

SETTLEMENT, RELEASE, AND WAIVER AGREEMENT

This Settlement, Release and Waiver Agreement ("Agreement") is entered into on November 25, 2013, by and among Preserve Calavera ("Petitioner") and Quarry Creek Investors, LLC ("Quarry Creek Investors") and the City of Carlsbad ("City"). Petitioner, Quarry Creek Investors and the City are sometimes referred to collectively hereinafter as the "Parties."

1. INTRODUCTION

On May 9, 2013, Petitioner filed a Verified Petition for Writ of Mandate pursuant to the California Environmental Quality Act in San Diego Superior Court as Case No. 37-2013-00047911-CU-WM-NC ("CEQA Lawsuit"). The CEQA Lawsuit challenges the Carlsbad City Council's decision on April 2, 2013, to certify a Final Environmental Impact Report ("FEIR") and to approve a General Plan amendment, Zone Change, Master Plan and related entitlements ("Project Approvals") for a mixed-use development project known as "Quarry Creek" ("Project"). A complete description of the Project is set forth in Section 3.0 of the Project Description of the FEIR. The FEIR states that it is intended to cover all approvals, actions and determinations to implement the Project.

On May 29, 2013, Petitioner filed a Verified Complaint for Declaratory and Injunctive Relief pursuant to the Brown Act in San Diego Superior Court as Case No. 37-2013-00050683-CU-MC-NC ("Brown Act Lawsuit"). The Brown Act Lawsuit alleges the Carlsbad City Council discussed the Project in closed session in violation of the Brown Act before approving the Project on April 2, 2013. The Brown Act Lawsuit and the CEQA Lawsuit will be referred to herein collectively as the "Pending Lawsuits."

Following a mandatory settlement conference pursuant to CEQA and after negotiations in good faith, the Parties desire to resolve their differences through settlement rather than through trial, including resolving all claims and liabilities in connection with the issues asserted in the Pending Lawsuits or which could have been raised in the Pending Lawsuits. Moreover, the Parties intend that this settlement will resolve all disputes over the implementation, construction and maintenance of the Project.

The Parties enter into this Agreement to fully settle and discharge all disputed civil claims and actions upon the terms and conditions set forth herein.

2. NO ADMISSION OF LIABILITY

It is expressly understood, acknowledged, and agreed to by the Parties, that by reason of entering into this Agreement, the Parties 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, allegations,

assertions, or the positions of any party. Further, the Parties have not made any such admission and this Agreement is entered into solely by way of compromise and settlement.

3. QUARRY CREEK INVESTORS' OBLIGATIONS

In consideration of the obligations undertaken and the promises made herein by Petitioner and the City, Quarry Creek Investors hereby covenants and agrees as follows:

- a. Quarry Creek Investors will process a substantial conformance Tentative Map and Minor Master Plan Amendment on Quarry Creek through the City showing the following:
 - i. Revised grading and road modifications to the “panhandle” parcel of the Project, as shown on Exhibit “A”.
 - ii. A reduction in the Project’s maximum unit count from 656 to 636.
 - iii. A two story height limit for the first row of homes on the northernmost portion of the panhandle parcel of the Project.
 - iv. Use of earth tone colors for elevations and roof tiles for the first row of homes on the northernmost portion of the panhandle parcel of the Project.
 - v. Subject to the approval of the City and the City’s Fire Department, enhanced landscaping shall be planted on the north facing slope of the panhandle parcel of the Project in order to provide additional screening of residential structures.
- b. Quarry Creek Investors will use its best efforts to acquire in fee the Village H property (“Village H”), composed of approximately 60.89 acres, Assessor Parcel Number (“APN”) 167-101-19.
- c. Quarry Creek Investors shall not be required to allow public access on existing trails through Village H during the time that it owns Village H.
- d. Quarry Creek Investors shall retain the right to improve existing drainages within Village H as mitigation in connection with obtaining permits or other approvals for the Project from the United States Army Corps of Engineers (“USACE”), the United States Fish and Wildlife Service (“USFWS”), California Department of Fish and Wildlife (“CDFW”), and San Diego Regional Water Quality Control Board (“SDRWQCB”) (jointly, the

“Resource Agencies”). Such improvements shall be subject to reasonable review and approval by the City.

