

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (“Agreement”) is entered into by and between Plaintiff Lakes at Lemmon Valley, LLC (“Plaintiff”) and Defendant WASHOE COUNTY, a political subdivision of the State of Nevada (“Defendant”). As used herein, the terms Defendant or county or Washoe County include Washoe County and its administrators, agencies, agents, assignees, attorneys, contractors, departments, directors, divisions, employees, employers, executors, heirs, insurers, officers, principals, representatives, servants, subrogees, subsidiaries and successors; likewise, the term Plaintiff includes its administrators, agencies, agents, assignees, attorneys, contractors, departments, directors, divisions, employees, employers, executors, heirs, insurers, officers, principals, owners, shareholders, representatives, servants, subrogees, subsidiaries and successors.

WHEREAS, on December 4, 2018, Plaintiff filed a Petition for Judicial Review against Defendant in the Second Judicial District Court of the State of Nevada in and for the County of Washoe, Case No. CV18-02374 (hereinafter referred to as the “Litigation”);

WHEREAS, Plaintiff alleged that there was no substantial evidence to support Defendant’s November 13, 2018, decision to deny Plaintiff’s application for a tentative map on a 98-lot single family residential subdivision along the eastern side of Lemmon Drive just south of its intersection with Military Road in Washoe County;

WHEREAS, after briefing and oral argument in the Second Judicial District Court, Defendant’s decision was overturned on July 19, 2019, and the matter was ordered remanded to the county commission for approval of the tentative map with conditions;

WHEREAS, on August 20, 2019, Defendant voted to authorize an appeal of the district court’s order;

WHEREAS, on August 20, 2019, Defendant appealed the district court's order to the Nevada Supreme Court;

WHEREAS, after briefing and oral argument, the district court on September 26, 2019, granted Defendant's motion to stay its order pending Defendant's appeal to the Nevada Supreme Court;

WHEREAS, once in the Nevada Supreme Court, the case was assigned number 79469, which is a companion case to Plaintiff's own appeal to the Nevada Supreme Court of the district court's decision to stay its underlying order, which was given case number 79788;

WHEREAS, both Defendant's and Plaintiff's appeals were assigned to the Nevada Supreme Court's settlement program under the supervision of Settlement Judge David Wasick;

WHEREAS, on November 13, 2019, the settlement judge convened a settlement conference with the parties at the Nevada Supreme Court in Carson City, Defendant represented by counsel as well as 2 county commissioners and the county risk manager, Plaintiff represented by counsel and appearing through the principal owner of Lakes at Lemmon Valley, LLC;

WHEREAS, Plaintiff and the Defendant desire to resolve and settle all existing claims in the litigation that, as of the date of this Agreement, have been or could have been raised in the Litigation and concerning all matters relating to its subject matter and any and all disputes between themselves.

NOW, THEREFORE, in consideration of the mutual covenants and promises and other good and valuable consideration set forth herein, Plaintiff and Defendant agree as follows:

A. Specific Terms

1. **DISMISSAL OF APPEALS:** In exchange for the settlement of all claims against all parties, Defendant authorizes the dismissal of its appeal in the Nevada Supreme Court

(79469), and Plaintiff agrees to a dismissal of its companion appeal in the Nevada Supreme Court (79788); a stipulation to dismiss the appeals will be filed after approval of this settlement agreement.

- 2. APPROVAL OF SUBDIVISION:** Effective upon dismissal of the appeals and remittitur by the Nevada Supreme Court, Defendant approves the tentative map involved in the Litigation pursuant to the district court's July 19, 2019, order, and the County Clerk shall forthwith issue its letter of approval of the same.
- 3. WAITING PERIOD ON SALE OF LOTS WITHIN SUBDIVISION:** Defendant will not close sales on any individual units within the subdivision before December 1, 2021.
- 4. SUBMISSION OF LEFT-TURN MEDIAN DEVICE TO RTC:** Defendant will submit a proposal, through a qualified engineer, to the Regional Transportation Commission (RTC) for a median device that would allow a left-hand turn onto Lemmon Drive (southbound) for traffic leaving the subdivision; if RTC approves the proposal, then construction of the device by the developer will become a condition of the tentative map approval; if not, then the approval of the subdivision will go forward without the left-hand turn condition.
- 5. EACH SIDE TO BEAR THEIR OWN COSTS AND ATTORNEY'S FEES:** Defendant and Plaintiff will each bear their own costs and attorney's fees in this matter.
- 6. WAIVER OF DAMAGES:** Plaintiff waives and releases all damages or claims for damages of any kind arising out of or relating to the subject matter of the Litigation,

including any claim for damages based on the alleged loss of a sale of the subdivision property by Plaintiff as a result of Defendant's appeal and the district court's stay;

