

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "Agreement") is made and entered into by and between the following parties (referred to collectively hereinafter as "the Parties"): Tony Wood, Donna Wood, Ted Allegra, Cheri Allegra (collectively "plaintiffs") and Hidden Lakes Estates Homeowners' Association, a California mutual benefit, nonprofit corporation ("the Association" or "HOA" herein).

RECITALS

This Agreement is based upon the following facts and representations:

Plaintiffs commenced an action in the Superior Court of California, County of Placer Case No. SCV 16896, alleging that a common area lake owned by the Association was and is leaking water onto their properties, thus constituting a trespass/nuisance which has caused, and continues to cause, property damage and other harm to them.

The Association has denied liability on all claims alleged. The Parties recently completed mediation before Buzz Wiesenfeld on September 27, 2005. The mediation process resulted in a conditional settlement agreement, which the Parties wish to formalize in this Agreement.

Rather than engage in litigation, the Parties have reached a settlement of plaintiffs' claims. Pursuant to the terms set forth herein and in furtherance of their desire to avoid the costs, uncertainty and delay of prosecuting and defending the action, and to settle and terminate fully and forever all rights, claims, obligations, conflicts, causes of action, each and every one between them and among them that arise out of, are based upon, or relate in any way to the facts recited above and/or the claims underlying the action, the Parties make this Agreement as a complete and final resolution of their differences.

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants, terms and conditions set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

i. Release and Waiver of All Claims

In exchange for the unallocated payment of _____ on behalf of defendant Hidden Lakes Estates Homeowners Association by Philadelphia Indemnity Insurance Company, Plaintiffs, for and on behalf of themselves, their heirs, executors, administrators, successors, predecessors, assigns, insurers, parents, attorneys, parent corporations, subsidiaries, related entities, trustees, partners, shareholders, officers, directors, agents, employees, and third party administrators, hereby release and discharge Hidden Lakes Estates Homeowners Association, Philadelphia Indemnity Insurance Company, their respective heirs, executors, administrators, successors, predecessors, assigns, insurers, attorneys, parent corporations, subsidiaries, related entities, trustees, partners, shareholders, officers,

directors, agents, employees, and third party administrators, from any and all claims, demands, causes of action, obligations, damages, and liabilities of any kind and nature whatsoever, whether in law or in equity, which either party ever had, now has, or may in the future arising from the claims asserted in the operative complaint and predecessor complaint in Superior Court of California, County of Placer Case No. SCV 16896, except as limited by the provisions of Civil Code § 1668.

2. **Waiver of California Civil Code § 1542**

Plaintiffs, and each of them, acknowledge that there is a risk that, prior to the execution of this Agreement, they may have incurred, suffered, or sustained injury, loss, damage, costs, attorneys' fees, or expenses, which are in some way caused by and/or connected with the persons, entities, the matters referred to in this Agreement, and which are unknown or unanticipated at the time that this Agreement is signed, or which are not presently capable of being ascertained. Plaintiffs, and each of them, further acknowledge that there is a risk that such damages as are known may become more serious than they now expect or anticipate. Nevertheless, Plaintiffs, and each of them, acknowledge that this Agreement has been negotiated and agreed upon in light of those risks and hereby expressly waive all rights they may have in any such unknown claims and assumes the risk that the facts and law pertaining to this dispute may change or be different than is now known. The provisions of this paragraph extend to all claims actually made or which could have been made in the above operative complaint and predecessor complaint, and all claims, whether or not known, claimed or suspected, and whether currently existing or arising in the future based upon the same subject matter alleged in the operative complaint and predecessor complaint. Plaintiffs and each of them waive the provisions of California Civil Code section 1542, which provides:

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.

Plaintiffs, and each of them, waive and relinquish any rights and benefits that they may have under California Civil Code section 1542. Plaintiffs, and each of them, acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those which they now know or believe to be true, but Plaintiffs, and each of them, intend hereby fully and finally and forever to settle and to release any and all matters, disputes, and differences, known or unknown, suspected or unsuspected, which do now exist, may exist, have existed, or may exist in the future which arise out of, directly or indirectly, from the matters described in this Agreement. In furtherance of this intention, the releases herein shall be and remain in effect as full and complete general releases notwithstanding discovery or existence of any such additional or different facts.

3. **Representations and Warranties**

Each of the Plaintiffs represent and warrant that such party has not in any manner assigned, transferred, conveyed, or sold, or purported to assign, transfer, convey, or sell any right, action, cause of action, or claim arising out of, related to, or connected with the matters described herein and that such party is solely entitled to recover any damages under such claims, actions, causes of action, and rights. Each of the Plaintiffs represent and warrant that no subrogation of any cause of action, chose in action, or part thereof has taken place with respect to any of the claims released in this Agreement.

4. **Compromise**

This Agreement is the result of a compromise between the Parties hereto and shall never at any time or for any purpose be construed as an admission of liability or responsibility for any loss or damage in connection with the matters described in this Agreement or otherwise, which liability or responsibility is hereby expressly denied by each of the Parties.

5. **Agreement**

This Agreement supersedes and prevails over prior communications, agreements and understandings regarding the matters contained herein between the signatories hereto or their representatives. Any representation, promise or condition in connection with such matters that is not incorporated in this Agreement shall not be binding upon any of the Parties.

