

SETTLEMENT AGREEMENT AND MUTUAL GENERAL RELEASE

This Settlement Agreement and Mutual General Release (Agreement) is entered into between Bert Kurtin and Deborah Kurtin (the “Kurtins”) and Bert Kurtin’s attorney, David Alexander, on the one hand, and the City of Piedmont, California, (“City”) the Steering Committee for the Hampton-Sea View Avenues Underground Assessment District (“Steering Committee”), and their mutual counsel, Meyers Nave Riback Silver & Wilson (“Meyers Nave”), on the other hand. (The Kurtins, Mr. Alexander, the City, the Steering Committee, and Meyers Nave are all collectively “the Parties.”)

RECITALS

- A. On June 3, 2009, the Kurtins filed a complaint (“Original Complaint”) in Alameda County Superior Court entitled Kurtin v. City of Piedmont, et al. (Case No. RG09455710) (the “Lawsuit”). The Lawsuit, which was amended on two occasions (First Amended Complaint, Second Amended Complaint), challenged the legality of the City’s formation, approval and implementation of the Hampton / Sea View Avenues Underground Assessment District (the “HSV District”). The Kurtins are property owners and residents of the HSV District. The City denies that the formation, approval, and implementation of the HSV District was illegal or otherwise in violation of any law as alleged in the Original Complaint, First Amended Complaint or Second Amended Complaint.
- B. On June 24, 2009, the City and the Steering Committee filed a special motion to strike the Original Complaint pursuant to CCP § 425.16 et al. On August 24, 2009, the Court denied the special motion to strike.
- C. Subsequently, on March 2, 2010, plaintiff Bert Kurtin filed a motion for reasonable attorney’s fees and costs incurred in connection with his opposition to the special motion to strike. The City opposed this motion for reasonable attorney’s fees and costs. On May 6, 2010, the Court filed its Order Granting in Part Motion of Bert Kurtin for Award of Attorney’s Fees and Costs (“Anti-SLAPP Fee Order”). The Court awarded Mr. Kurtin \$131,491.50 in attorney’s fees and costs against the City.
- D. On May 3, 2010, the Piedmont City Council adopted a resolution abandoning the HSV District (the “Resolution”) and discharging the liens for assessments on the property of the property owners in the HSV District. The City Clerk recorded the Resolution. In light of the abandonment of the HSV District, the City and the Kurtins agree that the non-monetary relief requested by the Kurtins, the scope of which is disputed by the Parties, is moot, and the Lawsuit should be dismissed as to any non-monetary relief sought.
- E. The Parties also desire to resolve the monetary relief sought by the Kurtins and to avoid the further expenditure of time and incurring of additional attorney’s fees and costs and distraction and strain of further litigation to the parties to the Lawsuit and all residents of Piedmont.

NOW, THEREORE, in consideration of the foregoing and for other valuable consideration set forth below, the Parties agree as follows:

