

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT ("Agreement") is made and entered into in Alameda County, California, as of July 11, 2017, by and between THE MARINA INN (the "Inn"), on the one hand, and the CITY OF SAN LEANDRO ("City") and the CITY COUNCIL OF THE CITY OF SAN LEANDRO ("Council"), on the other hand (collectively, the "Parties"), with reference to and based upon the following:

RECITALS

A. The Inn operates and maintains the property at 68 Monarch Drive, San Leandro, California (the "Marina Inn Property"), pursuant to a ground lease entered into between the City and the Inn approved by the City of San Leandro City Council April 2, 1984, and executed April 5, 1984 (the "Lease").

B. The Inn is a member of the Coalition for the San Leandro Shoreline, an unincorporated association.

C. On or about July 20, 2015, the Council adopted Resolution No. 2015-125 (the "Resolution") certifying an Environmental Impact Report (the "EIR"), adopting mitigation findings, findings concerning alternatives, a statement of overriding considerations and a mitigation monitoring program under the California Environmental Quality Act ("CEQA") for the specific activities and approvals that collectively constitute the "San Leandro Shoreline Development Project" described in Chapter 3 ["Project Description"] of the EIR (the "Project").

D. On or about August 18, 2015, Coalition for the San Leandro Shoreline filed a Verified Petition for Writ of Mandate ("Petition") against the City entitled *Coalition for the San Leandro Shoreline, an unincorporated association, v. City of San Leandro, City Council of San Leandro and Does 1 through 10*, Alameda County Superior Court Case No. RG15782404 (the "Action"), in which it alleged that the City had violated CEQA by its actions in approving the Resolution.

E. On or about June 8, 2016, the City filed an Answer to the Petition in the Action, in which the City denied all of the material allegations in the Petition and asserted affirmative defenses.

F. The parties have reached a settlement to resolve all issues relating to the Action, the Resolution, and the Project (collectively, the "Dispute"), in accordance with the terms of this Agreement. This Agreement resolves all issues relating to the Dispute.

AGREEMENT

WHEREFORE, for valuable consideration, including the obligation and terms as set forth below, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Disposition of Action.

a. Within seven (7) days after execution of this Agreement, the Inn shall file or cause to be filed, on behalf of Petitioner Coalition to Save the San Leandro Shoreline, a Request for Dismissal of the Action, with prejudice, in its entirety, both as to all claims in the Petition, and as to all parties named in the Petition.

b. In filing the dismissal contemplated by this paragraph, counsel for the Inn shall provide conformed copies of the Requests for Dismissal and any other documents filed with the Court to counsel for the City.

2. Amendment of the Lease.

a. Within no longer than three (3) calendar months after the Inn's dismissal of the Action with prejudice pursuant to Paragraph 1, the City will amend the Lease to extend the current term of said Lease by a period of five (5) calendar years, and further amend the Lease to require that the Inn shall comply with the provisions of the City's Living Wage Ordinance (City of San Leandro Municipal Code Chapter 1-6), with said compliance to be required to commence as of a date no later than eighteen (18) calendar months after the date of execution of this Agreement.

b. All other rights, terms, conditions, provisions, and requirements of the Lease shall remain in full force and effect.

3. Negotiations toward Further Extension of Lease Term and Location of Future Hotel.

a. In recognition of this Agreement, the Parties commit to conduct good-faith negotiations to extend the term of the Lease to be at least equivalent to the term of any lease or other agreement the City enters into for the construction and operation of a future hotel that may be constructed and operated under the Project.

b. The City further commits to pursue location of the possible future hotel at the site set forth on Exhibit A to this Agreement. However, this Agreement does not, and shall not be construed to, commit the City to approve a hotel at the site set forth on Exhibit A, or any other site.

c. Also in recognition of this Agreement, the Inn agrees that good-faith negotiations under this section of this Agreement shall include discussion of capital improvements by the Inn to the Marina Inn Property.

4. Mutual Release:

a. Upon the Inn's dismissal of the Action with prejudice pursuant to Paragraph 1(a) above, and in full and final settlement of the disputes described in the Recitals above, the parties agree to release and forever discharge each other and their respective shareholders, officers, directors, employees, agents, attorneys, legal successors and assigns, of

any and all claims, actions, causes of action, obligations, liabilities, indebtedness, breach of duty, 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 the claims asserted and issues raised in the Action.

b. Notwithstanding paragraph 4a above and 4c below, the City shall comply with and enforce all obligations imposed by law and regulation upon Project-related activities, including all provisions of Mitigation Measures relating to impacts AIR-2, AIR-5, NOISE-1, NOISE-2, NOISE-3 and NOISE-4, as set forth in the Mitigation and Monitoring Reporting Program approved in the Resolution and provision, by the City, of means of vehicular and pedestrian ingress to/egress from the Marina Inn Property at all times of construction of the Project. The Inn shall attempt to resolve any dispute under this subsection with the on-site complaint and enforcement manager (as identified in Mitigation Measure NOISE-4, bullet no. 10) as a pre-requisite to filing any claim against the City.

c. Waiver of Civil Code Section 1542: The foregoing releases are 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 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.”

d. Consultation with Counsel: Each party acknowledges that they have Counsel concerning this matter. Each party agrees that it shall not claim or argue that lack of Counsel has impacted its decision to enter into this Agreement including effect of the release set forth in subparagraph (a), the language from Civil Code Section 1542 quoted in subparagraph (c), and the waiver contained in subparagraph (c). The Parties knowingly accept the risks associated with this Agreement.

