

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is being made this 23rd day of February, 2022 (the “Effective Date”), by and among the following Parties: (1) Carmel Mountain Ranch Residential Community Association, a non-profit corporation (“HOA”) and (2) NUWI CMR, LLC, a limited liability company (“DEVELOPER”). HOA and DEVELOPER may be referred to herein individually as a “Party” or collectively as “Parties.”

RECITALS

A. DEVELOPER is the developer who received various land use approvals necessary for and/or related to development of the Trails at Carmel Mountain Ranch project, a master planned, in-fill development, proposed and approved to include up to 1,200 dwelling units, open space, recreational and community facility uses, and related on- and off-site infrastructure and infrastructure improvements. The Trails at Carmel Mountain Ranch project, including all related discretionary and ministerial approvals issued or to be issued at the local, regional, state, and/or federal level together constitute “the Project.”

B. The Project is located within the City of San Diego (“City”), in the Carmel Mountain Ranch Community, and redevelops the closed Carmel Mountain Ranch Country Club and associated 18-hole golf course. The Project site consists of approximately 164.5 acres and currently has an address of 14050 Carmel Ridge Road, San Diego, California 92128 and includes APNs 313-043-09, 313-040-60, 313-040-62, 313-031-28, 313-040-71, 313-541-10, 313-660-43, 313-704-01, 313-704-02, 313-040-79, 313-040-80, 313-031-32, 313-043-01, 313-043-02, 313-043-03, 313-653-40, 313-621-29, 313-512-43, 313-523-13, 313-040-85, 313-040-71, 313-690-26, 313-690-25, 313-041-09, and 313-540-26 (“the Project Site”).

C. HOA is a nonprofit mutual benefit corporation and community association based in Carmel Mountain Ranch.

D. On September 14, 2021, the City Council of the City of San Diego adopted Resolution Nos. R-313705 (R-2022-50 Cor. Copy); R-313706 (R-2022-51); R-313707 (R-2022-52 Rev.); R-313708 (R-2022-53); and R-313709 (R-2022-57), and introduced Ordinance No. O-21376 (O02022-11). On October 5, 2021, the City Council of the City of San Diego adopted Ordinance No. O-21376 (O02022-11). Together, these Resolutions and Ordinance certified Environmental Impact Report (“EIR”) No. 652519/SCH No. 2020039006, adopted the Findings and Statement of Overriding Considerations, and adopted the Mitigation, Monitoring, and Reporting Program (“MMRP”); adopted amendments to the City of San Diego General Plan and Carmel Mountain Ranch Community Plan; approved Master Planned Development Permit (“PDP”) No. 2366508 and Site Development Permit (“SDP”) No. 2366425; approved Vesting Tentative Map (“VTM”) No. 2366422 with Easement Vacation; authorized execution of an Indemnification Agreement between the City and DEVELOPER; and rezoned the Project Site.

E. On October 6, 2021, the City filed a Notice of Determination with the County Clerk of the County of San Diego.

F. The EIR, Findings and Statement of Overriding Considerations, MMRP, General Plan and Carmel Mountain Ranch Community Plan amendments, Master PDP, SDP, VTM and Easement Vacation, and rezone are referred to herein collectively as the “Entitlements.”

G. On November 16, 2021, HOA filed a lawsuit in San Diego Superior Court, *Carmel Mountain Ranch Residential Community Association v. City of San Diego, et al.*, Case No. 37-2021-00048546-CU-TT-CTL (the “Lawsuit”), challenging the City’s approval of the Project, alleging *inter alia* that the City failed to comply with the California Environmental Quality Act (“CEQA”), the City’s General Plan, the City’s Community Plan, and the City’s Municipal Code when approving the Project.

H. In order to avoid the expense and delay of litigation, HOA and DEVELOPER now desire, without any admission of wrongdoing, fault or liability of any Party to any other Party, to settle all concerns and objections that HOA had, has or may have with the Entitlements, the Project and/or the future development of the Project Site.

