

## SETTLEMENT AGREEMENT AND GENERAL RELEASE

This SETTLEMENT AGREEMENT (“Agreement”) is made and entered into between and among KARUNA LAND LLC (together, “Plaintiff/Petitioner”) and the County of Marin and its Board of Supervisors, including all named County Defendants (together, “County”). Plaintiff/Petitioner and the County are sometimes referred to herein collectively as the “Parties” or individually as “Party.”

### RECITALS

**WHEREAS**, Karuna is the owner and occupant of real property consisting of approximately 11 acres located at and commonly known as 1 Sacramento St., San Anselmo, CA (APN 177-220-10 “the Property”).

**WHEREAS**, on or about November 9, 2009, Karuna filed a Petition for Writ of Mandate to Review Final Administrative Decision and Civil Complaint for Declaratory Relief in the Superior Court of California, County of Marin, Case Number CIV 095695, related to the denial by the County of a development application submitted on or about September 12, 2008 for two single family homes and a remainder lot on the Property.

**WHEREAS**, on or about June 12, 2012, Karuna and the County entered into a Settlement Agreement (“2012 Settlement Agreement”) regarding in Case Number CIV 095695.

**WHEREAS**, on or about July 24, 2012, Karuna filed a Master Plan / Vesting Tentative Map / Precise Development Plan (“Karuna MP/VTM/PDP”) application, called the Conditional Alternative Plan (“CAP”).

**WHEREAS**, on or about January 28, 2014, a hearing on the CAP was held before the Board. The Board voted unanimously to approve the Master Plan and the CEQA negative declaration determination and deny Karuna’s Vesting Tentative Map / Precise Development Plan application for the Property.

**WHEREAS**, on or about April 25, 2014, Karuna filed a petition for writ of administrative mandamus to Review Final Administrative Decision and Civil Complaint for Declaratory Relief, Breach of Contract, and Inverse Condemnation in the Superior Court of California, County of Marin, Case Number CIV 1401555. (“The Litigation.”)

**WHEREAS**, on or about February 18, 2015, Karuna filed a First Amended Complaint and added Specific Performance to the original causes of action in the Superior Court of California, County of Marin, Case Number CIV 1401555.

**WHEREAS**, on or about September 1, 2016, an interlocutory writ order was issued directing the County to reconsider its approval of Ordinance No. 3611 (Karuna Master Plan) and Resolution No. 2014-06 (denial of Karuna subdivision and precise development plan) (“Ruling”).

**WHEREAS**, on or about June 13, 2017, a remand hearing on the CAP was held before the Board. The Board voted unanimously to approve the Karuna MP/VTM/PDP application for the Property.

**WHEREAS**, on or about March 9, 2018, Karuna filed a Final Map/Improvement plan application for the Property (“Karuna FM/IP”) which the County denied on or about July 23, 2018.

**WHEREAS**, on or about February 11, 2019 Karuna filed a Third Amended Petition (“TAP”) and on February 22, 2019, Karuna filed a Third Amended Complaint (“TAC”) to reflect matters in the case that occurred between June 13, 2017 and August 7, 2019.

**WHEREAS**, on March 5, 2019, the Court denied Karuna's Third Amended Petition for writ relief.

**WHEREAS**, a bench trial on the TAC commenced on June 10, 2019. On the morning of June 12, 2019, the parties asked the Court for a brief recess to reexamine the possibility of resolving the case through a settlement agreement. The afternoon of June 12, 2019, the parties began Court supervised settlement discussions in Department B. The afternoon of June 13, 2019, the parties reached a conditional settlement of the Litigation, which was put on the record under CCP 664.6. The settlement was conditioned on Board of Supervisors approval on June 18, 2019. The conditional settlement contemplated the execution of a Settlement Agreement and General Release and the execution of a Final Stipulated Judgment.

**WHEREAS**, as a result of these settlement negotiations, the Parties believe that it would be in their respective best interests to settle their differences on the terms specified in this Agreement. Thus, the Parties have executed and delivered this Agreement in settlement, fully and forever, of all rights, duties, liabilities, claims, demands, damages, rights of action, and causes of action, whether known or unknown, among said parties relating in any way to the Litigation.

## **AGREEMENT**

Based upon the above recitals, it is mutually agreed upon by and among the Parties hereto as follows:

1. Full Satisfaction of All Claims for Attorneys' Fees. This Agreement shall fully satisfy any and all claims made by Petitioner/Plaintiff for attorneys' fees and costs in the Litigation against the County. Petitioner/Plaintiff shall not file a motion for attorneys' fees for any work performed in the Litigation. Each party is to bear its own costs and attorneys fees in this Litigation.

