given not less than ninety (90) days prior to the termination date, renew this Agreement for a like period upon the same terms and conditions. This Agreement may be terminated by either party upon ninety (90) days prior written notice to the other. Notice of intent to renew or to terminate may be given by the City's Director of Public Works for City. Notice of intent to terminate may be given by the District's Chief Executive Officer for the District.

12. Subject to the conditions and restrictions contained in this Agreement, City shall have the full control and authority, for purposes of this Agreement, over the use of the Premises, and City may restrict, or control, regulate and supervise the public use thereof. City may, in its discretion but consistent with the right of District hereinafter described, and without diminution of the flood control or conservation function or hazard thereto of the Premises as now existing or as may hereafter be altered, take any measures of every kind as may in the opinion of City be necessary for the safety of the users of the Premises for any lease purpose. Further, City shall have the sole responsibility for the maintenance in usable and safe condition of every facility provided upon the Premises for purposes of this Agreement.

13. District shall have the sole responsibility to maintain Regnart Creek for flood control and water conservation purposes, to repair and reconstruct the same where necessary for such purposes and to perform such periodic maintenance as may be appropriate to such purposes, including removal of silt, debris, and obstructive growth. It is expressly understood that District is engaged in flood control and the conservation of water and that the terms and conditions of this Agreement shall not in any way interfere with the absolute, free and unrestricted right of District to operate and maintain for flood control and water conservation purposes the stream bed and banks or any appurtenant works thereto, or to repair or construct any of its works, or to raise or lower the height of the water present upon the Premises; and it is further understood that nothing herein contained shall be construed as conferring a right upon City to have, or a duty upon District to provide, water upon the Premises at any time. In emergency situations, District will not be liable for damage to City improvements, structures, paving or facilities. Repair or restoration of such damage shall be in the discretion of and at the expense of City. It is also expressly

understood by City that the level of water upon the Premises may fluctuate from day to day due to controlled or uncontrolled flows upon and across the same, and that such fluctuations may require greater control over the use of the Premises by City and the public; provided, however, that City shall be responsible for informing itself thereof and of all other conditions of the Premises whether open or covered which may in anywise affect the health and safety of the users of the Premises hereunder. Notwithstanding the above, District shall make reasonable efforts to notify City in advance of any unusual flooding occurrences.

(a). City shall have the right to build any improvements on the Premises necessary, or convenient to the enjoyment of this Agreement, provided the location of any such improvement is, in each case during the term of this Agreement, first approved by District and signified by issuance of a District permit. It is fully understood and agreed that District's basis of approval or disapproval of improvements is limited to its responsibility to insure that the same shall not constitute an obstruction to flood flows and shall not interfere with the use of the Premises for flood control or water conservation purposes, and does not in anywise extend to consideration of the health and safety of users of the Premises, which latter consideration is the responsibility of City.

(b). Improvements built by City on the Premises shall remain the property of City and upon the termination of this Agreement shall be removed by City, leaving the Premises in a condition as near as reasonably possible to their condition prior to such improvements. If District, reasonably requires that such an improvement must be removed or relocated, the same shall be done at City's expense upon reasonable notice from District.

(c). City shall assume the defense of, indemnify and hold harmless, District, its officers, agents, and employees from all claims, liability, loss, damage, and injury of any kind, nature, or description directly or indirectly arising during the initial term of this Agreement, or any renewal thereof, and resulting from the public use of the Premises pursuant hereto or from public use of adjacent Premises of District occurring in consequence of City's or the public's use of the Premises or from acts, omissions, or activities of City's officers, agents, employees, or independent contractors employed by City, excepting claims, liability, loss, damage, or injury which arise from the willful or negligent acts, omissions, or activities of an officer, agent, or employee of District. Except as described above, This Agreement to defend, indemnify, and hold harmless the District shall operate irrespective of the basis of the claim, liability, loss, damage, or injury and irrespective of whether the act, omission, or activity is a condition of premises or any other cause of any kind or nature.

