

AGREEMENT OF SETTLEMENT AND RELEASE

THIS AGREEMENT OF SETTLEMENT AND RELEASE (hereinafter, the “Agreement”) is made and entered into by and between Robert and Rebecca Hinkle (collectively “the Hinkle Parties”), on the one hand, and Mammoth Fireside Condominium No. 1 Owners’ Association (“Fireside HOA”) and Stephen Webb (“Webb”) (collectively the “Fireside Defendants”), on the other hand. The Hinkle Parties and Fireside Defendants are collectively referred to in this Agreement as the “Parties.” The effective date of this Agreement (“Effective Date”) is the first date as of which it is signed by the Parties.

RECITALS

This Agreement is made with reference to the following facts:

A. In 2004, an agreement was made between the individual owners of the Mammoth Fireside Condominiums (the “Fireside Owners”) and Mammoth 8050, LLC and 8050 Partners, L.P. (collectively “8050”) whereby the Fireside Owners (which included Plaintiffs) agreed to transfer their interest in a piece of property being used as an uncovered parking lot to 8050 in exchange, inter alia, for a perpetual easement to 50 parking spaces in a parking garage to be built on that property as part of 8050’s development of adjacent property. All Fireside Owners, including Plaintiffs, executed ballots agreeing on the exchange. With exception of owners that were trusts and the owners of one other unit, the owners, including plaintiffs, agreed to provide Webb, the Chairman of Fireside’s Board of Governors (the “Board”), with a Limited Power of

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Attorney to execute the exchange agreement and all documents necessary to complete the transaction memorialized in that agreement (which agreement shall hereinafter be singularly referred to as the "Purchase Agreement"), such as any grant deed, reciprocal easement agreement, a quitclaim deed, modification of the Fireside CC&Rs, housing density guidelines and lot line adjustment applications (all of which documents shall hereinafter be referred to as the "Purchase and Sale Documents"). Unbeknownst to Webb when he executed the Purchase and Sale Documents, Plaintiffs had executed and delivered to Attorney Jamie Stewart a trust document in which they requested Mr. Stewart not release their ballot, which they executed in July of 2004, until they provided written authority for him to do so. They claim that they had not done so by the time that they learned that the Purchase and Sale Documents had been executed, and, therefore, they were prevented from ascertaining the impact of the transaction at issue on their interest in their property at the Mammoth Fireside Condominiums.

B. On July 11, 2005, Plaintiffs filed a civil complaint, Case No. 15542, in the Mono County Superior Court (the "Action") against, inter alia, Defendants, which complaint alleged causes of action against Defendants for Quiet Title, Rescission and Breach of Fiduciary Duty. The Settling Parties have agreed to resolve this matter for payment of \$30,000 to Plaintiffs. Plaintiffs previously settled this Action with the 8050 co-defendants, and, in their settlement with 8050, Plaintiffs confirmed that they were parties to and agreed to be bound by the original Purchase and Sale Documents, which their execution of this Agreement shall re-affirm. On August 15, 2005, the Fireside

Defendants filed a verified answer to the Complaint and asserted various affirmative defenses.

C. The Parties wish to avoid the expense and uncertainty of litigation and to resolve their disputes in an efficient and non-adversarial manner.

D. It is the intent of the Settling Parties that this Agreement shall constitute a full and complete release of all claims by Plaintiffs hereto with respect to the Action, including claims as against the Fireside Defendants and Defendants' agents, servants, employees, predecessors, successors, partners, assigns and any other persons, firms, corporations, associations, partnerships or any other entity connected therewith. It is understood and agreed that this Agreement constitutes a compromise of disputed claims and that the consideration furnished is not to be construed as an admission of liability, but is merely made to avoid further litigation of the Action and to buy the peace of the Settling Parties herein as to Plaintiff's claims in the Action. Without admitting liability or wrongdoing, the Parties intend this Agreement to constitute a compromise, settlement and release whereby the Parties hereby extinguish any rights, obligations, duties, disputes, differences, complaints, and claims arising from any and all matters relating to the complaint, except as provided herein. By this Agreement, the Parties intend to memorialize the terms of such compromise and settlement.

