

SETTLEMENT AND COMMUNITY BENEFIT AGREEMENT

This Settlement and Community Benefit Agreement ("Agreement") is entered into on March 14, 2017, by and among NORTH COUNTY ADVOCATES, a non-profit corporation, on behalf of itself and its members (collectively "NCA"), the CITY OF CARLSBAD ("City"), a municipal corporation, LENNAR HOMES OF CALIFORNIA, INC. ("Lennar"), a California corporation, PRESERVE CALAVERA, a non-profit corporation, FRIENDS OF AVIARA, a non-profit association, and FRIENDS OF THE BUENA VISTA RESERVOIR, a non-profit association, on behalf of themselves and their members (collectively "Associations"), in light of the following facts and circumstances:

WHEREAS, on September 22, 2015, the City Council of the City adopted Resolution 2015-242, certifying the Final Environmental Impact Report ("General Plan EIR") and adopting Findings of Fact, a Statement of Overriding Considerations and a Mitigation Monitoring and Reporting Program for the Carlsbad General Plan Update and Climate Action Plan ("CAP") with

the City Council of the City finding that these actions were in compliance with the requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000, et seq., and its implementing guidelines ("CEQA Guidelines"), California Code of Regulations, title 14, section 15000, et seq.; and

WHEREAS, on September 22, 2015, the City Council of the City adopted Resolution 2015-243, Resolution 2015-244 and Ordinance No. CS-287, approving the Carlsbad General Plan Update and CAP and adopting General Plan Amendment 07-02, Local Coastal Plan Amendment 07-02, Citywide Facilities and Improvements Plan Amendment SS 15-06, Zoning Ordinance Amendment 07-01, Zone Change 15-02, and CAP SS 15-05 (collectively "General Plan Update and CAP Approvals"); and

WHEREAS, on October 21, 2015, NCA filed a lawsuit challenging the City's certification of the General Plan EIR and approval of the General Plan Update and CAP, entitled *North County Advocates v. City of Carlsbad*, San Diego Superior Court Case No. 37-2015-00035458-CU-WM-NC ("Lawsuit"); and

WHEREAS, pursuant to CEQA, NCA and the City met to discuss settlement of the Lawsuit and engaged in good faith negotiations over a period of months which addressed, among other things, the preservation and enhancement of open-space and park land in the City; and

WHEREAS, Lennar proposes to develop a 123-unit, single-family, detached unit condominium project on approximately 51 acres of land located south of Cassia Road, between the existing western and eastern segments of Poinsettia Lane, in the southwest quadrant of the City, referred to as the Poinsettia 61 Residential Development and Extension of Poinsettia Lane Project ("Poinsettia 61 Project"), consistent with the project description in the draft environmental impact report circulated for public review and inclusive of the response to comments prepared by the City("Poinsettia Final EIR"); and

WHEREAS, the Poinsettia 61 Project proposes to implement an integral portion of the Mobility Element of the City's General Plan by constructing Reach E, the last remaining section of Poinsettia Lane, between Cassia Road and Oriole Court, to extend and connect Poinsettia

Lane to El Camino Real; and

WHEREAS, the Poinsettia 61 Project also proposes to construct a bridge required to span a canyon on the eastern portion of Poinsettia Lane that will preserve the maximum corridor width practicable for a wildlife habitat corridor; and

WHEREAS, the City, as the lead agency, has caused to be prepared a draft environmental impact report for the Poinsettia 61 Project ("Poinsettia 61 Draft EIR") and has made the Poinsettia 61 Draft EIR available for a 45-day period for public review and comment beginning on October 31, 2016; and

WHEREAS, the City, as the lead agency under CEQA, in its sole and absolute discretion, may certify or not certify the Poinsettia Final EIR and may approve or not approve the Poinsettia 61 Project or may select any alternative, including the No Project alternative, or adopt any mitigation measure or condition which it determines is necessary and appropriate to reduce or avoid any potential environmental impact of the Poinsettia 61 Project or to comply with any applicable law or regulation; and

WHEREAS, all or parts of the Poinsettia 61 Project will require the approval of other public agencies, including without limitation the California Coastal Commission and other federal and state regulatory agencies with jurisdiction over natural resources which may be affected by the Poinsettia 61 Project (collectively "Resource Agencies"); and

WHEREAS, the Poinsettia 61 Draft EIR determined the Poinsettia 61 Project will have certain significant adverse impacts on vegetation communities, including southern maritime chaparral, and recommends as Mitigation Measure BR-6 that said impacts be mitigated by the creation, restoration and preservation of habitat at a 3:1 ratio; and

WHEREAS, the Poinsettia 61 Draft EIR identified various options for the location of mitigation for said impacts, including the creation of 3.1 acres of coastal sage scrub ("CSS") in a portion of the area of the City presently designated as developable park land in Veterans Park, which 3.1 acres would be incorporated into the City's Habitat Management Plan ("HMP") preserve, and may include the option of performing substantial enhancement of an additional up to 3.1 acres of CSS in the portion of Macario Canyon/Veterans Preserve presently

designated as HMP preserve and including the enhancement of up to 5.7 acres of southern maritime chaparral (“SMC”) in the natural areas within the boundary of Aviara Park, which up to 5.7 acres would be incorporated into the City’s HMP preserve; and