5. Execution Not an Admission Concerning the Action: Concerning the Action, this Agreement settles a dispute. By entering into this Agreement, no party hereto admits that the Petition claims or contentions of the other in the Action 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.

6. 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 their respective legal rights and each hereby certifies that he, she or it has read all of this Agreement and fully understands the same.

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

8. 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 required to take such additional actions as are required to implement the terms and conditions of this Agreement.

9. 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. Each party shall indemnify each other party, defend, and hold it harmless from and against any claims based upon or arising in connection with any prior assignment or transfer, or any such purported assignment or transfer, or any claims or other matters released or assigned herein.

10. 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, coalition members, and assigns of the parties.

11. Integration. This Agreement contains the entire agreement and understanding concerning the subject matter herein and supersedes and replaces any prior negotiations and agreements between the parties, whether written or oral. Each of the parties acknowledges representation by counsel throughout all of the negotiations which 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 the other party to execute this instrument.

12. 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 which 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; and, accordingly, by signing this Agreement, each signifies full understanding, agreement and acceptance. The Parties acknowledge and represent that this Agreement has been prepared and its negotiation has been carried on by the joint effort of the Parties. This Agreement shall be construed as if it were drafted by all Parties and not strictly for or against any one or more of the Parties. Each Party to this Agreement acknowledges and represents that he/she/it has read this Agreement and understands all of its terms.

13. Attorneys' Fees and Costs.

a. Fees and Costs Already Incurred. Each Party shall be responsible for its own costs and attorneys' fees incurred in connection with the Dispute and this Agreement, except as set forth in subsection b below.

b. Proceedings to Enforce Agreement. In any proceeding at law or in equity to enforce any of the provisions or rights under this Agreement, the prevailing party shall be entitled to recover from the unsuccessful party all costs, expenses and reasonable attorney's fees incurred in the enforcement proceeding by the prevailing party (including without limitation such costs, expenses and fees on any appeals) and if such prevailing party shall recover judgment in any such action or proceeding, such costs, expenses, including those of expert witnesses, and attorney's fees shall be included in and as part of the judgment.

14. Authorization. Each person executing this Agreement on behalf of a Party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity he or she purports to bind and that such Party has full right and authority and has obtained all consents and approvals and has taken all actions necessary to enter into this Agreement, perform all of its obligations thereunder, and consummate all transactions contemplated under this Agreement.

15. Construction of Agreement. This Agreement shall be construed as if it were drafted by all parties.

16. Severability. In the event that any provision of this Agreement should be held to be void, voidable, or unenforceable, the remaining portions thereof shall remain in full force and effect.

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

18. Notice. Any notice, demand, request, or other communication required or permitted to be given under this Agreement, (a) shall be made in writing; (b) shall be delivered by one or more of the following methods: (1) by personal delivery (with notice deemed given when delivered personally); (ii) by overnight courier (with notice deemed to be given upon written verification of receipt); or (iii) by certified or registered mail, return receipt requested (with notice deemed given upon verification of receipt); and (c) shall be addressed to a party as provided in this section or such other address as such party may request by notice given in accordance with this section.

The Inn:

% Apple Inns, Inc.
3857 Birch Street, Suite 482
Newport Beach, CA 92660
Attn: Alison A. Miller

With a copy to:

Leibold McClendon & Mann, P.C.
9841 Irvine Center Drive, Suite 230
Irvine, CA 92618
Attn: John G. McClendon

The City and Council:

The City of San Leandro
835 East 14th Street
San Leandro, CA 94577
Attn: City Clerk

with a copy to:

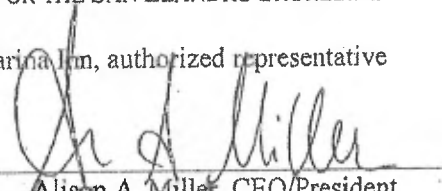
Meyers Nave Riback Silver & Wilson, PLC
555 12th Street, Suite 1500
Oakland, CA 94607
Attn: Richard D. Pio Roda

IN WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement.

Dated: 7-10, 2017


COALITION FOR THE SAN LEANDRO SHORELINE

By: The Marina Inn, authorized representative

By 
Alison A. Miller, CEO/President

APPROVAL AS TO FORM:

LEIBOLD McCLENDON & MANN, P.C.

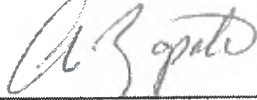
By 
John G. McClendon
Attorneys for Coalition for the San Leandro Shoreline


[signatures continued on next page]

[signatures continued from prior page]

Dated: 7/11, 2017

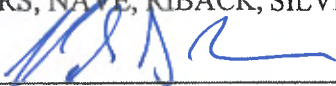
CITY OF SAN LEANDRO and
CITY COUNCIL OF THE CITY OF SAN LEANDRO

By 
Chris Zapata, City Manager

ATTEST:
By  FER
Tamika Greenwood, City Clerk

APPROVAL AS TO FORM:

MEYERS, NAVE, RIBACK, SILVER & WILSON, PLC

By 
Peter S. Hayes
Attorneys for CITY OF SAN LEANDRO and
CITY COUNCIL OF THE CITY OF SAN LEANDRO

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