- e. Quarry Creek Investors shall transfer its fee interest in Village H to the City upon the completion of the following events: (1) approval by the City of the Site Development Plans or Tentative Maps for the five lots created by Tentative Map No. CT 11-04; (2) USACE approval of a Section 404 permit for the Project; (3) execution of a Section 1603 Agreement with the CDFW for the Project; and (4) issuance of a Section 401 Certification by the SDRWQCB for the Project. The City agrees that this transfer of Village H shall be in an “as is” condition. Quarry Creek Investors shall be responsible for releasing any loans or liens it may have placed on the property, preparing any plats and legal description, and paying any fees associated with the transfer of Village H to the City.
- f. Within 45 days of the acquisition in fee of Village H, Quarry Creek Investors shall record an open space easement or restrictive covenant on Village H (excluding the CF Site) for the benefit of Preserve Calavera, or other mutually agreed upon third party. Notwithstanding the recordation of an open space easement or restrictive covenant on Village H, Quarry Creek Investors will retain the developments rights to the CF Site until the transfer of Village H to the City occurs.
- g. Quarry Creek Investors shall record a restrictive covenant or open space easement on the CF Site for the benefit of Preserve Calavera, or other mutually agreed upon third party, prior to transferring the CF Site to the City, provided such transfer occurs consistent with the terms of this Settlement Agreement.
- h. The form of the Village H transfer documents and open space easements and/or restrictive covenants referenced in Paragraphs 3.e through 3.g, above, shall be subject to the reasonable review and approval by the City.
- i. If the conditions precedent for the transfer of Village H to the City as set forth in Paragraph 3.e do not occur, or if any lawsuit is filed challenging any necessary approval required to implement the Project, Quarry Creek Investors may request a change in the CF designation on Village H, as allowed in the City’s Municipal Code, and develop the CF site consistent with that change in designation. Preserve Calavera agrees not to oppose the change in designation or development of the CF Site provided, however, that Quarry Creek Investors agrees to grant Preserve Calavera an option to purchase Village H prior to such development (“Village H Option”). The

Village H Option shall be triggered by a written notice to Preserve Calavera from Quarry Creek Investors, as specified in Paragraph 9.

- i. The Village H Option shall be for twelve (12) months from the date of receipt of written notice from Quarry Creek Investors.
 - ii. The purchase price shall be the same amount that Quarry Creek Investors pays for Village H.
 - iii. Within fifteen (15) days of receipt of the written notice, Petitioner shall make a \$50,000.00 deposit ("Option Deposit") on the Village H Option to vest the option. If Petitioner fails to make the Option Deposit, the option shall expire. The Option Deposit shall become non-refundable sixty (60) days after it is made. In the event that Petitioner exercises the option within the Term, however, the Option Deposit will be credited towards the purchase price.
- j. In the event that Quarry Creek Investors is unable to acquire Village H after using its best efforts to do so, and only after Quarry Creek Investors obtains the approvals described in Paragraphs 3.a and 3.e, Quarry Creek Investors shall deposit \$964,000.00 ("Settlement Funds") into an account that shall be used to benefit the preservation and management of natural lands in coastal San Diego North County, with a first priority on preserving and managing natural lands in the City, subject to the mutual agreement of Quarry Creek Investors and Preserve Calavera. Preserve Calavera agrees to cooperate in good faith with the City to identify natural lands located in the City that can be preserved or managed through the use of the Settlement Funds consistent with the terms of the Settlement Agreement. The parties shall agree on a third party that will act as the trustee for the account and make decisions concerning the distribution of funds consistent with the approved uses of the Settlement Funds outlined below. Focus shall be on existing natural lands, the watershed of the Carlsbad Hydrologic Unit, and regional habitat and wildlife movement corridors as identified in the Multiple Habitat Conservation Plan ("MHCP") and Carlsbad Habitat Management Plan. Any interest earned on the deposited Settlement Funds shall be used to pay the trustee; any remaining interest shall be reimbursed to Quarry Creek Investors after \$964,000.00 in Settlement Funds have been distributed by the trustee of the account for the approved uses. Any use of the Settlement Funds other than those described as preapproved uses, below, shall require the mutual written consent of Quarry Creek Investors and Preserve Calavera. Preapproved uses of the Settlement Funds shall include the following:

- i. Open space land acquisition - Research into potential acquisitions, appraisal and other fees, preparation of conservation easement and purchase agreements, purchase of land, and endowment funds for land management. Acquisitions shall only be from willing sellers and Petitioner agrees not to use the existence of the Settlement Funds as a basis to oppose proposed projects or other City initiatives.
- ii. Management of preserved lands within the City or lands acquired by use of the Settlement Funds - Preparation of land management plans, improved invasive species control such as invasive plant removal and cowbird trapping, trash removal and clean-up, site restoration, funding scientific studies on related issues such as targeted species enhancement, and improved site enforcement, such as ranger patrols.
- iii. Mitigating Greenhouse Gas Emissions - Providing incentive programs in support of expanded public transit services or increased ridership in the City as a first priority and also in the Cities of Oceanside and Vista. Physical improvements to support alternative transportation, such as pedestrian connections and bike racks, or reduced use of fossil fuels, such as electric vehicle charging stations and solar installations in the City. Education/outreach programs about reducing vehicle miles travelled ("VMT") and use of fossil fuels in the City.
- iv. Educational Programs in the City - Supporting educational programs that interpret the historic, cultural and natural resources of the Buena Vista Creek Valley. This could include providing visitor amenities, interpretive exhibits, supporting lectures or guided walks.
- v. Public trails in the City - Preparation of trail plans, construction of trail segments, interpretive signage/exhibits, erosion control and trail maintenance projects, designing/constructing trail amenities such as fencing, benches and kiosks in coordination with the City.
- vi. Wildlife movement corridors in the City - Support City's project to study barriers to wildlife movement and implement recommendations. Conduct further studies to better understand regional wildlife connectivity, such as a bobcat collaring project. Fund improved data collection and monitoring, such as transects by the San Diego Tracking Team or roadkill monitoring.
- vii. Public education and outreach in the City - Designing and distributing public information materials or holding community