WHEREAS, the City owns a 3.1 acre site in a residential area of northwest Carlsbad known as the “Buena Vista Reservoir”; and

WHEREAS, as part of a strategy for city-owned properties, the City determined the Buena Vista Reservoir is not needed for municipal purposes and may be sold for development in accordance with the applicable land use laws and regulations in the area; and

WHEREAS, community members opposed to the City’s proposed disposition of the Buena Vista Reservoir have asked the City to consider retaining the site for development as a public park; and

WHEREAS, the City maintains that the northwest quadrant of the city in which the Buena Vista Reservoir is located already meets the requirements for park acreage pursuant to the Growth Management Plan standards and therefore a source of funds to pay for the cost of

building a park at this location does not exist; and

WHEREAS, NCA and the Associations are interested in ensuring that the General Plan Update and CAP and the Poinsettia 61 Project are implemented in a manner which preserves and protects the natural resources and the environment of the City, including the protection and enhancement of open-space and park land in the City; and

WHEREAS, Lennar wishes to obtain NCA's and the Associations' support for approval of the Poinsettia 61 Project and NCA and the Associations wish to obtain an increase in existing park land for City residents above and beyond that required by CEQA and any other federal, state and local laws and regulations applicable to the Poinsettia 61 Project; and

WHEREAS, NCA and the City wish to settle the Lawsuit and all claims and disputes between them arising out of or relating to the General Plan EIR and the General Plan Update and CAP without admitting or establishing liability, fault, blame or the truth or veracity of any of the claims made by and between them, and in a manner which benefits the residents of Carlsbad; and

WHEREAS, simultaneously with entering into this Agreement, the City and NCA intend to enter into a related settlement agreement to address dismissal of the Lawsuit, the release of claims and certain other matters arising out of or relating to the Lawsuit; and

WHEREAS, NCA, the City, the Associations and Lennar shall be referred to below collectively as the "Parties"; and

WHEREAS, the Parties, subject to the provisions of this Agreement, desire to undertake all reasonable actions and public proceedings necessary to achieve their individual and collective objectives, including settlement and dismissal of the claims alleged in the Lawsuit, retention and development of Buena Vista Reservoir as a new public park, and support for the Poinsettia 61 Project, including the construction of Reach E of Poinsettia Lane and a bridge along the eastern portion of Poinsettia Lane that will preserve the maximum corridor width practicable for a wildlife habitat corridor;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS SET FORTH BELOW, THE PARTIES AGREE AS FOLLOWS:

1. **Incorporation of Recitals.** The recitals set forth above are incorporated herein as though set forth in full.

2. **No Admission of Liability.** NCA and the City understand, acknowledge and agree that by reason of entering into this Agreement, they do not admit, expressly or impliedly, any fact or liability of any type or nature, whether or not referred to herein, or the sufficiency of any claims made or that could have been raised by any party, or the allegations, assertions or positions of any party in the Lawsuit. Further, the Parties agree that the execution of this Agreement is contingent upon the execution of the Settlement Agreement for the Lawsuit and vice versa. Notwithstanding the foregoing, Lennar and the Associations are not a party to the Settlement Agreement for the Lawsuit between NCA and the City and shall have no liability in the event of any default by NCA or the City under that Settlement Agreement.

3. **NCA's and the Associations' Undertakings.** In consideration of the obligations undertaken and the promises made herein by the Parties, NCA and the Associations hereby covenant and agree to undertake the following actions:

3.1. NCA and the Associations shall support Lennar's application for certification of the Poinsettia Final EIR and approval of the Poinsettia 61 Project in all proceedings before the City and the California Coastal Commission by submitting a letter substantially in the form attached hereto as Attachment 1 to both of the foregoing agencies, a copy of which shall also be provided to the California Department of Fish and Wildlife and the United States Fish and Wildlife Service (collectively with the Coastal Commission, the "Resource Agencies"). In addition, NCA and the Associations shall submit an agency-specific letter of support to such other agencies whose approval is required for implementation of the Poinsettia 61 Project within ten (10) days of receipt of a written request from Lennar. The good-faith inability of NCA or the Associations to provide such an additional letter shall not void this Agreement.

3.2. NCA and the Associations shall take no action whatsoever, directly or indirectly, whether in writing, orally or otherwise, to oppose or to challenge any governmental certification, approval, permit or other entitlement, or modification of amendment thereof, which

is or may be required for certification of a final EIR and approval of the Poinsettia 61 Project, whether in judicial, administrative or legislative proceedings;

3.3. NCA and the Associations shall provide no assistance whatsoever, directly or indirectly, whether financial, legal or otherwise, to any person, organization or other entity to oppose or to challenge any governmental certification, approval, permit or other entitlement, or modification of amendment thereof, which is or may be required for certification of a final EIR and approval of the Poinsettia 61 Project, whether in judicial, administrative or legislative proceedings; and

3.4. Notwithstanding the preceding paragraphs of this Section 3, in the event the Poinsettia Final EIR is certified ("Poinsettia Final EIR - Certified") and the Poinsettia 61 Project is approved by the City Council, NCA and the Associations reserve the right to oppose or challenge any material breach of this Agreement or to the implementation by Lennar of the Poinsettia 61 Project in a manner not in substantial conformance, as defined below, with the project description contained in the Poinsettia Final EIR recommended for certification by the

Carlsbad Planning Commission on February 1, 2017, and all applicable laws, regulations or permit requirements, including without limitation any Mitigation Monitoring and Reporting Program applicable to the Poinsettia 61 Project pursuant to CEQA Guidelines section 15097.

