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IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT, IN AND FOR ORANGE COUNTY, FLORIDA

Michelle Irizarry, Valerie Williams, and Joanne Nixon,

CASE NO:

Plaintiffs,

v.

Orlando Utilities Commission; Lennar Corporation; U.S. Home Corporation; Avalon Park Group Management, Inc., d/b/a Avalon Park Group; and Beat Kahli,

Defendants.

_____/

CLASS ACTION COMPLAINT

Plaintiffs, in their individual capacities and on behalf of classes of similarly situated individuals defined herein, bring this action against the Orlando Utilities Commission Lennar Corporation, U.S. Home Corporation, Avalon Park Group Management, Inc., d/b/a Avalon Park Group, and Beat Kahli. In support of this action, Plaintiffs allege the following:

INTRODUCTION

1. This case is brought by Michelle Irizarry, Valerie Williams, and Joanne Nixon, on behalf of themselves and on behalf of a class and subclasses of individuals with properties located in a defined area within the southeastern corner of Orlando ("Class Area"), arising from contamination of their properties by airborne coal dust, coal

combustion residuals including fly-ash and bottom ash, harmful organic compounds, radionuclides and metals blown from the two coal-fired energy generation units at the Curtis H. Stanton Energy Center (the "Stanton Power Plant"),[1] which is owned and operated by the Defendant Orlando Utilities Commission ("OUC"). Under Florida law, the OUC is strictly liable and subject to claims for inverse condemnation for damages to Plaintiffs' properties and the properties of the putative class members. Specifically, particulates comprised of coal combustion residuals, coal dust, harmful organic compounds, radionuclides and metals blowing from the Stanton Power Plant have contaminated the Plaintiffs' properties with carcinogenic radionuclides, including polonium and polyaromatic hydrocarbons including Benzo(a)Pyrene ("BaP") and metals in concentrations exceeding Federal and Florida regulatory standards. (Collectively, radionuclides, BaP, and metals from the Stanton Power Plant are referred to as "Contaminants.") In fact, these dusts are easily visible to the naked eye when driving or walking through the Class Area. As a result, pediatric central nervous system, blood, and bone cancer rates in the Class Area drastically exceed National and Orange County levels. Plaintiffs and members of the proposed class have been deprived of the fair use and enjoyment of their properties; the value of the properties owned by Plaintiffs and the members of the class has been damaged; and the properties need remediation to prevent additional future harms.

[1] A diagram of the approximate boundary of the Class Area, which was defined by soil sampling and laboratory analysis, modeling procedures of the Environmental Protection Agency, and the power plant's own monitoring data is attached for illustrative purposes only as **Exhibit A**.

2. Plaintiffs also allege the developers and managers of the master-planned residential communities in the Class Area, including Lennar Corporation, U.S. Home Group, Avalon Park Group Management, Inc., as well as the principal of Avalon Park Group, Beat Kahli (collectively referred to as "Developer Defendants"), planned, marketed, built, and managed residential neighborhoods close to the Stanton Power Plant without addressing the risks and harms posed by the Contaminants, and that these developers are strictly liable for damages to the properties of the Plaintiffs and the putative subclass members. The suburban residential communities in the Class Area were touted carefully planned developments that would provide luxurious, yet affordable, neighborhoods in which families and children could safely live, work, and play.

3. There is a causal relationship between exposure to these Contaminants and cancer—especially in children. The danger of such exposure is borne out by an epidemiologic analysis and a site investigation, which found a correspondingly higher incidence of pediatric brain and blood cancers in the Class Area, including two exceedingly rare pediatric cancers—Diffuse Intrinsic Pontine Glioma and Ewing's Sarcoma—that occur repeatedly in the Class Area.

4. As a result of being exposed to Contaminants from the Stanton Power Plant, children and adults residing in the Class Area face an unacceptable risk of contracting cancer and other diseases. As a result of Defendants' conduct, children in the Class Area have been stricken with cancer, and some have died. The only source of these Contaminants is the Stanton Power Plant, which has a unique Contaminant

fingerprint. For more than 15 years, samples of the groundwater beneath the Stanton Power Plant's coal combustion residual piles have consistently shown gross alpha radiation above regulatory levels. As there is no background source of gross alpha beneath the Stanton Power Plant and surrounding community in the groundwater, the only source of gross alpha radiation in the groundwater is the radionuclides that have percolated down with precipitation from the coal combustion residual piles into the groundwater. This is not surprising since the Stanton Power Plant purchases coal from the most radioactive coal basin in the United States.

5. Plaintiffs and the putative class members have been damaged and have incurred damages as a result of the depositing of Contaminants from the Stanton Power Plant onto their properties. Their properties and all properties within the Class Area have been contaminated with hazardous, cancer-causing substances.

PARTIES

Plaintiffs

6. Plaintiffs own property located in the Class Area.

7. Plaintiff Michelle Irizarry is a resident of Orange County, Florida. Plaintiff Michelle Irizarry owns property located within the Stoneybrook community in the Class Area at 14851 Hawksmoor Run Circle, Orlando, Florida. Plaintiff Michelle Irizarry is a putative class representative and subclass representative for the Stoneybrook subclass.

8. Plaintiff Valerie Williams is a resident of Orange County, Florida. Plaintiff Valerie Williams owns property located within the Stoneybrook community in the Class

Area at 14701 Chadbury Court, Orlando, Florida. Plaintiff Valerie Williams is a putative class representative and subclass representative for the Stoneybrook subclass.

9. Plaintiff Joanne Nixon is a resident of Orange County, Florida. Plaintiff Joanne Nixon owns property located within the Eastwood community in the Class Area at 14136 Deljean Circle, Orlando, Florida. Plaintiff Joanne Nixon is a putative class representative.

Defendants

10. The OUC is a municipally-owned public utility, governed by a five-member commission (including the Mayor of Orlando), that provides water and electric service to the citizens of Orlando, St. Cloud, and unincorporated areas of Orange County, Florida. Established in 1923 by a special act of the Florida Legislature, the OUC is the second largest municipal utility in Florida and 14th largest municipal utility in the country.

11. Defendant Lennar Corporation ("Lennar"), a public company headquartered in Miami, Florida, is the parent of Defendant U.S. Home Corporation (U.S. Home"). U.S. Home Corporation ("U.S. Home") is a Delaware corporation that constructed homes in the Stoneybrook community, located in the Class Area. Its principal address is 700 N.W. 107th Avenue, Suite 400, Miami, FL 33172, and its registered agent is located at 1200 South Pine Island Rd., Suite 250, Plantation, FL 33324.

12. Lennar acquired U.S. Home in or around 2000 and was responsible for developing and managing the Stoneybrook East Community following the acquisition.

Until 2013, Lennar operated the homeowner's association for the Stoneybrook community. Lennar has the same principal address as U.S. Home, 700 N.W. 107th Avenue, Suite 400, Miami, FL 33172, and its registered agent is also located at 1200 South Pine Island Road, Plantation, FL 33324.

13. Avalon Park Group Management, Inc., which does business as Avalon Park Group, is a Florida corporation that marketed the master-planned Avalon Park development, and constructed homes in the Avalon Park community, located in the Class Area. Its registered agent is Marybel Defillo, 3680 Avalon Park East Blvd., Suite 300, Orlando, FL 32828, which is also the principal address of the corporation.

14. Beat Kahli is the President and CEO of Avalon Park Group and has been responsible for developing and marketing Avalon Park since the underlying land was acquired by his predecessor firm, Kahli & Associates, in or around 1995. Upon information and belief, Mr. Kahli is a resident of Florida.

