

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

In consideration of the mutual covenants and releases contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, VENTURA COUNTY WATERWORKS DISTRICT NO. 1, ("District") and PARDEE HOMES, a California corporation ("Pardee"), hereby enter into this Settlement Agreement and Release of Claims ("Agreement") on the following terms:

1. The District's Claims. In connection with the development of a new master-planned housing community, Pardee constructed and installed certain water and sewer improvements at Tracts 5045-3 & 5045-4 (Project Number 31538 / 32538) in Moorpark, California (the "Water and Sewer Project"). To secure Pardee's performance of the Water and Sewer Project, the District required Pardee to procure surety bonds numbered 52BSBDE2478 & 52BSBDE2479 (the "Bonds"), which Bonds are still in-force as of the Effective Date hereof. The District alleges that: (a) on November 18, 2012, the District informed Pardee of sewage backup and overflow problems related to the 8-inch sewer line in Tract 5045 between Station 4+66 and Station 7+68; (b) Pardee's construction of the sewer was defective in that it left the system with an unacceptable "sag" that results in flow backups and requires clean-outs two to three times per year; and (c) the District has suffered or will suffer damages resulting from the foregoing, including, without limitation, (i) damages totaling \$47,600.00 relating to increased site management costs and sewer clean-out costs over the next twenty (20) years, (ii) damages related to any disruption, public inconvenience, delay, loss of use and/or loss of workman and equipment use suffered by the District related to any and all of the foregoing, and (iii) additional costs, expenses and time spent by the District related to any and all of the foregoing (collectively, the "District's Claims"). Pardee disputes the validity of the District's Claims and denies any and all liability and/or responsibility therefor. The District has requested that Pardee pay for certain remediation steps regarding the sewer system and compensate the District for its damages in exchange for a full and final specific release of the District's Claims against Pardee and its agents.

2. Full and Final Resolution of the District's Claims. The parties hereto have determined that it is in their respective best interests to fully and finally resolve, settle and compromise the District's Claims asserted or assertable thereby against Pardee. In consideration of the District's waiver, release and relinquishment of the District's Claims against Pardee, Pardee agrees to:

- (a) Purchase a SmartFLOE system from SmartCover Systems, including pay the installation charges, initial system setup fee, and any other items required for a complete monitoring system.
- (b) Have a technician from SmartCover Systems install the SmartFLOE at the manhole upstream of the sewer sag located at approximately Station 7+68.42, as shown on Attachment 2 to the District's September 7, 2018 letter to Pardee. Replace the existing sewer manhole cover with a hinged manhole cover.

(c) Cause SmartCover Systems to initialize the service and commence training District staff on operating the system. The SmartCover alarm system shall be set up to text alarm messages to the mobile phone of the District's sanitation system standby operator.

(d) Cause the manhole to be placed and function properly for approximately one month. If there are any issues, they must be resolved immediately, and the one-month timeline starts over. The service package shall include one year of Active Site Management (ASM), a one-year warranty on parts, a two-year warranty on power, a one-year warranty on labor, and a three-year service agreement.

(e) Pay to the District the sum total of FORTY SEVEN THOUSAND SIX HUNDRED DOLLARS AND NO CENTS (\$47,600.00).

Section 2(a) – 2(e) above shall collectively be referred to hereinafter as the "Settlement Consideration." Other than the Settlement Consideration provided by Pardee, any and all costs or expenses attributable to the District's Claims, the remediation thereof, or otherwise shall be borne exclusively by the District. Pardee and the District agree that Pardee is providing the foregoing Settlement Consideration in lieu of any and all other payments, repairs, remediation, services, replacements, alterations or consideration. The District shall be solely responsible for paying any and all federal, state and/or local income taxes that are payable on the Settlement Consideration. Furthermore, within ten (10) business days after the last of the items listed in Section 2(a) – 2(e) has been substantially completed, the District expressly agrees to take any and all actions, and execute any and all documents, that are necessary or required to extinguish, exonerate, release, and/or sign off on (as appropriate) the Bonds, as well as Bond 8887131 relating to Tract 5860.

3. Specific Release. Except for the obligations arising under this Agreement, upon the date that the last party to this Agreement executes this Agreement, (the "Effective Date"), the District hereby forever specifically releases, discharges and holds harmless Pardee and each of its agents, managers, members, owners, shareholders, officers, directors, contractors, sub-contractors, employees, attorneys, advisors, consultants, volunteers, predecessors, successors, subsidiaries, affiliates, trustees, representatives and other like parties (collectively, the "Released Parties") from any and all causes of action, actions, suits, settlements, judgments, liens, indebtedness, taxes, damages, losses, costs, expenses, fees (including attorney's fees), penalties, claims, claims for relief, liabilities and demands of every kind, nature, and character related to, arising under, or in connection with the District's Claims, the Bonds, and/or the Water and Sewer Project, whether known, or unknown, suspected or unsuspected, existing or prospective which have accrued from the beginning of time to the Effective Date (collectively, the "Released Claims"). The District acknowledges that Pardee's provision of the Settlement Consideration as described above constitutes a compromised settlement of disputed claims and is not an admission of fault or liability.