For the purposes of this Agreement only, and only as between Lennar, NCA and the Associations, implementation of the Poinsettia 61 Project shall be deemed to be in "Substantial Conformance" with the project description contained in the Poinsettia Final EIR provided that any Project changes shall not:

1. Substantially reduce or eliminate project features and/or mitigation measures specifically intended to address environmental protection or preservation;
2. Increase the number of residential units proposed or change the boundary of the subject property;
3. Add a new land use not originally contemplated (detached and attached residential units shall be deemed the same land use);

4. Result in any significant environmental impact, and/or require additional mitigation due to new or greater impacts; and/or,

5. Result in a greater than 10% deviation from applicable development standards of the Carlsbad Municipal Code.

The City shall not be bound by the definition of Substantial Conformance set forth above when evaluating future Project changes, if any.

3.5. Neither NCA, the City, nor the Associations shall bring any claim against Lennar relating to the Settlement Agreement being entered into by NCA and the City.

4. The City's Undertakings. In consideration of the obligations undertaken and the promises made herein by the Parties, the City hereby covenants and agrees to undertake the following actions:

4.1. The City shall in good faith and a timely manner process and consider Lennar's application for approval of the Poinsettia 61 Project, including the preparation of the Poinsettia Final EIR and all other reports and information required to be prepared by the City

for Lennar's application to be presented for consideration by the Planning Commission and City Council of the City. The City acknowledges that time is of the essence and will bring the Poinsettia 61 Project forward to hearing before the Planning Commission and City Council as quickly as practicable in compliance with all laws.

4.2. In processing and considering Lennar's application for approval of the Poinsettia 61 Project pursuant to paragraph 4.1 above, the City shall conduct all public proceedings and take all actions required by law and, as the lead agency under CEQA, reserves its sole and absolute discretion to certify or not certify the Poinsettia Final EIR for the Poinsettia 61 Project and to approve or not approve the Poinsettia 61 Project or to select any alternative, including the No Project alternative, or to adopt any mitigation measure or condition of approval which the City determines is necessary and appropriate to reduce or avoid any significant environmental impact of the Poinsettia 61 Project or to comply with any applicable law or regulation.

4.3. If the City exercises its discretion to approve the Poinsettia 61 Project, the City shall grant a license or other permission as required for Lennar and its contractors to access Veterans Park for the preparation of plans and studies, for the installation, maintenance and monitoring in connection with the creation and establishment of 3.1 acres of CSS to be incorporated into the HMP preserve, in a location consistent with Section 5.11.9. of this Agreement, along with the approval of the Resource Agencies, within the otherwise developable park land of Veterans Park.

4.4. If the City exercises its discretion to approve the Poinsettia 61 Project, and if needed to satisfy the approvals granted to the Poinsettia 61 Project by the Resource Agencies, including the California Coastal Commission, the City shall grant a license or other permission as required to Lennar and its contractors to access Macario Canyon/Veterans Preserve for the preparation of plans and studies, for the installation, maintenance and monitoring in connection with the enhancement and establishment of up to 3.1 acres of CSS in a location to be determined by the City, along with the approval of the Resource Agencies.

4.5. If the City exercises its discretion to approve the Poinsettia 61 Project, the City shall grant a license or other permission as required to Lennar and its contractors to access the natural areas of Aviara Park for the preparation of plans and studies, for the installation, maintenance and monitoring in connection with the enhancement and establishment of up to 5.7 acres of SMC to be incorporated into the HMP preserve, in a location to be determined by the City, along with the approval of the Resource Agencies.

4.6. If the City exercises its discretion to approve the Poinsettia 61 Project, the City shall grant Lennar the option to effectuate and take actions necessary to obtain approval from the appropriate Resource Agencies to incorporate the 3.1 acres of otherwise developable park land in Veterans Park, referenced in Section 4.3, into the HMP preserve, which option may be exercised, upon approval of the Poinsettia 61 Project by the California Coastal Commission, and which option must be exercised prior to the issuance of a grading permit for the Poinsettia 61 Project. The agreed-upon value of this developable park land is \$3,028,700.

4.7. If the City exercises its discretion to approve the Poinsettia 61 Project, the City shall grant Lennar the option to effectuate and take actions necessary to obtain approval from the appropriate Resource Agencies to incorporate up to 5.7 acres of Aviara Park, referenced in Section 4.5, into the HMP preserve, which option may be exercised, upon approval of the Poinsettia 61 Project by the California Coastal Commission, and which option must be exercised prior to the issuance of a grading permit for the Poinsettia 61 Project. Collectively, the options referenced in Sections 4.6 and 4.7 are hereafter referred to as the "HMP Options".

4.8. If the City exercises its discretion to approve the Poinsettia 61 Project, and (a) the Poinsettia 61 Project is approved by the California Coastal Commission, and (b) Lennar exercises the HMP Options, the City, as owner of the Buena Vista Reservoir, shall consent to Lennar's submittal of a Conditional Use Permit application for the development of the Buena Vista Reservoir as a new public park.