I. The specific terms and conditions of this Agreement, as set forth in detail below, are a compromise and do not necessarily reflect the Parties’ views of what may be required under CEQA or any other laws.

NOW THEREFORE, for a valuable consideration, the receipt and sufficiency of which is now acknowledged, the Parties agree as follows:

AGREEMENT

1. OBLIGATIONS OF THE PARTIES

1.1 Obligations of HOA.

1.1.1 Dismissal of Lawsuit. No later than five (5) business days following receipt of notice that the Reimbursement Payment described in Section 1.2.1 of this Agreement as been deposited into escrow, HOA shall cause to be filed with the Superior Court of the County of San Diego (“Court”) an executed copy of the Request for Dismissal (the “Request”) attached hereto as Exhibit A, which shall unconditionally request that the Court dismiss the Lawsuit in its entirety with prejudice (the “Dismissal”). HOA shall provide written evidence to counsel for DEVELOPER that: (i) the Request was timely filed with the Court; and (ii) the Court entered the Dismissal. HOA shall also provide written evidence of the Court’s entry of Dismissal of the Lawsuit to the City Attorney for the City concurrently with notification to DEVELOPER.

1.1.2 HOA’s Duty Not to Object or Disrupt Approval, Construction or Operation of the Project.

(i) Upon the execution of this Agreement, HOA shall take no action to oppose or interfere with the issuance of any and all discretionary, ministerial and/or

administrative approvals and permits that may be required in connection with the Project, including, but not limited to, those necessary for or sought in relation to the construction, opening or operation of the Project, Project Site, or on- or off-site infrastructure or facility relocations or improvements related to the Project. HOA hereby further agrees that with respect to the Project, HOA, shall not in any way oppose the Project, including without limitation: (1) oppose the granting of any of the Entitlements or other approvals for or related to the Project that are in substantial conformance with the Project as approved and as revised by this Agreement and in strict conformance with the numeric limitations found in Paragraphs 1.2.2(i), (ii) and (iii) of this Agreement, (2) frustrate the satisfaction of the Project's conditions of approval, (3) file any administrative or other appeal or objection with the City or any other government agency challenging the granting of any of the Entitlements or other approvals by the City or any other government agency related to the Project that are in substantial conformance with the Project as approved and as revised by this Agreement and in strict conformance with the numeric limitations found in Paragraphs 1.2.2(i), (ii) and (iii) of this Agreement, (4) file any legal action against the City or any other government agency challenging the granting of any of the Entitlements or other approvals related to the Project that are in substantial conformance with the Project as approved and as revised by this Agreement and in strict conformance with the numeric limitations found in Paragraphs 1.2.2(i), (ii) and (iii) of this Agreement, and/or (5) take any affirmative action to cause or attempt to cause the City or any other government agency to withhold issuance and/or disapprove any permit, license or other approval, such as, but not limited to, any haul route determination, demolition permit, grading permit, building permit, certificate of occupancy, or permits and approvals required to install, demolish, relocate, or improve infrastructure or similar facilities serving or located within the Project Site.

(ii) In addition to the foregoing, HOA shall not in any way encourage any person or organization to take any action, and shall prevent to the extent of its power any and all persons associated with HOA from taking any action, to object, appeal, disrupt or otherwise interfere either administratively or judicially with the Project and the City's or any other government agency's granting of any of the Entitlements or other approvals necessary for or related to the Project and that are in substantial conformance with the Project as approved and as revised by this Agreement.

(iii) In the event that HOA fails to strictly comply with this Paragraph 1.1.2, HOA shall forfeit its claim to the Reimbursement Payment (defined below) and the other obligations of DEVELOPER as defined in Paragraphs 1.2.2 and 1.2.3 of the Agreement. The Parties further agree that HOA's failure to comply with the foregoing obligation to reimburse DEVELOPER shall constitute a material breach of the Agreement.

