

# COMMUNITY BENEFITS AGREEMENT

## Warm Springs/South Fremont Project (Lennar Homes of California)

This Agreement, dated this 4th day of November, 2015, is by and between Community Organization and Developer, each as defined below.

### RECITALS

A. Developer has proposed a mixed use project in the City of Fremont, California, within the area described by the City of Fremont's Warm Springs Community Plan as Area 4, generally bounded by S. Grimmer Boulevard, Fremont Boulevard, Lopes Court, and existing development (the "Project Site"), consisting of approximately 2,214 residential units (including approximately 958 for-sale attached units and 1,256 multi-family rental units) and commercial development (including office, retail, research and development, and potentially convention and hotel uses), as it may be amended or modified by Subsequent Approvals as defined in Recital E (the "Project").

B. The Project requires various approvals from the City of Fremont, including a Master Plan and a Development Agreement, each as defined below.

C. The Project, as proposed, includes certain public benefits, including without limitation dedication of land for and construction of a new TK-5/6 public elementary School and adjacent Urban Park and dedication of land for and construction of the Affordable Housing Component, all as more particularly described and defined in the Development Agreement.

D. Community Organization wishes to ensure that the School and Affordable Housing Component are completed as contemplated by the Development Agreement, and in addition have requested that Developer provide certain additional community benefits not contemplated by the Development Agreement or the Master Plan.

E. The Parties (as defined below) desire to resolve, as set forth in this Agreement, certain concerns and potential disputes raised by Community Organization including, without limitation, potential administrative and/or judicial challenges to any of the project approvals necessary for the approval, permitting, entitlement, and development of the Project on the Project Site, including without limitation: the CEQA Checklist (as defined below), the Master Plan, and the Development Agreement (collectively, the "Project Approvals"), and any subsequent approvals, permits and entitlements for the Project or the Project Site, including without limitation Design Review permits, subdivision maps, grading permits, building permits, certificates of occupancy, and amendments or modifications to any of the foregoing approvals (collectively, the "Subsequent Approvals") that do not cause a Significant Change (as defined in Section II.C below).

NOW, THEREFORE, following negotiations between the Parties, in consideration of the mutual terms, covenants, conditions and promises contained herein,

Developer and Community Organization have agreed to settle potential claims between the Parties regarding the Project Approvals and the Subsequent Approvals, through the terms and conditions set forth in this Agreement.

## **AGREEMENT**

### **ARTICLE I. DEFINITIONS**

As used in this Agreement, the following capitalized terms shall have the following meanings. All definitions include both the singular and plural form.

“Additional Community Benefit Commitments” is defined in Section II.B.

“Agreement” shall mean this Agreement, including all attachments.

“BTC” is defined in Article IV.

“CEQA Checklist” shall mean the Warm Springs/South Fremont Community Plan Planning Area 4 Master Plan (Lennar) CEQA Environmental Compliance Checklist approved by the City on March 17, 2015.

“City” shall mean the City of Fremont, California, and all agencies that comprise it.

“City Council” shall mean the Fremont City Council.

“Community Benefit Commitments” is defined in Section II.B.

“Community Organization” shall mean COR - Congregations Organizing for Renewal (a California nonprofit corporation) and its respective representatives, employees, agents, attorneys, officers, and directors, each when acting in an authorized, official capacity on behalf of organization, and the organization’s Successors. Obligations of Community Organization shall be obligations only of the organization itself, as distinct from its associated organizations, constituent organizations or any natural persons.

“Compliance Matrix” is defined in Section II.E.

“Developer” shall mean Lennar Homes of California, Inc., a California corporation, and its representatives, employees, agents, attorneys, officers, and directors, each when acting in an authorized, official capacity on behalf of Lennar Homes of California, Inc., and the Successors of Lennar Homes of California, Inc.

“Development Agreement” shall mean the Development Agreement by and between the City of Fremont, a California municipal corporation, and Lennar Homes of California, Inc., a California corporation, regarding the Warm Springs Innovation District Project dated May 1, 2015; approved by the City on April 7, 2015, by Ordinance No. 11-2015, and recorded on June 1, 2015, as instrument number 2015144393 in the Official Records of Alameda County.

“Effective Date” shall mean the date set forth in the preamble above.