4. Effect of Specific Release. The District expressly acknowledges that this Agreement is intended to fully and specifically release the Released Claims as of the

Effective Date hereof. Each party represents and warrants that it: (a) has read this Agreement in its entirety; (b) has consulted with or had the opportunity to consult with counsel of its choosing about this Agreement; (c) understands the terms of this Agreement; and (d) freely and knowingly enters into this Agreement. To the extent the District asserts any Released Claims against the Released Parties after the Effective Date hereof, this Agreement shall operate as a complete bar thereto.

5. Non-Disparagement. Each party agrees and covenants to take no action and make no statement that is intended, or would reasonably be expected, to harm, disparage, or negatively impact the other party or any of the Released Parties or their reputation, or which would reasonably be expected to lead to unwanted or unfavorable publicity therefor.

6. Independent Investigation. Each party acknowledges that it is not relying upon any representation of the other party and that it has made its own independent investigation of all factual and legal matters related to this Agreement. Each party acknowledges that it has been afforded sufficient opportunity to consult with technical experts and legal counsel of its own choice at its own expense to evaluate the legal effects of this Agreement.

7. No Representations or Warranties. The District further declares and represents that, except for the matters expressly set forth herein, no promise, representation, warranty, inducement or agreement has been made by or on behalf of any of the Released Parties to the District relating to the Released Claims. Further, the District agrees and acknowledges that the Released Parties expressly disclaim any and all: (a) liability or responsibility in connection with any repair, replacement, installation, reinstallation, alteration, and/or remediation either attributable to, or paid for with, the Settlement Consideration; and (b) warranties (express or implied) in connection with (i) any repair, replacement, installation, reinstallation, alteration, and/or remediation either attributable to, or paid for with, the Settlement Consideration, (ii) any workmanship related to the activities described in (i), or (iii) any materials used in connection with the activities described in (i).

8. Entire Agreement; Modification. This written Agreement constitutes the entire agreement between the parties hereto. This Agreement is intended by the parties as a final expression of their agreement with respect to such terms as are included herein and may not be contradicted by evidence of any prior agreements or contemporaneous oral agreement. This Agreement is fully integrated. This Agreement may not be amended, modified, altered, or changed in any respect whatsoever except by a further agreement in writing executed by Pardee and the District.

9. Interpretation. The language in all parts of this Agreement shall be governed and construed under the laws of the State of California, without reference to or application of principles concerning conflicts of laws of any jurisdiction, according to its normal and usual meaning, and not STRICTLY FOR OR AGAINST EITHER Pardee or the District.

10. Attorney's Fees. Each party will pay the fees, expenses, and/or other related costs of its own attorneys in connection with the preparation, negotiation and

execution of this Agreement. To the fullest extent allowed by law, each party hereby agrees that in the event that legal action is commenced regarding this Agreement, each party hereby waives its right to a jury trial.

11. Savings Clause. If any provision of this Agreement is held to be invalid, void, or illegal by any court of competent jurisdiction, that provision shall be deemed severable from the remainder of this Agreement and shall in no way affect, impair or invalidate the remaining provisions herein contained. If any provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

HAVING ELECTED TO EXECUTE THIS AGREEMENT, TO FULFILL THE PROMISES AND TO RECEIVE THE SETTLEMENT CONSIDERATION SET FORTH ABOVE, THE DISTRICT FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTERS INTO THIS AGREEMENT INTENDING TO WAIVE, SETTLE, AND SPECIFICALLY RELEASE ALL "RELEASED CLAIMS" AS DESCRIBED HEREIN AS OF THE EFFECTIVE DATE HEREOF.

IN WITNESS WHEREOF, the parties hereto do enter into this Agreement as of the Effective Date described herein.

"DISTRICT"

VENTURA COUNTY WATERWORKS
DISTRICT NO. 1,

By: 

Chair, Board of Ventura County
Waterworks District No. 1

Dated: 3/12/19

"PARDEE"

PARDEE HOMES,
a California corporation

By: 

Dated: 02/26/19

ATTEST: MICHAEL POWERS
Clerk of the Board of Supervisors
County of Ventura, State of California

By: 

Deputy Clerk of the Board