Terms of Agreement

1. Waiver of Rights of Appeal. The Parties shall forgo any right, if any, that any of them may have to appeal from or otherwise challenge any order of the Court made in the Lawsuit, or to file any further motion for an award of attorney's fees and cost regarding any part of the Lawsuit.
2. Payment by City. Within five working days after all Parties and their counsel execute this Agreement, the City, and the City alone, shall pay the Kurtins \$185,000 (one hundred eighty-five thousand dollars) by check payable to Bert and Deborah Kurtin (the "Settlement Check"), in compromise of, and in full and final settlement of, any and all claims that the City, Steering Committee, and/or Meyers Nave, on the one hand, and the Kurtins and/or Mr. Alexander, on the other hand, have or could have asserted against one another in the Lawsuit. Any division of that amount between the Kurtins and Bert Kurtin's attorney, Mr. Alexander, will be a matter solely between themselves, and the City's obligation will be discharged by delivery of the Settlement Check to the Kurtins.
3. Stipulation and Proposed Judgment. Within three working days of the Kurtins' receipt of the Settlement Check, the Kurtins and the City will execute and file with the Court a Stipulation and Proposed Judgment in substantially the form attached hereto as Exhibit A ("Stipulated Judgment").
4. Mutual Releases.
 - a. By the Kurtins and Mr. Alexander. Except for the obligations arising pursuant to this Agreement, the Kurtins and Bert Kurtin's attorney, David Alexander, for themselves, their successors, past and present representatives, agents, attorneys and other persons acting on their respective behalfs, fully and forever release and discharge the City, and all of its past and present representatives, city council members, staff, agents, attorneys or other persons acting on its behalf, the Steering Committee, and Meyers Nave, and each of their past and present representatives, city council members, staff, agents, attorneys or other persons acting on their respective behalfs, from all claims, liabilities, obligations, liens, causes of action, demands, costs, attorney's fees, or damages, whether direct or contingent, liquidated or un-liquidated, and known or unknown, based on any constitutional provision, statute, common law doctrine, or principle of equity, arising out of or related to the formation, approval or implementation of the HSV District, whether asserted or not in the Lawsuit, and including any aspect of the response to or litigating of the Lawsuit itself (the "Circumstances").
 - b. By the City, the Steering Committee, and Meyers Nave. Except for the obligations arising pursuant to this Agreement, the City, the Steering Committee, and their

attorneys, Meyers Nave, for themselves, their successors, past and present representatives, agents, attorneys and other persons acting on their respective behalfs, fully and forever release and discharge the Kurtins and Mr. Alexander, and each of their representatives, agents, and attorneys or other persons acting on their respective behalfs, from all claims, liabilities, obligations, liens, causes of action, demands, costs, attorney's fees, or damages, whether direct or contingent, liquidated or un-liquidated, and known or unknown, based on any constitutional provision, statute, common law doctrine, or principle of equity,, arising out of or related to the formation, approval or implementation of the HSV District, whether asserted or not in the Lawsuit, and including any aspect of the response to filing or litigating of the Lawsuit itself (the "Circumstances").

- c. Waiver of CCP § 1542 Rights. Each Party to this agreement expressly waives any and all rights under CCP § 1542, or under any other federal or state statutory rights or rules, or principles of any jurisdiction, government, or political subdivision thereof, similar to Section 1542 ("Similar Provision"). No Party to this Agreement may invoke the provisions of Section 1542 or any Similar Provision to prosecute or assert in any manner any claims released under this Agreement. Section 1542 provides that:

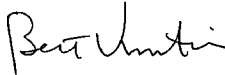
A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

5. Discharge of Anti-SLAPP Fees Order. The Kurtins and Mr. Alexander agree that after the Kurtins accept the Settlement Check, any and all claims that any of them may have for attorney's fees and costs incurred in the Lawsuit under CCP Section 1021.5 or otherwise, and including but not limited to the City's obligation under the Anti-SLAPP Fees Order, will be released and discharged.
6. No Prior Assignment. Each Party warrants that he, she or it has not assigned to any person or entity any portion of any Claim arising from the Circumstances, including but not limited to any claim for attorney's fees or costs incurred in the Lawsuit against any other Party, or against any entity or individual affiliated with any other Party.
7. Non-Disparagement. Each Party agrees not to publicly disparage, and not to encourage any person or entity to publicly disparage, any other Party, including any Council member, member, officer, employee, agent, representative or attorney of any other Party, with regard to any of the Circumstances.
8. No Admission of Liability. This is a settlement of disputed claims. Nothing contained herein shall be construed as an admission of liability, fault or wrongdoing by or on behalf of any Party or any individual or entity affiliated with any Party.