JURISDICTION AND VENUE

15. The Court has jurisdiction as this is an action for damages that exceeds the sum of $15,000, exclusive of costs, interest, and attorneys' fees.

16. The Court has personal jurisdiction over the OUC, Lennar Corporation, U.S. Home Corporation, Avalon Park Group, and Mr. Kahli because they are Florida citizens.

17. Venue is proper in the Circuit Civil Court of Orange County, Florida, pursuant to Florida Statutes § 47.011 and § 47.051, because the harmful contamination

of Plaintiffs' properties, and the properties of the putative class members, occurred in Orange County, the location where Plaintiffs' causes of action accrued.

FACTUAL ALLEGATIONS

18. The OUC, which bills itself as *"**The Reliable One**,"* is the municipal utility responsible for providing electric, water, chilled water, and/or lighting services to more than 435,500 people in the Orlando area. It owns and operates the Stanton Power Plant, located in east Orange County twelve miles southeast of Orlando, which can generate more than 1,800 megawatts of electricity.

19. Although the Stanton Power Plant also includes two natural gas-fired energy generating units that are jointly owned and operated with the Southern Company, the portions of the Stanton Power Plant that are relevant to this case are No. 001 ("Unit No. 1") and No. 002 ("Unit No. 2"), two 440-megawatt coal-burning facilities. Unit No. 1 consists of a Babcock and Wilcox boiler/steam generator (Model RB 611) and steam turbine, which drives a generator with a nameplate rating of 468 megawatts. Unit No. 2 consists of a Babcock and Wilcox boiler/steam generator (Model RB 621) and steam turbine, which drives a generator with a nameplate rating of 468 megawatts. Each boiler/steam generator is a wall-fired dry-bottom unit.

20. The foundation for Units No. 1 and 2's development lies in the late 1970s and early 1980s, when the OUC determined that its then-existing generating capacity could not satisfy future energy demands in the Orlando area. The OUC's engineering consultants recommended that the OUC develop a new coal-fired plant in order to

accommodate rapid projected growth in Orlando and transition from the volatile oil market to coal. The OUC adopted their recommendation and began developing Units No. 1 and 2 of the Stanton Power Plant, which began commercial operations in 1987 and 1996, respectively.

21. In addition to operating Units 1 and 2, the OUC is also responsible for other relevant aspects of operations at the Stanton Power Plant, including transportation and offloading of coal for use in Units 1 and 2, storage and handling of coal for use in Units 1 and 2, and storage, handling, and disposition of solid fuels, coal, coal ash, coal combustion residuals, limestone, gypsum, and slag used in or generated from Units 1 and 2.

22. The Stanton Power Plant is located at 5100 S. Alafaya Trail, Orlando, FL 32831, less than two miles south of the southern portion of the Class Area, in the middle of the Hal Scott Regional Preserve and Park, a flat wetland nature preserve, which lacks any impediments to prevent particulates from being carried from the plant onto the Class Area. A wind-rose from the Orlando International Airport shows that wind blows from all directions, permitting Contaminants to be transmitted from the power plant to the residential properties in the Class Area on a nearly continuous basis, to the present day.

23. There are no other industrial facilities near the Class Area, and the Stanton Power Plant is the only plausible source of Contaminants in the Class Area.

Contamination of the Class Area

24. Laboratory analysis of soil samples from the Class Area found coal dust and fly ash with levels of Contaminants exceeding regulatory standards, including polynuclear aromatic hydrocarbons ("PAHs") such as BaP; heavy metals; and gross alpha radiation from radionuclides including radium and plutonium.

25. Soil samples from multiple properties within the Class Area, collected on separate occasions, contained PAHs including BaP, metals including copper, and radionuclides, at concentrations exceeding state and federal cleanup standards. For uranium mining facilities, the U.S. EPA has established 5 picoCuries per gram (pCi/g) as the maximum allowable concentration of alpha radiation in soil. The U.S. EPA considers these regulations to be cleanup standards at Superfund sites. *See* the EPA document "Use of Soil Cleanup Criteria in 40 CFR Part 192 as Remediation Goals for CERCLA Sites." The concentrations of gross alpha measured at the Site ranges from 6.61 to 18.1 pCi/g, and alpha radiation from polonium exceed 16pCi/G. The Florida BaP soil remediation objective is 100 parts per billion (ppb), and the Federal cleanup objective is 110 ppb. The concentrations of BaP in the Class Area ranged from 120 to 310 ppb, and thus exceed both federal and state cleanup objectives. The concentrations of many metals also exceed the U.S. EPA's Soil screening Levels. *See* U.S.EPA Regional Screening Levels (RSLs) Generic Tables for Residential Land Use (November 2017). The collected samples also exceed Florida's regulations regarding Target Levels for Containment Cleanup as set forth in Chapter 62-777 of the Florida Administrative Code. It is important to note that children are far more susceptible to

alpha radiation than adults because of their lower body mass, rapidly developing cells, and more frequent contact with soil. Children in the Class Area were likely exposed to the Contaminants both before and after birth.

26. PAHs, BaP, heavy metals, and radionuclides are an exclusive fingerprint of coal and coal combustion residuals. The presence of these chemicals in the Class Area, individually or in combination, demonstrates there is no other entity that could have caused the presence of the Contaminants in the Class Area other than the Stanton Power Plant.

27. Coal contains naturally occurring radioactive materials consisting of uranium and its decay products, including radium and polonium. Coal combustion residuals are the chemicals remaining after coal is burned by power plants to produce electricity. When coal is burned, ignitable compounds, which are largely organics, are converted into energy, *i.e.*, heat, which in turn boils water to create steam that powers the rotation of turbines to create electricity. The remainder of the coal, the ash, is comprised of less ignitable organics including BaP, metals, and radionuclides. Studies have shown that burning coal concentrates naturally occurring radioactive materials in the coal combustion residuals as much as 3 to 10 times more than the concentrations in coal.

28. At the Stanton Power Plant, coal combustion residuals are trucked over open roads to where they are dumped on uncovered piles. Coal, which is also a source of metals, radionuclides, and metals are also stored in open piles on the Site.

29. Wind then carries the coal particles and coal combustion residue particulates from the piles and the stacks over the flat surrounding nature preserve where it then settles onto the Class Area. In fact, the ash can be seen blowing around the neighborhood miles from the Stanton Power Plant. Air modeling of the power plant's air emissions from its coal combustion ash piles using the EPA's air dispersion modeling software referred to as "AERMOD," which incorporated results from the soil testing, and airborne particulate monitoring by the OUC and the Florida Department of Environmental Protection, demonstrate that particulates from the Stanton Power Plant settle onto the Class Area.

30. Samples of the groundwater beneath the Stanton Power Plant's coal combustion residual piles have consistently shown gross alpha radiation above Florida Department of Environmental Protection Groundwater and Surface Water Clean-up Target Levels. There is no background source of gross alpha in the groundwater. The only source of gross alpha in the groundwater is radionuclides that have percolated down with precipitation from the coal combustion residual piles into the groundwater.

31. Other studies confirm what the Stanton Power Plant's own data demonstrates. In 2006, the environmental organization Facing South conducted a study using the U.S. EPA's Toxics Release Inventory Program data. It concluded that the Stanton Power Plant emitted more coal combustion waste, containing perilous levels of heavy metals and radiation, than any other electrical facility in the United States. And a 2010 study performed by the Environmental Integrity Project and

Earthjustice documented the Stanton Power Plant's history of noncompliance with environmental regulations.

32. The OUC was well aware that the Stanton Power Plant was releasing copious amounts of ash and coal dust into the environment. As indicated in just a single excerpt from one of hundreds of pages of dust inspection reports, blowing dust was reported on more than 90% of the daily inspections. Its site inspector, Boral Services, noted that nearly every day dust was observed coming from the haul roads and landfill. While it notes that water was applied to the dusting area, it obviously was not enough, since the dust blew from the site nearly every day it was inspected. Below is a log for just a portion of 2017.