1.1.3 Prohibited Actions. By way of example, the following are illustrative of the type of activity prohibited under Paragraph 1.1.2: (i) presentation to the City or any other governmental agency or authority, either in writing or verbally, any additional arguments, claims, expert analyses, documentation or other materials related to the Project, including without limitation, any materials objecting to, opposing or identifying any legal deficiency with the City's or any other government agency's granting of any of the Entitlements and/or any approval related to the Project, beyond the claims and materials that HOA previously submitted to the City in connection with the Project; and (ii) participation in any further hearings on the

Project, the Entitlements or any appeals thereof, conducted by the City, including without limitation the Planning Commission and the City Council or any committee thereof, or by any other government agency. These examples are provided to assist HOA; this list should not be considered an exhaustive summary of the type of activity prohibited under Paragraph 1.1.2.

1.1.4 The other terms and provisions of this Agreement notwithstanding, the Parties acknowledge that HOA is under none of the obligations specified in Paragraph 1.1.2 or 1.1.3 if DEVELOPER is found to have breached any of its obligations specified in Section 1.2 of this Agreement.

1.2 Obligations of DEVELOPER.

1.2.1 Reimbursement of HOA's Attorney Fees and Costs. DEVELOPER agrees to pay the sum of one hundred and eighty thousand dollars (\$180,000) to HOA for the reimbursement of HOA's attorney fees and costs (the "Reimbursement Payment"). DEVELOPER agrees that within five (5) business days of the Effective Date, the Reimbursement Payment will be delivered to its legal representatives at Manatt, Phelps & Phillips, LLP, to be held in escrow. The Reimbursement Payment shall be released to the Delano and Delano Trust Account no later than one (1) business day following the Court's entered order dismissing the Lawsuit with prejudice.

1.2.2 Project Revisions. In exchange for the mutual promises contained in the Agreement, including HOA's agreement to dismiss the Lawsuit and agreement not to object or disrupt approval, construction or operation of the Project, DEVELOPER agrees to incorporate the following changes into the Project:

(i) Maximum Dwelling Unit Count. Despite being approved for the development of one thousand and two hundred (1,200) dwelling units, DEVELOPER will not construct or permit the construction of more than nine hundred and seventy-five (975) dwelling units as part of the Project.

(ii) Maximum Building Height in Units 16 and 17. Despite being approved for building heights of up to four stories in Units 16 and 17 of the Project, DEVELOPER will limit the height of buildings in Unit 16 and 17 to three (3) stories, as part of the Project.

(iii) Percentage of For-Sale Units. Despite being approved for a greater percentage of for-rent dwelling units, at least 50 percent of all constructed dwelling units shall be constructed as for sale units, and not more than 50 percent of all constructed dwelling units may be constructed as for-rent or for other use and/or occupancy.

1.2.3 Notice and Access to Plans. No later than five (5) business days following the submission of Project plans related to a required substantial conformance review for a building, DEVELOPER shall provide notice and a digital copy of any such plans to HOA at no cost to the HOA. Such notice shall be provided only once.

(i) HOA shall designate one (1) individual (the “Association Designee”) as the recipient of all such notices and plans. Counsel for HOA shall provide the name of the Association Designee to counsel for DEVELOPER together with the information required in Paragraph 1.1.1 above. Thereafter, HOA shall be responsible for apprising DEVELOPER directly of any changes to the Association Designee.

(ii) DEVELOPER shall not have any obligation to provide notice or a digital copy of submitted plans to anyone other than the Association Designee. Provided HOA has actual notice, the form of the notice shall be determined in the reasonable discretion of DEVELOPER and may be limited to email communication with the Association Designee. This paragraph does not grant, either expressly or impliedly, any approval or revision authority, or any comment period, over any plans related to the Project to HOA or any other individual or entity.

(iii) The plans are to be provided for informational purposes only and shall under no circumstances allow the DEVELOPER to claim that a deviation from the settlement agreement was disclosed in the plans and waived due to inaction by the HOA.

