

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Agreement”) is made, for reference purposes as of June ____, 2014, by and among the County of Santa Barbara, California, a political subdivision of the State of California duly organized and existing under the laws of the State of California (the “County”); Santa Barbara County Courthouse Docent Council, a California non-profit corporation registered with the California Attorney General (the “Docent Council”); Rodney Baker, an individual (“Baker”); The Towbes Foundation, a California non-profit corporation (the “Foundation”); Montecito Bank & Trust, a California corporation (“MBT”); Michael Towbes, an individual (“Towbes”) (the Foundation, MBT and Towbes are sometimes collectively referred to herein as the “Towbes Parties”); and A. Barry Cappello, an individual taxpayer in the County (“Cappello”). Each of the entities and individuals named above is sometimes referred to as a “Party” and sometimes collectively referred to as the “Parties.”

This Agreement is effective on the date that this Agreement is fully executed by all of the Parties (the “Effective Date”), and is made with reference to the following Recitals.

1. Recitals

- i. Since 1971 the Docent Council has undertaken to stimulate the public’s awareness of the judicial process and an appreciation of the beauty, history, art and architecture of the Santa Barbara County Courthouse (the “Courthouse”). It is charged with the duty to protect and preserve the artworks, furnishings and objects within the Courthouse (the “Courthouse Collection”).
- ii. In 1993, the Santa Barbara Historical Museums (now known as the Santa Barbara Historical Museum) (“Museum”) became the owner of a certain artwork entitled “Landing of Cabrillo” c. 1924 by Dan Sayre Groesbeck (the “Painting”).
- iii. The Docent Council, acting on behalf of both the Museum and the Docent Council, arranged for the public display of the Painting at the Courthouse. The Painting was the inspiration for the Mural Room frescos which were also painted by Dan Sayre Groesbeck, as he was chosen as a result of his previous masterwork, the Painting.
- iv. On or about December 6, 1993, the Painting was transported, hung, and

stabilized for public display at the Courthouse.

- v. By letter agreement dated April 15, 1994, the Museum transferred title to the Painting to the Docent Council, and the Docent Council accepted title to the Painting subject to certain conditions. The Painting remained on display at the Courthouse. The Docent Council accepted responsibility for its perpetual care and featured the Painting on Courthouse tours.
- vi. MBT has a flagship branch located at 1000 State Street, Santa Barbara, California (the “Bank Facility”), and Towbes is Chairman of the Board of MBT. Towbes is also the Chief Financial Officer of the Foundation.
- vii. The Painting was originally commissioned in 1924 by County National Bank & Trust for display at the Bank Facility. In 1959, the Painting was moved to another location, 1001 State Street, by its then owner, Crocker Bank. At some point subsequent thereto the Painting was placed in storage, prior to its transfer to the Museum. The Painting was displayed at the Courthouse from 1994-2013.
- viii. In or about early 2013, Towbes on behalf of the Foundation and MBT contacted Baker to request that the Painting be relocated to its original place of display, the Bank Facility.
- ix. On or about March 15, 2013, the Painting was valued at \$200,000 (two hundred thousand dollars).
- x. In response to Towbes’ request, the Docent Council discussed and approved a proposal to loan the Painting to Towbes and Mr. Baker subsequently executed an “Artwork Loan Agreement” dated April 10, 2013 under which the Painting would be loaned to the Foundation for display at the Bank Facility for a minimum period of ten (10) years to renew automatically after the initial period (the “Artwork Loan Agreement”). There was publicity about this transfer.
- xi. As a condition to, and in partial consideration of, the Artwork Loan Agreement, the Foundation, at its sole cost, undertook to professionally conserve the Painting and its original frame, at a total cost of approximately \$17,200.00 (seventeen thousand two hundred dollars). MBT also procured and maintains insurance for the display of the Painting at the Bank Facility.