AGREEMENT AND RELEASE

NOW, THEREFORE, in consideration of the Recitals set forth above, and the following terms, promises, covenants, and conditions, the adequacy, delivery and reasonableness of which the Parties hereby acknowledge, the Parties agree as follows:

3

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1. No Admission of Liability. The Fireside Defendants deny and dispute the merits of all claims that have been asserted or could have been asserted in the complaint. The Fireside Defendants have concluded, however, that litigation of this matter would be expensive and protracted and that it is desirable that all claims and disputes be settled in the manner and upon the terms and conditions set forth in this Agreement.

2. Settlement Amount: The Fireside Defendants shall pay to the Hinkle Parties, as consideration for the settlement of the claims and disputes, which are the subject of the Complaint, and the releases set forth herein, a total sum in the amount of thirty thousand dollars (\$30,000) (“Settlement Amount”). Payment of the Settlement Amount shall be made no later than three (3) days following execution of this Agreement. Plaintiffs and Defendants shall bear their own fees and costs with respect to any and all complaints that constitute the Action.

3. Dismissal: Upon execution of this Agreement, and receipt of the Settlement Amount, the Hinkle Parties agree to file a Request for Dismissal of the action against the Fireside Defendants, and each of them, with prejudice, within three (3) business days.

4. General Release.

4.1 Release by the Hinkle Parties. Except for full and complete performance of the obligations imposed upon the Parties under this Agreement the Hinkle Parties, and each of them, shall and hereby do relieve, release, forever discharge, and covenant not to sue the Fireside Defendants, and each of them, and each of their former and present officers, directors, managers, managing agents, members, partners,

4

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employees, independent contractors, agents, servants, heirs, administrators, executors, predecessors, successors, affiliates, subsidiaries, parents, representatives, and assigns, and each of them, jointly and severally, from and against any and all rights, claims, debts, demands, acts, agreements, promises, liabilities, obligations, damages, costs, fees, expenses (including, without limitation, those of attorneys' fees, costs and expenses), damages, actions, and/or causes of action of every nature, character and description, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, in law or equity which the Hinkle Parties, and each of them, ever had or now have arising out of, concerning or pertaining in any way connected to the allegations set forth in the Fireside Action.

4.2 Release by the Defendants. Except for full and complete performance of the obligations imposed upon the Parties under this Agreement, and for the rights of the Fireside Defendants to collect from the Hinkle Parties their proper share of any homeowners' dues, special assessments, or other charges or obligations that can be properly assessed by the Board of Directors of Fireside HOA, pursuant to the Fireside HOA's Conditions, Covenants and Restrictions, upon each member of the Fireside HOA, the Fireside Defendants, and each of them, shall and hereby do relieve, release, forever discharge, and covenant not to sue the Hinkle Parties, and each of them, and each of their spouses, heirs, servants, employees, agents, assigns, any entities which the Hinkle Parties own or control and representatives, and each of them, jointly and severally, from and against any and all rights, claims, debts, demands, acts, agreements, promises, liabilities, obligations, damages, costs, fees, expenses (including, without limitation, those of

attorneys' fees, costs and expenses), damages, actions, and/or causes of action of every nature, character and description, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, in law or equity which the Fireside Defendants, and each of them, ever had or now have arising out of, concerning or pertaining in any way connected to the allegations set forth in the Fireside Action.

5. Covenant not to sue. The Hinkle Parties hereby covenant and agree not to sue the Fireside Defendants in any action or proceeding based upon any claim, cause of action or demand arising out of, concerning or pertaining to: (i) the claims released herein; or, (ii) the Purchase Agreement, including, but without limitation, the negotiation, execution, or consummation thereof; or, (iii) any agreement, settlement, resolution or compromise of any matter relating to originally negotiated terms contained in the Purchase and Sale Documents referenced in Recitals paragraph A, above, including the resolution of any action between Fireside and 8050 arising out of or relating to the negotiation, execution, consummation or performance of said original Purchase and Sale Documents, except that the covenant not to sue set forth in this subparagraph (iii) shall not prevent the Hinkles from joining any lawsuit that may be filed by any other Fireside homeowner concerning any agreement, settlement, resolution or compromise of any matter relating to originally negotiated terms contained in the Purchase and Sale Documents referenced in Recitals paragraph A, above, including the resolution of any action between Fireside and 8050 arising out of or relating to the performance or non-performance of obligations imposed upon 8050 pursuant to the terms of said original Purchase and Sale Documents.