2. RELEASE OF LIABILITY

2.1 Mutual Releases. Except for the obligations created under this Agreement, the Parties, for themselves and for each of their predecessors, successors, parent entities, subsidiary entities, associated or related entities, heirs, legatees, devisees, beneficiaries, administrators, executors, trustees, assigns, affiliates, partners, managers, shareholders, directors, officers, associates, employees, agents, servants, and representatives (present and former), and all persons who at any time have acted by, through, under, or in concert with any or all of the foregoing persons and entities, now irrevocably and unconditionally remises, releases, acquits, absolves and forever discharges the other, and each and all of their predecessors, successors, parent companies or entities, subsidiary companies or entities, associated or related companies or entities, heirs, legatees, devisees, beneficiaries, administrators, executors, trustees, assigns, affiliates, partners, managers, shareholders, directors, officers, associates, employees, agents, servants, attorneys, insurers, and representatives (present and former), and all persons who at any time have acted by, through, under, or in concert with any or all of the foregoing persons and entities, of and from any and all causes of action in law or in equity, debts, contracts, charges, complaints, claims, suits, damages, obligations, promises, agreements, losses, costs, controversies, judgments, and expenses, of every kind whatsoever, whether known or unknown, fixed or contingent, direct or derivative, subrogated or assigned, suspected or unsuspected, that the Parties have or may have, or that it at any time previously had or claimed to have, or that it at any time subsequently may have or claim to have, against any of the released persons or entities by reason of any matter, cause, act, omission, or thing whatsoever from the beginning of time to the Effective Date of this Agreement, arising from or relating to the Litigation, the Project, the Entitlements and any other approvals or permits granted to DEVELOPER or its successors for or related to the Project up to and including the date of this Agreement, including without limitation all matters, causes, acts, omissions, or things whatsoever that may have been, were, or ever could

have been or ever could be alleged or otherwise asserted in any forum relating to the Project (collectively, the "Released Claims"). Persons/entities released by this term are specified in Paragraph 2.10.1 of the Agreement.

2.2 Waiver of Unknown Claims. In addition, the Parties now waive all rights and benefits that they now have, or in the future may have, under Section 1542 of the California Civil Code and any law, principle, or rule of similar effect of any state or territory of the United States or under federal law with respect to the Project. Section 1542 of the California Civil Code provides as follows:

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

The Parties hereby acknowledge (a) that they are aware that they may subsequently discover facts in addition to or different from those that they now know or believe to exist with respect to the matters covered by this Agreement; and (b) that such different or additional facts, if they exist, may have given or may subsequently give rise to the Released Claims. The Parties therefore affirm that the releases contained in this Agreement have been negotiated and agreed upon in light of that acknowledgment, and they intend, through this Agreement and with the advice of their attorneys, fully, finally, and forever to settle and release the Released Claims. In furtherance of such intention, The Parties also affirm that the releases contained in this Agreement shall remain in effect and shall be fully binding notwithstanding the discovery or existence of any additional or different facts.


Initial


Initial

3. GENERAL PROVISIONS

3.1 Reliance on Representations/Warranties. Each representation and warranty made in this Agreement by any of the Parties has substantially induced the other Parties to enter into this Agreement. Each Party acknowledges and affirms that the other Parties are entitled to rely on that Party's representations and warranties without independent verification and that such reliance is reasonable under the circumstances of this Agreement.

3.2 Integration. This Agreement constitutes and contains the entire agreement and understanding between the Parties concerning the subject matter addressed herein. Unless otherwise expressly stated herein, this Agreement supersedes and replaces all prior negotiations and all agreements, proposed or otherwise, whether written or oral, concerning its subject matter.

3.3 Cooperation. The Parties shall cooperate in performing their obligations under this Agreement, execute all supplementary documents that may be required or convenient to the

fulfillment of their obligations, and take all additional actions that may be necessary or appropriate to give full force and effect to the terms and conditions of this Agreement and that are not inconsistent with such terms and conditions. Each Party, diligently and in good faith, shall undertake all actions and procedures reasonably required to carry out the purpose and intent of this Agreement.