B. General Terms

There are no third party beneficiaries of this Agreement.

Plaintiff and Defendant understand and agree that this Agreement represents a compromise settlement of various matters, and that the promises of payment made in consideration of this Agreement shall not be construed to be an admission of any liability or obligation by any party hereto.

Plaintiff represent that they have not previously assigned any claims, demands, actions or causes of action arising out of or in any way related to the Litigation.

Both Plaintiff and Defendant have participated in the preparation and drafting of this Agreement. As such, the parties acknowledge that any doctrine of law which may operate to imply any ambiguity in this Agreement against any party hereto as the profferor of the Agreement is not applicable to this Agreement. Accordingly, this Agreement shall be interpreted as if the parties jointly and equally prepared and drafted each word, sentence and paragraph.

This Agreement is entered into, construed and enforced in accordance with the laws of the State of Nevada, as applied to contracts made and to be performed entirely within Nevada. The parties consent to the exclusive jurisdiction of the Second Judicial District Court of the State of Nevada in and for the County of Washoe for the enforcement of this Agreement.

This Agreement shall inure to the benefit of each party and their affiliates, agencies, agents, assigns, contractors, departments, divisions, heirs, officers, directors, employees, independent representatives, parent corporations, partners, personal representatives, servants, shareholders, spouses, subsidiary corporations and successors.

The illegality or invalidity of any provision or portion of this Agreement shall not affect the validity of the remainder of the Agreement. This Agreement shall be construed as if such provision did not exist. To the extent practicable, the unenforceability of such provision shall not be held to render any other provision(s) of this Agreement unenforceable.

Plaintiff and Defendant have carefully read this Agreement in its entirety before signing the same, and understand that this Agreement constitutes the entire Agreement of the parties, and as such, is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions and other agreements that may have been made in connection with the subject matter hereof. This Agreement contains the entire agreement between the parties and all the terms and provisions of this Agreement are contractual and are not merely recitals. This Agreement was signed and executed voluntarily and without reliance upon any statement or representation not specifically set forth in this Agreement. No modification or amendment to this Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

The parties represent that they have the authority to execute this Agreement on behalf of the persons and entities on whose behalf they are signing. The parties further represent that the signatures on this Agreement are the genuine, usual and customary signatures of the persons executing this Agreement and are fully binding on such persons and entities, and each person signing is legally and mentally competent to sign this Agreement and is fully authorized by law to bind himself or the principal on whose behalf he is signing.

//

//

//

WHEREFORE, THE FOLLOWING PERSONS FREELY AND VOLUNTARILY SIGN
THIS AGREEMENT ON THE DATES INDICATED BELOW:

DATED this _____ day of _____, 2019.

Lakes at Lemmon Valley, LLC

By: _____
Charles Bluth

Title: _____

STATE OF NEVADA

COUNTY OF WASHOE

On this _____ day of _____, 2019, before me the undersigned, a Notary Public
in and for said County and State, appeared CHARLES BLUTH, known to me, or proven to me
by reliable evidence, to be the person who executed the above and foregoing instrument,
SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS, and who acknowledged to me
that this instrument is freely and voluntarily executed for the purposes therein mentioned.

NOTARY PUBLIC

[Intentionally left blank]

Washoe County:

By: _____
Washoe County Commission Chair

Date: _____

Attest:

Washoe County Clerk

APPROVED AS TO FORM AND CONTENT:

Dated this ____ day of _____, 2019.

CHRISTOPHER J. HICKS
Washoe County District Attorney

By: _____
NATHAN J. EDWARDS
Deputy District Attorney
Attorney for Washoe County