- xii. Cappello, a resident taxpayer of Santa Barbara County, promptly contacted the County and the Docent Council and objected to the transfer of the Painting.
- xiii. The Docent Council filed a Complaint to the California Attorney General on or about May 13, 2013, seeking an opinion on the propriety of the Artwork Loan Agreement and removal of the Painting from the Courthouse to the Foundation for display at MBT.
- xiv. Cappello filed a Complaint to the California Attorney General on or about June 11, 2013, alleging, *inter alia*, that the Docent Council's act diverted a \$200,000 asset from its proper charitable purposes (the "AG Complaint").
- xv. Cappello additionally drafted a complaint for a taxpayer lawsuit to be filed in the Superior Court of Santa Barbara County. He indicated his intent to file said lawsuit, which alleged claims (the "Claims") against the County, the Docent Council, the Towbes Parties and others, based on but not limited to, *inter alia*:
 - 1. The alleged illegal gifting of public funds or property for private use;
 - 2. The alleged failure of the Docent Council to obtain approval from the County prior to executing the "Artwork Loan Agreement" under which the County would be divested of its alleged possessory interest in the Painting and the Painting would no longer be displayed for the benefit of the public; and
 - 3. The deprivation of the County's alleged right of possession of the Painting on or about April 17, 2013 when the Painting was removed from the Courthouse and relocated to the Bank Facility.
- xvi. Towbes and Cappello met on January 13, 2014, to discuss the above-described matters, and issues related to the Claims. Towbes, Baker and Cappello then met on February 19, 2014 to further discuss these matters and issues related to the Claims.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES IN THIS AGREEMENT, and for other good and valuable consideration, the receipt of which are hereby

acknowledged by the Parties, the Parties make the agreements and covenants set forth below in this Agreement.

2. **Tolling of Statutes of Limitations.** On the Effective Date, all statutes of limitation related in any way to the Claims, if any, shall be tolled pending the “Closing Date,” as defined below.

3. **Reproduction of the Painting.** The Towbes Parties will, at their own and sole expense, obtain a reproduction of the Painting (the “Reproduction”), for purposes of display at MBT. No Party objects to the creation and display of the Reproduction and the County and Docent Council hereby grant and license The Towbes Parties the right to create and display the Reproduction.

4. **Risk of Loss and Injury.** During the period that they retain possession of the Painting, the Towbes Parties will bear the risk of loss or injury to the Painting. Upon delivery of the Painting from the Bank Facility as provided herein, risk of loss or injury to the Painting shall transfer to the County and Docents, except that no risk shall inure to the County until title has been transferred to the County as discussed in paragraph 6 below.

5. **Completion of Reproduction.** The Towbes Parties will use their diligent efforts to complete the Reproduction by on or about May 31, 2014 (the “Reproduction Completion Date”). As of the date of execution of this Agreement, the Reproduction has been completed.

6. **Transfer of Title to the County.** The Docent Council will transfer title of the Painting to the County, and the County will accept the transfer of title to it, as set forth below:

- i. The Docent Council will promptly and formally process their application to donate the Painting to the County;
- ii. The Docent Council will transfer title to the County, and the County will accept title and the donation of the Painting, on or before September 30, 2014, or such date as is mutually agreed upon in writing by all the Parties hereto;
- iii. The County will formally accept the gift of the Painting as appropriately authorized, through the Board of Supervisors, pursuant to Government Code section 25355, County Resolution #99-485, and any other statute, ordinance or policy developed by the County to encourage, recognize,

and/or report donations; and

- iv. The County will accept the donation of the Painting, subject to the condition that the Painting be permanently and prominently displayed to the public at the Courthouse, as part of the Courthouse Collection, for the public's use and enjoyment in the Courthouse at either:
 1. The location where the Painting was affixed from 1994 through 2013 (the "Last Courthouse Location"); or
 2. An equally prominent location in the Courthouse, where the Painting is both protected from harm and the public can enjoy the Painting as a major piece of art of the Courthouse (a "New Courthouse Location").

7. Removal and Delivery of the Painting. Promptly following the Reproduction Completion Date, the Towbes Parties will arrange with the Docent Council and the County for the delivery of the Painting to the Courthouse. The Towbes Parties will pay, at their sole expense, for all expenses of removing the Painting from the Bank Facility. If the Painting is to be delivered to the Last Courthouse Location, The Towbes Parties will pay for all of the costs of delivering, installing and affixing the Painting at the Last Courthouse Location in the condition that existed immediately prior to the removal from the Last Courthouse Location (the "Base Relocation Cost"). If the Painting is to be delivered to the New Courthouse Location, then The Towbes Parties will pay for the Base Relocation Cost, and the Docent Council and/or County will pay all additional costs and expenses of affixing and installing the Painting at the New Courthouse Location.

