

CONDITIONAL SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

1.0 PARTIES

1.1 The principal parties to this Conditional Settlement Agreement and Release of All Claims ("AGREEMENT") are: (1) Plaintiff, SOCORRO CULE ("CULE" or "PLAINTIFF") and (2) Defendant, THE COUNTY OF SANTA BARBARA ("COUNTY" or "DEFENDANT") Collectively, CULE and the COUNTY may be referred to herein as the "PARTIES."

1.2 PLAINTIFF enters into this AGREEMENT on her own behalf and on behalf of her heirs, beneficiaries, executors, administrators, agents, representatives, attorneys, successors, and assigns, and on behalf of all other persons and entities to whom any CLAIM (defined below under heading 4.0) has accrued or may accrue. PLAINTIFF and those others are referred to below as "RELEASORS," and each such reference is intended to refer to them jointly and severally.

1.3 The DEFENDANT enters into this AGREEMENT its own behalf, on behalf of its/their past and present agents, servants, employees, officers, directors, contractors, administrators, representatives, elected officials, attorneys, departments, divisions, subsidiaries, insurers, risk managers, predecessors or successors, assigns, accountants, adjusters and agencies, and on behalf of all other persons and entities associated in any way with the COUNTY, whether acting independently, individually, on behalf of the COUNTY or otherwise, or against whom any CLAIM has been or may be made. The COUNTY and those others are referred to below as "RELEASEES" and each such reference is intended to refer to them jointly and severally.

2.0 SCOPE AND INTENT

2.1 This AGREEMENT pertains to CULE'S Petition for Writ of Mandate and related causes of action filed on or about January 22, 2009, in the matter entitled *SOCORRO CULE v. COUNTY OF SANTA BARBARA*, Santa Barbara Superior Court Case No. 1305144 (Assigned Hon. J. William McLafferty) and all other CLAIMS defined below under heading 4.0.

2.2 PLAINTIFF and DEFENDANT desire and intend this AGREEMENT to fully resolve, finally settle, release, discharge and forever extinguish all CLAIMS, and to hold the DEFENDANT and all other RELEASEES entirely harmless with respect to those CLAIMS.

2.3 PLAINTIFF and DEFENDANT desire and intend this AGREEMENT to fully supersede any and all prior agreements, understandings, discussions, and negotiations between them, written or oral, with respect to the subjects of this AGREEMENT.

3.0 CONSIDERATION

3.1 PLAINTIFF and DEFENDANT acknowledge and agree that this AGREEMENT and the performance of any and all of its requirements, conditions, and covenants is **expressly conditional** on the approval by the County's Board of Supervisors ("BOS") of this AGREEMENT and its terms. In the event that the BOS declines or otherwise fails to approve this AGREEMENT and its terms, it shall become null and void and of no effect or consequence whatsoever. The BOS has the final, sole and exclusive right to bind the COUNTY to this AGREEMENT.

3.2 Subject to Section 3.1 above, PLAINTIFF and DEFENDANT acknowledge and agree that the sole consideration given by RELEASEES for the waivers, releases, covenants, warranties and other terms set forth in this AGREEMENT is as follows: if the BOS votes to approve the issuance of a Certificate of Compliance pursuant to *Government Code* § 66499.35, Santa Barbara County Code 21-71.4(d) or any other applicable provision of law and with respect to CULE's real property identified as County Assessor Parcel No. 153-300-020, Section 27 of Township 5 North, 28 West, San Bernardino Meridian, Santa Barbara County, California, (the "SUBJECT PROPERTY") CULE's duties and obligations under this AGREEMENT and specifically those set forth in Sections 4.0 and 5.0 shall be triggered and effectuated. If the BOS declines to approve the issuance of a Certificate of Compliance, this AGREEMENT shall be, null, void and of no effect or consequence.

3.3 Notwithstanding anything contained herein to the contrary, since the COUNTY may not properly contract away either its police power or its legislative authority, the BOS shall retain the final authority to approve, modify or reject this AGREEMENT, issuance of the Certificate of Compliance and may otherwise impose any condition or requirement that, in its discretion, the BOS deems appropriate including, without limitation incorporating standard indemnification language in the form set forth below:

"The applicant shall defend, indemnify and hold harmless the County or its agents, officers and employees from any claim, action or proceeding against the County or its agents, officers or employees, to attack, set aside, void, or annul, in whole or in part, the County's approval of the Certificate of Compliance. In the event that the County fails promptly to notify the applicant of any such claim, act or proceeding, or that the County fails to cooperate fully in the defense of said claim, this condition shall thereafter be of no further force or effect"

3.4 Nothing contained herein shall require the BOS to take or refrain from taking any regulatory action with respect to the SUBJECT PROPERTY in the future and no non-litigation oriented policy decisions are encompassed or are otherwise implicated in this AGREEMENT.