Date	Time	Is there any dust observed coming from roadways or landfill?	Was water applied to landfill?	Was water applied to roadways?	Was the sweeper truck operated on roadways?	If dust was observed, why was the sweeper truck or water truck NOT used?
05/05/2017	09:00	NO	NO	NO	NO	Rain
05/15/2017	09:00	YES	NO	YES	NO	
05/16/2017	09:30	YES	YES	YES	YES	
05/17/2017	09:00	YES	YES	YES	NO	
05/18/2017	09:30	YES	YES	YES	YES	
05/19/2017	09:30	YES	YES	YES	NO	
05/22/2017	09:00	YES	NO	NO	NO	Water truck down
05/23/2017	08:30	YES	NO	YES	YES	Water truck down
05/24/2017	10:00	YES	YES	YES	NO	
06/19/2017	13:00	YES	YES	YES	NO	
06/20/2017	09:00	YES	YES	YES	YES	
06/21/2017	09:30	YES	YES	YES	NO	
06/22/2017	08:30	YES	YES	YES	YES	
06/23/2017	08:00	YES	YES	YES	NO	
06/26/2017	10:00	YES	YES	YES	NO	
06/27/2017	10:30	NO	YES	YES	YES	
06/28/2017	08:30	YES	YES	YES	NO	
06/29/2017	–	YES	YES	YES	YES	
06/30/2017	–	YES	YES	YES	NO	
07/03/2017	08:30	YES	YES	YES	YES	
07/05/2017	09:30	YES	YES	YES	NO	
07/06/2017	09:00	YES	YES	YES	YES	
07/31/2017	09:00	YES	YES	YES	NO	
08/01/2017	08:30	YES	YES	YES	YES	
08/03/2017	09:00	YES	YES	YES	YES	
08/04/2017	09:30	YES	YES	YES	NO	
08/07/2017	09:00	YES	YES	YES	YES	
08/08/2017	10:00	YES	YES	YES	NO	
08/14/2017	09:40	YES	YES	YES	NO	
08/15/2017	10:00	YES	YES	YES	YES	
08/17/2017	09:00	YES	YES	YES	YES	
08/18/2017	08:30	YES	YES	YES	NO	
08/21/2017	09:00	YES	YES	YES	NO	
08/22/2017	09:00	YES	YES	YES	NO	
08/24/2017	09:00	YES	YES	YES	NO	
08/25/2017	08:45	YES	YES	YES	NO	
08/28/2017	09:30	YES	YES	YES	NO	
08/29/2017	09:00	YES	YES	YES	YES	
08/31/2017	09:30	YES	YES	YES	YES	
09/04/2017	10:00	YES	YES	YES	NO	
09/05/2017	09:00	YES	YES	YES	YES	
09/07/2017	09:00	YES	YES	YES	YES	

33. The OUC purchases coal for its Stanton Power Plant from the Illinois Basin, which has the highest radioactivity of any coal in the continental United States. According to publicly available minutes from the OUC, "Mr. Ksionek asked Jan Aspuru to provide a presentation on Affirmative Item A-2 regarding the Railroad Transportation Contract. Mr. Aspuru provided background information for the contract. In 2004, OUC and CSX Transportation, Inc. (CSXT) entered into a 13-year term to transport approximately 2 million tons of coal annually from the Illinois Basin to the Stanton Energy Center (SEC)." *Minutes*, Orlando Utilities Commission, January 23, 2018.

34. Even a 1,000-megawatt coal-fired power plant that is not using the most radioactive coal in the United States could still generate more than 10 tons/yr. of radionuclides. The radioactive emissions produced from the fly ash of a coal-fired power plant are 100 times more than a nuclear power generation of the same energy producing capacity.

Developments in the Class Area

35. The OUC began developing its coal-burning operations at the Stanton Power Plant in the 1980's. From the outset, the OUC knew that operating the plant in a manner that would minimize pollution from coal dust, coal ash, and coal residuals was critically important. In granting a permit for the development of the Stanton Power Plant and the project management plan prepared by the OUC's contractor, Black & Veatch, in 1982, the Florida Department of Environmental Protection required that the OUC "minimize fugitive dust emissions from the coal storage and handling facilities . . .," and ensure that "[a]ll conveyors and transfer points will be enclosed to preclude [particular

matter emissions," that "[i]nactive coal storage piles will be shaped, compacted and oriented to minimize wind erosion," use "[w]ater agents or chemical wetting agents" to prevent pollution "as necessary," and maintain a "fly ash handling system (including transfer and silo storage)" that was "totally enclosed and vented . . . through fabric filters." Final Determination, OUC Stanton Energy Center Units 1 and 2, Orange County, Florida, Permit No. Federal- PSD-FL-084, Florida Dep't of Environmental Protection, Bureau of Air Quality Management, May 14, 1982, *available at http://arm-permit2k.dep.state.fl.us/psd/0950137/0000D8F6.pdf.*

36. The Stanton Power Plant began coal-burning operations at Unit 1 in 1987 and at Unit 2 in 1996. Until the 1990's, the area surrounding the Stanton Power Plant was largely undeveloped, and there were few residential properties located in close proximity to the facility.

37. In the 1990's, real estate developers secured land for what ultimately became the suburban residential communities in the Class Area. Despite the fact that these communities were built in the shadow of the Stanton Power Plant, the developers did not take adequate steps to protect residents who bought homes in the Class Area from the Contaminants generated by the Stanton Power Plant, or take the actions needed to remediate the harms caused by the Contaminants and prevent future harms from the Contaminants. Instead, the developers have consistently provided residents of the Class Area with a false sense of security by promoting area communities as being safe for Class Area families.

38. Stoneybrook East was developed by U.S. Home Corp. in east Orange County in 1996. Again, despite its location just four miles from the Stanton Power Plant, U.S. Home sought to attract a broad range of buyers by portraying the development as a prestigious golf course community offering condos, single-family homes, and paired villas. After acquiring U.S. Home, Lennar remained involved in developing, promoting and managing the Stoneybrook East community for many years, and continued to manage the homeowner's association for Stoneybrook East until 2013.

39. Eastwood was developed in 1992 and marketed as an affordable golf course community. Once more, although Eastwood is situated just five miles from the Stanton Power Plant, it was aggressively marketed to potential buyers and branded as "Homes for Tomorrow" with elaborate game and entertainment rooms, garage workshops, and innovate uses of natural gas. Eastwood had the highest volume of home sales among Orange, Osceola, and Seminole counties in the first half of 1998.

40. Beat Kahli, majority owner of the Avalon Park Group, marketed Avalon Park as a community designed to combat urban sprawl and offer affordable opportunities for families to live, work, and play. The Avalon Park Group claims to have recreated the traditional neighborhood, woven together by a sense of community, in which doctors and lawyers live down the street from teachers and police officers, and Main Street is flanked by mom-and-pop businesses. Kahli billed the development as "a city, a self-sustaining community," which includes schools, shops, start-up businesses, and a state-of-the-art football stadium as its centerpiece. Many of Avalon Park's unique features were financed by Kahli himself in order to stimulate the local economy and

attract homebuyers. Despite acknowledging Avalon Park's proximity to the Contaminant-spewing Stanton Power Plant, Kahli zealously pursued development and emphasized its suitability for families and children.

41. At no time did any of the Developer Defendants warn residents of the hazards associated with pollution from the Stanton Power Plant, do anything to address the pollution that existed within these communities, or take measures to address the harms that resulted from that pollution.