8. Closing Date. The date on which both: (1) the title to the Painting has been transferred from the Docent Council to the County, and the County has validly accepted the transfer of title; and (2) the relocation of the Painting from the Bank Facility to the Courthouse, and the affixing of the Painting at the Courthouse, is complete, as set forth above in paragraphs 3-7, will be deemed the "Closing Date." On the Closing Date the Artwork Loan Agreement shall be deemed terminated and of no further force or effect, if any.

9. Settlement; No Admission of Liability. This Agreement is intended by the Parties to be a full and final settlement between them of all issues related to the AG Complaint and the Claims identified above, pursuant to and upon the terms and conditions set forth herein. This Agreement is not, and shall not be treated as, an admission of liability by any Party for any purpose.

10. **Release.** Effective on the Closing Date, each of the Parties, on behalf of themselves and on behalf of their respective officials, principals, predecessors, successors, spouses, heirs, executors, administrators, directors, officers, shareholders, partners, members, attorneys, agents, representatives, employees, and/or assigns, hereby fully releases and discharges each of the other Parties and each of the other Parties' respective officials, principals, predecessors, successors, spouses, heirs, executors, administrators, directors, officers, shareholders, partners, members, attorneys, agents, representatives, employees, and/or assigns, from any and all claims, losses, demands, actions, causes of action, costs and fees (including attorney's fees incurred in connection with or related to the AG Complaint and Claims referenced herein and this Agreement), causes of action, and/or liabilities, whether known or unknown, which in any way arise out of, are connected with, or in any way related to the AG Complaint, Claims, to any issues related to the Painting being transferred from the Courthouse for display at the Bank Facility, and/or the matters set forth in this Agreement.

11. **Dismissal.** Promptly following the Closing Date, the Docent Council will withdraw its request for opinion made by way of Complaint to the California Attorney General filed on or about May 13, 2013. Cappello will withdraw and/or dismiss his AG Complaint.

12. **General Release of Known and Unknown Claims.** Each Party acknowledges and agrees that the release that they give to each of the other Parties on the Closing Date applies to all claims for injuries, damages, or losses to their own person and property, real or personal (whether those injuries, damages, or losses are known or unknown, foreseen or unforeseen, patent or latent), that they may have against any other Party which arise from or are related to the AG Complaint or the Claims in any way. Each Party waives application of Civil Code section 1542 in this regard.

Each Party certifies that they have read the following provisions of Civil Code section 1542:

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.

Each Party understands and acknowledges that in consequence of this waiver of Civil Code section 1542, even if they should eventually suffer additional damages arising out of the Claims or the facts referred to in this Agreement, they will not be able to make any claim for those damages. Furthermore, each Party acknowledges that they consciously intend these

consequences even as to claims for damages that may exist as of the date of this release but that they do not know exist, and that, if known, would materially affect their decision to execute this release, regardless of whether their lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

13. No Release of Claims Under this Agreement. Notwithstanding the above release in paragraphs 10 and 12 and any other language to the contrary in this Agreement, each Party acknowledges and agrees that the claims, rights or other matters released by the Party under this Agreement do not include any claims seeking to enforce or obtain a remedy for a breach of a representation, warranty, obligation or liability given or created by this Agreement.

14. Advice of Attorney. Each Party warrants and represents that in executing this Agreement, they have relied on legal advice from the attorney of their choice; that the terms of this Agreement have been read and its consequences (including risks, complications, and costs) have been completely explained to them by that attorney; and that they fully understand the terms of this Agreement. Each Party further acknowledges and represents that, in executing this Agreement, they have not relied on any inducements, promises, or representations made by any other Party or any person representing or serving the other party.

15. Conditions of Execution and Legal Authority. Each Party to this Agreement acknowledges and warrants that their execution of this Agreement is free and voluntary, and that each has the authority to execute this Agreement on behalf of the entity for which they are signing.

16. Execution of Other Documents. Each Party shall cooperate fully in the execution of any and all other documents and in any additional acts that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

17. Governing Law. This Agreement is entered into, and shall be construed and interpreted, in accordance with the substantive laws of the State of California without reference to choice of law or conflict of law provisions.