The Hinkle Parties acknowledge and agree that this covenant not to sue is broader than the release set forth in Section 4.1, *supra*.

6. Waiver of Civil Code Section 1542. The Parties understand and agree that this Agreement fully and finally releases and forever resolves the foregoing matters released and discharged herein including those which may be unknown, unanticipated and/or unsuspected. The Parties hereby acknowledge that they have read and understand §1542, which 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.

Notwithstanding the provisions of this section, this Agreement shall be in full settlement of all claims and disputes released herein. To the extent necessary to effectuate the releases set forth above, the Parties to this Agreement expressly waive all rights they may have by virtue of California Civil Code §1542. The Parties acknowledge they are aware they may hereafter discover claims or facts in addition to or different from those which they now know or believe to exist with respect to the released claim and the underlying facts, and that it is their intent to fully, finally, and forever settle and release all their disputes and differences as between them and the Fireside Owners pertaining to the Action and the Purchase and Sale Documents.

7. Representations and Warranties. The Parties represent and warrant to and agree with each other as follows:

7

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a. The Parties have received independent legal advice from attorneys of their choice with respect to the advisability of entering into this Agreement and of giving the releases provided herein.

b. In connection with the execution of this Agreement and the making of the settlement provided for herein, no party to this Agreement has relied upon any statement, representation or promise of any other party not expressly contained herein.

c. This Agreement contains the entire agreement of the Parties hereto. There are no agreements or understandings between the Parties hereto relating to the matters and releases referred to in this Agreement.

d. The Parties have made such investigation of the facts pertaining to the releases contained herein as they deem necessary.

e. The Parties have not assigned or transferred any of the claims released hereunder.

f. The terms of this Agreement are contractual and are the result of negotiation among the Parties. Each party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any party, and the canon of contractual interpretation set forth in California Civil Code section 1654 shall not be applied.

g. This Agreement has been carefully read by each of the Parties and the contents thereof are known and understood by each of the Parties. This Agreement is signed freely by each party executing it.

h. The resolution of the Fireside Action, including all negotiations leading to the resolution, the payment of consideration hereunder, the contents of this Agreement and any document executed in connection herewith, are not intended to constitute and shall not constitute an admission or concession of any kind by anyone or any entity as to the Fireside Action or otherwise.

8. Modifications. This Agreement may not be amended, canceled, revoked or otherwise modified except by written agreement subscribed by all of the Parties to be charged with such modification.

9. Agreement Binding on Successors. This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and on their respective heirs, executors, administrators, trustors, personal representatives, assigns, successors, beneficiaries, predecessors, employees, agents, attorneys, past, present and future officers, directors, partners, shareholders, and all others claiming under or through them.

10. Severability. In the event any provision of this Agreement shall be held to be void, voidable or unenforceable, the remaining provisions shall remain in full force and effect.

11. Governing Law. This Agreement shall be construed in accordance with, and be governed by, the laws of the State of California. This Agreement may be enforced under California Code of Civil Procedure section 664.6.

12. Warranty of Authority. Each party whose signature is affixed hereto in a representative capacity represents and warrants that he or she is authorized to execute this Agreement on behalf of and to bind the entity on whose behalf his or her signature is

affixed. Each party specifically represents and warrants that it is the owner or authorized agent of the owner of any claim released herein, and that no signatures other than those made on this Agreement are necessary to bind the Parties to all of the obligations imposed by this Agreement. In the event that there is a breach of any representation or warranty of authority to execute this Agreement, the breaching party shall indemnify and hold harmless the non-breaching party from any and all loss or damage, including reasonable attorneys' fees, incurred as result of the breach of such representation and warranty.