The Class Area's Exposure to Coal Plant Emissions Is Life Threatening

42. The Contaminants have caused, and are continuing to cause, devastating harm to the health and property of residents in the Class Area. There is a causal relationship between exposure to the Contaminants released from the Stanton Power Plant and various pathologies, including cancer—especially in children. The danger of such exposure is borne out by an epidemiologic analysis based on data from the Florida Cancer Disease Registry and a site investigation, which found a higher incidence of, for instance, pediatric brain and blood cancers including two exceedingly rare pediatric cancers that are causally associated with the Contaminants—Diffuse Intrinsic Pontine Glioma and Ewing's Sarcoma.

43. Although this proposed class action will not be focused on individual personal injuries, the issues in the case do involve serious human health concerns. An unusually high number of children residing in the area where Plaintiffs' properties are located have been stricken with cancer and a number of those children have died, and

our investigation (including the opinions of experts in the relevant fields) indicates those cancers resulted from exposure to Contaminants from the Stanton Power Plant.

44. Children are more vulnerable to exposures to coal-fired power plant emissions because of their prolonged time engaged in outdoor activities, greater air consumption relative to lung mass and body weight, frequent mouth breathing (which allows for less filtering through nasal passages), and direct contact with contaminated soil. As a result, comprehensive studies of childhood brain tumors and other cancers report associations with particulate matter contained in both coal and coal combustion residuals.

45. The Class Area falls within the southern portions of the 32825 and 32828 zip codes, and includes the communities of Avalon Park, Stoneybrook, Eastwood, Cypress Springs, Andover Lakes/Cay, and Turnberry Pointe/Cay.

46. The Class Area contains approximately 30,000 residents and approximately 15,000 housing units.

47. One method for assessing the impact of environmental carcinogens on a community is to calculate the ratio of observed to expected cancer cases. This is referred to as the "cancer incidence ratio" or "CIR." It is important to note that this is just one method for determining if a particular community has been impacted by an environmental factor. The cancer incidence ratio for central nervous system cancer in the Class Area is **5 to 10 times higher** than the cancer incidence ratio in Orange County, Florida, and the United States. The Florida Cancer Registry tracks the cancer incidence ratio by zip code. Zip code 32828 accounted for 13% of the cancer in Orange

County, but 32828's population of 60,000 is only 5% of Orange County's population of 1,200,000. Thus 32828's pediatric cancer rate is more than **3 times higher** than Orange County's pediatric cancer rate. Zip code 32828 accounted for 0.78% of the cancer in the State of Florida, but 32828's pediatric cancer rate is **3 times higher** than Florida's pediatric cancer rate. The rate of Leukemia in males in 32828 was more than **twice as high** as the rate of Leukemia in Orange County. The rate of brain and central nervous system cancer in males in 32828 was more than **twice as high** as the rate of brain and central nervous system cancer in Orange County. The rate of neuroblastoma cancer in males in 32828 was nearly **5 times as high** as the rate of neuroblastoma cancer in Orange County. But as high as these numbers are, based upon Plaintiffs' investigation, a disproportionate number of these incidences of cancer occur in the Class Area, which has a population only one-third of the size of the population in the entire zip code. Accordingly, it is likely that the cancer incidence ratio in the Class Area is **far higher** than the incidence ratio for 32828 reported by the Florida Cancer Registry.

48. Due to the presence of the dangerous, cancer-causing Contaminants in the Class Area, the properties of Plaintiffs and the putative class members cannot be safely inhabited. Soil and porous media should be removed to abate the risks to safe levels. Plaintiffs seek damages on behalf of themselves and the putative class members in the form of damages for impairment of their property; remediation; economic losses, such as loss of property value and the interference with the use and enjoyment of their property; and the prompt cleanup, excavation, treatment, and removal of radioactive wastes and related contaminants from their properties.

49. Contaminants generated by the Stanton Power Plant have damaged, and are continuing to damage, the properties owned by residents in the Class Area. To protect the value of properties owned by Plaintiffs and members of the proposed class, and to prevent additional future harm from ongoing discharges of Contaminants from the Stanton Power Plant, the implementation of a comprehensive remediation plan is needed. That plan would include, but not be limited to, changes to the OUC's methods for handling and storing coal and coal waste at the Stanton Power Plant to prevent pollution from the Contaminants; funding the replacement of soil, carpets, and furnishings polluted with Contaminants; and installing filtration systems to prevent future harms from the Contaminants.

50. All conditions precedent to this action have been met or waived.

Radionuclides, Including Polonium-210, Contaminate the Class Area and Cause the Types of Cancer Found in the Class Area

51. Combustion of coal concentrates the radionuclides in the ash by a factor of 10. Radionuclides contained in coal and fly ash emitting alpha radiation can include uranium, thorium, lead, polonium, and radium. The carcinogenic effect of gross alpha radiation has been studied for more than 100 years and is one of the prime radiological emissions of nuclear accidents and nuclear weapons. Such ionizing radiation, often manifested by the presence of gross alpha radiation, can cause cell death, chromosomal aberrations, DNA damage and replication errors, mutagenesis, and cancer. Cells, tissues, and organisms respond to radiation in a manner that is not readily predicted by dose.

52. Epidemiologic studies have shown that persons exposed to ionizing radiation have an increased risk of cancer, including bone cancer, brain cancer, and leukemia, and, later in life, breast and thyroid cancer. Recent comprehensive reviews and meta-analyses reported a statistically significant 1.2- to 1.5-fold increased risk of childhood leukemia associated with various markers of air pollution from coal-fired power plants, including particulate matter. The exposure of a fetus to radiation is referred to as prenatal radiation exposure. This can occur when the mother's abdomen is exposed to radiation from outside her body. Also, a pregnant woman who accidentally swallows or breathes in radioactive materials may absorb that substance into her bloodstream. From the mother's blood, radioactive materials may pass through the umbilical cord to the baby or concentrate in areas of the mother's body near the womb (such as the urinary bladder) and expose the fetus to radiation.

53. There is a general consensus in the scientific community that the diseases attributable to ionizing radiation (i.e., gross alpha) include, but are not limited to:

a. Cancers of the bile ducts, bone, brain, breast, colon, esophagus, gallbladder, liver (primary site, but not if cirrhosis or hepatitis B is indicated), lung (including bronchiolo-alveolar cancer), pancreas, pharynx, ovary, salivary gland, small intestine, stomach, thyroid, urinary tract (kidney/renal, pelvis, urinary bladder, and urethra);

b. Leukemia (except chronic lymphocytic leukemia);

c. Lymphomas (except Hodgkin’s disease);

d. Multiple myeloma (cancer of plasma cells); and

e. Tumors of the brain and central nervous system.

54. It is also well understood that there is an 8-week period during early pregnancy when an unborn child is especially sensitive to the effects of higher-than-normal levels of ionizing radiation. As the levels of ionizing radiation increase, so does the chance of brain abnormalities.

55. Studies have also indicated that the risk of breast cancer increases in women who were exposed to radiation during childhood. Irradiation in childhood can also cause an enlarged thymus, enlarged tonsils, tinea capitis, acne, and an increased risk for thyroid cancer. Fetal exposure to radiation has also been associated with severe mental retardation, the frequency and severity of which are related to the magnitude of the radiation dose.

56. Ionizing radiation adheres to and even penetrates porous materials such as fabric, soil, plants, wood, concrete, furniture, clothing, and equipment. In many instances, the surfaces cannot be cleaned and instead must be replaced.