“Existing Community Benefit Commitments” is defined in Section II.A.

“Master Plan” shall mean the Warm Springs/South Fremont Community Plan Area 4 Master Plan dated March 2015 and approved by the City on March 17, 2015, by Resolution No. 2015-11.

“Party” shall mean Community Organization and the Developer and their respective Successors.

“Project” is defined in Recital A.

“Project Approvals” is defined in Recital E.

“Project Site” is defined in Recital A.

“RISE Coalition” is defined in Article IV.

“RISE Leadership Members” is defined in Article IV.

“Significant Change” is defined in Section II.E.

“Subsequent Approvals” is defined in Recital E.

“Successor” shall mean each Party’s respective successors, assignees, buyers, grantees, vendees, or transferees, and their past or present, direct or indirect, affiliates, partners, joint venturers, subsidiaries, parents, representatives, receivers, trustees, officers, directors, employees, agents, representatives, attorneys and shareholders and each of them, to the extent that each such person or entity is acting on behalf of the Party in question.

“Transfer Documents” is defined in Section V.G.

## ARTICLE II. SUPPORT AND CONTINGENCIES

A. **Non-Opposition to Project.** Community Organization shall refrain from (i) opposing the Project Approvals or the Subsequent Approvals; (ii) advocating for the imposition of additional community benefits or conditions of approval on the Project, the Project Approvals, or the Subsequent Approvals, (iii) taking any action that would delay, change the process for issuance of, or otherwise interfere with the issuance or validity of, any Project Approvals or Subsequent Approvals; (iv) citing the Project, the Project Approvals, or the Subsequent Approvals (including without limitation the level of community benefits provided thereby) as a basis for advocating for changes in laws, regulations, policies, or practices, or the imposition of conditions related to other projects or project approvals; and (vi) advocating for any administrative or legislative change directed particularly at the Project, the Project Approvals, the Subsequent Approvals, or the Project Site that would increase the costs of processing, development, or construction, or adversely affect the timing of the development and build-out, of the Project or the Project Site.

Community Organization shall not itself submit formal or informal, prepared or unprepared, oral or written comments, or testify in front of, or aid, encourage, assist or collaborate with (monetarily or otherwise) any other party in submitting oral or written comments to or testifying in front of, (i) any reviewing authority or agency, or (ii) any media entity or representative thereof, or (iii) any community meetings, proceeding, or other public event, in violation of this Section II.A.

**B. No Further Action.** Community Organization agrees and covenants that it shall not itself, or counsel others to, directly or indirectly, initiate, aid, request, encourage, file, fund or participate in any activity jeopardizing or challenging the Project Approvals or the Subsequent Approvals, including without limitation: (i) any administrative or judicial hearing or appeal opposing the approval, issuance, or validity of the Project Approvals or the Subsequent Approvals, including, without limitation, an appeal of any of the Project Approvals or the Subsequent Approvals; (ii) any litigation challenging in any way the approval, issuance, or validity of the Project Approvals or the Subsequent Approvals; (iii) or any legislation, initiative, referendum or moratorium which would in any way prevent or impede the approval, issuance, or validity of the Project Approvals or the Subsequent Approvals.

**C. Release.** Except for the obligations provided herein, Community Organization hereby unconditionally releases, remises, acquits and forever discharges Developer from any and all claims, demands, injuries, actions, causes of action, either at law or in equity or of any kind, nature or description, whether presently known or unknown and whether presently are existent or nonexistent, which Community Organization has had or now has or may in the future have against Developer challenging the Project Approvals or the Subsequent Approvals.

**D. Waiver of Civil Code Section 1542.** Community Organization agrees that the release described in Section II.C extends to all claims known or unknown, suspected or unsuspected, and in that regard Community Organization acknowledges that it has read, been advised by counsel concerning, and considered and understands the full nature, extent and import of the provisions of Section 1542 of the Civil Code of California, which reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

1. Community Organization further declares that it knowingly and willingly enters into this Agreement notwithstanding the provisions of Section 1542. Community Organization, with the advice of counsel, waives and relinquishes, now and forever, any and all rights it has or may have under Section 1542 to the fullest extent allowed by law. Community Organization agrees and represents that it fully understands the statutory language of Civil Code Section 1542 and with this understanding, nevertheless, elects to and does assume all risks for rights, claims, demands, obligations, causes of action or liabilities, known or unknown, heretofore and hereafter arising within the scope of the release described in Section II.C.