4.9. Upon Lennar's exercise of the HMP Options, Lennar shall enter into an agreement with the City to construct certain park improvements on the Buena Vista Reservoir site ("Park Construction Agreement"), in accordance with the design, standards and specifications approved by the City, including without limitation posting security and performance obligations required by the Carlsbad Municipal Code, at a maximum cost to Lennar of \$3,028,700, which is inclusive of all costs associated with the design, public outreach, permitting, plan processing, and construction of the park facilities, along with a construction management fee, for the benefit of Lennar, in an amount not to exceed 8% of actual total project costs, as to be more specifically set forth in the Park Construction Agreement. Upon completion of such improvements, the City shall accept the park and its ongoing maintenance. The City Manager is authorized to execute, on behalf of the City, the Park Construction Agreement and to represent and act on behalf of the City in all future actions and decisions necessary to implement the Park Construction Agreement, and to do so consistent with and

in full compliance with the terms and conditions expressed in this Agreement and to the satisfaction of the City Attorney.

4.10. The Park Construction Agreement shall provide for construction of a new Neighborhood Park at the Buena Vista Reservoir, which will include passive use amenities such as, but not limited to, children's playground structures, picnic tables, shade structures, interpretive signage, dry creek stream beds, mounded turf, drought tolerant landscaping and low level security lighting, and will not include active use elements such as, but not limited to, athletic fields, athletic field lighting, restroom buildings, parking lots, skate parks, dog parks, tennis courts or other sport courts. The potential schedule for a 30 month park planning and construction process is generally described as:

- Public participation – 1st Round (1 month)
 - Notifications and initial meeting
- Concept plan creation and internal review/revision (2 months)
 - Design firm and Parks & Recreation staff
- Public participation – 2nd Round (2 months)
 - Postings/mailings and surveys
 - Notifications and follow up meeting

- Refine concept plan and request early assessments (2 months)
 - Planning (incl. resource agencies), Building, Utilities, Recreation
- Provide update and confirm direction (1 month)
 - Parks & Recreation Commission and City Council
- Obtain entitlements (6 months)
 - Zone Change, CUP
- Construction documents development (5 months)
 - Schematic, 30%, 80%, 100% submittals and review/correction
- Permitting (1 month)
 - Storm water, Grading, and Buildings
- Construction (10 months)

Ground breaking to substantial completion

4.11. The Park Construction Agreement shall include a detailed budget and schedule that addresses the public outreach and notification process, concept design, permitting, plan processing, construction, and delivery and acceptance of a completed park by the City.

4.12. The City will incorporate into the Draft Trails Master Plan Update (scheduled for City Council adoption in 2017) a trail segment along the full length of the SDG&E easement from Ambrosia Lane to Aviara Parkway and the City will use its best efforts to ensure

the development of the trail within the SDG&E easement. In the event SDG&E fails to approve the proposed trail within the SDG&E easement area, the City shall pursue an alternate trail connection location and Lennar shall deposit \$20,000 into a City fund dedicated exclusively to the development of a trail connection in an alternate location.

5. Lennar's Undertakings. In consideration of the obligations undertaken and the promises made by the Parties, Lennar hereby covenants and agrees to undertake the obligations set forth in Sections 5.1 and 5.2 below. Lennar further covenants and agrees to undertake the obligations set forth in Sections 5.3 through 5.11.13 subject to (i) the approval of the Poinsettia 61 Project by the City, (ii) the approval of the Poinsettia 61 Project by the California Coastal Commission, in substantially the same form as that approved by the City, (iii) the expiration of all applicable statutes of limitations within which to challenge such City and California Coastal Commission approvals with no legal challenge having been filed or, in the event a legal challenge is filed, upon final resolution of such legal challenge through entry of final judgment or dismissal, and (iv) the earlier to occur of (1) the recordation by Lennar

of a final subdivision map for the Poinsettia 61 Project or (2) the issuance of a grading permit for the Poinsettia 61 Project.

5.1. Lennar shall use commercially reasonable efforts to obtain certification of the Poinsettia Final EIR and approval of the Poinsettia 61 Project and related land use entitlements by the City Council of the City, including without limitation the processing and recordation of a final subdivision map, and other agencies responsible for issuing approvals for the Poinsettia 61 Project, and Lennar shall pursue its applications for such approvals to a final decision by the City Council and all other such agencies, provided that such approvals are substantially in conformance with the project description contained in the Poinsettia Final EIR for the Poinsettia 61 Project.

5.2. Lennar's application for approval of the Poinsettia 61 Project referred to in paragraph 5.1 above shall include but is not limited to the following components: construction of Reach E of Poinsettia Lane, between Cassia Road and Oriole Court, to extend and connect Poinsettia Lane to El Camino Real; construction of a bridge required to span a

canyon on the eastern portion of Poinsettia Lane that will preserve the maximum corridor width practicable for a wildlife habitat corridor; and a preparation of a Habitat Restoration Plan pursuant to Mitigation Measure BR-6 of the Poinsettia 61 Draft EIR which shall provide for Lennar's implementation actions necessary for the creation of new CSS habitat on 3.1 acres of otherwise developable park land within Veterans Park, to be incorporated into the HMP preserve, and, to the extent needed to satisfy the mitigation required by the Resource Agencies, the enhancement of up to 3.1 acres of CSS within the Macario Canyon/Veterans Preserve presently within the HMP, and the enhancement of up to 5.7 acres of SMC within Aviara Park to be incorporated into the HMP preserve, and the payment of all fees and costs associated therewith.