57. Based on sampling conducted in 2018, Polonium-210 (chemical symbol Po-210) contaminates much if not all the Class Area. In one sample collected 3.7 miles from the Stanton Power Plant, polonium was detected at a concentration of greater than 16 pCi/g which is three times higher than U.S.EPA's benchmark for gross alpha radiation of 5 piC/g, which is based on the far less toxic radon and radium. The samples consisted of air-borne particulates that had deposited on the roofs.

58. The International Agency for Research on Cancer has designated Polonium-210 a Group 1 Human Carcinogen. The long-term lifespan-shortening effects

of polonium are comparable to plutonium, and five times greater than uranium and radium. Studies have concluded that a single alpha particle is toxic at the cellular level, and alpha particles can cause double-strand chromosomal breaks and chromosomal translocations that can lead to cancer. A 2011 cohort study examining the development of bone sarcoma in atomic bomb survivors of Hiroshima and Nagasaki concluded the following: "On the basis of what we believe is one of the longest and largest prospective studies assessing the development of bone sarcoma in individuals exposed to ionizing radiation, it appears that the development of radiation-induced bone sarcoma may be associated with exposure to much lower doses of ionizing radiation than have previously been reported."

59. Polonium-210 is a product of the radioactive decay of natural uranium (U-238), which is found in coal. Uranium-238 was also detected in particulates collected from the Class Area. The presence of Polonium-210 in significant concentrations is exceedingly rare in nature. However, studies have established that Polonium-210 is emitted in significant concentrations during the coal combustion process. Thus, Polonium-210 in the Class Area can be attributed only to the Stanton Power Plant. Polonium-210 released during coal combustion can be emitted in a gaseous state or attached to particulates and, accordingly, can be carried very far and inhaled deeply into the lungs. Polonium-210 has a physical half-life of approximately 140 days and a biological half-life of approximately 50 days. Physical half-life is defined as the amount of time required for one-half of the radioactivity to be lost due to decay, whereas biological half-life is defined as the time required to eliminate one-half of the substance

retained by the body. The time needed for Polonium-210 to disintegrate into the next radioactive isotope can be considerably longer.

60. Polonium-210 enters the body through inhalation, ingestion, and through orifices, skin abrasions, and wounds. Polonium-210 binds strongly to hemoglobin and plasma proteins and is not filtered by the kidneys.

61. Since Polonium-210 is being emitted from the continuous burning of coal by the Stanton Power Plant, the residents of the Class Area have been exposed on a continuous basis. Studies have shown that, in situations involving continuous intake, more Polonium-210 is retained due to chronic dosage exposure as opposed to acute dosage exposure.

62. Studies have concluded that substantial doses of radiation are delivered to individual cells by a single alpha particle no matter how low the dose to the whole body. Alpha particles can cause double-strand chromosomal breaks and chromosomal translocations, which can lead to cancer.

63. Once it enters the body, Polonium-210 becomes concentrated in red blood cells before spreading to the liver, kidneys, bone marrow, gastrointestinal tract, testicles or ovaries, and other organs. However, substantial radiation doses from polonium can be expected in many tissues of the body. Bone marrow tissue is particularly susceptible because it creates the blood cells.

64. The impact of Polonium-210 on children would be especially severe because their cell multiplication rate is extremely high, and the impacts in the fetal and

post-partum phases would be widely distributed and have long-term adverse consequences.

65. Polonium-210 accumulates in the ovaries, the yolk sac of the embryo, and in the placental and fetal tissues. Studies have indicated that Polonium-210 can cross the placental barrier and accumulate in and irradiate the fetal tissue. Alpha emitters can induce DNA lesions in stem cells resulting in the transmission of chromosomal instability to their progeny, and even a single alpha particle can induce long-term chromosomal instability leading to cancer. As a result, even low-level exposure to Polonium-210 can have long-term biological effects by damaging early life phase critical cells and causing DNA alterations that can lead to cancer. Leukemia in children is known to originate in the fetus, as demonstrated by the presence of cells with leukemia clone-specific mutations present at birth in children who later contract the disease. Chromosomal translocation is a hallmark of childhood leukemias. Studies have also reported a significant increase in bone tumors following exposure to radiation. As a result, Polonium-210 can cause an increased incidence of lymphomas and soft-tissue and malignant-bone tumors. Ewing's Sarcoma is a cancerous tumor that grows in bones and the soft tissue around bones.

66. The incidence ratio of Ewing's Sarcoma, an extremely rare form of cancer that occurs primarily in children and young adults, is approximately **9 times higher** than the rate expected for the Class Area. While this cancer normally appears in only 1.7 children, younger than 15, out of a million, in the Class Area there are new cases of Ewing's Sarcoma occurring every few years.

67. Consistent studies have found an association between ionizing radiation and heightened risk of brain and central nervous system tumors, including gliomas. One such glioma is a diffuse intrinsic pontine glioma (DIPG), which is a highly aggressive and difficult-to-treat brain tumor found at the base of the brain. DIPGs are glial tumors, meaning they arise from the brain's glial tissue, which is tissue made up of cells that help support and protect the brain's neurons. These tumors are found in an area of the brainstem (the lowest, stem-like part of the brain) called the pons, which controls many of the body's most vital functions such as breathing, blood pressure, and heart rate. Approximately 300 children in the U.S. are diagnosed with DIPG each year, but the incidence of this cancer in the Class Area is more than **7 times higher** than the expected rate.

68. Irradiation of the cranium, even at low doses, can increase the incidence of meningiomas by a factor of 10 and that of glial tumors by a factor of 3 to 7, with a latency period of 10 years to more than 20 years after exposure.

PAHs, Including BaP, Contaminate the Class Area and Cause the Types of Cancer Found in the Class Area

69. PAHs cause cellular disruption, damage, mutations, and cancer. Benzo(a)pyrene (BaP) is the among the most carcinogenic PAHs. Studies of workers exposed to mixtures of PAHs and other compounds have noted an increased risk of skin, lung, bladder, and gastrointestinal cancers. One study found an increased risk of childhood brain cancer associated with PAH exposure. Another study found that

paternal preconception PAH exposure was associated with increased risks of childhood brain tumors. In another study, researchers found that transplacental exposure to BaP from maternal inhalation produced DNA damage in the developing fetus, which can facilitate the formation of cancer.

70. Epidemiologic studies of human children have also found an increased risk of childhood brain cancer associated with PAH and BaP exposure.

71. A child can be exposed to BaP and radionuclides both while in the womb and after birth. Evidence of tiny particles of carbon, typically created by burning fossil fuels, has been found in placentas. When pregnant women breathe polluted air, particulate matter, which could include radionuclides and BaP, are able to reach the placenta via the bloodstream. Air pollution affects fetal development and can continue to affect babies after birth and throughout their lives.

72. Adults are also placed at increased risk of cancer by exposure to PAHs and BaP.

73. Mice fed BaP during pregnancy had difficulty reproducing, as did their offspring. The offspring of pregnant mice fed BaP also showed other harmful effects, such as birth defects and decreased body weight. According to the U.S. Agency for Toxic Substances and Disease Registry, similar effects could occur in humans.

74. Studies in animals have also shown that PAHs can cause harmful effects to the skin, body fluids, and immune system after both short- and long-term exposure.