2. Community Organization hereby expressly, knowingly, and voluntarily waives and relinquishes any and all rights and benefits that it may have under California Civil Code Section 1542 with respect to the release described in Section II.C.

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COR – Congregations Organizing for Renewal

E. **Significant Changes.** Requirements of this Article II shall not apply to Subsequent Approvals to the extent that such Subsequent Approvals would cause a Significant Change, provided that this exception shall apply only to the specific Subsequent Approval proposing the Significant Change, only to the applicant seeking that Subsequent Approval, and only to the Significant Change itself. Only the applicant seeking the Subsequent Approval in question may enforce Section II.B(ii) or II.C with respect to that Subsequent Approval. A “Significant Change” shall mean any of the following:

1. a material reduction or delay in the Existing Community Benefits (as defined below);
2. an increase, as compared to the Project Approvals, of (i) two hundred twenty-five (225) or more residential units, and/or (ii) non-residential acreage or square footage in the Project that would generate more than one thousand (1000) additional non-construction jobs based on the job factors contained in the Compliance Matrix set forth in the Appendix to the Master Plan (the “Compliance Matrix”); for example, the Compliance Matrix establishes a ratio of 298 square feet of “Retail and Entertainment” space per estimated job, so an additional 298,000 square feet of retail or entertainment space in the Project would constitute a Significant Change;
3. a decrease, as compared to the Project Approvals, of non-residential acreage or square footage in the Project that would result in more than five hundred (500) fewer non-construction jobs based on the job factors contained in the Compliance Matrix;
4. authorization of any of the uses listed in Exhibit A, attached hereto.

### ARTICLE III. COMMUNITY BENEFITS

A. **Existing Community Benefit Commitments.** Developer shall comply with Developer’s obligations set forth in the Master Plan as it exists on the Effective Date of this Agreement, the Development Agreement as it exists on the Effective Date of this Agreement, and the Mitigation and Construction Agreement between Lennar Homes of California, Inc., a California corporation, Toll Brothers, Inc., a Delaware corporation, and Valley Oak Partners, LLC, a California limited liability company, and the Fremont Unified School District, a public school district of the State of California, regarding the following subject areas:

1. the Affordable Housing Component and Plan (as defined in the Development Agreement Section 6.3), including the approximate size of units, level of affordability, number and percentage of affordable units, location, and timing of construction;
2. the payment of Impact Fees (as defined in the Development Agreement), including Impact Fees related to affordable housing; and
3. Developer's contribution of funds or real property, site preparation, or other services in support of construction of the School (as defined in the Development Agreement), the Urban Park (as defined in the Development Agreement), and the Backbone Infrastructure (as defined in the Development Agreement)

(collectively, the "Existing Community Benefit Commitments").

**B. Additional Community Benefit Commitments.** In addition to the Existing Community Benefit Commitments, Developer shall provide the following "Additional Community Benefits":

1. The marketing program for the Affordable Housing Component shall include a program for targeted marketing to residents of City and of the Warm Springs community, in order to maximize their opportunity to reside in the Affordable Housing Component, in accordance with Section 4.4 of the form of Affordable Housing Agreement attached to the Development Agreement as Exhibit F.
2. Subject to consultation with City as required by Section 6.3D of the Development Agreement, the resident services for the Affordable Housing Component required by Section 6.3D of the Development Agreement shall include workforce development services. The workforce development services shall be provided at no cost to the residents of the Affordable Housing Component and shall be designed to assist with employability skills, including job placement, resume development and interview skill proficiency. In addition, there shall be English as a Second Language, Computer Skills and Financial Literacy development included in the overall services package. The resident services provider, in consultation with City, shall have the authority to substitute replacement services if, after eighteen (18) months of availability, the workforce development services are not sufficiently utilized.
3. Developer shall deposit Three Hundred and Fifty Thousand Dollars (\$350,000.00) into a trust account designated and managed by Community Organization, to be used only for grants to qualified job training providers to provide job training (construction and non-construction) for residents of the City. The deposit shall be made in five (5) equal installments of Seventy Thousand Dollars (\$70,000), with the first installment payable upon the later to occur of April 1, 2016, or ninety (90) days after the execution of this Agreement, and the remaining four installments each due annually thereafter on the anniversary date of the first payment. At least fifty percent (50%) of the deposited funds must be used for construction job training. The Parties anticipate that funds will be granted to the Cypress Mandela Training Center for construction job training, and to Ohlone College for non-construction job training, but other qualified job training providers may be granted funds for expenditure consistent with this