(d). District shall assume the defense of, indemnify, and hold harmless, City, its officers, agents, and employees from all claims, liability, loss, damage, and injury of any kind, nature or description directly or indirectly arising from District's exercise of its flood control or water conservation purposes on the Premises pursuant hereto or from acts, omissions, or activities of District's officers, agents, employees, or independent contractors employed by District excepting claims, liability, loss, damage, or injury which arises from the willful or negligent acts, omissions or activities of an officer, agent, or employee of City. Except as described above, This agreement to defend, indemnify, and hold harmless shall operate irrespective of the basis of the claim, liability, loss, damage, or injury, and irrespective of whether the act, omission, or activity is a condition of premises or any other cause of any kind or nature. Any and all notices required to be given hereunder shall be deemed to have been delivered upon deposit in the United States mail, postage prepaid, addressed to either of the parties at the address hereinafter specified or as later amended by either party in writing:

City

District

City Of Cupertino
10300 Torre Avenue
Cupertino, CA 95014
Attention: Director of Public Works

Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, California 95118
Attention: Clerk of the Board

This agreement, and all the terms, covenants, and conditions hereof, shall apply to and bind the successors and assigns of the respective parties hereto; provided, that City shall neither assign nor sublet this Agreement without prior written consent of District.

This agreement includes any and all exhibits, covenants, agreements, conditions, and understandings between City and District concerning the Premises. There are no covenants, agreements, conditions, or understandings, either oral or written, between the parties hereto other than herein set forth.

WITNESS THE EXECUTION HEREOF the day and year first hereinabove set forth.

"City"

"District"

CITY OF CUPERTINO

SANTA CLARA VALLEY WATER DISTRICT,
a public corporation

By: David W. Knapp 12.19.03
David W. Knapp
City Manager

By: Sig Sanchez
Chair/Board of Directors

ATTEST:

ATTEST:

Kimberly Smith
City Clerk

Lawrence L. Kella
Clerk/Board of Directors

APPROVED AS TO FORM:

APPROVED AS TO FORM:

[Signature]
City Attorney

[Signature]
General Counsel

RESOLUTION NO. 03-228

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
AUTHORIZING EXECUTION OF A JOINT USE AGREEMENT WITH THE SANTA
CLARA VALLEY WATER DISTRICT FOR THE REGNART CREEK TRAIL**

WHEREAS, a Joint Use Agreement with the Santa Clara Valley Water District is necessary because the Regnart Creek Trail passes over land owned by the District; and

WHEREAS, said agreement will allow for the use of the land for bicycle and pedestrian access,

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Cupertino hereby authorizes the City Manager to negotiate and execute a Joint Use Agreement for bicycle and pedestrian access of the Regnart Creek Trail on behalf of the City of Cupertino.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 15th day of December, 2003, by the following vote:

<u>Vote</u>	<u>Members of the City Council</u>
AYES:	James, Kwok, Lowenthal, Sandoval, Wang
NOES:	None
ABSENT:	None
ABSTAIN:	None

THIS IS TO CERTIFY THAT THE WITHIN INSTRUMENT IS A TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE IN THIS OFFICE.

ATTEST December 22, 2003
CITY CLERK OF THE CITY OF CUPERTINO
BY Kevin A. Bernard
for CITY CLERK

ATTEST:

/s/ Kimberly Smith

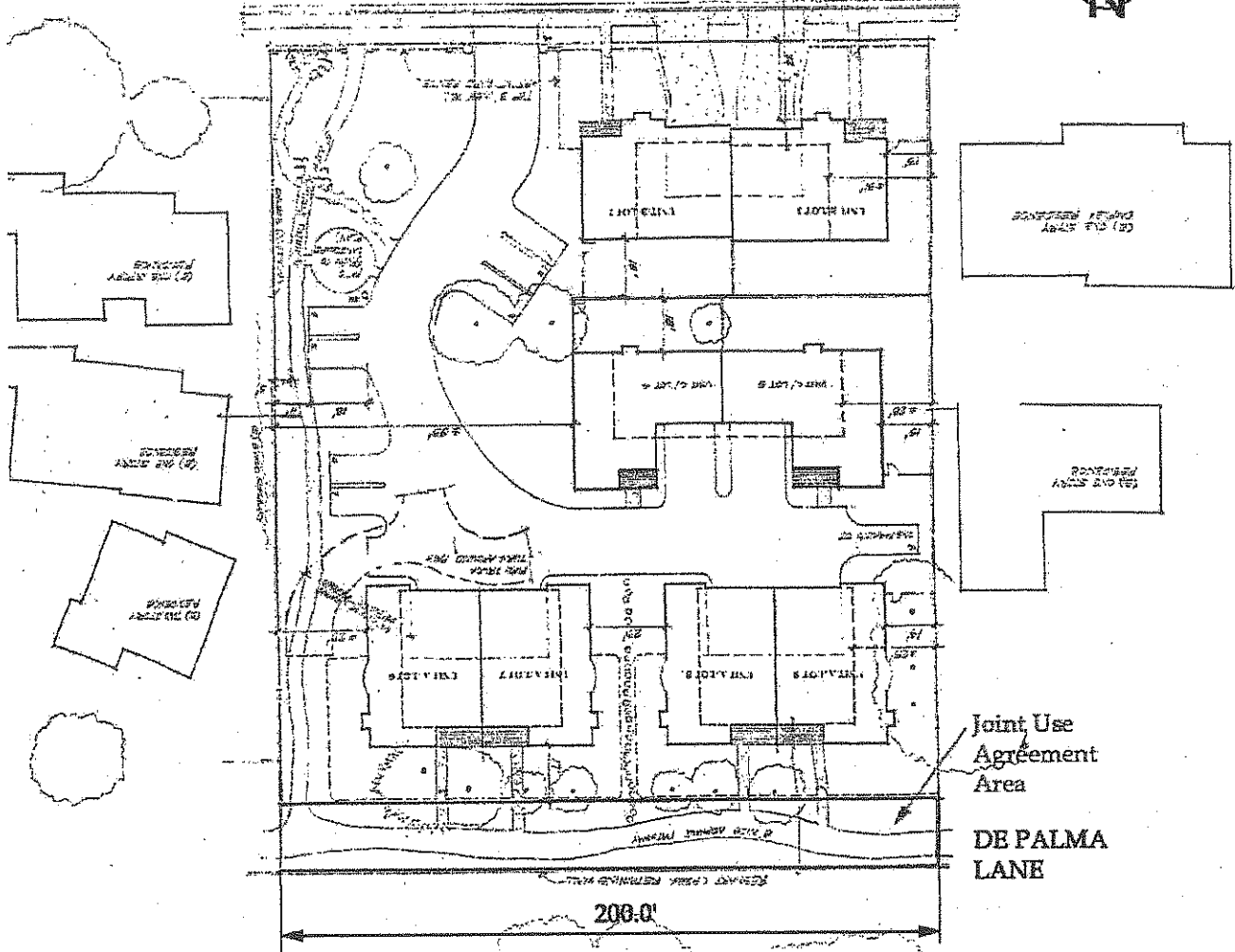
City Clerk

APPROVED:

/s/ Sandra James

Mayor, City of Cupertino

RODRIGUES AVENUE



Joint Use Agreement Area

DE PALMA LANE

200.0'

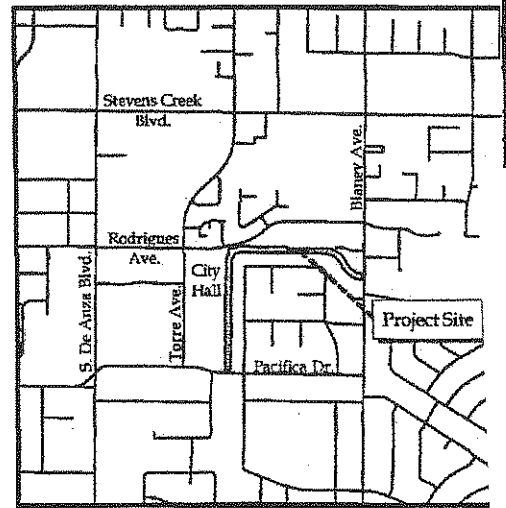


EXHIBIT A

APN-
369-32-036



City of Cupertino

Regnart Creek Trail

Prepared by the Community Development Department
Last Updated: September 18, 2003



10/11/03 10:15 AM



RODRIGUES AVE

S BLANEY AVE

Regnart Creek



LAS ONDAS WAY

BRITTANY CT

Id: 56
Creek: Regnart II
Agency: City of Cupertino
Term: 30
Expires: 01/19/34
APN: 369-32-036
Use: Public Pathway

 JOINT USE AGREEMENT AREA





A duly executed copy of this document has been received and placed on file.

Date: 2/6/08

Meeting Date: 02/06/08
Agenda Item: 5
Manager: B. Goldie
Extension: 2634
Director: P. Kwok/T. Estremera

CONFORMED COPY
BOARD AGENDA MEMO

Discussion Action Consent Information

SUBJECT: Amendment to Joint Use Agreement With the City of Cupertino for Bicycle and Pedestrian Path Along Regnart Creek

RECOMMENDATION:

1. Consider the potential environmental effects of the project discussed in the Negative Declaration prepared by the City of Cupertino (City) (Attachment 2).
2. Authorize the interim Chief Executive Officer (CEO) to execute the amendment to the Joint Use Agreement (Agreement) with the City (Attachment 3).
3. Authorize the Chair of the Board of Directors to sign the proposed transmittal letter (Attachment 4).

RATIONALE:

An amendment (Attachment 3) of the existing Agreement is requested by the City to encumber the additional District lands for recreational purposes along Regnart Creek.

Executive Limitations Policy No. EL-5, Item 5.9, requires that the Board make all decisions regarding the acquisition, encumbrance, or disposal of real property. This amendment to the Agreement, authorizing joint use with the City, encumbers additional District property and is presented to the Board for consideration and delegation of authority to the CEO to execute the agreement.

This amendment also supports Board Ends Policy 3.3.1 which states "Public access to 70 miles of trails along creeks and access to open space by the year 2016 consistent with Measure B." This provides an additional 0.04 miles of trails to support the policy.

SUMMARY:

The location of the property is shown as Attachment 1.

On January 20, 2004, the City and the District entered into a 30-year term Agreement for the purpose of allowing recreational uses of District property along Regnart Creek at De Palma

SUBJECT: Amendment to Joint Use Agreement With the City of Cupertino for Bicycle and Pedestrian Path Along Regnart Creek

02/06/08

Lane. The City desires to amend the Agreement to extend the limits of the pathway along Regnart Creek up to the terminus of De Palma Lane as shown on Exhibit B. The additional lands provide for 200 feet (0.04 miles) of trail. The premises subject to this amendment are also subject to use for vehicular access as described by the Grant Deeds adopted on December 18, 1961 and January 2, 1962. The Grant Deeds grant the owners of the property at 20055 and 20065 De Palma Lane the right to construct an access road within the District property. The City and the developer have worked together to accommodate the vehicular access and pedestrian path in the design of the development.

Pending the Board's consent of the recommended actions, a District construction/encroachment permit can be issued for the proposed trail construction.

CEQA REQUIREMENTS:

The City, acting as a lead agency for the trail project, approved a Negative Declaration for the development at 20055 and 20065 De Palma Lane in July 2006. Later, the City prepared an Environmental Assessment Addendum to the Negative Declaration to include the trail construction.

As a fee title owner of the property where the trail will be constructed and a permitting agency, the District is a responsible agency under CEQA for this project. The District may rely upon the Lead Agency's CEQA analyses prior to approving the Agreement. In its findings for the project, the City states that the project is consistent with the City's General Plan and there are no significant environmental effects. The addendum identifies that the residential development will be subject to the construction best management practices to mitigate for the potential impacts on storm water quality. Provisions will be included in the District's permit for the project, as appropriate, to ensure that the mitigation measures are included in the project delivery.

The final Negative Declaration is included as Attachment 2.

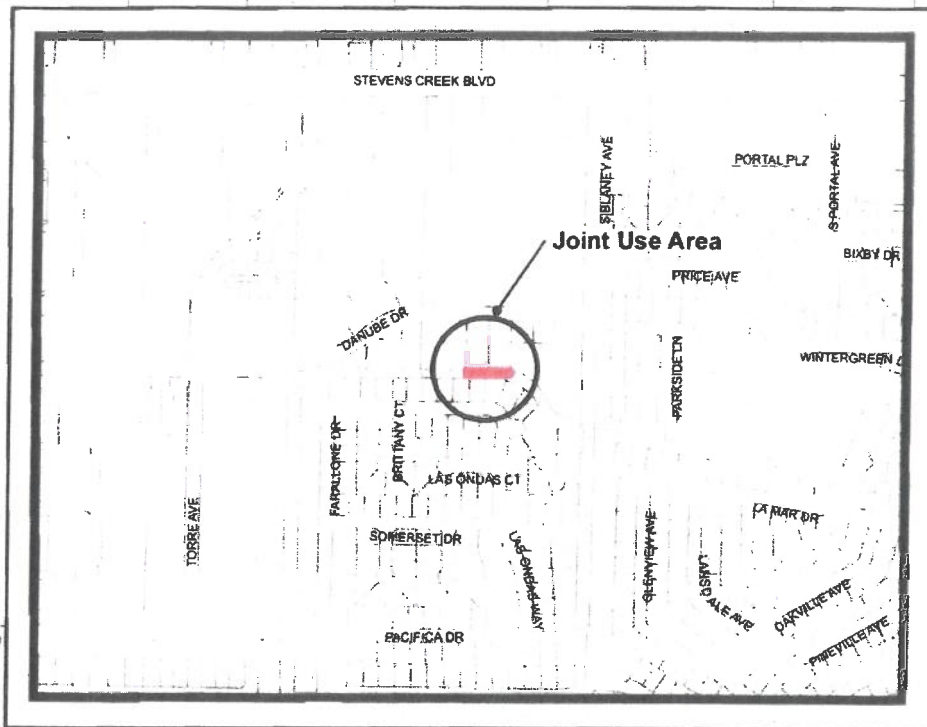
PUBLIC OUTREACH:

District staff worked with the City to develop the amendment.

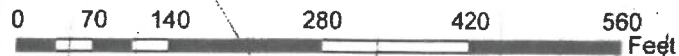
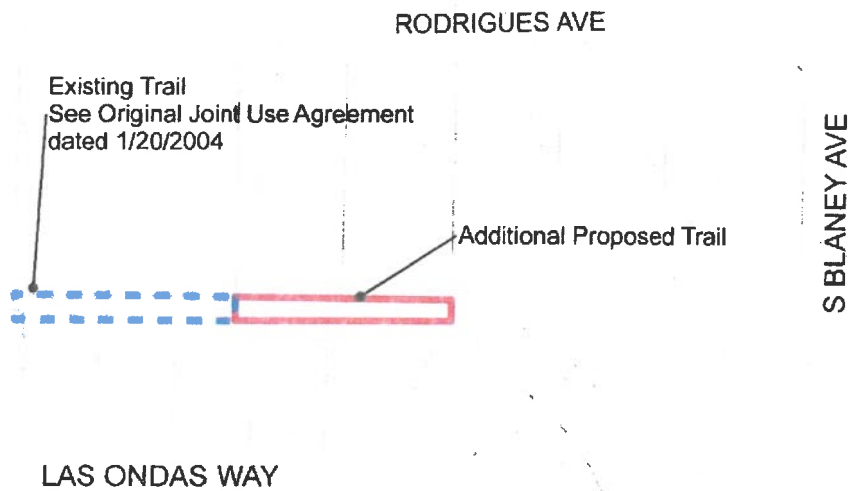
FINANCIAL IMPACT:

There is no immediate or direct financial impact with the approval of the amendment.

-  Existing Trail
-  SCVWD Fee



LOCATION MAP



Santa Clara Valley Water District
 5750 Almaden Expressway
 San Jose, CA 95118-3614



**Regnart Creek Trail
 Joint Use Agreement
 Santa Clara Valley Water District
 And
 City of Cupertino**

ATTACHMENT

1

**AMENDMENT
TO THE JOINT USE AGREEMENT BETWEEN THE
CITY OF CUPERTINO
AND
SANTA CLARA VALLEY WATER DISTRICT
ALONG REGNART CREEK**

This agreement is made and entered into on this 6th day of FEB, 2008, ("Effective Date") by and between the City of Cupertino, a chartered California municipal corporation, with its principal place of business located at 10300 Torre Avenue, Cupertino, California 95014 ("City") and Santa Clara Valley Water District, a California public entity, with its principal place of business located at 5750 Almaden Expressway, San Jose, California 95118 ("District"). District and City may be referred to herein individually as a "Party" or collectively as the "Parties".

RECITALS

- A) Whereas, the Parties entered into an agreement entitled "JOINT USE AGREEMENT" (Agreement), effective January 20, 2004 for recreational purposes on premises along Regnart Creek; and
- B) Whereas, the Parties now wish to amend the Agreement to include additional lands as shown on Exhibit B.
- C) Whereas the parties recognize that the premises subject to this amendment are used for vehicular access as described by the Grant Deeds adopted December 18, 1961 and January 2, 1962.

The Parties agree to amend the Agreement as follows:

AGREEMENT PROVISIONS


- 1) Exhibit A to the original Agreement (attached), is hereby amended as set forth in Exhibit B attached to this Amendment and incorporated by this reference. The alignment of a bicycle and pedestrian access path shall be along Regnart Creek (a portion of APN 369-32-036) at the terminus of DePalma Lane.
- 2) All other terms of the original Agreement, not specifically modified by this Amendment shall remain in full force and effect.

The Parties acknowledge and accept the terms and conditions of this Amendment as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Amendment shall become operative on the Effective Date first set forth above.

CITY OF CUPERTINO, CALIFORNIA

APPROVED AS TO FORM:


Charles Kilian
City Attorney

 2.25.08
David Knapp
City Manager

ATTEST:

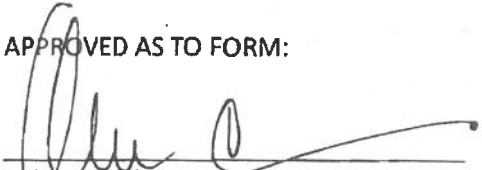

Kim Marie Smith
City Clerk

10300 Torre Avenue
Cupertino, CA 95014
Telephone: (408) 777-3212
Facsimile: (408) 777-3366

"City"

**SANTA CLARA VALLEY WATER DISTRICT,
a public entity**

APPROVED AS TO FORM:


Debra Cauble
District Counsel


Olga Martin Steele
Chief Executive Officer

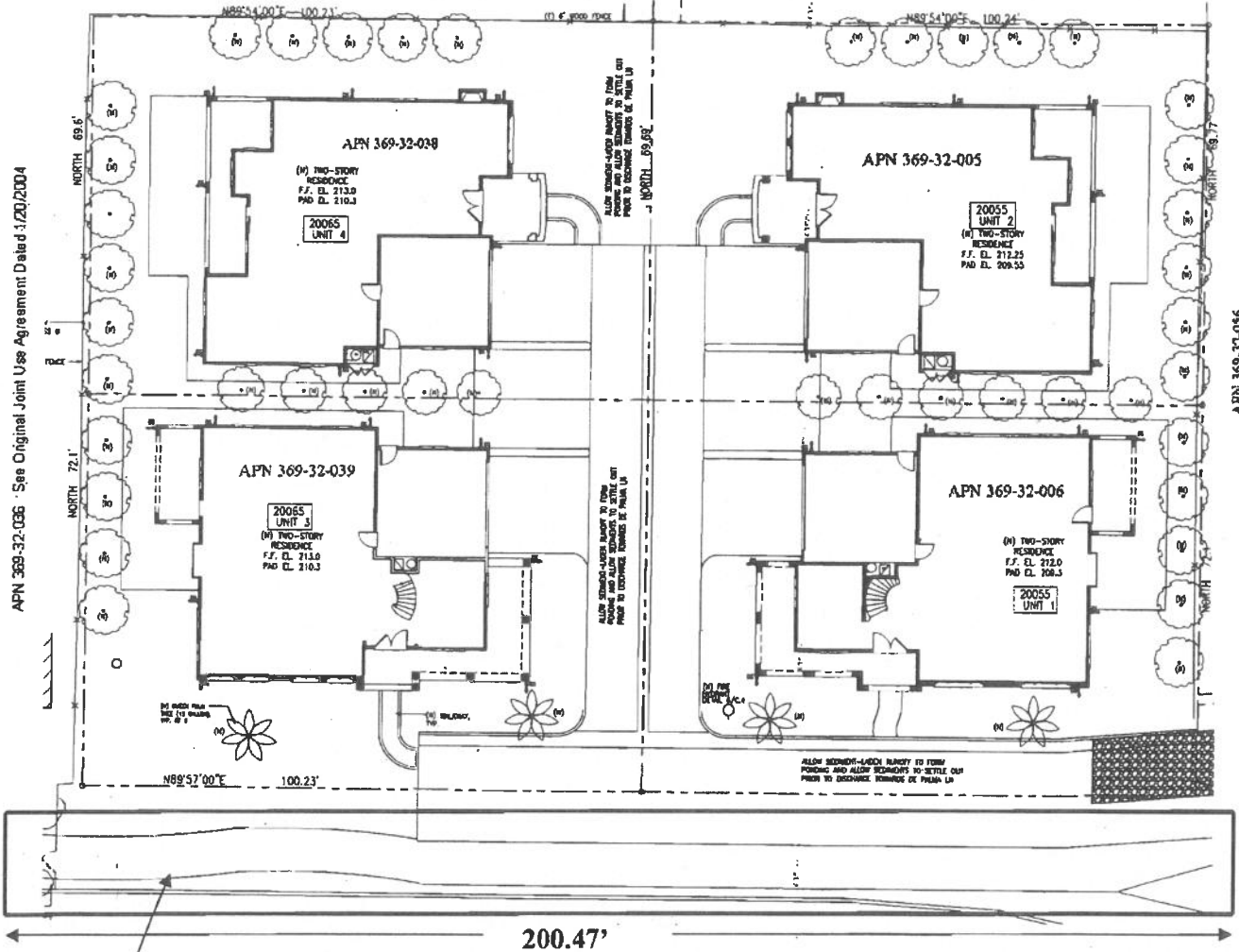
ATTEST:


acting Clerk/Board of Directors

5750 Almaden Expressway
San Jose, CA 95118
Telephone: (408) 265-2600
Facsimile: (408) 266-2897

"District"

20055 / 20065 DE PALMA LANE Amendment



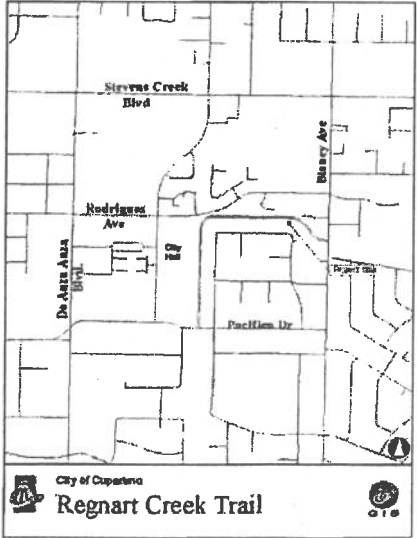
APN 369-32-036 - See Original Joint Use Agreement Dated 1/20/2004

APN 369-32-036

Additional
Joint Use
Agreement Area

EXHIBIT "B"

REGNART CREEK TRAIL
JOINT USE AGREEMENT
SANTA CLARA VALLEY WATER DISTRICT
AND
CITY OF CUPERTINO



Location Map

valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the intentional conduct of said Owner or Owners other than adjustments by Declarant in the original construction. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners of each adjoining Lot agree that minor encroachments over adjoining Lots and Common Area shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist. In the event that an error in engineering, design or construction results in an encroachment of a building into the Common Area, or into or onto an adjoining Lot, or into a required setback area, a correcting modification may (at the discretion of Declarant) be made in the subdivision map. Said modification shall be in the form of a certificate of correction and shall be executed by Declarant (so long as Declarant is the sole owner of the Project) and by Declarant's engineer and by the city engineer. If the correction occurs after title to the Common Area has been conveyed to the Association, the Association shall also execute the certificate of correction. The Board of Directors may, by vote or written approval of a majority of the directors, authorize the execution of the certificate of correction.

