

## SETTLEMENT AGREEMENT

THIS AGREEMENT ("Agreement") is made effective as of June 1, 2009 ("Effective Date") by and between the following parties: (1) ANTHONY GIAMMANCO, CATHY GIAMMANCO and VINCENT GIAMMANCO (collectively and individually "the Giammanco parties"); (2) HUCKLEBERRY RIDGE NO. 1 HOMEOWNERS ASSOCIATION, INC. ("the HOA") and (3) THE CITY OF MONTEREY ("City") (the Giammancos, the HOA and the City shall be collectively referred to as "the parties"), and is made with reference to the following facts circumstances:

### RECITALS

A. Litigation has arisen between the Giammancos, the HOA and the City. Various complaints and cross-complaints were filed asserting claims to quiet title to Parcel B (an approximately 12 acre parcel of land owned by the HOA), eject the public from Parcel B, declare rights regarding the ability of the public to use Parcel B, to cancel the open space easement deed over Parcel B, to declare obligations to maintain Parcel B, to invalidate amendments to the HOA's governing documents, to enjoin efforts by the HOA to collect assessments from its members to fund the maintenance of Parcel B, to declare an easement had arisen in favor of the City by implied dedication and acceptance, and seeking damages for inverse condemnation, among others ("the litigation"). The full facts and circumstances of the litigation are set forth in the allegations of the pleadings filed by all parties in the litigation and in depositions, documents and information provided in the course of discovery conducted in the litigation. The allegations of all pleadings filed in Case No. M63835 are incorporated by reference for informational purposes as if fully set forth herein.

B. The parties stipulated to a general reference of the disputes concerning Parcel B to Hon. Nat Agliano (ret'd), who tried the issues referred to him in two phases. The first phase was limited to matters that could be decided from public documents relating to the Huckleberry Ridge subdivision, and the second phase involved live witness testimony and concerned issues that required the presentation of evidence and live testimony. Both phases have been completed, and statements of decision thereon have been finalized by Justice Agliano.

C. The parties wish to resolve all disputes in this case relating to compliance with Justice Agliano's statements of decision, matters not included in the stipulation for referral and any other issues pending in the litigation.

### AGREEMENT

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

I. Payment of Money.

A. The HOA agrees to pay to the Giammancos the sum of Ninety Thousand Dollars (\$90,000.00) which payment shall be made by a check payable to Gary Gray in trust for

Cathy Giammanco, Anthony Giammanco and Vince Giammanco, delivered to Gary Gray on or before June 10, 2009.

B. The HOA agrees to pay to Justice Agliano or his designee the Giammanco's share of the cost of mediation conducted on June 1, 2009, in consideration for which the Giammancos agree to pay from their own resources all costs associated with the completion of the fence in accordance with the specifications set forth in Justice Agliano's Statement of Decision in Phase 2 of the litigation. The Giammancos acknowledge that Anthony Giammanco is an experienced general contractor, that Anthony Giammanco has conducted his own independent inquiry regarding the costs of materials and labor necessary to build the aforementioned fence and has reached his own opinion as to the likely costs, without any influence by the City or the HOA. The Giammancos therefore assume all risk that the cost of completing construction of the grape stake fence in accordance with the Statement of Decision after Phase 2 differs from the Anthony Giammanco's estimate of such cost.

2. Entry of Judgment. The parties agree that upon execution of this Agreement, the referee's Statement of Decision as to Phase 2 shall be lodged with the court and a judgment entered thereon in accordance with Code of Civil Procedure section 664(a). Nothing set forth in this Agreement shall be construed as relieving any party's obligation to comply with the terms of the judgment so entered by the court or diminishing in any way the rights and obligations set forth in such judgment. Similarly, nothing in this Agreement shall be construed as diminishing in any way any party's right to take steps, including resort to judicial process, to compel another person or party's compliance with the terms of any such judgment.

3. Appeal of Court's Decision and/or Objection to Referees Statement of Decision

a. In consideration for entry of judgment as provided in Paragraph 2 of this Agreement and the parties agreement to waive any challenge to the judgment, as provided for herein below, the City agrees to waive and relinquish any right it might have or claim to in any manner challenge the referee's statement of decision as to Phase 1 and Phase 2 of the reference hearing of this matter and/or any judgment entered by the court thereon, including but not limited to review by appeal, review by original petition or extraordinary writ, any action or motion collaterally attacking the judgment or statement of decision, motion for reconsideration, motion for new trial or hearing. The City agrees to refrain from providing support or assistance to any person, association, entity or party who might assert a challenge to or seek review of the statement of decision and/or judgment of the court, unless otherwise required by law (such as in response to a Public Records Act request).

b. In consideration for entry of judgment as provided in Paragraph 2 of this Agreement and the parties agreement to waive any challenge to the judgment, the HOA agrees to waive and relinquish any right it might have or claim to in any manner challenge the referee's statement of decision as to Phase 1 and Phase 2 of the reference hearing of this matter and/or any judgment entered by the court thereon, including but not limited to review by appeal, review by original petition or extraordinary writ, any action or motion collaterally attacking the judgment or statement of decision, motion for reconsideration, motion for new trial or hearing. The HOA agrees to refrain from providing support or assistance to any person, association, entity or party who might assert a challenge to or seek review of the statement of decision and/or judgment of the court.