Agreement. All funds deposited into the trust account must be granted to training providers within six (6) months after deposit, or they shall be returned to Developer. Grant agreements for trust account expenditures shall require grantees to provide to Community Organization regular reports regarding use of grant funds, number of trainees, placement rates, and other information generally required in relation to workforce development grants. Community Organization shall provide Developer with an annual written report detailing all expenditures from the trust account, including copies of all reports from grantees.

The Existing Community Benefit Commitments and Developer's obligation to provide the Additional Community Benefits shall be collectively described herein as the "Community Benefit Commitments".

#### ARTICLE IV. RISE

The "RISE Coalition" is an unincorporated association whose primary active members include Fremont chapters or locations of the following groups: the Afghan Coalition; Fremont Congregational Church, the Holy Spirit Church, Our Lady of Guadalupe; Timelist Group; and St. Joseph's Catholic Church (together, the "RISE Leadership Members"). The Building & Construction Trades Council of Alameda County (the "BTC") is a coalition of 28 affiliated unions in various construction trades. Although the RISE Coalition and the BTC are not Parties to this Agreement, the Parties acknowledge and agree that, if the RISE Coalition, any of the RISE Leadership Members acting in an authorized and official capacity, or the BTC takes any action that would constitute a material breach of Article II of this Agreement if the RISE Coalition, such RISE Leadership Members, or the BTC were a Community Organization and a Party to this Agreement, then Developer's obligations under Section III.B of this Agreement shall terminate. Community Organization shall inform the RISE Coalition, the RISE Leadership Members, and the BTC in writing of the provisions of this Article IV within ten (10) days after the execution of this Agreement.

#### ARTICLE V. MISCELLANEOUS

**A. Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of each of the Parties and their respective Successors, and Successors of such Successors.

**B. Entire Agreement.** The Agreement contains the entire agreement between the Parties and supersedes any prior agreements, whether written or oral. This Agreement may not be altered, amended, or modified except by an instrument in writing signed by the Parties hereto.

**C. Authority, Representations and Warranties.** Each signatory to this Agreement represents and warrants that he or she has full power and authority to execute and deliver this Agreement on behalf of the entity for whom he or she is signing. Concurrently with the delivery of a signed copy of this Agreement, Community Organization shall provide to Developer a copy of an executed resolution of the Board of Directors of Community Organization or other documentation reasonably satisfactory to Developer evidencing the

authority of Community Organization and the individual executing the Agreement to bind Community Organization. Upon proper execution and delivery, this Agreement will have been duly entered into by the Parties, will constitute as against each Party a valid, legal and binding obligation, and will be enforceable by each Party and against each Party in accordance with the terms herein.

**D. Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

**E. Severability.** If any of the provisions of this Agreement shall prove to be invalid, void, illegal, or unenforceable, it shall in no way affect, impair, or invalidate any of the other provisions hereof; provided that, if the invalidation, voiding or unenforceability would deprive any Party of material benefits derived from this Agreement, or make performance under this Agreement unreasonably difficult, the Parties shall meet and confer and shall make good faith efforts to amend or modify this Agreement in a manner that is mutually acceptable to the Parties. Notwithstanding the foregoing, if any material provision of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable, either Party may terminate this Agreement by providing written notice of such termination to the other Party.

**F. Attorneys' Fees.** In any litigation or other proceeding arising out of rights and obligations under Section II.B(ii) or Developer's obligation to make installment payments under Section III.B.3 of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees, expenses, disbursements, and court costs. In any other proceeding arising out of this Agreement, each Party will be responsible for its own attorneys' fees, expenses, disbursements, and court costs. Within forty-five (45) days after the Effective Date of this Agreement, Developer shall provide \$5,000 to Community Organization's legal counsel, to support in part the legal expenses incurred by Community Organization in negotiation of this Agreement.

