

## **SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2021 (“Effective Date”) by, between and among CALIFORNIA RENTERS LEGAL ADVOCACY AND EDUCATION FUND, VICTORIA FIERCE and JOHN MOON (collectively, “PETITIONERS”) and CITY OF SAN MATEO, SAN MATEO CITY COUNCIL and CITY OF SAN MATEO PLANNING COMMISSION (collectively, “RESPONDENTS”); referred to herein collectively as the “Parties” and individually as “Party.”

### **RECITALS**

- A. PETITIONERS are Petitioners and Appellants, and RESPONDENTS are Respondents and Appellees, in *San Francisco Bay Area Renters Federation, et al. v. City of San Mateo, et al.*, San Mateo County Superior Court Case No. 18-CIV-021015 and *California Renters Legal Advocacy & Education Fund, et al. v. City of San Mateo, et al.*, First District Court of Appeal Case Nos. A159320 and A159658 (collectively, the “Action”).
- B. On September 10, 2021, the First District Court of Appeal, Fourth Division, issued a published opinion in the Action (the “Opinion”), directing the San Mateo County Superior Court to grant the Petition for Writ of Administrative Mandate PETITIONERS filed on April 26, 2018 (the “Petition”).
- C. The Parties have determined that it is in their mutual interest to reach a settlement over claims for attorney’s fees and costs in the above-recited Action without further litigation on the terms and conditions set forth in this Agreement.

WHEREFORE, for valuable consideration, including the obligations and terms as set forth below, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

#### **1. Agreement Regarding Opinion, Judgment and Writ**

RESPONDENTS will not seek rehearing, reconsideration or republication of the Opinion, will not petition the California Supreme Court to review the Opinion, will make no other efforts to challenge the finality or published status of the Opinion, and will not encourage or aid any other person or entity in making any such efforts. Promptly upon remittitur issuing in the Action, RESPONDENTS will cooperate with PETITIONERS in presenting the proposed judgment and proposed writ attached hereto as Exhibit A and Exhibit B to the San Mateo County Superior Court and informing the San Mateo County Superior Court that RESPONDENTS stipulate to the form of such judgment and such writ. RESPONDENTS will file no objections to the San Mateo County Superior Court signing and entering such proposed judgment and proposed writ.

#### **2. Attorneys’ Fees and Costs**

Not later than November 1, 2021, RESPONDENTS will provide, or cause to be provided, to PETITIONERS the sum of \$450,000. This payment will be made out payable to the

California Renters Legal Advocacy and Education Fund, delivered to the address specified in Section 4.15, with CALIFORNIA RENTERS LEGAL ADVOCACY AND EDUCATION FUND's Employee ID number of 47-5414850 noted.

3. Waiver of Claims for Attorney's Fees and Costs

If RESPONDENTS perform their obligations in Sections 1 and 2, if no other person or entity files any request for depublication of the Opinion, if the California Supreme Court does not grant review of the Opinion within the applicable deadline, and if remittitur issues in this Action, then upon occurrence of the foregoing conditions precedent:

- a. PETITIONERS will accept the payment specified in Section 2 in full and complete satisfaction of any and all entitlement PETITIONERS might otherwise have to recover attorneys' fees and costs that PETITIONERS incurred through the Effective Date of this Agreement litigating the claims presented in the Petition in the trial court and in the Court of Appeal.
- b. PETITIONERS will file no motion pursuant to Cal. R. Ct. 3.1702 to recover attorneys' fees previously incurred litigating the claims presented in the Petition.
- c. PETITIONERS will file no memorandum of costs pursuant to Cal. R. Ct. 3.1700 or Cal. R. Ct. 8.278 seeking to recover costs incurred litigating the claims presented in the Petition.

If RESPONDENTS perform their obligations in Sections 1 and 2, but another person or entity files any request for depublication of the Opinion, or the California Supreme Court reviews the Opinion, PETITIONERS reserve the right to seek additional amounts beyond \$450,000 for attorneys' fees and costs incurred in responding to the depublication request or the California Supreme Court's review of the Opinion. If the California Supreme Court reviews the Opinion on its own motion, reverses and the ultimate result is that the Petition is denied, then PETITIONERS shall refund the \$450,000 payment to RESPONDENTS.

4. Additional Terms

4.1 Cooperation on Additional Documents and Actions

Each of the Parties agrees to execute and deliver to each of the other Parties all additional documents, instruments, and agreements, and to take such additional actions, as are necessary or appropriate to implement the terms and conditions of this Agreement.

4.2 Binding Effect and Third Parties

The Parties agree that the obligations and benefits arising out of the Agreement, and each of the terms of this Agreement, are binding upon and inure to the benefit of any of the Parties' current or future subsidiary entities, subdivisions, Board, officers, directors, executives, agents,

employees, affiliated entities, attorneys and each and all of the respective predecessors, successors, spouses, heirs, assigns, insurers, members or personal or legal representatives of the Parties. This Agreement is not for the benefit of any person that is not a party to this Agreement.

#### 4.3 Final Integrated Agreement

This Agreement contains the entire agreement and understanding between and among all Parties concerning the subject matter herein and supersedes and replaces any prior negotiations and agreements between the Parties, whether written or oral.

#### 4.4 Understanding of Agreement

Each Party understands and agrees to this Agreement, the terms and conditions contained herein and in the documents referred to herein, and has relied upon his, her, or its own judgment, belief, knowledge, understanding, and expertise after careful consultation with his, her, or its own legal counsel concerning the legal effect of all of the terms of this Agreement.

#### 4.5 Voluntary Settlement

Each Party enters into this Agreement knowingly and voluntarily, in the total absence of any fraud, mistake, duress, coercion, or undue influence, and after careful thought and reflection. By signing this Agreement and the documents referred to herein, each Party signifies full understanding, agreement, and acceptance. The Parties acknowledge and represent that this Agreement has been prepared and its negotiation has been carried on by the joint effort of the Parties. This Agreement must be construed as if it were drafted by all Parties and not strictly for or against any one or more of the Parties. Each Party to this Agreement acknowledges and represents that he/she/it has read this Agreement and understands all of its terms.

#### 4.6 Investigation of Facts; Consultation with Independent Counsel

Each Party has investigated the facts and had the opportunity to consult with independent counsel pertaining to this Agreement and all matters pertaining thereto as deemed necessary by each.

#### 4.7 California Law and Enforcement

This Agreement, and the documents referred to herein, are governed by, and construed and interpreted in accordance with, the laws of the State of California. The Parties agree that remedies at law may be inadequate to protect against any actual or threatened breach of this Agreement and that, without limiting any other rights and remedies otherwise available, injunctive relief, specific performance, or other equitable relief is available in the event of any actual or threatened breach of this Agreement. The Parties agree that no bond need be posted to obtain injunctive or equitable relief, but if required by law or the court, the Parties consent to a bond in the lowest amount permitted by law.

#### 4.8 Severability

In the event that any provision of this Agreement should be held to be void, voidable, or unenforceable, the remaining portions hereof will remain in full force and effect, but this Agreement should in any event be interpreted, and if necessary reformed, to ensure each Party receive the benefit of its bargain.

#### 4.9 Multiple Counterparts

This Agreement may be executed in any number of counterparts, each of which may be deemed an original, and all of which together constitute a single instrument, notwithstanding that all the Parties are not signatories to the original or same counterpart. Photocopies or facsimiles constitute good evidence of such execution.

#### 4.10 Waiver, Modification, and Amendment

No breach of this Agreement or of any provision herein can be waived except by an express written waiver executed by the Party waiving such breach. Waiver of any one breach may not be deemed a waiver of any other breach of the same or other provisions of this Agreement. This Agreement may be amended, altered, modified, or otherwise changed in any respect or particular only by a writing duly executed by the Parties hereto or their authorized representatives.

#### 4.11 Effective Date

Upon execution by all Parties, this Agreement is effective as of the date first above written.

#### 4.12 Language

In the language of this document and the documents referred to herein, the singular and plural numbers, and the masculine, feminine and neutral genders, are each deemed to include all others, and the word "person" is deemed to include corporations and every other entity, as the context may require.

#### 4.13 Attorneys' Fees

- a. Fees and Costs Already Incurred. Except as provided in Sections 2 and 3 above, each Party is responsible for its own costs and attorneys' fees incurred in negotiating and drafting this Agreement.
- b. Proceedings To Enforce Agreement. In any proceeding at law or in equity to enforce any of the provisions or rights under this Agreement, the prevailing Party is entitled to recover from the unsuccessful Party all costs, expenses and reasonable attorneys' fees incurred in the enforcement proceeding by the prevailing Party (including, without limitation, such costs, expenses, and fees on any appeals) and if such prevailing Party recovers judgment in any such action or proceeding, such costs, expenses,



including those of expert witnesses, and attorneys' fees will be included in and as part of the judgment.

- c. Claims Related to Future Acts or Omissions. Nothing in this Agreement should be construed as PETITIONERS' agreement to waive any entitlement to recover attorneys' fees or costs incurred because of acts or omissions of RESPONDENTS occurring after the Effective Date of this Agreement, including but not limited to any litigation challenging the lawfulness of RESPONDENTS' acts or omissions when re-considering the housing development project described in the PETITION.

#### 4.14 Signatories' Authority

Each person executing this Agreement on behalf of a Party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind and such Party has full right and authority and has obtained all consents and approvals and taken all actions necessary to enter into this Agreement, perform all of its obligations hereunder, and consummate all transactions contemplated under this Agreement.

#### 4.15 Notice

Any notice, demand, request, or other communication required or permitted to be given under this Agreement, (a) must be made in writing; (b) must be delivered by one of the following methods: (i) by personal delivery (with notice deemed given when delivered personally); (ii) by overnight courier (with notice deemed given upon written verification of receipt); or (iii) by certified or registered mail, return receipt requested (with notice deemed given upon verification of receipt); and (c) must be addressed to a Party as provided in this Section or such other address as such Party may request by notice given in accordance with the terms of this Section.

Notice to PETITIONERS must be provided as follows:

California Renters Legal Advocacy & Education Fund  
360 Grand Ave, #323  
Oakland, CA 94610

With a copy to:

Daniel Golub  
Holland & Knight  
50 California Street, Suite 2800  
San Francisco, CA 94111

Notice to RESPONDENTS must be provided as follows:

Patrice M. Olds  
City Clerk  
City of San Mateo  
330 W. 20th Avenue  
San Mateo, CA 94403  
Email: polds@cityofsanmateo.org

With a copy to:

Prasanna W. Rasiah  
San Mateo City Attorney  
330 W. 20th Avenue  
San Mateo, CA 94403  
prasiah@cityofsanmateo.org

4.16 No Admission of Liability

This Agreement is the product of a settlement and nothing contained herein shall be construed as an admission or acknowledgment of any fact, legal issue, claim or defense on the part of any Party; any such interpretation of this Agreement is hereby expressly disclaimed. The foregoing does not alter RESPONDENTS' commitments in Section 1, including but not limited to RESPONDENTS' agreement to stipulate to judgment.

4.17 Ownership of Claim; Warranty Against Prior Assignment

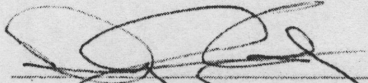
PETITIONERS represent and warrant that no other person or entity has or has had any interest in the attorneys' fees and costs claims, demands, obligations, or causes of action referred to in this Agreement, that they have the sole right and exclusive authority to execute this Agreement and receive the consideration specified herein; and that they have not sold, assigned, transferred, pledged, encumbered, conveyed, or otherwise disposed of any of the claims, demands, or obligations referred to in this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

*Signatures to follow on next page*

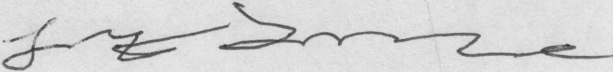
**PETITIONERS:**

CALIFORNIA RENTERS LEGAL ADVOCACY AND EDUCATION FUND, a nonprofit corporation

By: 

Name: Dylan Casey

Its: Executive Director



VICTORIA FIERCE



JOHN MOON

**RESPONDENTS:**

CITY OF SAN MATEO, SAN MATEO CITY COUNCIL AND CITY OF SAN MATEO PLANNING COMMISSION

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_  
PRASANNA W. RASIAH  
City Attorney, City of San Mateo

# **EXHIBIT A**

Daniel R. Golub (SBN 286729)  
Emily M. Lieban (SBN 303079)  
HOLLAND & KNIGHT LLP  
50 California Street, 28th Floor  
San Francisco, California 94111  
Telephone: (415) 743-6900  
Facsimile: (415) 743-6910  
Daniel.Golub@hklaw.com  
Emily.Lieban@hklaw.com

*Attorneys for Petitioners*  
**CALIFORNIA RENTERS LEGAL ADVOCACY  
AND EDUCATION FUND, VICTORIA FIERCE  
and JOHN MOON**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF SAN MATEO**

SAN FRANCISCO BAY AREA RENTERS  
FEDERATION, CALIFORNIA RENTERS  
LEGAL ADVOCACY AND EDUCATION  
FUND, VICTORIA FIERCE, AND JOHN  
MOON,

Petitioners,

v.

CITY OF SAN MATEO, SAN MATEO CITY  
COUNCIL, and CITY OF SAN MATEO  
PLANNING COMMISSION,

Respondents,

TONY MEHMET GUNDOGU and AYNUR  
V. GUNDOGU,

Real Parties in Interest.

Case No. 18-CIV-02105

**[PROPOSED] JUDGMENT AND ORDER  
GRANTING PEREMPTORY WRIT OF  
MANDAMUS**

On September 10, 2021, the Court of Appeal for the First Appellate District, Division Four, filed its opinion in California Renters Legal Advocacy and Education Fund v. City of San Mateo, Case Nos. A159320 and A159658 (the “Opinion”), reversing the prior judgment of this Court, and directing that a writ of mandate issue from this Court. In compliance with the Opinion, IT IS HEREBY ORDERED, DECREED AND ADJUDGED that:

1. This Court hereby VACATES its November 7, 2019 Order Denying Petition for Writ of Administrative Mandate, its December 4, 2019 Judgment, and its January 17, 2020 order denying

1 Petitioners' motion to vacate and motion for a new trial.

2 2. Judgment be, and hereby is, entered in favor of Petitioners California Renters Legal  
3 Advocacy and Education Fund, Victoria Fierce and John Moon (collectively, "Petitioners") and  
4 against Respondents City of San Mateo, San Mateo City Council and City of San Mateo Planning  
5 Commission ("Respondents") for the reasons set forth in the Opinion.

6 3. The Court hereby GRANTS Petitioners' April 26, 2018 Petition for Writ of  
7 Administrative Mandate. A peremptory writ of mandamus ("Writ") shall issue from this Court,  
8 directing Respondents to take the following actions not later than 60 days from the date of the Writ:

- 9 a. Vacate the February 5, 2018 action of the San Mateo City Council upholding  
10 the decision of the San Mateo Planning Commission's decision to deny  
11 Planning Application #15-0104 for the 4 West Santa Inez Condos Project; and  
12 b. Reconsider the challenge to the Planning Commission's decision in  
13 accordance with the views expressed in the Opinion.

14 4. This Court exercises continuing jurisdiction to ensure compliance with the Writ and  
15 to consider whether to order further remedies pursuant to Gov. Code § 65589.5(k)(1) or (l) or other  
16 applicable law. Respondents shall file with the Court and serve on all parties a return to the Writ not  
17 later than 75 days from the date of the Writ, in which return Respondents shall demonstrate that they  
18 have complied with this Judgment and Order, and with the Writ.

19 5. In light of the current circumstances, this Court orders that electronic service of the  
20 Writ upon Respondents' counsel pursuant to the parties' electronic service agreement constitutes  
21 personal service of the Writ upon Respondents for all purposes, including but not limited to for  
22 purposes of Sections 1096 and 1097 of the Code of Civil Procedure.

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DATED: \_\_\_\_\_

# **EXHIBIT B**



Daniel R. Golub (SBN 286729)  
Emily L. Lieban (SBN 303079)  
HOLLAND & KNIGHT LLP  
50 California Street, 28th Floor  
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*Attorneys for Petitioners*  
**CALIFORNIA RENTERS LEGAL ADVOCACY  
AND EDUCATION FUND, VICTORIA FIERCE  
and JOHN MOON**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF SAN MATEO**

SAN FRANCISCO BAY AREA RENTERS  
FEDERATION, CALIFORNIA RENTERS  
LEGAL ADVOCACY AND EDUCATION  
FUND, VICTORIA FIERCE, AND JOHN  
MOON,

Petitioners,

v.

CITY OF SAN MATEO, SAN MATEO CITY  
COUNCIL, and CITY OF SAN MATEO  
PLANNING COMMISSION,

Respondents,

TONY MEHMET GUNDOGU and AYNUR  
V. GUNDOGU,

Real Parties in Interest.

Case No. 18-CIV-02105

**[PROPOSED] PEREMPTORY WRIT OF  
MANDAMUS**

Judgment having been entered in this proceeding in favor of Petitioners California Renters Legal Advocacy and Education Fund, Victoria Fierce and John Moon, ordering that a Peremptory Writ of Mandate be issued from this Court, NOW THEREFORE IT IS HEREBY ORDERED that:

1. Respondents City of San Mateo, San Mateo City Council and City of San Mateo Planning Commission take the following actions not later than 60 days from the date of this Writ:

a. Vacate the February 5, 2018 action of the San Mateo City Council upholding

1 the decision of the San Mateo Planning Commission's decision to deny  
2 Planning Application #15-0104 for the 4 West Santa Inez Condos Project; and

- 3 b. Reconsider the challenge to the Planning Commission's decision in  
4 accordance with the views expressed in September 10, 2011 opinion of the  
5 Court of Appeal for the First Appellate District, Division Four, in California  
6 Renters Legal Advocacy and Education Fund v. City of San Mateo, Case Nos.  
7 A159320 and A159658.

8 2. This Court exercises continuing jurisdiction to ensure compliance with the Writ and  
9 to consider whether to order further remedies pursuant to Gov. Code § 65589.5(k)(1) or (l) or other  
10 applicable law. Respondents shall file with the Court and serve on all parties a return to the Writ not  
11 later than 75 days from the date of the Writ, in which return Respondents shall demonstrate that they  
12 have complied with this Judgment and Order, and with the Writ.

13 3. In light of current circumstances, this Court orders that electronic service of the Writ  
14 upon Respondents' counsel pursuant to the parties' electronic service agreement constitutes personal  
15 service of the Writ upon Respondents for all purposes, including but not limited to for purposes of  
16 Sections 1096 and 1097 of the Code of Civil Procedure.

17 LET THE WRIT OF MANDATE ISSUE.

18 DATED: \_\_\_\_\_  
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22 CLERK OF THE SUPERIOR COURT  
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