3.4 Notices. Any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to any of the Parties shall, unless otherwise required by law, be in writing and be deemed duly served and given: (a) when personally delivered to the Party to whom it is directed; or (b) when deposited with the United States Postal Service and sent via certified mail (return receipt requested), first-class postage prepaid. The following addresses shall be used for any and all notices:

For *HOA*:

Heather Wiltshire
Walters Management
9665 Chesapeake Drive, Suite 300
San Diego, CA 92123
Email: hwiltshire@waltersmanagement.com

With a Copy to:

Everett DeLano
DeLano & DeLano
104 W. Grand Avenue, Suite A
Escondido, California 92025
Email: everett@delanoanddelano.com

For *DEVELOPER*:

Mr. Adam Browning
NUWI CMR, LLC
16192 Coastal Highway
Lewes, DE 19958

With Copies to:

Jennifer Lynch
Manatt, Phelps & Phillips, LLP
695 Town Center Drive, 14th floor
Costa Mesa, California 92626
Email: jlynch@manatt.com

and

Heather Riley
Allen Matkins Leck Gamble Mallory & Natsis
LLP
One American Plaza
600 West Broadway, 27th Floor
San Diego, California 92101-0903
Email: hriley@allenmatkins.com

However, any Party may change the address to which notices or other communications are to be given under this Agreement by sending a notice of the change to the other Parties at their last address designated under this Agreement.

3.5 Time Calculations. Time is of the essence to this Agreement. Whenever a time for performance of any act is stated in this Agreement, the time shall be calculated by including all calendar days including Saturdays, Sundays, and legal holidays; provided that, if performance of any act is due on a Saturday, Sunday or legal holiday, then performance of that act may be completed on the next calendar day that is not a Saturday, Sunday or legal holiday.

3.6 Mutual Drafting, Use of Titles. The Parties participated equally in negotiating and drafting this Agreement, and nothing in it shall be construed against any particular Party on the basis that this Agreement was drafted by that Party. Headings and titles are used throughout this Agreement solely for the convenience of the Parties and are not an integral part of it.

3.7 Severability. If any term, condition, or application of this Agreement is held to be invalid, such invalidity shall not affect the Agreement's other terms, conditions, or applications that can be given effect without the invalid term, condition, or application. To this end, the Agreement is declared to be severable.

3.8 Waiver/Modification/Remedy Selection. No waiver of any breach of any term or condition of this Agreement shall be, nor shall it be construed to be, a waiver of any other breach of this Agreement, and no waiver shall be binding unless made in writing and signed by the Party waiving the breach. No change in the terms or conditions of this Agreement shall have any force or effect unless expressed in a writing signed by the Parties. A Party's pursuit or enforcement of fewer than all available remedies in the event of any breach or default under this Agreement shall not preclude that Party from pursuing or enforcing other or all available remedies in the event of any other breach or default under this Agreement unless otherwise prohibited by law.

3.9 Persons/Entities Bound and Benefited.

3.9.1 This Agreement, including without limitation HOA's obligations under Paragraph 1.1 and DEVELOPER's obligations under Paragraph 1.2, shall be binding on and inure to the benefit of the Parties, jointly and severally, in every capacity whatsoever, and to their predecessors, successors, successors in interest, parent companies or entities, subsidiary companies or entities, associated or related companies or entities, heirs, legatees, devisees, beneficiaries, administrators, executors, trustees, assigns, affiliates, partners, managers, shareholders, directors, officers, associates, employees, agents, servants, representatives, and all persons who at any time have acted or will act by, through, under, or in concert with any or all of the foregoing persons and entities. Notwithstanding anything to the contrary, DEVELOPER acknowledges that HOA has no jurisdiction or ability to control its members from exercising independent rights, including speech and petitioning rights. HOA can only agree in a way which binds the HOA to the terms of this Agreement, but not its members.

3.9.2 As a covenant running with the land, this Agreement shall be binding upon all successors in interest and assigns to the Project Site, or any part thereof, and the

entitlements included in the Project, in addition to the DEVELOPER. A Memorandum of Agreement, in the form attached hereto as Exhibit B, shall be recorded in the Office of the County Recorder of San Diego County.

3.10 Dispute Resolution and Attorney's Fees. If any dispute arises out of or in connection with this Agreement, the dispute shall be prosecuted in any federal or state court of competent jurisdiction in the County of San Diego. In the event any Party to this Agreement brings an action to enforce or interpret any provision of this Agreement, or is required to defend any action or proceeding the defense to which is based upon any provision of this Agreement, the Prevailing Party shall be entitled to recover all of its costs and reasonable attorneys' fees incurred or sustained in connection with the enforcement or interpretation of the Agreement from the non-prevailing Party or Parties. The "Prevailing Party" shall mean the Party who, in light of the issues litigated and the court's decision on such issues, receives a more favorable outcome.

3.11 Notice and Cure Procedure. Prior to initiating a judicial proceeding arising out of or in connection with this Agreement, the objecting Party shall first notify the responding Party in writing of its purported breach or failure, giving the responding Party thirty (30) days from receipt of such notice to cure such breach or failure. If the responding Party does not: (a) cure the default within such thirty (30) day period; or (b) provide within such thirty (30) day period a mutually acceptable plan to cure the default within a reasonable time period if the default is not reasonably susceptible of being cured within thirty (30) days, then the complaining Party may pursue its judicial remedies in accordance with Paragraph 3.10 of this Agreement.

3.12 Efficacy of Copy/Counterparts. This Agreement may be executed in counterparts, and each executed counterpart shall have the efficacy of a signed original. Photographic duplications of executed counterparts may be used, in the absence of any genuine issue as to their authenticity, in lieu of originals for any purpose. Each Party's executing signature may be transmitted to the others via facsimile, and such facsimile signature shall have the same effect as an original signature.

3.13 Termination. This Agreement shall terminate twenty-five (25) years from the Effective Date.

3.14 Governing Law. This Agreement shall be governed by, and all rights and liabilities under it shall be determined in accordance with, the laws of the State of California.

3.15 Legal Expenses and Costs. Except as provided in Paragraphs 1.2.1 and 3.10, the Parties shall each bear their respective attorneys' fees and other legal expenses and costs incurred in connection with the Project and the Lawsuit through the Effective Date and incurred in connection with the negotiation, drafting and implementation of this Agreement.

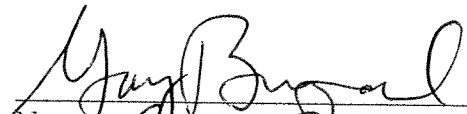
3.16 OFAC. HOA represents that neither it nor its officers, directors or employees is a person or entity with whom U.S. persons or entities are restricted from doing business under the Patriot Act or any other requirements contained in the rules and regulations of the Office of Foreign Assets Control, Department of the Treasury. HOA represents and covenants that neither

it nor its employees and agents have offered or will offer, directly or indirectly, any illegal bribe, kickback or other improper or illegal payment to any person.

3.17 Authority to Bind. Each person signing this Agreement represents that he or she has full legal authority to bind the Party on whose behalf the person signs.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

CARMEL MOUNTAIN RANCH RESIDENTIAL COMMUNITY ASSOCIATION,
a non-profit corporation

By: 
Name: GARY BRIZARD
Title: President

NUWI CMR, LLC,
a limited liability company


By: 
Name: Adam Browning
Title: Manager

EXHIBIT A

**Form of Request for
Dismissal**

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO. : E-MAIL ADDRESS: ATTORNEY FOR (Name):	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
Plaintiff/Petitioner: Defendant/Respondent:	
REQUEST FOR DISMISSAL	
CASE NUMBER:	

A conformed copy will not be returned by the clerk unless a method of return is provided with the document.

This form may not be used for dismissal of a derivative action or a class action or of any party or cause of action in a class action. (Cal. Rules of Court, rules 3.760 and 3.770.)