75. Under the EPA's Guidelines for Carcinogen Risk Assessment (U.S. EPA, 2005), BaP is "carcinogenic to humans" based on strong and consistent evidence in

animals and humans. The Department of Health and Human Services has determined that benz[a]anthracene, benzo[b]fluoranthene, benzo[j]fluoranthene, benzo[k]fluoranthene, benzo[a]pyrene, dibenz[a,h]anthracene, and indeno[1,2,3-c,d]pyrene are known animal carcinogens. The International Agency for Research on Cancer has determined the following: benz[a]anthracene and benzo[a]pyrene are probably carcinogenic to humans; benzo[b]fluoranthene, benzo[j]fluoranthene, benzo[k]fluoranthene, and indeno[1,2,3-c,d]pyrene are possibly carcinogenic to humans; and anthracene, benzo[g,h,i]perylene, benzo[e]pyrene, chrysene, fluoranthene, fluorine, phenanthrene, and pyrene are not classifiable as to their carcinogenicity to humans. The EPA has determined that benz[a]anthracene, benzo[a]pyrene, benzo[b]fluoranthene, benzo[k]fluoranthene, chrysene, dibenz[a,h]anthracene, and indeno[1,2,3-c,d]pyrene are probable human carcinogens.

76. Studies of brain tumors in children following in utero and infant exposure to ambient air toxins found that a risk of medulloblastoma was significantly associated with prenatal exposure to PAHs.

77. Studies examining exposure to PAHs by parents and their children found that paternal preconception occupational exposure to PAHs was associated with childhood brain tumors, especially glial tumors. Diffuse Intrinsic Pontine Glioma (DIPG) is a glial tumor.

Metals Contaminate the Class Area and Cause the Types of Cancer Found in the Class Area

78. Copper and other metals from the Stanton Power Plant have extensively contaminated the Class Area. Copper, lead, cadmium, mercury, and arsenic are the primary metals found in coal that also threaten human health. The effects of these metals on human health have been extensively studied. Metals pose a risk of neurological damage to adults and in particular to fetuses. Children are especially susceptible to exposure due to frequency of mouthing behavior and high gastrointestinal uptake. Recent data indicate that adverse health effects, including kidney damage and bone damage, caused by cadmium exposure may occur at low exposure levels.

79. Copper was detected in soil in the Class Area at 2,200 milligrams per kilogram ("mg/kg"), far above Florida's remedial objective of 310 mg/kg. Studies have shown that copper exposure is a cause of sarcomas. Studies have also shown that the presence of copper feeds the growth of tumors.

CLASS ALLEGATIONS

80. This class action is being filed by Plaintiffs pursuant to Florida Rules of Civil Procedure 1.220(a) and 1.220(b)(3) on behalf of themselves and all others similarly situated.

81. Plaintiffs seek to certify the following class, defined as:

The record title holders and owners as of the date of class certification of all privately-owned parcels of land that are contaminated by coal combustion residuals from the Curtis H. Stanton Energy Center and which are generally located within a 5.5-mile radius of the plant. Such properties are located in the 32825 and 32828 mailing zip codes in unincorporated Orange County, Florida and include the residential

communities generally known as Avalon Park, Stoneybrook, Eastwood, Cypress Springs, Andover Lakes/Cay and Turnberry Pointe/Cay. **Exhibit A**, which is included for illustration purposes only, depicts the approximate Class Area boundary based upon current data.

82. Plaintiffs also seek to certify the following subclass, defined as:

a. Stoneybrook subclass—*all class members who own property within the Class Area that was built or marketed by Defendant U.S. Home or Defendant Lennar or that were managed as part of the Stoneybrook homeowner's association that was operated by Lennar until 2013.*

b. Avalon Park Group subclass—*all class members who own property within the Class Area that is part of the Avalon Park master-planned community.*

To the extent revealed by discovery and investigation, there may be additional appropriate classes and/or subclasses from the above class definitions that are broader and/or narrower in time or scope of exposure.

83. Excluded from the proposed class and subclasses are Defendants' officers, directors, agents, employees, and members of their immediate families; the judicial officers to whom this case is assigned, their staff, and the members of their immediate families; and any local, state, or federal governmental entities.

84. This Court may maintain these claims as a Class Action pursuant to Florida Rule of Civil Procedure 1.220 as they satisfy the numerosity, commonality, typicality, adequacy, and superiority requirements, and share a well-defined community of interest in the questions of law and fact involved in this matter.

85. *Numerosity*. The proposed class numbers in the thousands, and each of the proposed subclasses numbers in at least the hundreds. There are thousands of residential housing units in the Class Area, and there are hundreds of housing units in each of the subdivisions covered by the proposed subclasses.

86. *Commonality*. There are common questions of law and fact that affect the rights of every member of the putative class. The same conduct by Defendant OUC has injured every member of the putative class, and the same conduct by Defendants Lennar, U.S. Home, Avalon Park Group, and Beat Kahli, has injured every member of their respective subclasses.

87. *Typicality*. Plaintiffs are members of the putative class and subclasses. The claims asserted by Plaintiffs in this action are typical of the claims of the members of the putative class and subclasses, as the claims arise from the same course of conduct by the Defendants, and the relief sought is common. Plaintiffs and each putative class member have suffered damages to their properties as a result of the Contaminants from the Stanton Power Plant blowing Contaminants onto the Class Area.

88. *Adequacy*. Plaintiffs will fairly and adequately represent and protect the interests of the members of the putative class and subclasses as their interests are coincident with, not antagonistic to, the other class and subclass members. Plaintiffs have retained counsel competent and experienced in both consumer protection and class action litigation.

89. *Superiority*. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Questions of law and/or fact common to the putative class and subclasses include, but are not limited to:

a. Whether the Stanton Power Plant discharged (or caused any other condition of pollution) a hazardous substance into the land or water on or under the Class Area;

b. Whether the OUC and/or developer Defendants are strictly liable for the discharge of a hazardous substance into the land or water on or under the Class Area;

c. Whether the OUC and/or developer Defendants are strictly liable for the contamination on, in, or around the Class Area under Florida Statute § 376.313;

d. Whether the OUC and/or developer Defendants, through their acts or omissions, proximately caused property damage, diminution of property values, cleanup costs, and health risks due to radioactive materials and related Contaminants deposited, released, or abandoned in the Class Area;

e. Whether the OUC and/or developer Defendants, through their acts or omissions, deprived class members of the free and reasonable use and enjoyment of their properties due to the contamination of properties in the Class Area; and

f. Whether class members have suffered damages, including but not limited to property and economic damages, as a result of the conduct of the OUC and/or developer Defendants.

90. These questions of law and/or fact are common to the class and subclasses and predominate over any questions affecting only individual class members.

91. A class action is an appropriate method for the adjudication of the controversy in that it will permit a large number of claims to be resolved in a single forum simultaneously, efficiently, and without the unnecessary hardship that would result from the prosecution of numerous individual actions and the duplication of discovery, effort, expense, and the burden on the courts that individual actions would create.

92. The benefits of proceeding as a class action, including providing a method for obtaining redress for claims that would not be practical to pursue individually, outweigh any difficulties that might be argued with regard to the management of the class action.

COUNT I—STRICT LIABILITY UNDER FLORIDA STATUTE § 376.313 AGAINST THE OUC

93. Plaintiffs reallege and reaffirm herein the allegations contained in paragraphs 1 - 92.

94. The OUC's wrongful acts and omissions in releasing and discharging (or other conditions of pollution) toxic pollutants, hazardous substances, and other Contaminants onto the lands and water of the state of Florida in general, and the Class Area in particular, were in violation of various environmental statutes in the State of Florida, including but not limited to the following:

a. Discharging (or other condition of pollution) of any pollutants or hazardous substances into or upon land (or water) in violation of Florida Statute § 376.302(1)(a); and

b. Failure to immediately remediate, contain, remove, and abate the discharges in violation of Florida Statute § 376.305(1).

95. Plaintiffs are each a "person[s]" who may bring a cause of action for damages for such violations under Florida Statute § 376.313.

96. Plaintiffs and the class members have been damaged by the OUC's discharge of hazardous substances onto their land and property, as those terms are defined in Florida Statutes §§ 376.30 –376.319.