5.3. Lennar shall plan, obtain all necessary approvals and construct the new park improvements on the Buena Vista Reservoir site in accordance with the design, standards and specifications approved by the City. Lennar shall complete construction of the park improvements such that the new park is operational no later than 30 months from the date of

recordation of a final subdivision map or issuance of a grading permit for the Poinsettia 61 Project, whichever is earlier. It is the expectation that a park that includes the passive use amenities as enumerated in Section 4.10 is achievable within the maximum cost to Lennar of \$3,028,700, consistent with the terms of Section 4.9. In the event that the design, permitting, and construction of the park improvements exceed the maximum cost listed in Section 4.9, the City shall accordingly amend the scope, as described in Section 4.10 above and as more specifically defined in the Park Construction Agreement, to bring the total costs to within the maximum amount specified in Section 4.9, unless other funding sources, not to include Lennar, are timely identified. While the City is not obligated to under this Agreement, the City may choose to provide additional funding to cover the park improvement cost amount that is in excess of the maximum cost listed in Section 4.9.

5.4. Lennar shall prepare all necessary studies, plans and specifications, shall obtain all required permits, shall install, monitor and maintain for a minimum period of 5 years, and shall create and successfully establish 3.1 acres of CSS within the otherwise

developable park area of Veterans Park, for incorporation into the HMP preserve, to the satisfaction of the City and the Resource Agencies, and Lennar shall bear the full cost thereof.

5.5. To the extent required by the Resource Agencies, Lennar shall prepare studies, plans and specifications, shall obtain all required permits, shall install, monitor and maintain for a minimum period of 5 years, and shall enhance and successfully establish up to 3.1 acres of CSS within the Macario Canyon/Veterans Preserve, to the satisfaction of the Resource Agencies, and Lennar shall bear the full cost thereof.

5.6. Lennar shall prepare studies, plans and specifications, shall obtain all required permits, shall install, monitor and maintain for a minimum period of 5 years, and shall enhance and successfully establish up to 5.7 acres of SMC within the natural area of Aviara Park, for incorporation into the HMP, to the satisfaction of the Resource Agencies, and Lennar shall bear the full cost thereof.

5.7. Prior to issuance of first grading permit, Lennar shall fund a non-wasting endowment for the on-going maintenance of the additional 3.1 acres of CSS habitat created

within the otherwise developable park land of Veterans Park, in a dollar amount determined by a PAR analysis approved by and to the satisfaction of the City and the Resource Agencies.

5.8. If additional habitat mitigation within the Veterans/Macario Canyon Preserve is required by the Resource Agencies, then prior to issuance of the first grading permit, Lennar shall fund a non-wasting endowment for the on-going maintenance of the enhanced up to 3.1 acres of CSS habitat within Veterans/Macario Canyon Preserve, in a dollar amount determined by a PAR analysis approved by and to the satisfaction of the City and the Resource Agencies.

5.9. Prior to issuance of first grading permit, Lennar shall fund a non-wasting endowment for the on-going maintenance of the up to 5.7 acres of SMC within the natural area of Aviara Park, in a dollar amount determined by a PAR analysis approved by and to the satisfaction of the City and the Resource Agencies.

5.10. Lennar shall design, permit and construct Poinsettia Lane, from the current easterly terminus east of Cassia Road to the current westerly terminus west of Oriole

Court, to full major arterial standards, so that it is substantially complete and open to traffic no later than 30 months from the date of recordation of a final subdivision map or issuance of a grading permit for the Poinsettia 61 Project, whichever is earlier. The completion date in the previous sentence will be extended due to force majeure events and any processing and construction delays substantially caused by the Resource Agencies. This work shall be performed to the satisfaction of the City and the Resource Agencies.

5.11. Lennar shall take the following actions in connection with implementation of the Poinsettia 61 Project:

5.11.1. Lennar shall use sub-contractors for grading and off-site work who use California Air Resource Board (CARB) certified equipment and shall use commercially reasonable efforts to utilize Tier 2 or higher construction vehicles where practical.

5.11.2. Lennar shall provide coyote roller bars in appropriate areas and shall include restrictions and education in community CC&Rs.

5.11.3. Lennar shall provide bat roosts on bridges in appropriate areas.

5.11.4. Prior to the recordation of a final subdivision map or issuance of a grading permit for the Poinsettia 61 Project, whichever occurs earlier, Lennar shall use commercially reasonable efforts to secure permission to develop a pedestrian trail within the San Diego Gas & Electric Company easement within the project boundaries, subject to the approval of SDG&E. In the event SDG&E fails to approve the proposed trail within the SDG&E easement area, the City shall pursue an alternate trail connection location and Lennar shall deposit \$20,000 into a City fund dedicated exclusively to the development of a trail connection in an alternate location.