3.5 The PARTIES shall bear their own costs and attorneys' fees.

4.0 WAIVERS AND RELEASES

4.1 If the BOS votes to approve issuance of the Certificate of Compliance with respect to the SUBJECT PROPERTY, CULE shall, within 5 days of its issuance, dismiss her Writ of Mandate with prejudice and in the form attached hereto and shall on her own behalf, and on behalf of all other RELEASORS, for the benefit of the COUNTY and all other RELEASEES, fully and finally waive, release, acquit, discharge, and extinguish all CLAIMS, as defined below.

Subject only to the exceptions expressly stated in the next paragraph, CLAIMS means all past, present, and future claims, demands, complaints, grievances, charges, suits, appeals, petitions, actions, causes of action, liabilities, costs, expenses, liens, attorneys' fees, lawsuits, administrative claims, tort claims and charges, proceedings of every kind and nature, and assertions of right, whether known or unknown, foreseen or unforeseen, actual or potential, based wholly or in part on conduct, act or omission by the COUNTY, its Surveyor, the BOS, or any other RELEASEE, or relating in any way to the SUBJECT PROPERTY including any injury or damage which CULE, the RELEASORS or any of them sustained, or may have sustained, past or present, or will sustain in the


future, including, but not limited to, claims and prayers seeking special or general damages, or any other compensation, reimbursement, relief, or legal or equitable remedy of any sort, in any forum, for any physical or emotional pain, suffering, distress, impairment, or other bodily injury, any loss of salary, benefit, income, profit, or other economic advantage, any cost, expense, debt, charge, fee (including attorney's fee), or other economic detriment, or any other injury, damage, or loss of benefit to person or property, based upon any memorandum of understanding, contract, promise, debt, or liability, any provision of the California Fair Employment and Housing Act, the California Labor Code, the County Employees Retirement Law of 1937, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1871, the Americans with Disabilities Act, the Age Discrimination in Employment Act of 1967, the Equal Pay Act, the Fair Labor Standards Act, 42 U.S.C. § 1983, the Santa Barbara County Civil Service Rules, or any other law, statute, ordinance, code, rule, regulation, resolution, policy, ruling, decision, or legal authority. It is expressly acknowledged by the PARTIES that nothing contained in this provision shall preclude CULE from challenging a fine imposed in or about 2004 by the COUNTY of approximately \$9,000 and relating to the placement of a utility/storage trailer on the SUBJECT PROPERTY.

4.2 PLAINTIFF has read Civil Code section 1542, which provides as follows:

1542. GENERAL RELEASE—CLAIMS EXTINGUISHED.

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HER OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HER OR HER SETTLEMENT WITH THE DEBTOR.

Having read Civil Code section 1542, PLAINTIFF expressly waives any right she may have had under that section, or under any common law or similar law of any state, territory, or jurisdiction of the United States. PLAINTIFF understands that this waiver bars her, and all RELEASORS, from making or maintaining any CLAIM against the COUNTY or any RELEASEE, whether or not she does or could know, understand, foresee, or suspect the existence or the significance of the CLAIM, or of the injuries, damages, rights, remedies, authorities, or other grounds upon which the CLAIM might be based, even if the CLAIM or the grounds upon which it might be based do not yet exist.

RELEASORS hereby waive application of section 1542 of the California Civil Code by signing their initials here:  (Initialed by CULE)

5.0 COVENANTS

5.1 If PLAINTIFF has filed any complaint, CLAIMS, administrative claim or charge, grievance, petition, lawsuit or action against any RELEASEE, within 5 days of the issuance of a Certificate of Compliance for the SUBJECT PROPERTY, she shall promptly withdraw it, request that it be dismissed with prejudice as to all parties, and/or take any other action reasonably necessary to cause the proceedings to be ended. If at any time in the future any court, agency, regulatory or enforcement body, or other authority assumes jurisdiction of any complaint, CLAIM, administrative claim or charge, grievance, lawsuit or action against any RELEASEE on behalf of PLAINTIFF, PLAINTIFF shall promptly direct the agency, court, or other authority to withdraw from or dismiss the matter, and/or shall take any other action reasonably necessary to cause the proceedings to be

discontinued. PLAINTIFF shall execute and deliver any other document, and take any other action, that is or in the future may become reasonably necessary to consummate this AGREEMENT, or to give effect to any of its terms.

5.2 PLAINTIFF shall not sue or otherwise commence, maintain, join in, or in any manner seek relief through any proceeding pertaining to any CLAIM, and shall indemnify, defend and hold RELEASEES entirely harmless with respect to any damage, liability, loss, cost, expense, or attorneys' fees incurred by any of them as a result of any such suit or proceeding.