13. Attorneys' Fees and Costs. In the event any party hereto shall commence litigation or other legal proceedings to enforce this Agreement, or any of its terms, or to recover damages as a result of a breach of any term of this Agreement, the party or parties prevailing in such proceedings shall be entitled to recover from the party or parties not prevailing, all costs and expenses, including reasonable attorneys' fees incurred by such prevailing party or parties. To the extent that the prevailing party is a party which commenced said litigation or other legal proceedings, said party shall not be entitled to said party's attorneys' fees and costs unless said party made a written pre-litigation demand upon the other party to comply with the terms of this Agreement and allowed the other party or parties thirty (30) days to respond to that demand before filing suit.

14. Counterparts. This Agreement may be executed in one or more counterparts, each of which when executed and delivered shall be an original, and all of which when executed shall constitute one and the same instrument.

15. General Terms.

A. Unless otherwise provided in this Agreement or by law, any and all notices or other communications required or permitted by this Agreement or by law to be served on or delivered to any party to the Agreement shall be in writing and shall be deemed duly served, delivered, and received when personally delivered to the party to whom it is directed, or in lieu thereof, when three (3) business days have elapsed following deposit in the United States mail, certified or registered mail, return receipt requested, first-class postage prepaid, addressed as follows:

To Defendant Fireside:

Howard Wickersham

P.O. Box 1333

Mammoth Lakes, CA 93546

To Defendant Webb:

Stephen Webb

809 Grayling Bay

Costa Mesa, CA 92626

With a copy to Defendants' Attorney:

Jan K. Buddingh, Jr., Esq.

GORDON & REES, LLP

101 West Broadway, Suite 2000

San Diego, California 92101

To Plaintiffs and their Attorney:

David S. Poole, Esq.

Poole & Shaffrey

27441 Tourney Rd., Ste. 280

Valencia, CA 91355

A party may change such address for the purpose of this paragraph by giving timely written notice of such change to the other party in the manner provided in this paragraph.

Facsimile transmission shall constitute personal delivery.

B. Whenever the context requires, any gender includes all others, and the singular number includes the plural, and vice-versa.

C. Any captions in this Agreement are inserted for convenience of reference and do not define, describe, or limit the scope or intent of this Agreement or any of its terms.

D. This Agreement contains the entire agreement between the settling Parties. Any prior oral or written representations, agreements, understandings, and/or statements shall be of no force and effect.

E. Time is of the essence of each obligation hereunder.

F. This Agreement shall bind and inure to the benefit of the respective heirs, beneficiaries, assigns, personal representatives, and successors of the settling Parties; provided, however, except for the released parties, there are no intended third-party beneficiaries to this Agreement other than those expressly set forth herein, and the

settling Parties intend that only they or their heirs, assigns, personal representatives, successors, and the released Parties are entitled to enforce this Agreement.

G. Each settling Party agrees that he or she shall, upon the other's request, take any and all steps, and execute, acknowledge, and deliver to the other any and all further instruments reasonably necessary or expedient to effectuate the purposes of this Agreement.

H. The terms "Person" shall include a corporation, partnership, unincorporated association, trust, or any other legal entity; "including" shall mean inclusive without limitation to the included item specified.

I. In the event that any condition or covenant contained in this Agreement is either deemed to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of the terms of this Agreement and shall in no way affect any other covenant or condition therein contained. If such a condition, covenant or other provision shall be deemed invalid due to scope or breadth, then such provisions shall be valid to the extent and scope permitted by law.

J. No delay or omission by any of the settling Parties to exercise any right or power occurring upon any default by the other party with respect to any of the terms of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions, or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition, or agreement herein contained.

K. No third party beneficiaries are created or intended to be created by the provisions of this Agreement and any such intention is expressly disclaimed by the Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates set forth below.

DATED: _____, 2008

REBECCA HINKLE

By: _____
Rebecca Hinkle, an individual

DATED: _____, 2008

ROBERT HINKLE

By: _____
Robert Hinkle, an individual

DATED: _____, 2008

MAMMOTH FIRESIDE CONDOMINIUM
NO. 1 OWNERS ASSOCIATION

By: _____
Howard Wickersham
Chair of Board of Governors of
MAMMOTH FIRESIDE
CONDOMINIUM NO. 1 OWNERS
ASSOCIATION

DATED: _____, 2008

STEPHEN WEBB

Stephen Webb, an individual

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14

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SW: _____