5.11.5. Lennar shall develop criteria for the PAR to ensure adequate funding for on-going activities such as trail maintenance and enforcement, potential temporary habitat impacts associated with bridge maintenance, and to ensure monitoring and action for oak regrowth. Lennar shall pay for an independent third party to review the Land Management Plan and PAR. The third party shall be mutually agreed upon by NCA, the City, and Lennar from a list of those certified by the Resource Agencies, consent to not unreasonably be withheld.

Any work product of the third party reviewer will be provided to NCA, the City, and Lennar simultaneously, and NCA, the City, and Lennar will meet and confer regarding any issues expressed by the third party reviewer prior to submitting the Land Management Plan and PAR to the Resource Agencies.

5.11.6. Lennar shall use commercially reasonable efforts to provide pervious surfaces where possible throughout the project site subject to approval of and consistent with the recommendations of the project soils engineer of record.

5.11.7. Lennar shall utilize the definition of invasive plant species identified by the San Diego Natural History Museum and Lennar shall not include any invasive plant species in any of its landscape plans.

5.11.8. Lennar shall address the potential for temporary habitat impacts associated with bridge maintenance in the project's Land Management Plan.

5.11.9. Lennar shall coordinate with the City to ensure that the area and location selected for the creation and establishment of 3.1 acres of CSS to be incorporated into

the HMP preserve within the otherwise developable park land of Veterans Park will be based on biological value, and shall include the requirement that the 3.1 acres selected shall be contiguous to an existing HMP preserve area.

5.11.10. Lennar shall pay for an independent third party to review each and every Land Management Plan and PAR analysis necessary to fully implement the Poinsettia 61 Project. The third party shall be mutually agreed upon by NCA, the City, and Lennar from a list of those certified by the Resource Agencies, consent not to be unreasonably withheld. Any work product of the third party reviewer will be provided to NCA, the City, and Lennar simultaneously, and NCA, the City, and Lennar will meet and confer regarding any issues expressed by the third party reviewer prior to submitting each and every Land Management Plan and PAR analysis to the Resource Agencies.

5.11.11. Lennar, through the implementation of the Poinsettia 61 Project, shall provide additional off-site park and HMP preserve acreage at Veterans Park, Aviara Park,

the Buena Vista Reservoir, and the Kevane Parcels as detailed in the table attached hereto as Attachment 2.

5.11.12. Lennar, through the implementation of the Poinsettia 61 Project, shall provide on-site and off-site multi-modal circulation improvements and connections as detailed via the green text boxes and red and blue dashed lines in the figure attached hereto as Attachment 3.

5.11.13. Notwithstanding any provision of this Agreement to the contrary, Lennar is under no obligation to construct the Poinsettia 61 Project.

6. Reservation of Discretion.

6.1. The Parties acknowledge and agree that nothing in this Agreement shall be construed as circumscribing or limiting the City's discretion with respect to its compliance with CEQA and other applicable laws and regulations in connection with the Poinsettia 61 Project and that the City, in its sole and absolute discretion, may elect to certify or not certify the Poinsettia Final EIR or to approve or not approve the Poinsettia 61 Project, or may select

an alternative, including the No Project alternative, or may adopt mitigation measures or conditions of approval which the City determines are necessary and appropriate to reduce or avoid any potential environmental impact of the Poinsettia 61 Project or to comply with any applicable law or regulation. In the event that the City elects not to approve the Poinsettia 61 Project, any such action or inaction shall not constitute a breach of the City's obligations under this Agreement.

6.2. The Parties further acknowledge and agree that the City reserves its discretion to approve or disapprove all actions which require by law the exercise of discretion and which the City cannot lawfully be committed by contract to exercise in a particular way. Such reservation of discretion will apply to all contemplated legislative and quasi-judicial actions of the City, including without limitation the City's compliance with CEQA, approval of land use entitlements and related agreements, code enforcement and the making of findings and determinations required by law.

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Blanche Ramswick

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Aliso Viejo, CA 92656
949-349-8214
David.stearn@lennar.com

With a copy to: Melanie Houk
Deputy General Counsel
Lennar Homes of California, Inc.
25 Enterprise, Suite 400
Aliso Viejo, CA 92656
949-349-8022
Melanie.houk@lennar.com

Such written notices, demands and communications shall be effective on the date shown on the delivery receipt as the date delivered or the date on which delivery was refused.

9. Miscellaneous.

9.1. The Parties understand and agree that additional documents and agreements may be necessary to effectuate this Agreement and the Parties hereby agree to

execute and to deliver all other documents and agreements as may be reasonably necessary to carry out the purposes of this Agreement.

9.2. Each party signing this Agreement jointly and severally represents and warrants that it has full authority to obligate the party or parties or members on whose behalf it is signing and that no further action or authorization is necessary to execute this Agreement on behalf of such party or its members. NCA and the Associations specifically represent and warrant that they have full authority to obligate their members and that no further action is necessary for NCA and the Associations to make this Agreement on behalf of themselves and each of their members.