**G. Transfer of Interests.** In the event that Developer assigns or transfers all or any portion of the Project Site, the Project Approvals, or the Subsequent Approvals to a third party, Developer shall include in the documents effecting such transfer (the "Transfer Documents") a written assignment and assumption of any obligations pursuant to this Agreement transferred therewith, and Developer shall provide to Community Organization a copy of the portions of the Transfer Documents evidencing such assignment and assumption within ten (10) days after the transfer.

**H. Recordation.** The Parties shall execute a Memorandum of Agreement in the form attached as Exhibit B, which shall be recorded in the records of Alameda County, concurrently with Developer's transfer of ownership of any portion of the Project Site.

**I. Default and Remedies.**

1. **Default.** Failure by any Party to perform or comply with any term or provision of this Agreement, if not cured, shall constitute a default under this Agreement. Any breach or



default of any provision of this Agreement by any Party hereto shall not terminate this Agreement or suspend the performance of any obligation or duty created by this Agreement by any Party until and unless it is determined by a court, pursuant to the provision of this Section, that such breach shall terminate the Agreement or entitle the non-defaulting Party to terminate the Agreement or to suspend performance.

2. **Right to Cure.** If any Party believes that another Party is in default of this Agreement, it shall provide written notice to the allegedly defaulting Party of the alleged default; offer to meet and confer in a good-faith effort to resolve the issue; and, (a) in the case of monetary defaults, provide fifteen (15) days to cure the alleged default, and (b) in the case of non-monetary defaults, except where a delay may cause irreparable injury, provide sixty (60) days to cure the alleged default, in each case commencing at the time of the notice. Any notice given pursuant to this provision shall specify the nature of the alleged default, and, where appropriate, the manner in which the alleged default may be cured.

3. **Withdrawal of Comments.** The Parties agree that due to the nature of this Agreement, the amount of actual monetary damages sustained by Developer in the event of a breach of or default under this Agreement by Community Organization would be extremely difficult to determine. Therefore, without limiting the generality of this Section V.I, the Parties agree that:

(a) Community Organization will withdraw any comments submitted to any entity by Community Organization in violation of this Agreement; and

(b) If the nature of the forum or of the comments submitted by Community Organization in violation of this Agreement are such that the Community Organization cannot withdraw them, Community Organization will submit to the same entity comments the content of which counter the contents of the comments that violate this Agreement.

4. **Remedies.** In the event that another Party is allegedly in default under this Agreement, then a Party alleging default may elect, in its sole and absolute discretion, to waive the default or to pursue remedies as described in this Section. Such remedies may be pursued only after exhaustion of the cure period described above, except where an alleged non-monetary default may result in irreparable injury, in which case the non-defaulting Party may immediately pursue the remedies described herein. A Party may pursue enforcement of any term of this Agreement in Alameda County Superior Court. A Party may seek an order, and the court shall have the power to order, without limitations, affirmative equitable and/or affirmative injunctive relief, temporary or permanent, including specific performance, requiring a defaulting Party to comply with this Agreement. The Parties agree that any remedies stated above shall not be the Parties' exclusive remedies and the Parties shall be entitled to all other remedies at law or in equity and the exercise of any one or more of those remedies shall not constitute a waiver or election with respect to any other available remedies; provided that, except for orders to pay specified sums required to be paid under explicit terms of this Agreement, in no case shall monetary damages be awarded for violations of this Agreement.

**J. Implementation through Relevant Contracts.** Where Developer's obligation to provide the Additional Community Benefits pursuant to this Agreement requires Developer to impose responsibilities on entities that are not parties to this Agreement, Developer shall ensure that relevant contracts: (i) impose such responsibilities on such entities; (ii) require such entities to impose such responsibilities on subcontractors or other parties involved in the Project through the contract in question; (iii) require all entities with such responsibilities to provide to Developer upon request any information reasonably necessary to determine compliance with such responsibilities, and Developer will in turn provide this information to Community Organization upon its written request.

**K. Assurance regarding Preexisting Contracts.** Developer warrants and represents that, as of the Effective Date of this Agreement, it has not executed any contract pertaining to the Project that would preclude Developer's compliance with its obligations under this Agreement, that it is the sole entity maintaining rights to develop the Project under the Project Approvals, and that it has the ability to deliver and fulfill the Community Benefit Commitments.