c. In consideration for entry of judgment as provided in Paragraph 2 of this Agreement and the parties agreement to waive any challenge to the judgment, the Giammancos

each agree to waive and relinquish any right he or she might have or claim to in any manner challenge the referee's statement of decision as to Phase 1 and Phase 2 of the reference hearing of this matter and/or any judgment entered by the court thereon, including but not limited to review by appeal, review by original petition or extraordinary writ, any action or motion collaterally attacking the judgment or statement of decision, motion for reconsideration, motion for new trial or hearing. The Giammancos each agree to refrain from providing support or assistance to any person, association, entity or party who might assert a challenge to or seek review of the statement of decision and/or judgment of the court.

4. Waiver of Right to Seek Costs and/or Fees - The parties each agree to waive and relinquish any right they might have or claim to recover costs incurred in connection with the litigation and any right they might have or claim to recover attorneys fees and/or expert fees in connection with the litigation.

5. Good Standing. HOA is a California corporation organized and in good standing in the State of California.

6. Authority. Each of the parties represents that each has the authority to enter into this Agreement and has obtained all necessary approvals from its shareholders, officers and/or directors required to execute and carry out the terms of this Agreement. The parties signing on behalf of the HOA and the City are authorized to execute this Agreement on behalf of the HOA and the City, respectively. No further consent or approval of any other person is necessary to make this Agreement a binding agreement of the HOA and the City.

7. RELEASE OF CLAIMS.

a. HOA Dismissal and Release. The HOA, on its behalf and on the behalf of its successors and assigns, agrees to dismiss with prejudice each and every claim for relief asserted in this litigation, regardless of whether asserted in complaint, cross-complaint or other pleading, motion or petition. The HOA hereby releases the Giammancos and the City, their agents, officers, representatives, attorneys, insurers, successors and assigns, from any and all claims, demands and causes of action of any kind whatsoever, whether or not now known, suspected or claimed which the HOA now has, or claims to have, in any manner relating to the disputes giving rise to this litigation. The HOA and the City hereby agree that the "Stipulation Re: Third Cause of Action for Inverse Condemnation Contained in Cross-Complaint Filed on Behalf of Huckleberry Ridge No. 1 Homeowners Association, Inc." dated March 2007 is superseded by this Agreement. The HOA agrees to waive and relinquish any right or claim it might have for inverse condemnation against the City.

b. Giammanco Dismissal and Release. The Giammancos, on behalf of themselves and on the behalf of their successors and assigns, agree to dismiss with prejudice each and every claim for relief asserted in this litigation, regardless of whether asserted in complaint, cross-complaint or other pleading, motion or petition. The Giammancos hereby release the HOA and the City, their agents, officers, directors, representatives, attorneys, insurers, successors and assigns, from any and all claims, demands and causes of action of any kind whatsoever, whether or not now known, suspected or claimed which the Giammancos now have, or claim to have, in any manner relating to the disputes giving rise to this litigation.

c. City Dismissal and Release. The City, on behalf of itself and on the behalf of its successors and assigns, agrees to dismiss with prejudice each and every claim for relief asserted

matters described in the Recitals; (b) the claims, demands, actions and causes of action released and discharged pursuant to this Agreement; (c) the merit or absence of merit of any of the claims, demands, actions or causes of action released and discharged pursuant to this Agreement; (d) the tax effects or consequences of any aspect of this Agreement, including without limitation the tax effects or consequences of the transfers of money or interests in property provided for by this Agreement; or (e) any other effects or consequences of this Agreement or any of its terms or provisions, now or in the future.

9. No Assignment. The parties to this Agreement represent and warrant that they have not previously assigned or conveyed to any third person (including by operation of law) any right, claim, or cause of action that is the subject of this Agreement, and that each has the full and complete authority to enter into this Agreement.

10. Complete Agreement. This Agreement is intended by the parties hereto as the final expression of their agreement and as a complete and exclusive statement of the terms and provisions thereof. This Agreement supersedes all agreements, letters of intent, representations, warranties, statements, promises, inducements and understandings, whether oral or written ("Representations"), with respect to the subject matter hereof, and no party hereto shall be bound by or charged with any Representations not specifically set forth in this Agreement or the exhibits hereto notwithstanding the provisions of Civil Code section 1698. Nothing other than this Agreement shall be relevant or admissible to supplement or vary any of the terms or provisions set forth herein. No party hereto has made any statement or representation to any other party regarding any fact or facts relied upon by any other party in entering into this Agreement, and each of the party hereto specifically does not rely upon any statement, representation, or promise of any other party in executing this Agreement or making the settlement provided for herein, except as specifically set forth herein. This Agreement constitutes a single, integrated written contract expressing the entire agreement of the parties hereto relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any party hereto, except as specifically set forth herein. All prior discussions and negotiations have been and are merged and integrated into, and are superseded by, this Agreement. Each party hereby warrants and agrees that they have not relied upon on any Representations not specifically set forth herein as an inducement or as a material motivation for entering into this Agreement.

