

RECORDING REQUESTED BY:

WHEN RECORDED RETURN TO:

[**Grantee**]

THIS SPACE FOR RECORDER'S USE ONLY

PERPETUAL CONSERVATION EASEMENT GRANT

THIS PERPETUAL CONSERVATION EASEMENT GRANT (hereinafter "**Easement**") is made this ____ day of _____, 2007, by Lennar Communities of California, Inc., a California corporation ("**Grantor**"), in favor of _____, a California 501(c)(3) Non-profit Corporation ("**Grantee**").

RECITALS

- A. Grantor is the sole owner in fee simple of certain real property, excepting therefrom any existing easements and rights-of-way, located in the County of Sacramento, State of California identified herein as the **Preserve**, described in Exhibit A and depicted upon the map Exhibit B, both of which are attached hereto and incorporated herein by this reference.
- B. Grantee is a private non-profit 501(c)(3) corporation under the laws of the State of California, and is authorized to hold conservation easements under California Civil Code §815 et seq.
- C. "**Service**" is the United States Fish and Wildlife Service within the United States Department of the Interior, which is authorized by Federal law to administer the Endangered Species Act.
- D. "**Corps**" is the United States Army Corps of Engineers within the United States Department of the Army, which is authorized by Federal law to administer the Federal Clean Water Act, Section 404, and other laws and regulations; and
- E. This Easement provides conservation measures and mitigation for certain impacts located in the County of Sacramento, State of California, described in that certain Corps' Individual Permit dated June 29, 2006, and Individual Permit modification, dated November 17, 2006 (Corps File No. 199300651), Service Biological Opinion dated July 14, 2005, as amended September 8, 2006 (Service File No. 1-1-03-F-0143) (those documents, as they may be amended from time to time, are referred to collectively herein as the "Resource Agency Permits," the cover pages of which are attached to this Easement as **Exhibit C**), and is being conveyed in order to enable Grantor to undertake its residential development project

("Project") as described in the Resource Agency Permits and the *Vineyard Pointe Open Space Preserve Operations and Management Plan* dated February 16, 2007, by ECORP Consulting, Inc. ("**Plan**").

- F. The Preserve possesses natural resources with significant ecological and habitat values (collectively, "**Conservation Values**"). These natural resources are of aesthetic, ecological, educational, recreational, and scientific value to the Nation and its people. These values include Waters of the U.S., including wetlands, and the adjacent upland habitats. These natural resources are of great importance to both Grantor and Grantee.
- G. The Preserve, consisting of approximately five acres, has been identified as being occupied by, or as being potential habitat for, species of native plants and wildlife which Grantor and Grantee desire to preserve and protect, pursuant to the Plan, the cover page and table of contents of which is attached to this Easement as **Exhibit D** and incorporated herein by this reference.
- H. The Preserve includes the water in wetlands and drainage features, including water resulting from direct precipitation onto the Preserve and/or flows through the drainage features from natural storm events which partially or completely fill depressions on the surface of the Preserve.
- I. Grantor intends to convey to Grantee the right to preserve and protect the Conservation Values of the Preserve consistent with Grantor's implementation of the Plan for the Preserve.
- J. Grantor intends to convey fee title to the Preserve to the Southgate Recreation and Park District for the purposes of perpetual management for open space and habitat, and has granted that certain Easement for Drainage, recorded as Document No. _____ of the Official Records of the County of Sacramento in favor of the County of Sacramento for purposes of boring, constructing, reconstructing, repairing, operating, upgrading and forever maintaining a drainage system within the Preserve area consistent with the Plan;
- K. Grantee agrees by accepting this Easement to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the Conservation Values of the Preserve in accordance with the terms of this Easement and the Plan.
- L. The following terms, when used herein, shall have the meanings set forth below:
 - "**Grantor**" means Lennar Communities of California, Inc., or any successor, assignee, or transferee.
 - "**Grantee**" or "**Preserve Conservator**" means the _____, or any successor, assignee, or transferee appointed in accordance with this Easement.

"Preserve" means the approximately five-acre area appearing on Exhibit B containing a natural wetland features and buffer zones which shall be maintained as a Preserve in accordance with the provisions of Paragraph 3 of this Easement.

"Preserve Conservator" means the _____, or any successor, assignee, or transferee appointed in accordance with Paragraph 8 of this Easement.