2. Supersedes All Prior Agreements and Settlement Agreements Between the Parties. The Parties agree that this Settlement Agreement and General Release shall supersede all prior agreements and settlement agreements between the parties. Thus, for example, upon execution of this agreement, the 2012 Settlement Agreement shall no longer have any legal force or effect, whatsoever.

3. Stipulated Judgment. On or before June 19, 2019, the Parties shall endorse the Stipulated Judgment attached hereto as **Exhibit A** and shall present the Stipulated Judgment to the Marin Superior Court, Department B, for entry as final judgment on all of Plaintiff/Petitioners' claims against the County that were or could have been asserted in the TAC.

4. County agrees to:

a. Make Payment of \$100,000 to Karuna LLC (c/o John Sharp client trust account) cash within 60 days.

- b. Provide \$10,000 allowance to Karuna for Final Map and Improvement Plan check fees.
- c. As of today's date forward, assign Thomas Lai as the Project Planner or Supervising Planner for the purposes of processing the planning portion of the Final Map (provided workload allows for Mr. Lai to be available to work on the project).
- d. Process an approval to revise affordable housing condition of approval to read:  
 "Concurrent with the sale of the first lot or no later than June 30, 2022, whichever occurs first, the applicant shall, in satisfaction of all BMR requirements, pay the in lieu fee of \$232,000 for one affordable unit."
- e. Process an approval to revise TDR Calculation from 8 TDRs to 10 TDRs
- f. Process an approval to replace in every instance reference to 1,500 square feet of floor area with "1,500 square feet (strawbale construction) or 1,900 square feet (standard construction)" and to grant the maximum allowable 6-year time period to vest the Precise Development Plan.
- g. Process an approval to remove in every instance reference to a conservation easement in favor of a deed restriction stipulating that the remainder parcel would have no development rights for residence(s) (including accessory dwelling units), with allowance for other non residential uses consistent with the RMP zoning.
- h. Process the approvals contemplated in paragraphs d, e, f, and g above, on July 16, 2019.

5. Resolution of Potential Future Disputes Regarding Final Map and Improvement Plan. Should any dispute arise from Karuna's pursuit of a Final Map and Improvement Plan after the Board's July 16, 2019 text amendments, the parties agree to mediate said dispute within 30 days, at shared cost, at Resolution Remedies. Should mediation fail to resolve the dispute, Karuna's sole remedy shall be to file a writ of mandate pursuant to CCP 1085. The parties further agree to an expedited settlement conference with a Judicial Officer of the Court within 30 days of the filing of any CCP 1085 writ action.

6. CCP 664.6; Attorneys Fees and Costs in Any 664.6 Motion to Enforce. The parties agree that paragraphs 4a-4h are enforceable through CCP 664.6. For example, if the County failed to process the text amendment about the remainder parcel contemplated in paragraph 4g, Plaintiff/Petitioner could bring a motion to enforce under CCP 664.6. But, if after the County took the specific action contemplated in Paragraph 4g, a dispute arose regarding a future permit application for a new use on the remainder parcel, said dispute would not be governed by 664.6. Rather, said permitting dispute could only be challenged as any other permitting dispute could, under generally applicable law. Should any action be brought to enforce paragraphs 4a-4h of this settlement agreement under CCP 664.6, each party shall bear its own costs and attorneys fees.

7. Release. The Parties agree to release and forever discharge each other and their respective officers, directors, employees, agents, attorneys, legal successors and assigns, from any and all claims, actions, causes of action, obligations, liabilities, indebtedness, breach of duty, claims for writ of mandate, claims for injunctive relief and other equitable relief, suits, liens, losses, costs or expenses, including attorneys' fees, of any nature whatsoever, whether known or unknown, fixed or contingent, liquidated or unliquidated, suspected or unsuspected, foreseen or unforeseen, that arise out of, are based upon, or relate in any way to any of the claims for attorneys' fees made in the Litigation. The Parties intend this Settlement Agreement to be a full and final resolution of any and all disputes regarding the Litigation, including any dispute regarding attorneys' fees and costs in the Litigation.

8. Waiver of Civil Code Section 1542

The foregoing release is intended to extend to all such claims, known or unknown, suspected or unsuspected, and each party expressly waives and relinquishes any rights and benefits which they have or may have under Section 1542 of the Civil Code of the State of California, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

9. Consultation with Counsel. Each of the Parties acknowledges that: (1) it has specifically reviewed with its attorney the meaning and effect of the release contained in Section 5 and the language from Civil Code section 1542 quoted in Section 6; (2) each party's attorney(s) have fully explained the impact of these provisions; and (3) each party knowingly accepts the risks associated with these provisions.