9.3. The Parties have read all of this Agreement, fully understand the same and have consulted with their attorneys regarding this Agreement or have had the opportunity to retain attorneys but have elected not to do so. The following Parties are represented by independent counsel with whom each party has fully discussed the terms and consequences of this Agreement: NCA and its members are represented by the law firm Delano & Delano,

220 W. Grand Avenue, Escondido, CA 92025; Lennar is represented by the law firm Allen
Matkins Leck Gamble Mallory & Natsis LLP, 501 West Broadway, 15th Floor, San Diego, CA
92101-3541; the City is represented by the law firm Hogan Law APC, 225 Broadway, Suite
1900, San Diego, CA 92101. The following Parties have had the opportunity to retain
independent counsel but have elected not to do so: Preserve Calavera; Friends of Aviara; and
Friends of the Buena Vista Reservoir. The Parties hereto acknowledge that they execute this
Agreement of their own free will and under no threat, menace, coercion or duress of any kind
from any party. The Parties further acknowledge that they execute this Agreement acting on
their independent judgment and upon the advice of their respective counsel, without any
representation, express or implied, of any kind from any other party, except as specifically set
forth herein.

9.4. This Agreement constitutes the entire fully integrated written agreement
among the Parties with respect to the subject matter of this Agreement and may not be modified

or waived except by a writing duly executed on behalf of the party to be bound by the waiver or modification.

9.5. If any part of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, such decision shall not affect the validity of any remaining portion of this Agreement and the remainder shall stand in full force and effect.

9.6. In the event it becomes necessary for any party to obtain the services of an attorney to enforce the provisions of this Agreement against any party who has breached any obligation set forth herein, the prevailing party in any proceeding shall be entitled to recover all its attorneys' fees and costs incurred.

9.7. This Agreement may be pleaded by any party hereto as a full and complete defense to and may be used as the basis for an injunction against any action, suit, claim or other proceeding of any type which may be prosecuted, initiated or attempted in violation of the terms hereof.

9.8. This Agreement is made, executed and delivered within the County of San Diego, State of California and shall be construed and covered by the laws of the State of California.

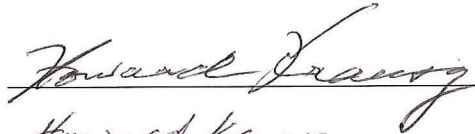
9.9. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and to all members, beneficiaries, elected and appointed officials, officers, directors, employees, attorneys, agents, successors, affiliates, heirs and assigns of each party.

9.10. This Agreement may be executed in one or more counterparts and, when executed by each of the Parties signatory hereto, said counterparts shall constitute a single valid Agreement even though each of the signatory Parties may have executed separate counterparts hereof.

IN WITNESS WHEREOF, this Settlement Agreement is executed on the date(s) set forth below.


Dated: March 14, 2017

NORTH COUNTY ADVOCATES

By: 
Howard Krausz
vice-
Patricia Bleha, President of the
Board of Directors


Dated: March 14, 2017

CITY OF CARLSBAD

By: 
Matt Hall, Mayor

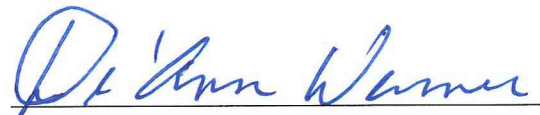
Dated: March 14, 2017

PRESERVE CALAVERA

By: 
Diane Nygaard, President

Dated: March 14, 2017

FRIENDS OF AVIARA

By: 
De'Ann Weimer, President

Dated: March 14, 2017

FRIENDS OF THE BUENA VISTA RESERVOIR

By:




Mary Anne Viney, President

Dated: March 14, 2017

LENNAR HOMES OF CALIFORNIA, INC.

By:



Jeremy Parness, V.P./Division President

Attachment 1

March 14, 2017

California Coastal Commission
Attn.: Ms. Erin Prahler & Mr. Gabriel Buhr
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108

RE: Local Coastal Plan Amendment 14-06, Coastal Development Permit 14-34, and Habitat Management Plan Permit 14-04 for the proposed Poinsettia 61 project in Carlsbad, CA

Dear California Coastal Commissioners:

We are writing you this letter to express our support for the above referenced actions before the Coastal Commission, regarding the Poinsettia 61 project proposed by the Applicant, Lennar Homes of California, Inc., as approved by the Carlsbad City Council on February 28, 2017, along with the certification of the associated Environmental Impact Report.

The Applicant, Lennar, has worked extensively with the City and the community at large, in addition to all of our respective organizations to ensure that all of our concerns regarding the proposed project are addressed and in particular, to help improve the larger issue of preserving and enhancing habitat and natural open space and providing public park land and trails within the City. We firmly believe that the approval and implementation of this project, in a form substantially similar to that approved by the City, will actually enhance and improve the existing environment and quality of life for the surrounding area.

Among other matters, the Applicant will be adding an additional six acres to the Habitat Management Plan Preserve in the City, constructing a new, unplanned three acre public park that is desired by the community, and completing the critical final link of a circulation element roadway with the construction of a bridge to preserve a wildlife corridor and riparian area, in addition to mitigating the project impacts. For these reasons, among others, we all urge you to approve the Poinsettia 61 proposal before you. Thank you for your consideration.