**L. Compliance Information.** Upon written request from a Party, another Party hereto shall provide any records or information reasonably necessary to monitor compliance with the terms of this Agreement.

**M. Waiver.** Unless otherwise expressly provided in this Agreement, no waiver by a Party of any provision hereof shall be deemed to have been made unless expressed in writing and signed by such Party. The waiver by any Party of any provision or term of this Agreement shall not be deemed a waiver of any other provision or term of this Agreement. The mere passage of time, or failure to act upon a breach, shall not be deemed a waiver of any provision or term of this Agreement.

**N. Construction.** Each of the Parties has had the opportunity to be advised by counsel with regard to this Agreement. Accordingly, this Agreement shall not be strictly construed against any Party, and any rule of construction that any ambiguities be resolved against the drafting Party shall not apply to this Agreement.

**O. Correspondence.** All correspondence shall be in writing, may be given either personally, by registered or certified mail (return receipt requested), or delivered by nationally recognized overnight courier service, and shall be addressed to the affected parties at the addresses set forth below. A Party may change its address by giving notice in compliance with this Section. The addresses of the Parties are:

If to Developer:

Lennar Homes of California, Inc.  
2603 Camino Ramon, Suite 525  
San Ramon, CA 94583  
Attn.: Bill O'Brien

With copies to:

Lennar Multifamily Communities  
492 9<sup>th</sup> Street, Suite 300  
Oakland, CA 94607  
Attn: Alex Waterbury

Cox, Castle & Nicholson LLP  
50 California Street, Suite 3200  
San Francisco, CA 94111  
Attn: Margo Bradish, Esq.

If to Community Organization:

COR – Congregations Organizing for Renewal  
703 C Street  
Union City, CA 94587  
Attn: Cassandra Alvarez

with a copy to:

Law Office of Julian Gross  
The Flood Building  
870 Market Street, Suite 813  
San Francisco, CA 94102

Notices personally delivered shall be deemed to have been received upon delivery. Notices delivered by certified mail, as provided above, shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addresses designated above as the Party to whom notices are to be sent, or (ii) within five (5) days after a certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. Notices delivered by overnight courier service as provided above shall be deemed to have been received twenty four (24) hours after the date of deposit.

**P. Counterparts.** This Agreement may be executed in two or more counterparts, each of which may be deemed an original, but all of which shall constitute one and the same document.

**Q. Further Acts.** The Parties shall execute, and deliver documents and instruments and take such other further actions as may be reasonably necessary to carry out the intent and provisions of this Agreement.

**R. No Requirement to Build.** The Parties hereto agree that, notwithstanding anything to the contrary herein, this Agreement shall not obligate Developer to undertake all or any part of the Project. If Developer, in its sole and complete discretion, chooses to construct

any portion of the Project, it will construct that portion in compliance with this Agreement, including Article III.

**S. No Prior Assignments.** The Parties hereto represent and warrant that they have not heretofore assigned or transferred or purported to assign or transfer, to any other person, entity, firm or corporation whatsoever, any claim, debt, liability, demand, obligation, expense, action or causes of action herein released.

**T. Settlement of Disputed Claims.** The Parties hereto understand and agree that this settlement is a compromise of disputed claims, and that Developer's actions under this Agreement are not construed as an admission of liability by Developer and likewise, except as otherwise provided herein, are not to be construed as an admission by Community Organization regarding the merits of the Project.

**U. Factual Investigation.** Each Party has conducted its own factual investigation, is not relying on the other Party, and assumes the risk that there are material unknown facts or that facts are other than as is presumed.

**V. Costs and Expenses.** Each Party hereto will bear its own costs, expenses, and attorneys' fees incurred in connection with negotiating this Agreement and neither will make any claim against the other for such costs, expenses, disbursements, or attorneys' fees.

**W. Agreement May Be Pleaded as a Defense.** In connection with any demand or cause of action related to a matter released in Section II.D herein, this Agreement may be pleaded as a defense by any Party hereto and shall operate to effect a dismissal of such demand or cause of action.

**X. Captions.** The captions of the various paragraphs in this Agreement are for convenience and organization only, and are not intended to be any part of the body of this Agreement, nor are they intended to be referred to in construing the provisions of this Agreement.