meetings/workshops on issues related to minimizing impacts on natural resources. This could include things like converting landscaping to native plants, wildlife appreciation, being a responsible dog owner, starting a community garden, greywater reuse, or bicycle safety.

- k. In the event that Quarry Creek Investors does not acquire Village H, Quarry Creek Investors agrees to pay Petitioner \$10,000.00 to cover administrative costs associated with implementing this Agreement, concurrent with the deposit of the Settlement Funds, in the form of a check made payable to Preserve Calavera.
- l. Subject to City regulations (i.e., Fire Department/Fuel modification zone requirements) and technical limitations (water quality treatment capabilities), Quarry Creek Investors will utilize, to the greatest extent feasible, California native plants on the exterior slope banks, within the detention basins and on the large interior slopes on Planning Areas R-1 and R-2.
- m. Quarry Creek Investors will grade the P-5 trailhead site, but delay implementation of both planned trailheads at Planning Area P-5 and the current eastern terminus of Marron Road until the earlier of such time as: (1) a City or other agency trail system is in place served by those trailheads, or (2) the issuance of the 500th residential building permit for the Project. Quarry Creek Investors will post a bond or other security acceptable to the City prior to the recordation of the first final map for the Project to secure completion of the P-5 trailhead. Quarry Creek Investors agrees to redesign the parking spaces at the P-5 trailhead consistent with the attached Exhibit "B" and shall implement such redesign upon the City's approval. No night lighting or night use of the trailhead facilities will be permitted.
- n. To the extent feasible, Quarry Creek Investors will coordinate the design of any of the planned trailhead facilities at P-5 and at the eastern terminus of Marron Road with design elements contemplated for the Buena Vista Creek Ecological Reserve.
- o. Quarry Creek Investors will design fencing adjacent to open space areas to facilitate wildlife movement, and agrees to propose to the City and the relevant Resource Agencies a "post-and-rail" fence design. The Parties acknowledge that the decision on the type of fencing selected in these areas is subject to the approval of both the City and one or more Resource Agencies.

- p. Quarry Creek Investors will add solar panels to the roof of the central recreation facility to the extent it is structurally feasible to do so, and two electric car plug in stations at a location within the Project.
- q. Quarry Creek Investors will cooperate with Preserve Calavera to inform future residents of the Project of the existence of any program funded by Preserve Calavera to make bus subsidies and/or passes available to the residents of the Project.
- r. Quarry Creek Investors will not oppose the deletion of Cannon Road from the City's Circulation Element, provided it is demonstrated that such deletion does not result in a Level of Service ("LOS") E or LOS F at the intersection of Carlsbad Village Drive and College Boulevard.
- s. Within three (3) business days after the Pending Lawsuits are dismissed with prejudice, Quarry Creek Investors will pay the total sum of \$95,318.53, for attorneys' fees and costs incurred by Petitioner in the Pending Lawsuits. Petitioner accepts this sum as a full, final and complete settlement of its claim for attorneys' fees and costs against Quarry Creek Investors and the City in the Pending Lawsuits. The payment by Quarry Creek Investors shall be in the form of a check made payable to the law firm DeLano & DeLano.

4. THE CITY'S OBLIGATIONS

In consideration of the obligations undertaken and the promises made herein by Petitioner and Quarry Creek Investors, the City hereby covenants and agrees as follows:

- a. The City agrees to accept the transfer of Village H in fee from Quarry Creek Investors, or Petitioner, in "as is" condition when offered.
- b. Upon the transfer of Village H to the City, the City shall assume responsibility for ownership of Village H and shall promptly allow public access to the historic public use trail through Village H.
- c. Concurrent with the transfer of Village H to the City, or as soon as practicable following the transfer, the City shall transfer the Calavera Homeowners' Association ("HOA") recreational vehicle storage area within Village H, in fee, to the Calavera HOA. Quarry Creek Investors shall prepare the plats and legal description necessary for the transfer of Village H and the Calavera HOA recreational vehicle storage area. In the event that the Calavera HOA refuses to accept the transfer of the Calavera HOA recreational vehicle storage area from the City, Quarry Creek

Investors or a Quarry Creek Investors-related entity agrees to accept such transfer.

