

SETTLEMENT AGREEMENT

BETWEEN

FAIRVIEW HEIGHTS HOMEOWNERS ASSOCIATION, VARIOUS PROPERTY OWNERS, and

FINANCIAL PACIFIC INSURANCE COMPANY

Fairview Heights Homeowners Association (hereinafter "Fairview Heights HOA"), a non-profit organization organized under the laws of the state of California, Financial Pacific Insurance Company ("Financial Pacific"), a California corporation, and the property owners (former or current) identified in Article 10 below (hereinafter the "Property Owners") enter into this agreement (the "Settlement Agreement") effective September 26, 2011, with reference to the following facts:

a. Fairview Heights HOA is the homeowners association established by that certain Declaration of Covenants Conditions and Restrictions (the "CC&Rs") recorded in the Alameda County Recorders Office on September 5, 2006 as document number 2006337411. Fairview Heights HOA is the owner of the common areas for the subdivision known as "Tract 6102" in the unincorporated portion of Alameda County known as Fairview.

b. Financial Pacific is a surety company that issued payment and performance bonds on behalf of Atwal Real Estate Investments, Inc. ("Atwal Real Estate"), the original developer for Tract 6102. Atwal Real Estate is the predecessor in interest to both (1) Fairview Heights HOA with respect to the Common Areas, and (2) the Property Owners with respect to the lots they purchased.

c. The County of Alameda (the "County") made a claim against Financial Pacific related to the work of Atwal Real Estate and its affiliate, Altima Contracting Ltd. under various subdivision improvement agreements Atwal Real Estate or Altima Contracting Ltd. entered into with the County. Without admitting the validity of each other's claims, Financial Pacific and the County of Alameda have entered into a settlement agreement, pursuant to which Financial Pacific has agreed to retain licensed contractors to perform certain work on and around Tract 6102. Financial Pacific has also agreed to procure an agreement from Fairview Heights HOA to perform the landscaping, irrigation and perimeter fence.

d. Financial Pacific made a claim for reimbursement of its expenses against Fairview Heights Homeowners Association and the Property Owners on the basis that Fairview Heights HOA and the Property Owners are the successors in interest to the original property owners and other theories. These claims were stated in a cross-complaint filed by Financial Pacific in the action known as *MCH Electric, Inc. v. Altima Contracting LTD, Inc., et al*, Superior Court of California, County of Alameda Case Number HG 09455003 (the "Lawsuit").

e. The Property Owners have filed cross-complaints against Financial Pacific and other parties related to Atwal Real Estate's failure to perform work related to Tract 6102.

f. Financial Pacific, the Property Owners and Fairview Heights HOA are now desirous of entering into a Settlement Agreement that (1) resolves the Lawsuit, (2) provides for Financial Pacific to perform certain work that benefits Fairview Heights HOA, (3) provides for Fairview Heights HOA to repay Financial Pacific a specific portion of the work Financial Pacific paid for pursuant to this Settlement Agreement, and (4) requires Fairview Heights HOA to perform its duties as a homeowners association.

NOW, THEREFORE, in consideration for the promises stated herein, Financial Pacific, Fairview Heights HOA and the Property Owners enter into the following agreement:

1. **Dismissal of Lawsuit.** Financial Pacific, the Property Owners and Fairview Heights HOA shall dismiss all claims in the Lawsuit against each other within five (5) court days of the fully authorized execution of this Settlement Agreement by Fairview Heights HOA, the Property Owners and Financial. The Dismissal shall be with prejudice and with a full waiver of claims for costs and attorneys' fees. The parties to this agreement, however, hereby stipulate for the Court to maintain jurisdiction over the parties pursuant to Code of Civil Procedure § 664.6 to enforce the settlement until performance in full of the terms of this Settlement Agreement.

2. **Construction Work.** Financial Pacific shall retain licensed contractors to perform the following construction work (hereinafter the "Construction Work"):

a. Construction of improvements shown on the Improvement Plans for Tract 6102 prepared by Lea & Braze Engineering, Inc. dated August 5, 2011 (including Revision 1 dated April 16, 2011) (hereinafter the "Improvement Plans"), attached and incorporated herein as "Attachment A;"

b. Repair or replacement of the nine street lights shown on the Improvement Plans on Tract 6102 to meet minimum County standards;

c. Construction of a perimeter fence around the perimeter of Tract 6102 as shown on page C-10 of the Improvement Plans; and

d. Construction of top blocks and manhole readjustment for the sewers as required for acceptance of the system by the Oro Lomo Sanitary District.

3. **Performance of HOA Duties.** Fairview Heights HOA shall take all necessary steps to restore its legal standing as a California non-profit corporation and perform the duties of homeowners association under California law, including, but not limited to the following:

- a. Paying all necessary taxes and filing all necessary reports to restore its corporate status as a non-profit California corporation;
- b. Paying all outstanding utility bills, including electrical, water, sewer;
- c. Obtaining a general liability policy covering liability arising out of property owned by Fairview Heights HOA;
- d. Collecting regular assessments in an amount determined by the board of Fairview Heights HOA or not less than \$35 per month;
- e. Holding regular meetings and electing officers and board members; and
- f. Perform all necessary maintenance of HOA property, including, but not limited to, maintenance of the storm drainage pump station and retention basin, fences around storm drainage pump station and retention basin, perimeter fences, streets, landscaping and irrigation systems. With respect to the pump station the Fairview Heights HOA shall establish an on call service contract with a mechanic qualified to maintain the system and address emergencies.

4. **Landscape Agreement with County of Alameda.** Fairview Heights HOA shall enter into a "Fairview Heights Landscaping Agreement" in the form attached as Attachment "B" with Alameda County, pursuant to which the HOA shall agree to (1) either submit by January 30, 2012 a plan including landscaping, irrigation and perimeter fences in accordance with Resolution No. 90-85 (the "Landscaping Plan") or agree to be bound by the currently approved landscaping plan for the subdivision dated March 19, 1999 (approved June 15, 1999), and (2) implement the Landscaping Plan pursuant to a timetable agreeable to the County and based upon occupancy for the subdivision.

5. **Performance Bond.** Financial Pacific shall provide a performance bond as required by the County of Alameda guarantying the Fairview Height's obligations under the Fairview Heights Landscaping Agreement.

6. **Special Assessment.** Fairview Heights HOA shall establish, pursuant to a properly noticed and binding vote, a special assessment (the "Special Assessment") to be used to pay certain expenses necessary to revive the home owners

association and resolve the litigation. The Special Assessment shall be sufficient to pay the following costs:

- a. Taxes and the costs of necessary professional services to restore the legal standing of Fairview Heights HOA and bring the accounting and records up to date;
- b. The costs of installing the landscaping and irrigation as required by the Fairview Heights HOA Agreement, including, but not limited to, the cost to pay a landscape architect to prepare the plan and the costs to implement the plan under the required timeline;
- c. Payment to Financial Pacific of the Financial Pacific Loan Payments, described in Article 7 below herein.

7. **Reimbursement to Financial Pacific of Certain Construction Costs.**

Fairview Heights HOA shall make monthly payments to Financial Pacific of the costs to perform the HOA Work, as defined herein below (the "Financial Pacific Loan Amount") amortized over three years with four percent (4%) per year interest. The "HOA Work" shall be defined as follows:

- a. Installation of a perimeter fence meeting the requirements of the County of Alameda and the Fairview Heights HOA;
- b. The completion of the top blocks and other construction required by Oro Lomo Sanitation Districts;
- c. The repair and/or replacement (to the extent required by the County) street lights for Tract 6102; and
- d. Work performed in response to claims by the County against the bond specified in Article 5 above.

During the construction period officers of Fairview Heights HOA shall have access to construction documents and pricing information related to the HOA Work. All design decisions will be approved by both a representative of Fairview Heights HOA and the County of Alameda.

Within 30 days of completion of the HOA Work, Financial Pacific shall hold a meeting with officers of Fairview Heights HOA to agree upon the amount of the Financial Pacific Loan Amount and the payment schedule therefore, using the "Addendum" form attached as Attachment "C." Said Addendum, once signed by Financial Pacific and Fairview Heights HOA, shall be incorporated into this Settlement Agreement. Thereafter, monthly payments (the "Financial Pacific Loan Payments") shall be due and payable to Financial Pacific in the amount stated on the Addendum.

8. **Assignment Of Special Assessment.** To secure the duty to pay the Financial Pacific Loan Payments, Fairview Heights HOA does hereby, sell, assign and transfer to Financial Pacific the right to collect Special Assessment from its members.

9. **Receiver.** In the event of a failure by Fairview Heights HOA to perform any of its duties herein above, including, but not limited to, Fairview Heights HOA's duties as a homeowners association described in Article 3 above, its duty to enter into the Landscaping Agreement as described in Article 4, its duty to collect a Special Assessment, as described in Article 6, and its duty to reimburse Financial Pacific as described in Article 7, Financial Pacific shall be entitled, as a matter of right, without notice and without giving bond and without regard to the solvency or insolvency of Fairview Heights HOA, or adequacy of security, to have a receiver appointed by the Court. Said receiver shall have the right to approve and collect Special Assessments, to enter into the Fairview Heights Landscaping Agreement and any other agreements necessary to carry out the intent of this agreement, and to perform all other actions of an active homeowners association, including the payment of Financial Pacific of the Financial Pacific Loan Payments.

10. **Property Owners.** The term "Property Owners" as used herein shall only apply to those defendants who are both (1) listed on Attachment "D," and (2) execute the signature block of this Settlement Agreement, and (3) to the extent each is a current owner of a lot at Tract 6102, executes the proxy attached as Attachment "E." In the event that a defendant does not execute this Agreement, said defendant will neither be released by this Agreement or shall be deemed to release any party hereto.

Notwithstanding any language in this Settlement Agreement to the contrary, the following parties (hereinafter the "Excluded Parties") shall not be released by any party to this Settlement Agreement: Altima Contracting LTD Incorporation, Jagjit Singh Athwal, Rajdavinder P. Atwal, Atwal Real Estate Investments, LLC, and Rupinder K. Atwal.

11. **Proxy.** Each of the Property Owners that owns a lot as of the date of execution of this agreement by each respective Property Owner, will sign a proxy, in the form attached as Attachment "E," authorizing the secretary of Fairview Heights to vote to approve execution of this Agreement by the Fairview Heights Homeowners Association.

12. **Releases.**

a. Financial Pacific, subject to execution and performance of this agreement by the Property Owners and the Fairview Heights Homeowners Association, does hereby acknowledge full satisfaction of, and fully finally and forever releases, settles and discharges Fairview Heights Homeowners Association, the Property Owners (other than the Excluded Parties), and their respective successors in interest, assignees, attorneys and agents from all claims, actions, causes of action, offsets or liabilities,

whether known or unknown, suspected or unsuspected, contingent or matured, related in any way to Tract 6102 or the Lawsuit.

b. Fairview Heights HOA and the Property Owners, subject to their respective execution and performance of this Settlement Agreement, do hereby acknowledge full satisfaction of, and fully finally and forever release, settle and discharge Financial Pacific, its successors in interest, assignees, attorneys and agents from all claims, actions, causes of action, offsets or liabilities, whether known or unknown, suspected or unsuspected, contingent or matured, related in any way to Tract 6102 or the Lawsuit.

c. Financial Pacific, the Property Owners and Fairview Heights HOA represent and acknowledge that they fully understand that if any fact relating to any matter covered by this Settlement Agreement is found hereafter to be other than or different from the facts now believed by any of them to be true, each of them expressly accepts and assumes the risk of such possible other facts or differences in fact and agrees that this Agreement shall nevertheless remain in effect.

d. The release stated in this release shall be and remain effective despite any discovery by Financial Pacific, the Property Owners and Fairview Heights HOA of facts in addition to or different from those he, she or it now knows or believes to be true with respect to the subject matter of the release.

e. Financial Pacific, the Property Owners and Fairview Heights HOA waive the benefits of all state or federal statutes or rules of law providing that a general release does not extend to claims which the releaser does not know or suspect to exist in his or her favor at the time of executing the release, including Civil Code section 1542, which provides:

SECTION 1542. CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE. 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

13. **Storm Water Pollution Prevention Plan.** Fairview Heights Homeowners Association agrees to act as the Legally Responsible Person for purposes of compliance with the National Pollutant Discharge Elimination System ("NPDES") and the California State Water Resources Board. Fairview Heights HOA ratifies the registration by Financial Pacific with the NPDES on behalf of Fairview Heights HOA. Financial Pacific will ensure compliance for all work it performs with all best management practices or other requirements of NPDES or the California General Construction Storm Water Permit.

14. **Further Assurances.** The Parties agree to execute such other documents, and to take such other actions, as may be reasonably necessary to further the intent and purpose of this Agreement.

15. **Costs and Legal Fees.** Each Party shall be responsible for its own costs and legal fees incurred in connection with this Agreement and the Lawsuit.

16. **Authority.** Each undersigned Party represents that said duty is fully authorized to enter into this Agreement.

17. **Entire Agreement.** This Agreement embodies the entire agreement of the Parties with regard to the matters contained in this Agreement and, as such, supersedes any and all other agreements, whether oral or in writing, express or implied, between or among the Parties hereto. There are no other promises, representations, warranties, understandings or agreements except as are expressly addressed in this Agreement. Any amendment, modification or waiver of any term or condition of this Agreement must be in writing and signed by all of the Parties.

18. **Governing Law.** This Agreement shall in all respects be construed and enforced in accordance with and governed by the laws of the State of California without regard to any principles of conflicts of laws.

19. **Severability.** The invalidity of any provision of this Agreement shall not affect the continuing enforceability of the remaining provisions.

20. **Drafting.** This Agreement shall be deemed drafted jointly by the Parties. Therefore, in any construction of this Agreement, the Agreement shall not be construed against any particular Party.

21. **Modifications.** This Agreement may be amended only by a written instrument executed by all Parties hereto.

22. **Counterparts.** This Agreement may be executed in one or more counterparts all of which taken together shall be deemed one original. Signatures by facsimiles or transmitted as an attachment to the electronic mail shall constitute an original signature.

FAIRVIEW HEIGHTS HOMEOWNERS ASSOCIATION

BY: _____ DATED: _____

FINANCIAL PACIFIC INSURANCE COMPANY

BY: _____ DATED: _____

FAIRVIEW HILLS, LLC

BY: _____ DATED: _____

BAC HOME LOANS SERVICING LP

BY: _____ DATED: _____

LIBERTY BANK

BY: _____ DATED: _____

BAJINDER ATWAL

BY: _____ DATED: _____

BHANVENPREET ATWAL

BY: _____ DATED: _____

KOWALPREET ATWAL

BY: _____ DATED: _____

RANBIR ATWAL

BY: _____ DATED: _____

SUKHJEVEN ATWAL

BY: _____ DATED: _____

SURINDERPAL ATWAL

BY: _____ DATED: _____

GULSHAN BAJAJ

BY: _____ DATED: _____

NITIN BHATIA

BY: _____ DATED: _____

SHEETAL BHATIA

BY: _____ DATED: _____

DARSHAN S. BRAR

BY: _____ DATED: _____

RAVINDER BRAR

BY: _____ DATED: _____

JASJIT K. BRAR

BY: _____ DATED: _____

BIMBLA W. CHAMBER

BY: _____ DATED: _____

RAM N. CHAMBER

BY: _____ DATED: _____

ANOOP CHEEMA

BY: _____ DATED: _____

MANJIT CHEEMA

BY: _____ DATED: _____

LALITA CHITLANGIA

BY: _____ DATED: _____

RAVI CHITLANGIA

BY: _____ DATED: _____

KAUR S. DHALIWAL

BY: _____ DATED: _____

KIRANDIP K. DHALIWAL

BY: _____ DATED: _____

BIVAN K. DHILLON

BY: _____ DATED: _____

DARSHAN S. BRAR DHILLON

BY: _____ DATED: _____

GURDEV S. DHILLON

BY: _____ DATED: _____

GURPRIT S. DHILLON

BY: _____ DATED: _____

HARJIT DHILLON

BY: _____ DATED: _____

MANPRIT DHILLON

BY: _____ DATED: _____

AFTAB S. GILL

BY: _____ DATED: _____

BALJEET K. GILL

BY: _____ DATED: _____

DAVINDER K. GILL

BY: _____ DATED: _____

MONIKA GOGIA GILL

BY: _____ DATED: _____

RUPINDER S. GILL

BY: _____ DATED: _____

ZULFICAR S. GIL

BY: _____ DATED: _____

VINAY K. GOGIA

BY: _____ DATED: _____

HARPEET SINGH GREWAL

BY: _____ DATED: _____

PARMJIT JASKIRAN K. GREWAL

BY: _____ DATED: _____

SATINDER GREWAL

BY: _____ DATED: _____

RAJESH GUPTA

BY: _____ DATED: _____

MANINDER HARI

BY: _____ DATED: _____

RAVINDER HARI

BY: _____ DATED: _____

LUCILLE ELAINE HILL

BY: _____ DATED: _____

SHEILA JOHN

BY: _____ DATED: _____

AMANDEEP KAUR

BY: _____ DATED: _____

ASHOK KUMAR

BY: _____ DATED: _____

KANCHAN B. KUMAR

BY: _____ DATED: _____

PETER LEVIKOW

BY: _____ DATED: _____

SHIV KUMAR

BY: _____ DATED: _____

SURINDER K. MANN

BY: _____ DATED: _____

CHANDRA NAIDU

BY: _____ DATED: _____

SATISH NARAYAN

BY: _____ DATED: _____

MANRAJ S. NATT

BY: _____ DATED: _____

SHARNJIT K. NATT

BY: _____ DATED: _____

JOHN RAKESH

BY: _____ **DATED:** _____

SHEILA RAKESH

BY: _____ **DATED:** _____

KULWINDER RANA

BY: _____ **DATED:** _____

SIRJIT SANDHU

BY: _____ **DATED:** _____

JAGDIP SEKON

BY: _____ **DATED:** _____

DANIEL M. SEITZINGER

BY: _____ **DATED:** _____

AVINDER P. SINGH

BY: _____ DATED: _____

INDERJIT SINGH

BY: _____ DATED: _____

JASVIR SINGH

BY: _____ DATED: _____

KULDIP SINGH

BY: _____ DATED: _____

RUPINDER SINGH

BY: _____ DATED: _____

SANT SINGH

BY: _____ DATED: _____

SIMER SINGH

BY: _____ DATED: _____

MANJEET SINGH SALH

BY: _____ DATED: _____

AMRITPAL S. SRA

BY: _____ DATED: _____

DAMANJIT K. SRA

BY: _____ DATED: _____

AMAN VIRK

BY: _____ DATED: _____

ARCHANA VOHRA

BY: _____ **DATED:** _____

DEEPAK VOHRA

BY: _____ **DATED:** _____

NOVINDER S. WARAICH

BY: _____ **DATED:** _____

RUPINDER K. WARAICH

BY: _____ **DATED:** _____

MANSUM WONG

BY: _____ **DATED:** _____

POKING WONG

BY: _____ **DATED:** _____

ANIL YADAV

BY: _____ **DATED:** _____