1. TO THE CLERK: Please **dismiss** this action as follows:
- a. (1) With prejudice (2) Without prejudice
 - b. (1) Complaint (2) Petition
 - (3) Cross-complaint filed by (name): on (date):
 - (4) Cross-complaint filed by (name): on (date):
 - (5) Entire action of all parties and all causes of action
 - (6) Other (specify):*
2. (Complete in all cases except family law cases.)
 The court did did not waive court fees and costs for a party in this case. (This information may be obtained from the clerk. If court fees and costs were waived, the declaration on the back of this form must be completed).

Date: _____

(TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY) (SIGNATURE)

*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

Attorney or party without attorney for:
 Plaintiff/Petitioner Defendant/Respondent
 Cross Complainant

3. TO THE CLERK: Consent to the above dismissal is hereby given.**

Date: _____

(TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY) (SIGNATURE)

** If a cross-complaint – or Response (Family Law) seeking affirmative relief – is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j).

Attorney or party without attorney for:
 Plaintiff/Petitioner Defendant/Respondent
 Cross Complainant

(To be completed by clerk)

- 4. Dismissal entered as requested on (date):
- 5. Dismissal entered on (date): as to only (name):
- 6. Dismissal **not entered** as requested for the following reasons (specify):
- 7. a. Attorney or party without attorney notified on (date):
- b. Attorney or party without attorney not notified. Filing party failed to provide a copy to be conformed means to return conformed copy

Date: _____ Clerk, by _____, Deputy

Plaintiff/Petitioner: Defendant/Respondent:	CASE NUMBER:
--	--------------

COURT'S RECOVERY OF WAIVED COURT FEES AND COSTS

If a party whose court fees and costs were initially waived has recovered or will recover \$10,000 or more in value by way of settlement, compromise, arbitration award, mediation settlement, or other means, the court has a statutory lien on that recovery. The court may refuse to dismiss the case until the lien is satisfied. (Gov. Code, § 68637.)

Declaration Concerning Waived Court Fees

1. The court waived court fees and costs in this action for *(name)*:
2. The person named in item 1 is *(check one below)*:
 - a. not recovering anything of value by this action.
 - b. recovering less than \$10,000 in value by this action.
 - c. recovering \$10,000 or more in value by this action. *(If item 2c is checked, item 3 must be completed.)*
3. All court fees and court costs that were waived in this action have been paid to the court *(check one)*: Yes No

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date:

(TYPE OR PRINT NAME OF ATTORNEY PARTY MAKING DECLARATION)



(SIGNATURE)

EXHIBIT B

**Form of Memorandum of
Agreement**

MEMORANDUM OF AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

NUWI CMR, LLC
16192 Coastal Highway
Lewes, DE 19958
Attention: Adam Browning

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (“Memorandum”) is dated as of February ___, 2022 for reference purposes only by and between NUWI CMR, LLC, a limited liability company, and Carmel Mountain Ranch Residential Community Association, a non-profit corporation (“CMRCA”). NUWI CMR, LLC and CMRCA may be referred to herein individually as a “Party” or collectively as “Parties.”

A. The Parties entered into a Settlement and Release Agreement dated as of February ___, 2022 (the “Agreement”) for purposes of settling and dismissing *Carmel Mountain Ranch Residential Community Association v. City of San Diego, et al.*, San Diego County Superior Court Case No. 37-2021-00048546-CU-TT-CTL (the “Lawsuit”). The Lawsuit arose out of the City of San Diego’s approval of entitlements relating to The Trails at Carmel Mountain Ranch development project (“Project”).

B. The Project currently has an address of 14050 Carmel Ridge Road, San Diego, California 92128 and includes APNs 313-043-09, 313-040-60, 313-040-62, 313-031-28, 313-040-71, 313-541-10, 313-660-43, 313-704-01, 313-704-02, 313-040-79, 313-040-80, 313-031-32, 313-043-01, 313-043-02, 313-043-03, 313-653-40, 313-621-29, 313-512-43, 313-523-13, 313-040-85, 313-040-71, 313-690-26, 313-690-25, 313-041-09, and 313-540-26 (“the Project Site”).