- d. The City will support the efforts of the property owners to complete the connecting trail system, as described above in Paragraph 3.m, prior to the issuance of the 500th residential building permit for the Project.
- e. The City shall post signage at the trailhead of the historic public use trail through Village H at the time it is opened to the public, indicating that the opening of the trail is the result of a cooperative effort between the City, Quarry Creek Investors, and Preserve Calavera.
- f. The City's Master Trails Plan Update presented to the City Council for consideration shall include the Haymar-Marron loop trail and connection to Hidden Canyon Park, and the City will use its best efforts to implement the Plan.
- g. City staff agree that the changes to the Tentative Map identified in Section 3.a, above, and the redesign identified in Section 3.m, above, shall be approved through a substantial conformance process. City staff further agree that the amendment to the Master Plan identified in Section 3.a, above, shall be approved through a minor amendment process.

5. PETITIONER'S OBLIGATIONS

In consideration of the obligations undertaken and the promises made herein by Quarry Creek Investors and the City, Petitioner hereby covenants and agrees as follows:

- a. Petitioner shall cause its attorneys to execute a Request for Dismissal with Prejudice for both of the Pending Lawsuits. Petitioner shall file the Requests for Dismissal in the San Diego Superior Court on or before November 27, 2013.
- b. Petitioner shall take no action whether in judicial, administrative or legislative proceedings, to oppose any governmental approval, permit or other entitlement, or modification or amendment thereof, which is or may be required for implementation of the Project, including but not limited to:
 - i. Resource Agency permitting;
 - ii. amendment or implementation of the Falls Management Plan;
 - iii. processing and implementation of site development plans and tentative maps/parcel maps;

- iv. minor amendments to the Quarry Creek Master Plan;
 - v. major amendments to the Quarry Creek Master Plan that do not increase the residential density beyond 636 units or revise the development footprint within the panhandle parcel as shown on "Exhibit A" so long as such amendments otherwise comply with the terms of the Settlement Agreement;
 - vi. issuance of building permits;
 - vii. creation or implementation of preserve management plans; and
 - viii. implementation of any Native American cultural facility on the Oceanside parcel that does not alter the natural features of the El Salto Falls or the Buena Vista Creek.
- c. Petitioner shall provide no assistance whatsoever, directly or indirectly, whether financial, legal or otherwise, to any person, organization or other entity to oppose any governmental approval, permit or other entitlement, or modification or amendment thereof, which is or may be required for implementation of the Project.
- d. The prohibitions in this Section 5 shall not apply to any future actions not directly related to the Project as modified by this Agreement, or the physical implementation of the Project if it does not substantially conform to the provisions of this Agreement. This section is not intended to limit or abridge the free speech rights of individuals or entities which Preserve Calavera has no legal authority to bind.
- e. In the event Quarry Creek Investors grants, and Petitioner exercises, an option to purchase Village H from Quarry Creek Investors, Petitioner shall transfer Village H to the City consistent with the terms of the transfer between Quarry Creek Investors and the City, as set forth in Paragraphs 3.e through 3.h, above.
- f. Petitioner agrees not to waive any conflict that would allow DeLano & DeLano to represent anyone, or lend any support to anyone, in any judicial, administrative or legislative proceeding, to oppose any governmental approval, permit or other entitlement, or modification of amendment thereof, which is or may be required for implementation of the Project, including but not limited to those approvals described in Paragraph 5.b, above, or the development of the CF Site on Village H.

6. RELEASE OF ALL CLAIMS

In consideration of the obligations undertaken above, the Parties, on behalf of their officers, directors, members and all other persons acting by or on their behalf, do hereby fully and forever completely release, acquit, and discharge Petitioner, Quarry Creek Investors, and the City, and each of them, together with any and all past and present employees, agents (whether ostensible or actual), elected and appointed officials, officers, departments, or representatives (collectively "Releasees") from any and all civil claims, demands, costs, attorneys' fees, rights or causes of action seeking either damages or equitable relief, whether known or unknown, present or future, which Petitioner, Quarry Creek Investors, or the City may have against the Releasees, or any of them, that arise from the facts or circumstances alleged in the Pending Lawsuits or in any way connected with the subject matter of the Pending Lawsuits.

Subject to the provisions of Section 5 above, the Parties intend that this Agreement shall operate to release any claim Petitioner has now or may have in the future with respect to the approval and implementation of the Project or any action in furtherance of the Project consistent with this Agreement. Petitioner shall not initiate, pursue or support any future civil claim that would operate to interfere with the Project.

The Parties acknowledge that many of the modifications to the Project set forth in this Agreement involve the exercise of discretion on the part of City officials. Any act of discretion will be exercised in good faith by the City and shall not be set aside absent abuse of discretion within the meaning of Code of Civil Procedure 1085 in ordinary mandamus actions.