6. **Binding Effect**

This Agreement shall be binding upon, and shall inure to the benefit of, the Parties and their respective heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, affiliated and related entities, officers, directors, principals, agents, employees, assigns, representatives and all persons, firms, associations, and/or corporations connected with them, including without limitation their insurers, sureties, attorneys, consultants, accountants, and appraisers, except as expressly provided herein.

7. **Construction**

This Agreement was jointly drafted by counsel for the Parties hereto, and no Party shall be deemed to be the draftsman of this Agreement for purposes of construction or interpretation of terms or otherwise. In the event that any provision of this Agreement should be held to be void, voidable or unenforceable, the remaining portions hereto shall remain in full force and effect.

8. **Paragraph Headings**

Each paragraph heading in this Agreement is included solely for the purpose of convenience and is not intended to change in any way the meaning of any provision in the Agreement.

9. **Benefit of Counsel**

The advice of independent legal counsel has been obtained by each of the Parties hereto prior to entering into this Agreement.

10. **Governing Law**

This Agreement shall be interpreted in accordance with the laws of the State of California, excluding its conflict of law rules.

11. **Warranty of Authorized Signatories**

Each of the signatories warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for which he or she purports to sign.

12. **Cooperation**

Each Party hereto agrees to execute and deliver such further instruments and documents or to take such further action as may reasonably be requested by any other party to effectuate the intent of this Agreement, including but not limited to this document and dismissals with prejudice of the Complaints.

13. **Invalidity**

Should any provisions of this Agreement be held invalid or illegal, such illegality shall not invalidate the whole of this Agreement but, rather, the Agreement shall be construed as if it did not contain the illegal part, and the rights and obligations of the Parties shall be construed and enforced accordingly.

14. **Counterparts and Facsimiles**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute a single instrument. The Parties agree that the signature of any party or party representative may be by facsimile, and such facsimile shall be treated as an original signature for purposes of this Agreement.

15. **Attorneys' Fees and Costs**

The Parties hereto acknowledge and agree that each of them shall bear their own attorneys' fees, costs, and expenses arising out of and/or connected with the dispute which is the subject of this Agreement and County of Placer Case No. SCV 16896, except that, in the event any action is brought by any party hereto to enforce this Agreement, the prevailing party or parties shall be entitled to reasonable attorneys' fees and costs, in addition to all other relief to which that party or those parties may be entitled.

16. Confidentiality Agreement

Each of the Plaintiffs represent and warrant that the amount of the payment shall remain **strictly confidential**. The amount of payment shall not be admissible, nor be referred to, directly or indirectly, in other litigation, or to any third parties, except by compulsion from a court of competent jurisdiction or by written permission of the Hidden Lakes Estates Homeowners Association. Plaintiffs agree to use their best efforts to maintain such confidentiality from this date.

17. Order of Performance

A. Attorney Peterson shall promptly forward completed W-9 forms to attorney Fritsch, and they shall promptly file a Notice of Settlement with the court no later than December 2, 1005;

B. Attorney Fritsch shall promptly order from Philadelphia Indemnity Insurance Company a settlement draft in the amount of \$275,000 (two hundred seventy five thousand dollars) payable to "Tony and Donna Wood; and Ted and Cheri Allegra, and their attorneys MILLSTONE, PETERSON & WATTS LLP" and referencing the Superior Court of California, County of Placer Case No. SCV 16896;

C. Attorney Peterson shall forward properly and fully executed forms of Settlement Agreement and a Request for Dismissal of the entire action with prejudice no later than December 2, 2005;

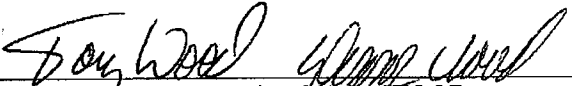
D. Upon receipt of properly executed settlement documents from plaintiffs, and the settlement draft from Philadelphia Indemnity Insurance Company, and in no event later than December 19, 2005, attorney Fritsch shall concurrently deposit the draft to attorney Peterson via overnight mail and the dismissal to the court for filing via U.S. mail;


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HLE EXHIBIT 5

E. Attorney Fritsch shall cause a Notice of Entry of Dismissal to be served, concluding this matter in its entirety.

Dated: 12/5/05 By: 
 TONY WOOD and DONNA WOOD

Dated: 12/5/05 By: 
 TED ALLEGRA and CHERI ALLEGRA

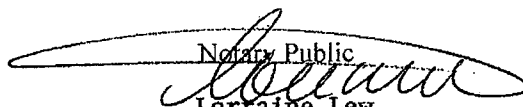
NOTARIAL ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)
 COUNTY OF Placer) ss.
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On the 5th day of December, 2005, before me, Lorraine Lew (Notary Public) personally appeared ~~personally known to me~~ or proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed same in his authorized capacity, and that by his signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.


Tony Wood, Donna Wood, Ted Allegra and Cheri Allegra
 IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year last above written.




 Notary Public
 Lorraine Lew

APPROVED AS TO FORM:
 Dated: 12/5/05

MILLSTONE, PETERSON & WATTS

By: 
 Glenn W. Peterson
 Attorneys for Plaintiffs