6.0 WARRANTIES

6.1 PLAINTIFF warrants that she is of lawful age, and she is, in all ways, legally competent to make this AGREEMENT and to perform all of the acts it requires she perform.

6.2 PLAINTIFF warrants that she is both the sole owner of the SUBJECT PROPERTY and of all CLAIMS, and that there has been no assignment or transfer of any interest in either. If any person or entity asserts any such assignment or transfer, PLAINTIFF shall indemnify, defend and hold RELEASEES entirely harmless with respect to any damage, liability, loss, cost, expense, or attorney's fees any RELEASEE may incur as a result of such assertion.

6.3 PLAINTIFF understands and warrants that in entering this AGREEMENT she relies wholly upon her own judgment, belief, and knowledge concerning the nature, extent, and effects of her injuries and losses, and does not rely upon any opinion, statement, or representation in that regard, whether oral or written, expressed by the COUNTY, its Assessor, any other RELEASEE, or any of their attorneys or other agents.

6.4 PLAINTIFF understands that hereafter she may discover facts different from, or in addition to, those that she presently knows or believes to be true regarding the matters to which this AGREEMENT pertains, or regarding the consequences of this AGREEMENT. CULE understands that, notwithstanding any such discovery, this AGREEMENT shall remain binding, in full force, and unaffected in any way.

6.5 PLAINTIFF understands that this AGREEMENT contains all of the terms agreed upon, and that the terms of this AGREEMENT are contractual, and not a mere recital.

6.6 PLAINTIFF warrants that no promise, representation, or inducement of any sort, oral or written, has been made to her regarding the subject matter, basis, or effect of this AGREEMENT, or otherwise regarding this AGREEMENT, except as expressly set forth in this AGREEMENT.

6.7 PLAINTIFF warrants that she has been given ample opportunity to review and consider this AGREEMENT, and has received and relied upon the advice of independent advisors, including an attorney of her choosing, regarding the advantages and disadvantages of making this AGREEMENT, and the meaning and consequences of its terms; and that she enters into this AGREEMENT based upon that advice, with full knowledge and understanding of the meaning and consequences of its terms, and of their legal rights and alternatives.

6.8 PLAINTIFF warrants that she willingly and voluntarily consents to all of the terms of this AGREEMENT, free from any pressure, menace, or duress.

7.0 MISCELLANEOUS

7.1 This AGREEMENT shall be construed and enforced in accordance with the laws of the State of California and any dispute herein shall be resolved in either the Santa Barbara Superior Court or an appropriate Federal Court of competent jurisdiction. The language of this AGREEMENT is the result of negotiations between the PARTIES and shall be construed as though all PARTIES have participated equally in its drafting; hence the language of all of the parts of this AGREEMENT shall be construed as a whole, according to its plain meaning, and shall not be construed for or against any particular party. The headings of this AGREEMENT are intended solely for convenience of reference, and shall not be construed to amplify, limit, modify, or affect any of the terms of this AGREEMENT, or used to interpret the meaning of any such term.

7.2 This AGREEMENT is the compromise of disputed claims, and neither this AGREEMENT nor any act taken pursuant to this AGREEMENT shall constitute or be construed as an admission of any fault, misconduct, wrongdoing, or liability on the part of the COUNTY or any RELEASEE, all of whom deny any fault, misconduct, wrongdoing, or liability, and enter into this AGREEMENT simply to avoid further litigation.

7.3 This AGREEMENT constitutes a single, integrated written contract, and expresses the entire agreement of the parties with respect to the subject matter of this AGREEMENT. No supplement, modification, or amendment to this AGREEMENT shall be effective unless contained in a writing that (a) expressly states the intent of the parties to supplement, modify, or amend this AGREEMENT, and (b) is signed by duly authorized representatives of PLAINTIFF and COUNTY.

7.4 The terms of this AGREEMENT are severable, and the illegality or invalidity of any term or provision shall not affect the validity of any other term or provision, all of which shall remain in full force and effect.


7.5 This AGREEMENT may be executed in one or more counterparts, each of which shall be deemed an original, which taken together shall constitute one and the same instrument.

THE PARTIES TO THIS AGREEMENT DECLARE THAT THEY HAVE CAREFULLY READ THIS AGREEMENT, HAVE RECEIVED EXPLANATIONS AND ADVICE OF THEIR COUNSEL NECESSARY TO FULLY UNDERSTAND THIS AGREEMENT AND EACH OF ITS TERMS, AND EXECUTE THIS AGREEMENT WITHOUT IMPROPER PRESSURE, UNDUE INFLUENCE AND AFTER MATURE DELIBERATION.

Executed on this 21st day of December, 2009, at Santa Barbara, California.


SOCORRO CULE

Executed on this 8th day of December, 2009, at Santa Barbara, California.


JOE CENTENO
Chair, Board of Supervisors for the County of Santa Barbara