Sincerely,

North County Advocates

Preserve Calavera

Friends of Aviara

Friends of Buena Vista Reservoir

XC: California Dept. of Fish & Wildlife
Attn: Christine Beck
3883 Ruffin Road
San Diego, CA 92123

United States Fish & Wildlife Service
Attn: Janet Stuckrath
2177 Salk Avenue, Suite 250
Carlsbad, CA 92008

City of Carlsbad
Attn: Teri Delcamp & Don Neu
1635 Faraday Avenue
Carlsbad, CA 92008

Lennar Homes of California, Inc.
Attn: David Stearn & Andrew Han
25 Enterprise, Suite 400
Aliso Viejo, CA 92656

Attachment 2
Poinsettia 61 Project
Off-site Park & HMP Preserve Acreage

	Park Acreage		HMP Acreage	
	Existing	Via Agreement	Existing	Via Agreement
Veterans Park	Total: 91.5 ac Developable park: 51.1 ac Undevelopable park: 40.4 ac	Total: 91.5 ac ¹ (NC) Developable park: 48 ac (-3.1 ac) Undevelopable park: 43.5 ac (+3.1 ac)	40.4 ac	43.5 ac ^{2,3} (+3.1 ac)
Aviara Park	No change	No change		+ up to 5.7 ac ⁴
Buena Vista Reservoir	0 ac	+3.1 ac	N/A	N/A
Kevane Parcel	N/A	N/A	7.5 ac ⁵	10 ac ⁶ (+2.5 ac)
Total	91.5 ac	94.6 ac (+3.1 ac)	47.9 ac	up to 59.2 ac (+ up to 11.3 ac)

Footnotes

1. The total calculated park acreage for Growth Management compliance purposes equals the gross park acreage total, or 91.5 acres, which includes both developable and undevelopable (HMP preserve area) acreage, and, therefore, does not change as a result of the Agreement.
2. At Veterans Park, 3.1 acres of developable park acreage will be added into the HMP preserve, bringing the total acreage of the Macario Canyon/Veterans Preserve up to 43.5 acres. Per the Agreement, Lennar is required to prepare all necessary studies, plans and specifications, obtain all required permits, install, monitor and maintain for a minimum period of 5 years, and create and successfully establish 3.1 acres of additional CSS within the otherwise developable park area of Veterans Park, for incorporation into the HMP preserve, to the satisfaction of the City and the Resource Agencies, and Lennar shall bear the full cost thereof. Lennar is required to coordinate with the City to ensure that the area and location selected for the creation and establishment of 3.1 acres of CSS to be incorporated into the HMP preserve within the otherwise developable park land of Veterans Park will be based on biological value, which includes the requirement that the 3.1 acres selected shall be contiguous to an existing HMP preserve area. Lennar is also required to fund a non-wasting endowment for the on-going maintenance of the additional 3.1 acres of CSS habitat created within the otherwise developable park land of Veterans Park, in a dollar amount determined by a PAR analysis approved by and to the satisfaction of the City and the Resource Agencies.

Attachment 2
Poinsettia 61 Project
Off-site Park & HMP Preserve Acreage

Footnotes

3. In addition, per the Agreement and depending on the final habitat mitigation requirements of the Poinsettia 61 Project after final approval by the California Coastal Commission, Lennar may also prepare studies, plans and specifications, obtain all required permits, install, monitor and maintain for a minimum period of 5 years, and enhance and successfully establish up to 3.1 acres of additional CSS within the existing Macario Canyon/Veterans Preserve, to the satisfaction of the Resource Agencies, and Lennar shall bear the full cost thereof. If this option is exercised, Lennar is also required to fund a non-wasting endowment for the on-going maintenance of the enhanced up to 3.1 acres of CSS habitat within Veterans/Macario Canyon Preserve, in a dollar amount determined by a PAR analysis approved by and to the satisfaction of the City and the Resource Agencies.
4. At Aviara Park, up to 5.7 acres of SMC will be established and incorporated into the HMP preserve. Per the Agreement, Lennar is required to prepare studies, plans and specifications, obtain all required permits, install, monitor and maintain for a minimum period of 5 years, and enhance and successfully establish up to 5.7 acres of SMC within the natural area of Aviara Park, for incorporation into the HMP, to the satisfaction of the resource agencies, and Lennar shall bear the full cost thereof. Lennar is also required to fund a non-wasting endowment for the on-going maintenance of the up to 5.7 acres of SMC within the natural area of Aviara Park, in a dollar amount determined by a PAR analysis approved by and to the satisfaction of the City and the Resource Agencies.
5. Under the adopted Carlsbad HMP, development on the Kevane Parcels shall be limited to a maximum of 25% of the property and shall be clustered on the western portion of the property. The total acreage of the Kevane Parcels is 10 acres, and implementation of the existing HMP standard would yield 7.5 acres of HMP preserve.
6. As a part of the Poinsettia 61 Project, Lennar will be incorporating the entire 10 acres of the Kevane Parcels into the HMP preserve, for a net gain in HMP preserve acreage of 2.5 acres. Lennar is also required to prepare studies, plans and specifications, obtain all required permits, install, monitor and maintain for a minimum period of 5 years, and restore and enhance the disturbed habitat areas within the 10 acres of the Kevane Parcels and incorporate the entire 10 acres of the Kevane Parcels into the HMP preserve, to the satisfaction of the resource agencies, and Lennar shall bear the full cost thereof. Lennar is also required to fund a non-wasting endowment for the on-going maintenance of the entire 10 acres of the Kevane Parcels, in a dollar amount determined by a PAR analysis approved by and to the satisfaction of the City and the Resource Agencies.

Attachment 3
On-site and Off-site Multi-Modal Circulation Improvements and Connections