**Y. Understanding of Terms.** The Parties each hereby affirm and acknowledge that they have read this Agreement, that they know and understand its terms, and have signed it voluntarily and on the advice of counsel. The Parties have had a full and unhindered opportunity to consult with their attorneys, accountants, financial advisors and such other consultants as they may have desired prior to executing this Agreement.

**Z. Termination.** If Developer notifies Community Organization, in writing, (i) that the Project is disapproved or is approved on terms not acceptable to Developer in its sole and absolute discretion, or (ii) that Developer has decided not to commence construction of any new buildings in the Project, or (iii) that the Project Approvals are voided as a result of any litigation, referendum or other reason, then this Agreement shall automatically terminate as of the date of such notice.

**AA. No Third Party Beneficiaries.** The Parties agree that no third party beneficiary to this Agreement exists and that nothing contained herein shall be construed as giving any other person or entity third party beneficiary status.

IN WITNESS WHEREOF, the following Parties have executed this Agreement as of the Effective Date:

LENNAR HOMES OF CALIFORNIA, INC.,  
a California corporation

  
By: ~~Lennar Homes of California, Inc.~~ Brian Olin  
Its: Vice President

COR – CONGREGATIONS ORGANIZING FOR RENEWAL,  
a California nonprofit corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

IN WITNESS WHEREOF, the following Parties have executed this Agreement as of the Effective Date:

LENNAR HOMES OF CALIFORNIA, INC.,  
a California corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

COR – CONGREGATIONS ORGANIZING FOR RENEWAL,  
a California nonprofit corporation

By: *Cassandra Alvarez*  
Its: Board of Directors Co-Chair

## **Exhibit A**

### **Objectionable Uses**

1. Homeless shelter or halfway house,
2. Correctional facility,
3. Shooting range,
4. Casinos, card rooms or billiards rooms,
5. Junkyards, landfills, sewage treatment plants or any facility for treatment or storage of contaminated, hazardous or toxic materials (collectively, "Hazardous Materials"); provided, however, that the use and storage of such Hazardous Materials shall not be deemed to be in violation of this Paragraph if the use and storage of such Hazardous Materials is part of or incidental to the uses permitted by the Project Approvals and such use and storage of such Hazardous Materials complies in all material respects with all applicable laws,
6. Manufacture of soap, glue, acid, rubber, plastics, paper, petroleum or explosive products or smelters,
7. Slaughter or rendering of fish, poultry or animal products,
8. Refinery or power plant,
9. Any use or activity which constitutes a menace to persons or property or is dangerous, obnoxious, or offensive by reason of air pollution, odor, smoke, noise, dust, vibration, radiation or fumes.



**Exhibit B**  
**Memorandum of Agreement**

RECORDING REQUESTED BY

AND WHEN RECORDED RETURN TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Space above this line for Recorder's use only)

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### MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (this "Memorandum") is made as of \_\_\_\_\_, 2015, by and between Lennar Homes of California, Inc., a California Corporation, ("Developer") and COR – Congregations Organizing for Renewal (a California nonprofit corporation) ("Community Organization").

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. Developer and Community Organization have entered into that certain Community Benefits Agreement dated as of \_\_\_\_\_, 2015 (the "Agreement") regarding the provision of community benefits in connection with Developer's project within the area described by the City of Fremont's Warm Springs Community Plan as Area 4 (generally bounded by S. Grimmer Boulevard, Fremont Boulevard, Lopes Court, and existing development), upon and subject to the terms and conditions set forth in the Agreement.

2. The sole purpose of this Memorandum is to give notice of the Agreement in the public records. This Memorandum does not provide a complete summary of the Agreement and in no way modifies the provisions of the Agreement, all of which provisions are specifically made a part hereof as fully and completely as if set out in full herein.

3. This Memorandum shall be binding upon, and shall inure to the benefit of, the parties hereto, and their respective legal representatives, successors and assigns.

4. This Memorandum may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Memorandum on the day and year first above written.

LENNAR HOMES OF CALIFORNIA, INC.,  
a California corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

COR – CONGREGATIONS ORGANIZING FOR RENEWAL,  
a California nonprofit corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_