In the event a dispute arises between the Parties with regard to the matters described in this Agreement, the Parties shall meet and confer for a period of thirty calendar days to resolve the dispute. In the event the dispute is not resolved during this process, any party may file a civil action seeking appropriate equitable relief to specifically enforce the terms of this Agreement.

Notwithstanding the foregoing, the release in this Section 6 shall not apply to the rights and obligations of Quarry Creek Investors and/or its successors in interest pursuant to the FEIR certified by the City and the Project Approvals approved by the City for the Project.

7. WAIVER OF SECTION 1542

As to the matters released by this Agreement, the Parties expressly waive all rights under Section 1542 of the California Civil Code and of any comparable principle of law, whether by statute or decision.

Section 1542 provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO THE CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF THE EXECUTION OF THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.”

This Release expressly includes a discharge of all unknown and unsuspected claims. The Parties understand and acknowledge the consequences of such a specific waiver.

8. NO PRIOR ASSIGNMENT OR TRANSFER

The Parties represent and warrant that there has been no assignment or other transfer of any claims or causes of action which they are releasing pursuant to the terms of this Agreement.

9. NOTICE

All letters, statements, or notices required pursuant to this Agreement shall be sent to the following addressees. Any letter, statement or notice sent shall be deemed served at the time of delivery when personally served, transmitted by facsimile machine or electronic mail, or by overnight parcel service. Any letter, statement, or notice sent by registered or certified mail shall be deemed served on the business day following deposit thereof in the U.S. Mail.

To: City of Carlsbad

City Attorney's Office
City Hall
1200 Carlsbad Village Drive
Carlsbad, CA 92008
Telephone No. (760) 434-2891
Facsimile No. (760) 434-8367
attorney@carlsbadca.gov

With a copy to:

Michael Hogan
Hogan Guiney
225 Broadway, Ste. 1900
San Diego, CA 92101
Telephone No. (619) 687-0282
Facsimile No. (619) 234-6466
mhogan@hgdllaw.com

To: Preserve Calavera

Preserve Calavera
5020 Nighthawk Way
Oceanside, CA 92056
Telephone No. (760) 724-3887
Facsimile No. (760) 724-3887
info@preservecalavera.org

With a copy to:

Everett DeLano
DeLano & DeLano
220 W. Grand Avenue
Escondido, CA 92025
Telephone No. (760) 510-1562
Facsimile No. (760) 510-1565
everett@delanoanddelano.com

To: Quarry Creek Investors

Quarry Creek Investors
Attn: Brian Milich
P.O. 85104
San Diego, CA 92186-5104
Telephone No. (619) 794-1208
Facsimile No. (619) 336-3596
bmilich@mcmillin.com

With a copy to:

Allen Haynie
Haynie Law Group
Excel Centre
17140 Bernardo Center Drive, Ste. 354
San Diego, CA 92128
Telephone No. (858) 485-7700
Facsimile No. (858) 485-7707
ahaynie@haynlaw.com

10. MISCELLANEOUS PROVISIONS

a. Entire Agreement:

This Agreement constitutes the full and entire Agreement between the Parties hereto, and such Parties acknowledge that there is no other agreement, oral and/or written, between the Parties hereto.

b. Authority to Enter Agreement:

This Agreement is the result of arms-length negotiations. Each Party to this Agreement represents and warrants to the others that the persons executing this Agreement on behalf of such Party are duly and fully authorized to do so, and that each such Party is acting pursuant to the power and authority granted by their respective principals, and that no further approvals are required to be obtained from any persons or entities.

c. Final Agreement:

The Parties to this Agreement, and each of them, acknowledge that: (1) this Agreement and its reduction to final form is the result of extensive good faith negotiations between the Parties through their respective counsel; (2) said counsel has carefully reviewed and examined this Agreement for execution by said Parties, or any of them; and (3) any statute or rule of construction that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Agreement.

d. Binding Agreement:

This Agreement is and shall be binding upon and shall inure to the benefit of the predecessors, affiliates, subsidiaries, successors, assigns, parties, agents, officers, employees, members, shareholders, associates, legal representatives, heirs, executives and/or administrators of each of the Parties hereto.

e. Attorneys' Fees, Costs, and Future Action:

Except as provided in Sections 3.s and 6 above, the Parties shall each bear their own costs and attorneys' fees incurred in connection with the Pending Lawsuits and this Agreement. However, if any Party brings an action to enforce any provision of this Agreement, the successful Party shall be entitled to its reasonable attorneys' fees and costs.

f. Interpretative Law:

This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced and governed by and under the laws of the State of California. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable for whatever reason, the remaining provisions not so declared shall nonetheless continue in full force and effect without being impaired in any manner whatsoever.

g. Modifications:

This Agreement may be amended or modified only by a writing signed by all Parties to this Agreement. Modifications affecting the rights or obligations of the City shall first be approved by the City Council.

h. Paragraph Headings:

Paragraph headings are for reference only and shall not affect the interpretation of any paragraph hereto.