"Preserve Manager" means Southgate Recreation and Park District or any successor, transferee, or assignee.

"Plan" means the *Open Space Management Plan for the Vineyard Pointe Open Space Preserve*, by ECORP Consulting, Inc., dated February 16, 2007, a copy of the cover page and table of contents of which is attached hereto as **Exhibit C**.

"Waters of the U.S." means that area defined in 40 CFR 122.2 as a feature under the regulation of the Federal Clean Water Act.

"Wetland" means that area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

"Riparian" means those areas that are those plant communities adjacent to and affected by surface or ground water of perennial or ephemeral water bodies such as rivers, streams, lakes, ponds, playas, or drainage ways. These areas have distinctly different vegetation than adjacent areas or have species similar to surrounding areas that exhibit a more vigorous or robust growth form.

"Uplands" means those habitats that are not riparian or wetlands, including grassland/meadow.

COVENANTS, TERMS, CONDITIONS, AND RESTRICTIONS

In consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of California and California Civil Code §815 et seq., Grantor hereby voluntarily grants and conveys to Grantee a Perpetual Conservation Easement over the Preserve of the nature and character and to the extent hereinafter set forth.

1. PURPOSE

It is the purpose of this Easement to ensure that the Preserve will be retained forever in an open space condition and to prevent any use of the Preserve that is

inconsistent with the implementation of the Plan or with the Resource Agency Permits, and otherwise will impair or interfere with the Conservation Values of the Preserve. Grantor intends that this Easement will assure that the Preserve will be used for such activities as are consistent with the Plan and the Resource Agency Permits and are otherwise consistent with maintaining the Conservation Values of the Preserve.

2. RIGHTS OF GRANTEE

- A. To accomplish the purpose of this Easement, the following rights are conveyed to Grantee by this Easement:
- B. To preserve and protect the Conservation Values of the Preserve;
- C. To enter upon and traverse all portions of the Preserve at all times in order to have access to the Preserve and to monitor Grantor's compliance with and otherwise enforce the terms of this Easement and to fulfill the Preserve Conservator duties as detailed in the Plan, provided that such entry shall not unreasonably impair or interfere with Grantor's use and quiet enjoyment of the Preserve or unreasonably disturb natural resources in the Preserve;
- D. Subject to the exceptions contained in Paragraph 6 herein, to prevent any activity on or use of the Preserve that is inconsistent with the Purpose of this Easement and to require the restoration of such area or features of the Preserve that may be damaged by any inconsistent activity or use; and
- E. To conserve and protect all mineral, air, water and groundwater rights required to protect and to sustain the biological resources of the Preserve.

3. PRESERVATION, MAINTENANCE, AND MANAGEMENT OF PRESERVE

- A. Preserve Manager. The Preserve will be managed and maintained by Southgate Recreation and Park District as described in the Plan.
- B. Preserve Conservator. Grantor, with recordation of this easement is granting the Grantee (Preserve Conservator) the ability to undertake the responsibilities of Preserve Conservator as described in the Plan, including the yearly Conservation Easement Monitoring.

4. PROHIBITED ACTIVITIES

No person shall engage in any of the following prohibited activities within the Preserve unless that activity is authorized by the Resource Agency Permits, the Plan or Paragraph 6 of this Easement, or otherwise approved in the future by the Corps and the Service:

- A. Planting, landscaping, plowing, or cultivation of the Preserve or any portion of such area, shall not be done or permitted except for the purpose of enhancing

the Preserve through the planting of local native plant species. The irrigation of these plantings will be done in a manner that does not adversely affect the hydrology of any wetlands within the Preserve;

- B. Planting, introduction, or dispersal of non-native or invasive plant species or animal species;
- C. Storage or placement of debris (whether temporarily or permanently);
- D. Discharge or placement of any dredged or fill material;
- E. Discharge, dumping, disposal, storage or placement of any soil, ashes, trash, refuse, rubbish, grass clippings, cuttings, bio-solids, or other waste materials;
- F. Excavating, dredging, or removing loam, gravel, soil, rock, sand, or other material;
- G. Leveling or grading or otherwise altering the general topography of the Preserve;
- H. Use of pesticides, herbicides, rodenticides, or other chemicals;
- I. Destruction or removal of any natural tree, shrub or other vegetation that exists upon the Preserve;
- J. Grazing, except as outlined in the Plan;
- K. Use of motorized vehicles, except with prior written approval by the Corps and the Service;
- L. Construction of roads, utility lines, trails, benches, equipment storage, buildings, billboards, signs, or other structures or activities;
- M. Granting use of the land to any third party for off-road vehicle use;
- N. Legally subdividing the Preserve, recording of a subdivision plan, partition, or any other division of the Preserve into two or more parcels;
- O. Paving or otherwise covering of the Preserve with concrete, asphalt, or any other impervious paving material, except for those areas called for in the Plan;
- P. Transferring any appurtenant water right required to maintain and restore the biological resources of the Preserve;
- Q. Granting surface entry for the exploration or extraction of minerals without approval by the Service and the Corps;

R. Any and all other uses which may adversely affect the purposes of this Easement.

5. GRANTOR'S DUTIES

Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the Preserve. In addition, Grantor shall undertake all necessary actions to perfect Grantee's rights under Paragraph 2 of this Easement. The Grantor is responsible for all management and monitoring as described in the Plan.

6. RESERVED RIGHTS

Grantor reserves to itself and to its personal representatives, heirs, successors, assigns, agents, and present and potential future lessees, all rights accruing from its ownership of the Preserve including, but not limited to: (i) the right to engage in or invite others to engage in activity on or use of the Preserve for the purpose of construction of the Project in accordance with the Resource Agency Permits and the Plan, including, without limitation, activities necessary for the construction of the Project and reconstruction of the creek corridor, constructing trails and planting the creek corridor with native plantings, as outlined in the Plan; (ii) the right to engage or invite others to engage in activity on or use of the Preserve for the purpose of complying with the requirements of any governmental permits or authorizations including, but not limited to, the Resource Agency Permits, those granted pursuant to the Federal or California Endangered Species Acts, the Clean Water Act or Section 1603 of the California Fish and Game Code; (iii) the right to engage in or invite others to engage in all uses of the Preserve that are not expressly prohibited herein and are not inconsistent with the Purpose of the Easement, including activities consistent with the Plan, and the right to conduct flood control and maintenance activities and right of public access to the creek corridor.

7. REMEDIES

A. Enforcement Rights. If Grantee or Grantor determines that there is a violation of the terms of this Easement or that a violation is threatened, such party shall give written notice to the other parties of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Preserve resulting from any use or activity inconsistent with the purpose of this Easement, to restore in accordance with the Plan, the portion of the Preserve so injured. If a party fails to cure a violation within thirty (30) days after receipt of written notice thereof from the other party, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, the aggrieved party may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, to recovery any damages to which it may be entitled for violation

of terms of this Easement or injury to the Conservation Values protected by this Easement, including damages for the loss of aesthetic ecological educational, recreation or scientific values and to require the restoration of the Preserve pursuant to the Plan to the condition that existed prior to any such injury. If a party, in its good faith and reasonable discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Preserve, such party may pursue its remedies under this paragraph without prior notice to the other party or without waiting for the period provided for the cure to expire. Each party's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and each party agrees that the other party's remedies at law for any violation of the terms of this Easement are inadequate and that such party shall be entitled to the injunctive relieve described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which such party may be entitled, including specific performance of the terms of this Easement, without the necessity of proving actual damages or the inadequacy of otherwise available legal remedies. Each party's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. Furthermore, the provisions of California Civil Code section 815 *et. seq.* are incorporated herein by this reference and this Easement is made subject to all of the rights and remedies set forth therein. If at any time in the future Grantor or Grantee or any subsequent transferee or assignee uses or threatens to use the Preserve for purposes not in conformance with the provisions of this Easement, or releases or abandons this Easement in whole or in part, notwithstanding California Civil Code section 815 *et. seq.*, the California Attorney General, or any entity organized for conservation purposes shall have standing as interested parties, and as third party beneficiaries in any proceeding affecting this Easement.