97. The OUC is strictly liable for damages to Plaintiffs and the class members resulting from such discharges (or other conditions of pollution) covered by Florida Statutes §§ 376.30 – 376.319, and Plaintiffs and the class members are not required to plead or prove negligence in any form or manner, pursuant to Florida Statute § 376.313, because it is sufficient to plead and prove, as set forth in various paragraphs above, that the prohibited discharges or other polluting conditions occurred.

98. The OUC's acts and omissions violate numerous Department of Environmental Protection ("DEP") standards as well as other state and federal standards adopted by the DEP, including, but not limited to:

a. Florida Administrative Code 62-777, Contaminant Cleanup Target Goals;

b. Florida Administrative Code 62-780, Contaminated Site Cleanup Goals;

c. Florida Administrative Code regulations pertaining to the disposal of radioactive waste, including, but not limited to: 64E-5.333, Classification and Characteristics of Low-Level Radioactive Waste for Near-Surface Land Disposal, Labeling and Manifest Requirements; 64E-5.334 General Provisions; 64E-5.335 Records of Radiation Protection Programs; 64E-5.336 Records of Surveys; 64E-5.339 Records of Individual Monitoring Results; 64E-5.340 Records of Waste Disposal or Transfers; 64E-5.344 Notification of Incidents; 64E-5.345 Reports of Exposures, Radiation Levels, Concentrations of Radioactive Material Exceeding the Constraints or Limits, Medical Events and Dose to an Embryo/Fetus or a Nursing Child; and 64E-5.347, Notifications and Reports to Individuals;

d. Florida Administrative Code 62-296.320(4)(c)(1), General Pollutant Emission Limiting Standards, General Particulate Emission Limiting Standards for Unconfined Emissions of Particulate Matter;

e. U.S.EPA Regulation of solid and hazardous waste, 40 C.F.R Parts 239-280;

f. Disposal of coal combustion residuals from electric utilities, promulgated pursuant to 42 U.S.C. 6907(a), 6944(a), 6945(a);

g. 40 C.F.R. 257—Subpart D—Standards for the Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments, including without limitation, § 257.80(a); and

h. United States Nuclear Regulatory Commission, 10 CFR, Part 61 – Licensing Requirements for Land Disposal of Radioactive Waste.

COUNT II—INVERSE CONDEMNATION AGAINST THE OUC

99. Plaintiffs reallege and reaffirm herein the allegations contained in paragraphs 1 - 92.

100. Inverse condemnation is a cause of action against a governmental defendant to recover the value of property which has been taken in fact by the governmental defendant, even though no formal exercise of the power of eminent domain has been attempted by the taking agency.

101. The OUC has taken in fact the property of Plaintiffs and the class members in the Class Area by, as set forth above, discharging (or other condition of pollution) pollutants or hazardous substances into or upon land or water in the Class Area, and/or failing to remediate, contain, remove, and abate the discharges, thereby rendering the properties uninhabitable.

102. This taking of the property of Plaintiffs and the class members in the Class Area was without just compensation in violation of Article X, section 6(a) of the Florida Constitution.

COUNT III— STRICT LIABILITY UNDER FLORIDA STATUTE § 376.313 AGAINST LENNAR

103. Plaintiffs reallege and reaffirm herein the allegations contained in paragraphs 1 - 92.

104. Plaintiffs are all persons entitled to bring actions under Florida Statute § 376.313. Under § 376.313, Lennar, as a developer, builder, or marketer of the Stoneybrook neighborhood in Avalon Park, is strictly liable for the damages caused by

all “conditions of pollution” in the Stoneybrook Subclass Area. The Contaminants contained in the soil and within the homes in the Stoneybrook Subclass Area are “pollution” within the meaning of Florida Statute § 376.031(17).

105. The only defenses to a claim under Florida Statute § 376.313 are those set forth in Florida Statute §376.308. Defendant Lennar cannot meet its burden of establishing any of the defenses available under Florida Statute § 376.308, including any defense based on the fact that the Contaminants were generated by the Stanton Power Plant. Lennar cannot show that the “conditions of pollution” at homes in the Stoneybrook Subclass Area resulted solely from the actions of the OUC because Lennar developed, built, and marketed homes despite the existence of Contaminants and did not take adequate steps to prevent homes from being exposed to the Contaminants.

106. Plaintiffs and the subclass members have sustained damages resulting from the “conditions of pollution” on their land, as that term is defined in Florida Statutes §§ 376.30 –376.319.

107. Lennar is strictly liable for damages to Plaintiffs and the subclass members resulting from such “conditions of pollution” covered by Florida Statutes §§ 376.30 – 376.319, and Plaintiffs and the subclass members are not required to plead or prove negligence in any form or manner, pursuant to Florida Statute § 376.313, because it is sufficient to plead and prove, as set forth in various paragraphs above, that the prohibited discharges or other polluting conditions occurred.

COUNT IV— STRICT LIABILITY UNDER FLORIDA STATUTE § 376.313 AGAINST U.S. HOME

108. Plaintiffs reallege and reaffirm herein the allegations contained in paragraphs 1 - 92.

109. Plaintiffs are all persons entitled to bring actions under Florida Statute § 376.313. Under § 376.313, U.S. Home, as a developer, builder, or marketer of the Stoneybrook neighborhood in Avalon Park, is strictly liable for the damages caused by all "conditions of pollution" in the Stoneybrook Subclass Area. The Contaminants contained in the soil and within the homes in the Stoneybrook Subclass Area are "pollution" within the meaning of Florida Statute § 376.031(17).

110. The only defenses to a claim under Florida Statute § 376.313 are those set forth in Florida Statute §376.308. Defendant U.S. Home cannot meet its burden of establishing any of the defenses available under Florida Statute § 376.308, including any defense based on the fact that the Contaminants were generated by the Stanton Power Plant. U.S. Home cannot show that the "conditions of pollution" at homes in the Stoneybrook Subclass Area resulted solely from the actions of the OUC because U.S. Home developed, built, and marketed homes despite the existence of Contaminants and did not take adequate steps to prevent homes from being exposed to the Contaminants.

111. Plaintiffs and the subclass members have sustained damages resulting from the "conditions of pollution" on their land, as that term is defined in Florida Statutes §§ 376.30 –376.319.

112. U.S. Home is strictly liable for damages to Plaintiffs and the subclass members resulting from such "conditions of pollution" covered by Florida Statutes §§ 376.30 – 376.319, and Plaintiffs and the subclass members are not required to plead or prove negligence in any form or manner, pursuant to Florida Statute § 376.313, because it is sufficient to plead and prove, as set forth in various paragraphs above, that the prohibited discharges or other polluting conditions occurred.

COUNT V— LIABILITY UNDER FLORIDA STATUTE § 376.313 AGAINST AVALON PARK GROUP AND BEAT KAHLI

113. Plaintiffs reallege and reaffirm herein the allegations contained in paragraphs 1 - 92.

114. Plaintiffs are all persons entitled to bring actions under Florida Statute § 376.313. Under § 376.313, Avalon Park Group and Beat Kahli, as developers, builders, or marketers of the Avalon Park master-planned community, are strictly liable for the damages caused by all "conditions of pollution" in the Avalon Park Group Subclass Area. The Contaminants contained in the soil and within the homes in the Avalon Park Group Subclass Area are "pollution" within the meaning of Florida Statute § 376.031(17).