18. Jurisdiction. The Parties agree that the Superior Court of the County of Santa Barbara shall have exclusive jurisdiction of any and all claims related to the validity, construction, interpretation, enforceability and/or performance of any of the terms or provisions of this Agreement or of any of the Parties' rights or obligations under this Agreement.

19. **Attorney Fees.** Each party to this Agreement shall bear all attorney fees and costs arising from that Party's own counsel in connection with the claims and matters referred to in this Agreement. However, should any proceeding be brought by any Party to this Agreement to enforce it or any provision hereof, the prevailing party in any such proceeding shall be entitled to recover, in addition to any other relief, reasonable attorney fees, costs, and expenses of the proceeding.

20. **Entire Agreement.** This Agreement contains the entire agreement between the Parties, and all provisions of this Agreement are contractual and not a mere recital.

21. **Inurement.** This Agreement shall be binding upon and will inure to the benefit of each Party's heirs, successors, agents, attorneys, family members, assigns, executors and administrators.

22. **Modification.** This Agreement shall not be modified except in writing signed by all of the Parties.

23. **Counterparts.** This Agreement may be executed in one or more counterparts, confirmed by signatures transmitted by facsimile or as a PDF or JPEG electronic document attached to an email, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

24. **Failure to Obtain County Signature.** Notwithstanding any language to the contrary herein above, in the event that this Agreement is not executed by the County, and is executed by all of the other Parties by August 31, 2014, then this Agreement shall remain in full force and effect among and between the signatory Parties to this Agreement, including but not limited to the Towbes Parties' obligations under paragraphs 3-7 above and the Docent Council's obligations under paragraph 6(i) above, subject to and including the following additional terms.

- i. If the County does not accept title and ownership of the Painting, the Docent Council will treat the Painting as being on permanent loan by the Docent Council to the County, to be held in trust for the benefit of the public by the Docent Council at the Courthouse and the Painting is immediately affixed and maintained, as part of the Courthouse Collection, for the public's use and enjoyment in the Courthouse at either: (a) the Last Courthouse Location (as defined in paragraph 6(iv)(1) above); or (b) the New Courthouse Location (as defined in paragraph 6(iv)(2) above);
- ii. The Docent Council shall pay the additional costs, if any, resulting from the Painting being affixed to the New Courthouse Location;

- iii. The Docent Council accepts responsibility for the care of the Painting at the Courthouse in perpetuity, in the event that the County does not accept the Docent Council's application to donate the Painting to the County;
- iv. The "Closing Date" as between the signatory Parties to this Agreement is modified from the date set forth in paragraph 8 above, and instead will be the date on which both: (1) the relocation of the Painting from the Bank Facility to the Courthouse, and the affixing of the Painting at the Courthouse, is complete, as set forth above in paragraphs 3-7; and (2) the Docent Council's application to donate the Painting to the County was made as set forth in paragraph 6(i), and the County has either (a) accepted the donation of the Painting and title has transferred; or (b) formally rejected the Docent Council's offer to donate the Painting. Effective on the modified "Closing Date," the signatory Parties will release each of the other signatory Parties pursuant to paragraphs 10 and 12, above. The signatory Parties do not release the County in any respect, and waive any release from the County.
- v. The terms of this paragraph 24 supersede and control any inconsistent terms in paragraphs 1 through 23 of this Agreement.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and accepted as of the date set forth above.

Dated: _____, 2014

County of Santa Barbara
STEVE LAVAGNINO, CHAIR
BOARD OF SUPERVISORS

ATTEST:
MONA MIYASATO
CLERK OF THE BOARD

By: _____

By: _____

APPROVED AS TO FORM:
MICHAEL C. GHIZZONI
COUNTY COUNSEL

By:  _____

Dated: _____, 2014

Rodney Baker

Dated: _____, 2014

Santa Barbara County Courthouse Docent Council

By: _____

Name: _____

Title: _____

Dated: _____, 2014

Michael Towbes

Dated: _____, 2014

The Towbes Foundation

By: _____

Name: _____

Title: _____

Dated: _____, 2014

Montecito Bank & Trust

By: _____

Name: _____

Title: _____

Dated: _____, 2014

A. Barry Cappello