- B. Cost of Enforcement. Should proceedings be brought to enforce or interpret any of the terms of this Conservation Easement, the prevailing party in any such proceedings shall be entitled to recover from the non-prevailing party its costs, including reasonable attorneys' and expert fees. Grantor and Grantee intend that each third party beneficiary of this Conservation Easement shall be subject to these provisions to the fullest extent consistent with applicable law.
- C. Parties Discretion. Enforcement of the terms of this Easement shall be at the discretion of the respective parties, and any forbearance by Grantor or Grantee to exercise their rights under this Easement shall not be deemed or construed as a waiver by Grantor or Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of their rights under this Easement. No delay or omission by Grantor or Grantee in the exercise of right or remedy upon any breach by Grantor or Grantee shall impair such right or remedy or be construed as a waiver.
- D. Acts Beyond Parties' Control. Nothing contained in this Easement shall be construed to entitle any party to bring any action against Grantor or Grantee

for any injury to or change in the Preserve resulting from causes beyond their control, including, flood, drought, disease, regional pest infestation, acts of God, fire or other casualty, excessive adverse weather conditions, strikes or labor disputes, the inability to obtain plant or other materials, natural changes in the environmental conditions of the Preserve, changes to the environmental conditions of the Preserve caused by persons acting beyond the reasonable control of Preserve Manager, or any other cause beyond the reasonable control of Preserve Manager, or from any prudent action taken by Grantee or Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

8. ACCESS

Grantee, its successors, assigns, agents, invitees and licensees shall have the right to access the Preserve at all times.

9. COSTS AND LIABILITIES

Except as set forth in this Easement, or as otherwise agreed in writing between the parties hereto, Grantor retains all responsibilities related to the ownership of the Preserve and all management activities as described in the Plan. The Grantee assumes the responsibilities pertaining to the once a year conservation easement monitoring as described in the Plan.

A. Taxes: Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Preserve by competent authority, including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.

B. Hold Harmless: Grantor or its successors shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "**Grantee Indemnified Parties**") from and against all liabilities, penalties, costs, losses, damages, expense, causes of action, claims, demands, or judgments, including without limitation, reasonable attorney's fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damages to any property, resulting from any act, omission, condition or other matter occurring on the Preserve, unless caused by the acts or omissions of any of the Grantee Indemnified Parties; and (2) the existence or administration of this Easement, unless caused by the acts or omissions of any of the Grantee Indemnified Parties.

Grantee or its successors shall hold harmless, indemnify, and defend Grantor and its members, directors, officers, employees, agents and contractors and their heirs, personal representatives, successors, and assigns of each of the them (collectively "**Grantor Indemnified Parties**") from and against all

liabilities, penalties, costs, losses, damages, expense, cause of action, claims, demands, or judgments, including without limitation, reasonable attorneys' fees, arising from or in any way connected with the administration of this Easement, unless caused by the acts or omission of any of the Grantor Indemnified Parties.

10. ASSIGNMENT

This Easement is transferable, but Grantee shall give Grantor and the Corps and the Service at least 30 days' prior written notice of the transfer. Grantee may assign its rights and obligations under this Easement only to an organization that is 1) approved by the Grantor and the Corps and the Service; and, 2) a public agency or a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated there under; and 3) authorized to acquire and hold conservation Easements under California Civil Code §815 et seq. (or any successor provision then applicable). As a condition of such assignment or transfer, the Assignee or Transferee shall agree in writing that the conservation purposes that this Easement is intended to advance shall continue to be fulfilled and that the Plan will be followed. In the event of the termination of Grantee's existence, the rights and obligations of Grantee hereunder shall, by that fact itself, and without any further action on the part of any entity, be deemed assigned to an entity approved by the Corps.

11. SUBSEQUENT TRANSFERS

Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which Grantor divests itself of any interest in all or a portion of the Preserve, including without limitation, a leasehold interest. Grantor further agrees to give written notice to the Grantee, the Corps, and the Service at least fifteen (15) days prior to the date of any Preserve transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

12. CONDEMNATION

The conservation purposes are presumed to be the best and most necessary public use as defined at California Code of Civil Procedure section 1240.680 notwithstanding California Code of Civil Procedure section 1240.609 and 1240.700.

13. ESTOPPEL CERTIFICATES

Upon request by Grantor, Grantee shall within 15 days execute and deliver to Grantor any document, including an estoppel certificate, which certifies Grantor's compliance with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement, as may be requested by Grantor.