i. No Inducement:

Each of the Parties to this Agreement acknowledges for itself that it has read this Agreement and fully understands its contents and consequences and has voluntarily executed it. Each of the Parties also warrants that no promise or inducement has been made or offered by any of the Parties, except as set forth herein, and that this Agreement is not executed in reliance upon any statement of representation of any of the Parties or their representatives, concerning the nature and extent of the injuries, damages or legal liability thereof. The Parties further represent that they have been represented by legal counsel during the course of the negotiations leading to the signing of this Agreement, and that they have been advised by legal counsel with respect to the meaning of this Agreement and its legal affect.

j. Counterparts

This Agreement may be executed in counterparts with the same effect as if all original signatures were placed on one document and all of which together shall constitute one and the same Agreement. Originals may be transmitted by facsimile, personal delivery, electronic mail, overnight parcel, or U.S. mail.

k. Additional Documents:

All Parties agree to cooperate fully to take any and all steps, perform any acts, and execute any documents consistent with the terms and conditions of this Agreement, which may be needed or required to effectuate the terms, intent, conditions, covenants, and provisions hereof.

l. Venue:

Venue for enforcement of this agreement shall be in the Superior Court of the State of California, County of San Diego, North County Division.

m. Press Releases:

Quarry Creek Investors, Preserve Calavera, and the City agree to cooperate at the appropriate time in all matters related to any press release(s) associated with the Settlement Agreement and the purchase and transfer of Village H to the City.

WE HEREBY CERTIFY THAT WE HAVE READ ALL OF THIS SETTLEMENT, RELEASE, AND WAIVER AGREEMENT AND FULLY UNDERSTAND THE SAME, AND IN WITNESS WHEREOF WE HAVE EXECUTED THIS AGREEMENT IN CALIFORNIA, SIGNED, SEALED AND DELIVERED.

[SIGNATURE BLOCKS FOLLOW]

PRESERVE CALAVERA

BY: Diane Nygard

ITS: President

DATED: 11/22/2013

Approved as to form:

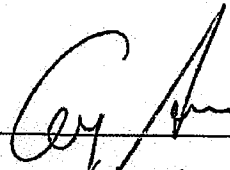
BY: [Signature]

ITS: Attorney

DATED: 11-23-13

QUARRY CREEK INVESTORS, LLC
a Delaware limited liability company
By: **McMillin Management Services, LP**
a California limited partnership
By: **McMillin Homes Construction, Inc.**
a California corporation
Its: **General Partner**

BY: VA-C
ITS: SVP
DATED: 11/25/13

BY: 
ITS: EVP
DATED: 11/25/13

Approved as to form:

BY: _____
ITS: _____
DATED: _____

QUARRY CREEK INVESTORS, LLC
a Delaware limited liability company
By: **McMillin Management Services, LP**
a California limited partnership
By: **McMillin Homes Construction, Inc.**
a California corporation
Its: **General Partner**

BY: _____

BY: _____


ITS: _____

ITS: _____

DATED: _____

DATED: _____

Approved as to form:

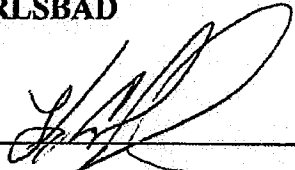
BY: 

ITS: November 26, 2013

DATED: Attorney

CITY OF CARLSBAD

BY:



ITS:

INTERIM CITY MANAGER

DATED:

11/25/13

Approved as to form:

BY:



ITS:

City Attorney

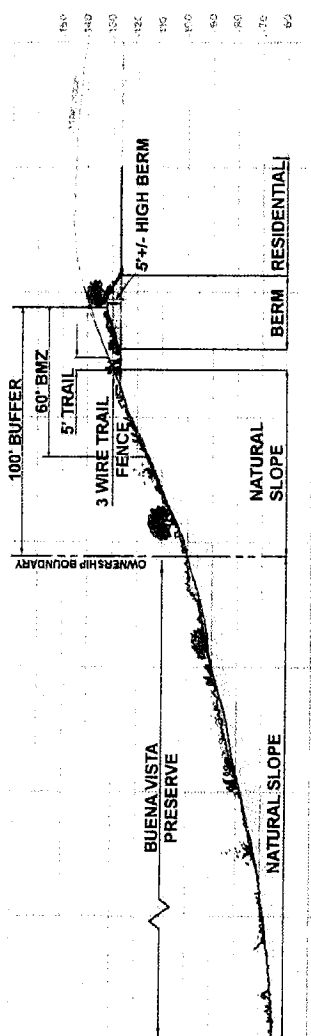
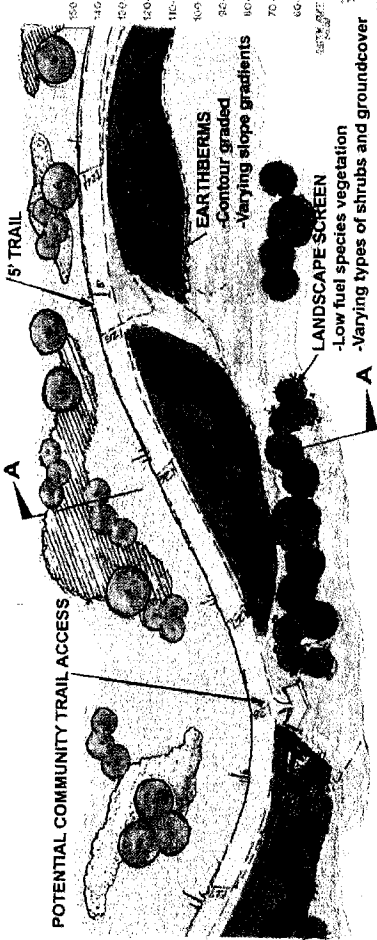
DATED:

11/25/13

Exhibit List

- Exhibit A - Quarry Creek Buffer Creation Exhibit (showing revised grading and road modifications to “panhandle” parcel)
- Exhibit B - Quarry Creek Substantial Conformance Exhibit (showing parking lot redesign)

EXHIBIT A



BUENA VISTA CREEK

SCALE: HORIZ. 1"=50'

BUENA VISTA CREEK

SCALE: HORIZ. 1"=50', VERT. 1"=20'

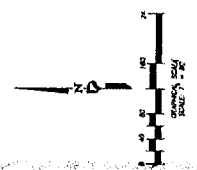
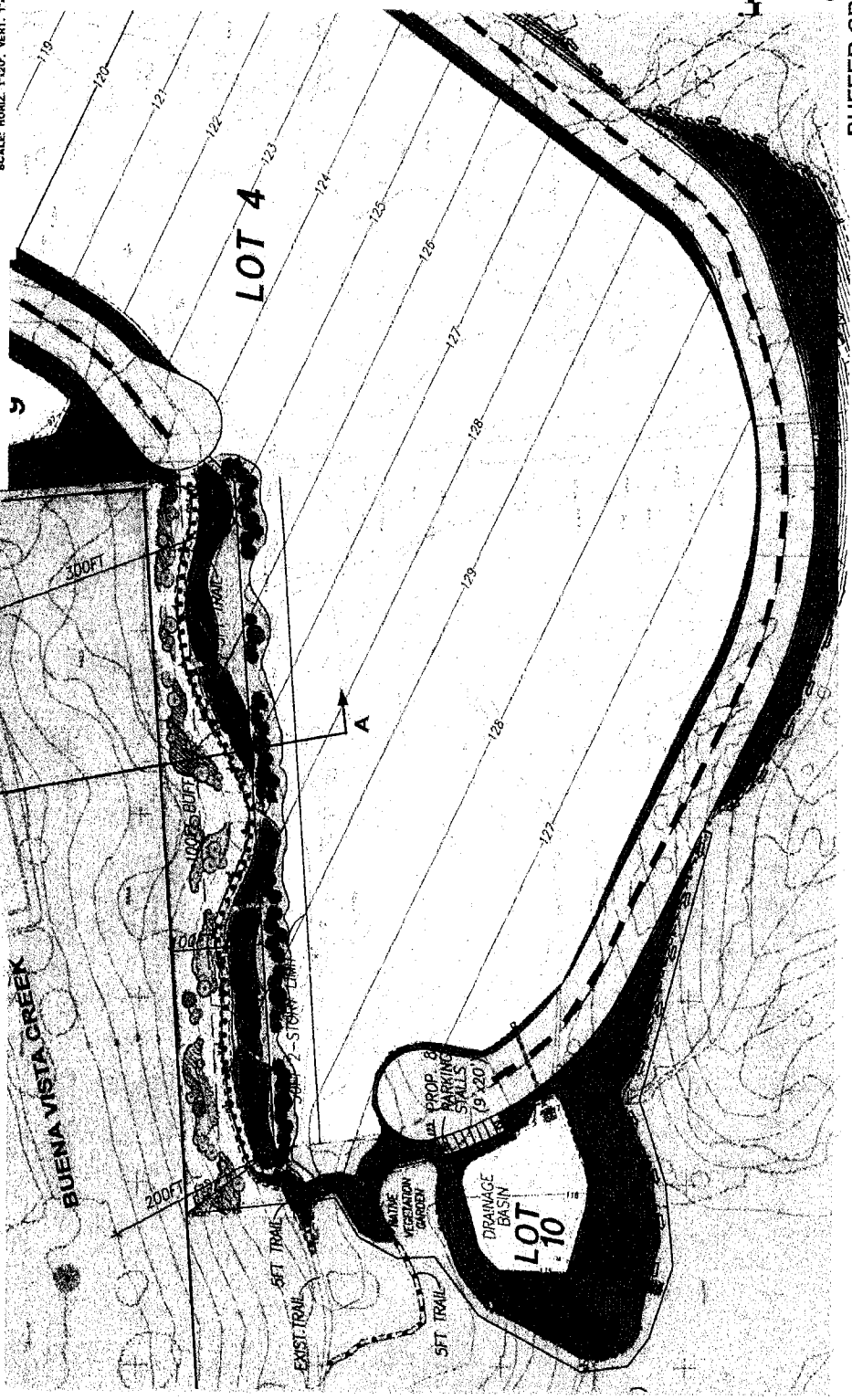
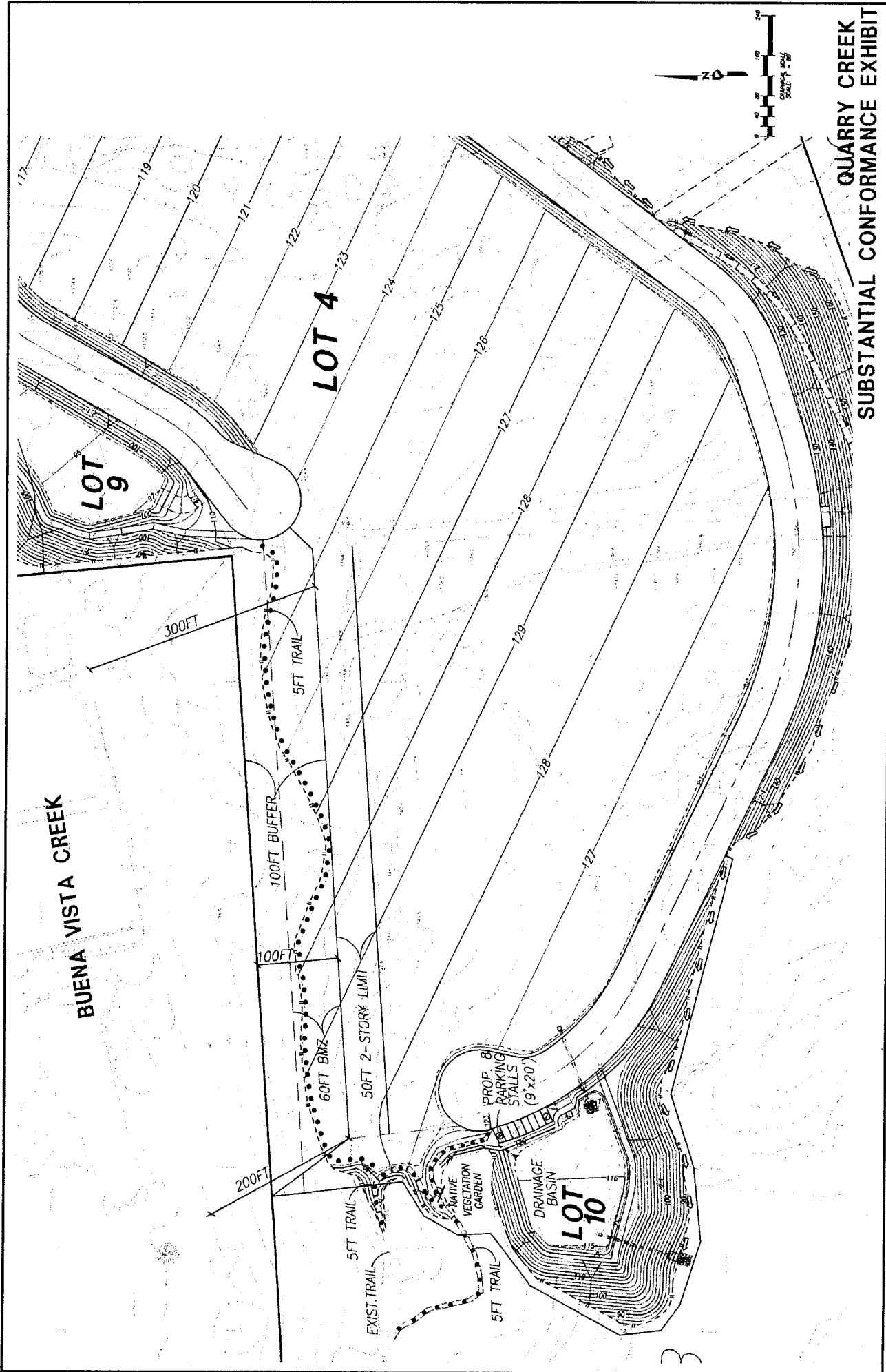


EXHIBIT B

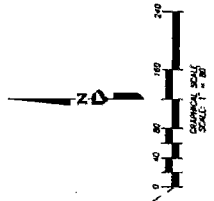


BUENA VISTA CREEK

LOT 9

LOT 4

LOT 10



QUARRY CREEK
SUBSTANTIAL CONFORMANCE EXHIBIT