9. Signature in Counterparts. This Agreement may be signed in counterparts, and a facsimile, electronic signature, and/or PDF image of a signature sent by email shall be as binding as an original.
10. Review and Consultation with Counsel. The Parties acknowledge and agree that (i) each Party has consulted with such Party's own, independent legal counsel, and with any other professional advisors such Party has deemed appropriate, about any and all matters contemplated under this Agreement, (ii) each Party and each Party's legal counsel and advisors have reviewed this Agreement, (iii) each Party has agreed to enter this Agreement after such review and their counsel's rendering of whatever advice they deemed appropriate, and (iv) any rule of construction to the effect that ambiguities are to be resolved against the drafting parties shall not apply in interpreting this Agreement or any portions hereof.
11. Use of Agreement. This Agreement may be entered into evidence in an appropriate court pursuant to California Code of Civil Procedure section 664.6.
12. Governing Law. This Agreement shall be governed by the laws of California, both as to interpretation and performance.
13. Jurisdiction of Court to Enforce Agreement. The Superior Court of California, County of Alameda shall retain jurisdiction for the limited purpose of enforcing the terms of this Agreement.
14. Signatories' Authority. Each undersigned hereby warrants that he or she has the authority to bind to the terms of this Agreement the entity or individual on whose behalf he or she signs.
15. Cooperation. The Parties agree to cooperate fully, reasonably, and in good faith in implementing this Agreement.

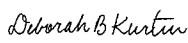
IN WITNESS WHEREOF, the undersigned agree to the above recitals and terms.

PLAINTIFF

Dated: July 14, 2010 By: 
 Bert Kurtin

Digitally signed by Bert Kurtin
 DN: cn=Bert Kurtin, o, ou,
 email=bkurtin@comcast.net,
 c=US
 Date: 2010.07.14 19:55:18 -07'00'


PLAINTIFF

Dated: July 14, 2010 By: 
 Deborah Kurtin

Digitally signed by Deborah B.
 Kurtin
 DN: cn=Deborah B. Kurtin, o, ou,
 email=deborah@kurtin.net, c=US
 Date: 2010.07.14 19:57:11 -07'00'

Dated: July 14, 2010

LAW OFFICE OF DAVID T. ALEXANDER



Digitally signed by David Alexander
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Office of David T. Alexander, ou,
email=david@dta-law.com, c=US
Date: 2010.07.14 19:57:47 -07'00'

By:

David T. Alexander

DEFENDANT CITY OF PIEDMONT

Dated: July __, 2010

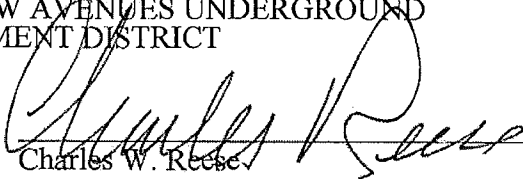
By: _____

Geoffrey Grote
City Administrator

STEERING COMMITTEE FOR THE HAMPTON-
SEA VIEW AVENUES UNDERGROUND
ASSESSMENT DISTRICT

Dated: July ¹⁵, 2010

By:


Charles W. Reese

Dated: July __, 2010

Marlene Settlemier

Dated: July __, 2010

Margaret Gumerlock Thomas

Dated: July __, 2010

Stephen Block

Dated: July __, 2010

Albert Edgerton

MEYERS NAVE RIBACK SILVER & WILSON

Dated: July __, 2010

By:

Steven R. Meyers

Dated: July 14, 2010

LAW OFFICE OF DAVID T. ALEXANDER



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Office of David T. Alexander, ou,
email=dtalex@ols-llm.com, c=US
Date: 2010.07.14 18:57:47 -0700

By: _____

David T. Alexander

DEFENDANT CITY OF PIEDMONT

Dated: July __, 2010

By: _____

Geoffrey Grote
City Administrator

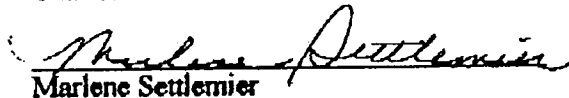
STEERING COMMITTEE FOR THE HAMPTON-
SEA VIEW AVENUES UNDERGROUND
ASSESSMENT DISTRICT

Dated: July __, 2010

By: _____

Charles W. Reese

Dated: July __, 2010



Marlene Settemier

Dated: July __, 2010

Margaret Gumerlock Thomas

Dated: July __, 2010

Stephen Block

Dated: July __, 2010

Albert Edgerton

MEYERS NAVE RIBACK SILVER & WILSON

Dated: July __, 2010

By: _____

Steven R. Meyers

Dated: July 14, 2010

LAW OFFICE OF DAVID T. ALEXANDER

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By:

David T. Alexander

DEFENDANT CITY OF PIEDMONT

Dated: July __, 2010

By:

Geoffrey Grote
City Administrator

STEERING COMMITTEE FOR THE HAMPTON--
SEA VIEW AVENUES UNDERGROUND
ASSESSMENT DISTRICT

Dated: July __, 2010

By:

Charles W. Reese

Dated: July __, 2010

Marlene Settlemier

Dated: July 15, 2010

Margaret Gumerlock Thomas
Margaret Gumerlock Thomas

Dated: July __, 2010

Stephen Block

Dated: July __, 2010

Albert Edgerton

MEYERS NAVE RIBACK SILVER & WILSON

Dated: July __, 2010

By:

Steven R. Meyers

Dated: July 14, 2010

LAW OFFICE OF DAVID T. ALEXANDER

By:

David T. Alexander

DEFENDANT CITY OF PIEDMONT

Dated: July __, 2010

By:

Geoffrey Grote
City Administrator

STEERING COMMITTEE FOR THE HAMPTON-
SEA VIEW AVENUES UNDERGROUND
ASSESSMENT DISTRICT

Dated: July __, 2010

By:

Charles W. Reese


Dated: July __, 2010

Marlene Settlemier

Dated: July __, 2010

Margaret Gumerlock Thomas

Dated: July 16, 2010



Stephen Block

Dated: July __, 2010

Albert Edgerton

MEYERS NAVE RIBACK SILVER & WILSON

Dated: July __, 2010

By:

Steven R. Meyers

Dated: July 14, 2010

LAW OFFICE OF DAVID T. ALEXANDER



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By: _____

David T. Alexander

DEFENDANT CITY OF PIEDMONT

Dated: July __, 2010

By: _____

Geoffrey Grote
City Administrator

STEERING COMMITTEE FOR THE HAMPTON-
SEA VIEW AVENUES UNDERGROUND
ASSESSMENT DISTRICT

Dated: July __, 2010

By: _____

Charles W. Reese

Dated: July __, 2010

Marlene Seitlemier

Dated: July __, 2010

Margaret Gumerlock Thomas

Dated: July __, 2010

Stephen Block

Dated: July __, 2010


Albert Edgerton

MEYERS NAVE RIBACK SILVER & WILSON

Dated: July __, 2010

By: _____

Steven R. Meyers

Dated: July 14, 2010

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David T. Alexander

DEFENDANT CITY OF PIEDMONT

Dated: July ___, 2010

By:

Geoffrey Grote
City Administrator

STEERING COMMITTEE FOR THE HAMPTON-
SEA VIEW AVENUES UNDERGROUND
ASSESSMENT DISTRICT

Dated: July ___, 2010

By:

Charles W. Reese

Dated: July ___, 2010

Marlene Settlemier

Dated: July ___, 2010

Margaret Gumerlock Thomas

Dated: July ___, 2010

Stephen Block

Dated: July ___, 2010

Albert Edgerton

MEYERS NAVE RIBACK SILVER & WILSON

Dated: July 19, 2010

By:



Steven R. Meyers

APPROVED AS TO FORM:

Dated: July __, 2010

CITY OF PIEDMONT


By: _____

George S. Peyton
City Attorney

1481223.2

STEERING COMMITTEE FOR THE
HAMPTON-SEA VIEW AVENUES
UNDERGROUND ASSESSMENT DISTRICT

Dated: July 19, 2010


By:  _____

Keith D. Kessler
MEYERS NAVE RIBACK SILVER & WILSON
Attorneys for the Steering Committee

Dated: July 14, 2010

PLAINTIFFS

Law Office of David T. Alexander

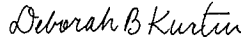
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David T. Alexander
Attorney for Plaintiff Bert Kurtin

Dated: July 14, 2010

Deborah B. Kurtin, In Pro Per

By:  _____

Digitally signed by Deborah B.
Kurtin
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Deborah B. Kurtin