115. The only defenses to a claim under Florida Statute § 376.313 are those set forth in Florida Statute § 376.308. Defendants Avalon Park Group and Beat Kahli cannot meet their burden of establishing any of the defenses available under § 376.308, including any defense based on the fact that the Contaminants were generated by the Stanton Power Plant. Avalon Park Group and Beat Kahli cannot show that the

"conditions of pollution" at homes in the Avalon Park Group Subclass Area resulted solely from the actions of the OUC because Avalon Park Group and Beat Kahli developed, built, and marketed homes, and encouraged and arranged for the development, building, and marketing of homes, in the Avalon Park master-planned community despite the existence of Contaminants and did not take adequate steps to prevent homes from being exposed to the Contaminants.

116. Plaintiffs and the subclass members have sustained damages resulting from the "conditions of pollution" on their land, as that term is defined in Florida Statutes §§ 376.30 –376.319.

117. Avalon Park Group is strictly liable for damages to Plaintiffs and the subclass members resulting from such "conditions of pollution" covered by Florida Statutes §§ 376.30 – 376.319, and Plaintiffs and the subclass members are not required to plead or prove negligence in any form or manner, pursuant to Florida Statute § 376.313, because it is sufficient to plead and prove, as set forth in various paragraphs above, that the prohibited discharges or other polluting conditions occurred.

TOLLING OF LIMITATIONS

118. Plaintiffs and the putative class and subclass members could not have reasonably known or have learned through the exercise of reasonable diligence that their properties were contaminated and that those risks were the direct and proximate result of:

a. OUC's wrongful acts and omissions in discharging or releasing Contaminants and failing to contain, remediate, and clean up any contamination; and

b. The Developer Defendants failing to restore or remediate conditions of pollution in the contaminated areas.

Thus, any applicable limitations periods did not begin to accrue until Plaintiffs and the putative class and subclass members discovered, or through the exercise of reasonable diligence should have discovered, Defendants' tortious acts and omissions.

JURY TRIAL DEMAND AND PRAYER FOR RELIEF

Plaintiffs and the putative class and subclass members hereby demand a trial by jury on all matters triable as of right by a jury.

WHEREFORE, Plaintiffs and the Class and Subclass Members request that the Court enter an order of judgment against the OUC, Lennar, U.S. Home, Avalon Park Group, and Beat Kahli as follows:

A. Enter an Order pursuant to Florida Rule of Civil Procedure 1.220 permitting this action to be maintained as a class action; appointing Plaintiffs as the representatives of the Class; appointing Plaintiff Michelle Irizarry as representative of the Stoneybrook subclass; appointing Plaintiff Valerie Williams as representative of the Stoneybrook subclass; and appointing Plaintiffs' counsel as counsel for such classes;

B. Enter judgment against the OUC, Lennar, U.S. Home, Avalon Park Group, and Beat Kahli for: compensatory damages; permanent injunctive relief; the prompt testing, assessment, excavation, and removal of all radioactive wastes and related contaminants to levels otherwise representative of background levels from the properties of the Plaintiffs and class and subclass members; attorneys' fees under

Florida Statute § 376.13, and costs of suit as provided for by law; and such other relief as the Court may deem just and proper in favor of Plaintiffs and the class and subclass members against the Defendants for property damage, including diminution of property values, the cost of remediation of properties, cleanup costs, loss of use and enjoyment of their property and destruction of their community, and for all other relief, in an amount to be proven at trial, as to which they may be entitled, including interest, expert fees and costs of this suit;

C. Award pre-judgment and post-judgment interest as provided by law; and

D. Award such other relief as this Court deems necessary, just, and proper.

DATED this 20th day of December 2018.

Respectfully submitted,

s/Theodore J. Leopold

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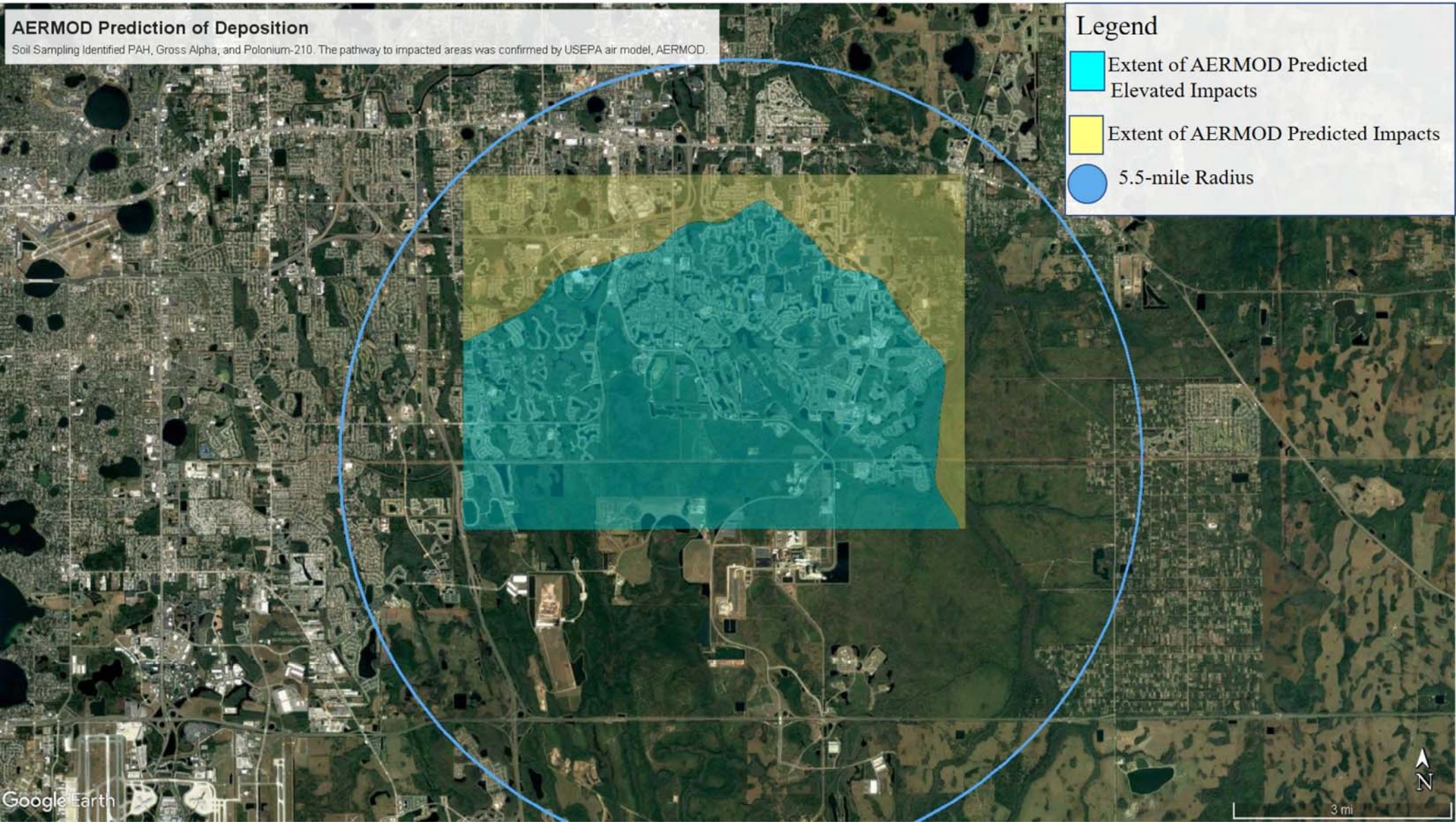
AERMOD Prediction of Deposition
Soil Sampling Identified PAH, Gross Alpha, and Polonium-210. The pathway to impacted areas was confirmed by USEPA air model, AERMOD.
Legend
Extent of AERMOD Predicted Elevated Impacts
Extent of AERMOD Predicted Impacts
5.5-mile Radius
Google Earth
3 mi
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EXHIBIT A