14. NOTICES

Any notice, demand, request, consent, approval, or communication that the parties desire or is required to give to the others shall be in writing and either serviced personally or sent by first class mail, postage prepaid, address as follows:

To Grantor: Lennar Communities of California, Inc.
1075 Creekside Ridge Drive, Suite 110
Roseville, CA 95678
Attn: Director of Community Planning

To Preserve
Manager: Southgate Recreation and Park District
6000 Orange Avenue
Sacramento, CA 95823-3225
Attn: Ward Winchell

To Grantee: _____

Attn: _____

To the Corps: United States Army Corps of Engineers
Sacramento Regulatory Branch
1325 J Street, 14th Floor
Sacramento, CA 95814-2922
Attn: Chief, Sacramento Valley Office

To the Service: U.S. Fish and Wildlife Service
2800 Cottage Way, W-2605
Sacramento, CA 95825
Attn: Chief, Endangered Species Division

or to such other address or the attention of such other officer as from time to time shall be designated by written notice to the other.

15. FUNDING

Grantee has received endowment funding for the purposes of fulfilling the yearly Conservation Easement Monitoring and reporting requirement as described in the Plan.

16. RECORDATION

Grantee shall promptly record this instrument in the official records of Sacramento County, California and may re-record it at any time as may be required to preserve its rights in this Easement.

17. ADDITIONAL EASEMENTS

Grantor shall not grant any additional Easements, rights-of-way, or other interests in the Preserve, other than a fee or leasehold interest, undivided interest or security interest (mortgage or deed of trust), or grant or otherwise transfer to any other person or entity or to other lands or otherwise abandon or relinquish any Waters associated with the Preserve without the prior written authorization of Grantee and notice to the Corps and the Service. Such authorization will be given unless the Corps and the Service determines that the proposed interest will adversely impact the functions and values of waters of the U.S. within the Preserve or will interfere with the use of the Preserve as Riparian plant and wildlife habitat. This paragraph shall not prohibit the transfer of a fee title or leasehold interest in the Preserve that is subject to the terms of this Easement. This paragraph shall also not prohibit the granting of future compatible utility Easements, as authorized by the Corps and the Service.

18. AMENDMENT

This Easement may be amended by Grantor and Grantee only by mutual written agreement and with written approval of the Corps and the Service. Any such amendment shall be consistent with the purposes of this Easement and shall not affect its perpetual duration.

19. GENERAL PROVISIONS

- A. Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of California, the Federal Clean Water Act, Federal Endangered Species Act, and other applicable Federal laws.
- B. Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be construed in favor of the grant to effect the Conservation Purpose of this Easement and the policy and purpose of California Civil Code §815 et seq. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provisions valid shall be favored over any interpretation that render it invalid.
- C. Severability. If any provision of this Easement, or the application thereof to any person or circumstances, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

- D. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Preserve, and supersedes all prior discussions, negotiations, understandings, or agreements related to this Preserve.
- E. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.
- F. Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns shall continue as servitude running in perpetuity with the Preserve.
- G. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- H. Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.
- I. Third-Party Beneficiary. Grantor and Grantee acknowledge that the Corps and the Service are third party beneficiaries of this Easement with the right of access to the Easement property and the right to enforce all of the provisions of this Easement.

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20. NO MERGER

In the event the Preserve and the Easement are ever owned by the same entity, there shall be no express or implied merger by operation of law or otherwise. If any party should claim such a merger, the parties agree that any and all terms and conditions of this Easement shall be deemed covenants and restrictions upon the Preserve, which, shall run with the land according to California and/or other applicable law and otherwise exist in perpetuity.

IN WITNESS WHEREOF, Grantor grants, and Grantee accepts, this Easement the day and year first above written.

GRANTOR:

Southgate Recreation and Park District
a Public Entity

By: _____

GRANTEE:

_____,
a California Non-Profit Corporation

By: _____

[ADD CURRENT FORM OF NOTARY ACKNOWLEDGMENT.]

EXHIBIT A – LEGAL DESCRIPTION OF “PRESERVE”

EXHIBIT B – MAP OF “PRESERVE”

EXHIBIT C – COVER PAGES OF RESOURCE AGENCY PERMITS

**EXHIBIT D – COVER PAGE AND TABLE OF CONTENTS FROM OPERATIONS AND
MANAGEMENT PLAN FOR THE VINEYARD POINTE OPEN SPACE “PRESERVE”**