2.9 Party Walls and Common Roof Systems:

A. General Rules of Law to Apply: Each wall, footing or foundation and/or common roof system that is built as part of the original construction of a residence, is located on the boundary line with an adjacent Lot and either is used in common with the residence on the adjacent Lot or abuts against a similar wall, footing or foundation and/or common roof system on the adjacent Lot shall constitute a "party wall." To the extent not inconsistent with the provisions of this section 2.9, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

B. Sharing of Repair and Maintenance: The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the party wall in proportion to such use.

C. Destruction by Fire or Other Casualty: If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the party wall may restore it, and if the other Owners thereafter make use of the party wall, they shall contribute to the cost of restoration thereof in proportion to such use; provided, however, that the Owner or Owners whose negligent act or omission proximately caused the damage or destruction, shall bear the full cost of restoration that is not covered by insurance.

D. Weatherproofing: Notwithstanding any other provisions of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

E. Right to Contribution Runs with Land: The right of any Owner to contribution from any other Owner under this section 2.9 shall be appurtenant to the land and shall pass to such Owner's successors in title.

F. Arbitration: In the event of any dispute arising concerning a party wall, or concerning the provisions of this section, upon written request of one (1) Owner addressed to the other Owner(s), the matter shall be submitted first to the Board for mediation, and thereafter, if the dispute remains unresolved, to binding arbitration within sixty (60) days pursuant to the rules of Judicial Arbitration and Mediation Services ("JAMS"), or any successor thereto, or to any other generally

recognized system of alternative dispute resolution, and judgment may be entered thereon in any court having jurisdiction.

2.10 Maintenance Easement: An easement over each Lot is reserved by Declarant, and is hereby granted to the Association, for the purpose of entering upon the Project to perform such maintenance, if any, as the Association may do in accordance with the provisions of section 5.1A of this Declaration.

2.11 Drainage Easements: An easement over and under each Lot as the servient tenement is reserved in favor of each other Lot as the dominant tenement for the purpose of allowing the Association's agents to enter the Lot to maintain that portion of an in-tract storm drainage system located thereon. No Owner or occupant shall commit any act that would interfere with the operation of any drainage system (including drainage swales) installed on the Owner's Lot, each Owner shall maintain the system free of debris and other obstacles at all times. Reciprocal appurtenant easements between each Lot and the Common Area and between adjoining Lots are reserved for the flow of surface water.

2.12 Pedestrian Pathway Easement: Declarant, as required by City, has constructed a pedestrian pathway that passes through the Project, from Rodrigues Avenue to the Regnart Creek walkway. The pathway may be used during daylight hours (only) by the public to walk between Rodrigues Avenue and the Regnart Creek walkway. The pathway is designated "10' Pedestrian Pathway Easement" on the Map.

2.13 Other Easements: The Common Area and each Lot are subject to all easements, dedications, and rights of way granted or reserved in, on, over and under the Project as shown on the Map.

2.14 Rights of Entry and Use: The Lots and Common Area (including Restricted Common Area) shall be subject to the following rights of entry and use:

A. The right of the Association's agents to enter any Lot to cure any violation of this Declaration or the Bylaws, provided that the Owner has received notice and a hearing as required by the Bylaws (except in the case of an emergency) and the Owner has failed to cure the violation or take steps necessary to cure the violation within thirty (30) days after the finding of a violation by the Association;

B. The access rights of the Association to maintain, repair or replace improvements or property located in the Common Area as described in section 5.2E;

C. The easements described in this Article II;

D. The right of the Association's agents to enter any Lot to perform maintenance as described in section 7.19;

E. The rights of the Declarant during the construction period as described in section 9.6.

2.15 Partition of Common Area: There shall be no subdivision or partition of the Common Area, nor shall any Owner seek any partition or subdivision thereof.