10. Execution Not an Admission. This Agreement is strictly for the purposes of compromising a dispute. By entering into this Agreement, no party hereto admits that the claims or contentions of the other were or are valid or meritorious. Each party hereto has in the past denied and continues to deny the claims, assertions, allegations and contentions of the others.

11. Advice of Counsel. The undersigned and each of them hereby declare and represent that, in effecting this Agreement, each has received full legal advice as to its respective legal rights, and each hereby certifies that he, she, or it has read the entirety of this Agreement and fully understands the same.

12. Applicable Law. The Parties hereby agree that this Agreement is made, executed, entered into, and intended to be performed within the State of California and that this is a California agreement and is to be construed as such.

13. Additional Documents and Instruments. Each of the Parties hereto agrees to execute and deliver to each of the other Parties hereto all additional documents, instruments, and agreements as are required to implement the terms and conditions of this Agreement.

14. No Assignment. The Parties represent that they have made no assignment of the claims released herein, and that no signature other than those set forth below is required to effectuate this Agreement, including the release set forth herein. If Petitioner/Plaintiff has assigned the claims released herein and the County is subject to claims based upon or arising in connection with any prior assignment or transfer, the County may seek any and all available relief, including, but not limited to specific performance of this agreement and/or damages.

15. Binding on Successors and Assigns. The Parties agree that the obligations and benefits arising out of the Agreement, including, but not limited to, the release set forth herein, and each of the terms of this Agreement, shall be binding upon and shall inure to the benefit of any successors and assigns of the Parties.

16. Integration. This Agreement contains the entire agreement and understanding concerning the subject matter herein and supersedes and replaces any prior negotiations and agreements among the Parties, whether written or oral. Each of the Parties acknowledges representation by counsel throughout all of the negotiations that preceded the execution of this document and the document has been executed with the consent, and upon the advice, of counsel. Each of the Parties acknowledges that no party or agent or attorney of any other party has made any promise, representation, or warranty, express or implied, not contained in this Agreement, to induce another party to execute this instrument.

17. Warranty of No Undue Influence. The Parties hereby warrant and represent that they are not aware of any duress, menace, fraud, coercion, or undue influence that has caused any party to enter into this Agreement. Each of the Parties hereby warrants and represents that it is not aware of any acts or conduct by which, in executing this Agreement, the mind of any of the Parties hereto has been overcome by the will of another person.

18. Authorization. Each person executing this Agreement warrants that he or she has full authorization to execute this Agreement on behalf of the entity that he or she is signing on behalf of, and further represents that all necessary approvals have been obtained to execute and implement this Agreement.

19. Construction of Agreement. This Agreement shall be construed as if it were drafted by all Parties.

20. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original instrument.

21. Amendment. This Agreement may not be amended in any respect without the written consent of all the Parties hereto.

22. Effective Date. This Agreement shall become effective on the date that all parties have executed the Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement on the date next to their signatures. By signing below, each individual represents he or she has read, agrees to, and fully understands the above terms and their binding nature, and that he or she has full authority to bind any entity or organization, including individual members of such entity or organization, for which he or she signs.

Dated: \_\_\_\_\_

KARUNA LAND, LLC


By: \_\_\_\_\_

Jerome Draper

Dated: \_\_\_\_\_

COUNTY OF MARIN

By: \_\_\_\_\_

  
Kathrin Sears  
President of the Marin County Board of Supervisors

APPROVED AS TO FORM:


Dated: \_\_\_\_\_

By: \_\_\_\_\_

John Sharp, Attorney for Karuna Land LLC

Dated: 6/19/19

By: \_\_\_\_\_

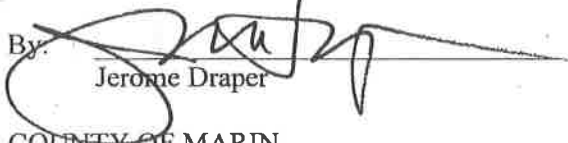
  
Brian Case, Deputy County Counsel  
County of Marin

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement on the date next to their signatures. By signing below, each individual represents he or she has read, agrees to, and fully understands the above terms and their binding nature, and that he or she has full authority to bind any entity or organization, including individual members of such entity or organization, for which he or she signs.

Dated: 6-18-19

KARUNA LAND, LLC

By:

  
Jerome Draper

COUNTY OF MARIN

Dated: \_\_\_\_\_


By:

\_\_\_\_\_  
Kathrin Sears  
President of the Marin County Board of  
Supervisors

APPROVED AS TO FORM:

Dated: 6/19/19

By:

  
John Sharp, Attorney for Karuna Land LLC

Dated: \_\_\_\_\_

By:

\_\_\_\_\_  
Brian Case, Deputy County Counsel  
County of Marin