C. Pursuant to the Agreement, NUWI CMR, LLC agreed to the following obligations:

(i) Maximum Dwelling Unit Count. Despite being approved for the development of one thousand and two hundred (1,200) dwelling units, NUWI CMR, LLC will not construct or permit the construction of more than nine hundred and seventy-five (975) dwelling units as part of the Project.

(ii) Maximum Building Height in Units 16 and 17. Despite being approved for building heights of up to four stories in Units 16 and 17 of the Project, NUWI CMR, LLC will not construct or permit the construction of buildings in Units 16 and 17 greater than three (3) stories.

(iii) Percentage of For-Sale Units. Despite being approved for a greater percentage of for-rent dwelling units, NUWI CMR, LLC will develop at least fifty (50) percent of the Project’s total constructed dwelling units as for-sale dwelling units.

(iv) Plan Distribution. No later than five (5) business days following the submission of Project plans related to the required substantial conformance review for the Project, NUWI CMR, LLC shall provide notice and a digital copy of any such plans to CMRRCA. Such notice shall be provided only once. CMRRCA shall designate one (1) individual (the “Association Designee”) as the recipient of all such notices and plans. Counsel for CMRRCA shall provide the name of the Association Designee to counsel for NUWI CMR, LLC pursuant to the requirements of the Agreement. Thereafter, CMRRCA shall be responsible for apprising NUWI CMR, LLC directly of any changes to the Association Designee. CMRRCA shall not have approval or revision authority over any plans related to the Project. This term of the Agreement does not grant, either expressly or impliedly, any approval or revision authority, or any comment period, over any plans related to the Project to CMRRCA.

D. Pursuant to the Agreement, CMRRCA agreed to the following obligations:

(i) File with the Superior Court of the County of San Diego an executed Request for Dismissal for the Lawsuit.

(ii) Take no action to oppose or interfere with the issuance of any and all approvals and permits required in connection with the Project, its construction, its opening, its operation, or on- or off-site infrastructure or facility relocations or improvements related to the Project, or to encourage the same by any person or organization.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Recitals**. The Recitals are true and correct, form a material part of this Memorandum and hereby are incorporated by reference.

2. **Persons/Entities Bound and Benefited by the Agreement**. The Agreement is binding upon the Parties and their successors, including all successors in interest and assigns to the Project, the Project Site and/or NUWI CMR, LLC.

3. **Termination and Release**. This Memorandum and the Settlement Agreement shall automatically terminate with respect to any (i) condominium unit or residential lot improved with a residence upon conveyance to a member of the homebuying public, (ii) with respect to any unit or lot upon issuance of a certificate of occupancy (or equivalency thereof) for a dwelling unit and/or residential serving improvements, and/or (iii) upon conveyance of any open space, park or other unimproved parcel to a homeowners association formed to govern the Project. Although such termination will be automatic, the Parties agree to record a written notice of termination with the County Recorder for the applicable condominium unit or lot upon request by either Party. It is the intent of this section is that homeowners and a homeowners association shall not be bound by the Memorandum of the Settlement Agreement

4. **Interpretation**. The purpose of this Memorandum is to give notice of the existence of the Agreement. Except as otherwise defined herein, capitalized terms used this Memorandum shall have the same meaning given such terms in the Agreement. If there is any inconsistency

between any provisions of the Memorandum and any provisions of the Agreement, the provisions of the Agreement shall control.

5. **Counterparts.** This Memorandum may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

CARMEL MOUNTAIN RANCH RESIDENTIAL COMMUNITY ASSOCIATION,
a non-profit corporation

By: _____ Date: _____
Name: _____
Title: _____

NUWI CMR, LLC,
a limited liability company

By: _____ Date: _____
Name: _____
Title: _____