11. Amendments. this Agreement may be amended in whole or in part only by a further written agreement executed by the parties.

12. Construction of Agreement. This Agreement, and any ambiguities or uncertainties herein, shall be equally and fairly interpreted and construed without reference to the identity of the party or parties preparing this Agreement, on the express understanding and agreement that each of the parties participated equally in the negotiation and preparation of this Agreement, or have had equal opportunity to do so. Accordingly, each of the parties hereby waives the benefit of California Civil Code, §1654 and any similar, successor or amended statute, providing that in cases of uncertainty, language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist.

13. Successors and Assigns. This Agreement shall inure to the benefit of, and shall be binding upon, the parties and their respective heirs, representatives, administrators, executors, successors and assigns.

14. Further Assurances. Each party hereby agrees to do all further acts and to make, execute and deliver all such additional written instruments, as shall be reasonably required to carry out the terms and provisions of this Agreement.

15. Waiver. No consent or waiver by any of the parties to any breach or default by another party under this Agreement shall be valid unless given in writing and shall not be deemed or construed to be a consent or waiver to any other breach or default under this Agreement, whether with respect to the same obligation or any other obligation.

16. Severability. If any term or provision of this Agreement is found to be void, voidable or unenforceable under the laws of the State of California, any and all of the remaining terms and provisions of this Agreement shall remain binding so long as the essential business purposes of the Agreement remain effective.

17. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

18. Attorneys' Fees. In the event that any party institutes a legal action or arbitration, including a bankruptcy proceeding, involving the interpretation or enforcement of this Agreement or their respective rights and obligations hereunder, the prevailing party in such action or arbitration shall be entitled to an award of reasonable attorney's fees, expert fees, court costs and other allowable costs.

19. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. The signature page of each counterpart may be detached from such counterpart and attached to a single document which shall for all purposes be treated as an original. The execution of this Agreement shall be deemed to have occurred, and this Agreement shall be enforceable and effective, only upon the complete execution of this Agreement by all parties.

20. In the language of this Agreement and the documents referred to herein, the singular and plural numbers, and the masculine, feminine and neuter genders, shall each be deemed to include all others, and the words "person" and "party" shall be deemed to include individuals, partnerships, corporations and every form of entity, as the context may require.

21. Each of the parties hereto has had been represented by counsel and has had the benefit of independent legal advice from attorneys of such party's choice with respect to the advisability of making the settlement and release provided herein, and with respect to the advisability of executing this Agreement. Prior to the execution of this Agreement by each party, that party reviewed same at length, made such investigation of the facts pertaining to the settlement as such party deemed necessary, and received the advice of counsel in reviewing and explaining the terms and consequences of this Agreement. This Agreement has been carefully read by, the contents hereof are known and understood by, and it is signed freely by each person executing this Agreement.

22. Each of the parties warrants and agrees that he, she or it will never deny the validity of this Agreement, or any of its terms or provisions on the grounds that he, she or it: (a) was not acting freely, knowingly and voluntarily in agreeing to the terms of this Agreement or any aspect of the settlement upon which it is based; (b) did not read this Agreement or any of its terms or provisions carefully or at all; (c) lacked the advice of competent independent counsel; (d) did not

understand the scope, nature, meaning or effects of this Agreement or any of its terms or provisions; or (e) engaged in an ultra vires act or otherwise entered into this Agreement, or any of its terms or provisions, without the ratification and approval of all necessary persons or entities, whether or not any such persons or entities claim that their ratification or approval was required.

23. This Agreement shall be binding upon and shall inure to the benefit of each of the parties and each of their respective officers, directors, shareholders, partners, joint venturers, employees, members, agents, representatives, trustees, predecessors, successors, assigns, beneficiaries, estates, executors, administrators, heirs, spouses, insurers and attorneys.

24. Facsimile Signatures. To facilitate execution of this Agreement, the parties may execute and exchange by facsimile counterparts of the signature pages. Moreover, a facsimile version of this Agreement may be considered an original for all purposes.


IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first set forth above.

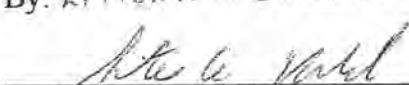
  
ANTHONY GIAMMANCO


  
VINCENT GIAMMANCO

  
CATHY GIAMMANCO

HUCKLEBERRY RIDGE NO. 1  
HOMEOWNERS ASSOCIATION, INC.

  
By: LITIGATION COMMITTEE + DIRECTOR

  
By: LITIGATION COMMITTEE MEMBER - DIRECTOR

  
By: LITIGATION COMMITTEE MEMBER + DIRECTOR

THE CITY OF MONTEREY

  
By: