

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is dated, entered into, and made effective on this ___ day of June, 2017 ("Effective Date"), by and between the Tangerine Crossing Homeowners Association, an Arizona non-profit corporation ("Association"), and The City of Tucson ("City") (collectively, "Parties").

RECITALS

WHEREAS, The Association is an Arizona non-profit corporation that governs and manages a gated community in Marana, Arizona.

WHEREAS, the City employs Ramon Batista, Assistant Chief of the Tucson Police Department.

WHEREAS, Mr. Batista is a member of the Association and bound by the First Amended and Restated Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for Tangerine Crossing, record on January 25, 2007 with the Pima County Recorder's Office at Sequence No. 20070171206 ("CC&Rs").

WHEREAS, Mr. Batista was driving an assigned City vehicle on May 5, 2016 when he collided with the Association's entry gate.

WHEREAS, The collision damaged the gate, necessitating repairs that cost the Association \$7,307.00 to repair.

WHEREAS, the damage gave rise to claims against Mr. Batista and the City under Arizona law and the CC&Rs.

WHEREAS, The Parties desire to resolve and settle this dispute amicably without litigation and make this Agreement in compromise and full and final settlement of all disputes and claims arising from or relating to the incident, all in accordance with the terms, conditions, covenants, and releases set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and promises herein contained, the Parties hereby agree as follows:

1. Authority. Each person signing this Agreement represents that they have the authority and capacity to bind the Parties. The Parties represent and warrant

that they have the right and authority to release, relinquish, and settle the claims described herein.

2. Monetary Payment. The City shall pay Five Thousand Dollars (\$5,000.00) to the Association in settlement of the Association's claims against the City. The City shall deliver payment in the form of a check made out to Tangerine Crossing Homeowners Association.

3. Release of Claims. The Association waives any and all claims or causes of action of any kind, only with respect to issues arising out of the damage to the entry gate, against Mr. Batista and the City, its agents, employees, directors, officers, and managers, and shall not pursue further actions against Mr. Batista or the City its agents, employees, directors, officers, and managers, for damages arising out of this incident.

4. Modification. This Agreement shall not be altered, modified, or amended, except by written agreement signed by all of the Parties.

5. Severability. If, after the date of this Agreement, any provision hereof is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, such provision will be fully severable and the remainder of the Agreement will remain enforceable and not affected thereby, provided that the overall intent of this Agreement is not vitiated by such severability.

6. Choice of Law. The validity, construction, interpretation, and administration of this Agreement will be governed by the laws of the State of Arizona. The Parties agree that in the event any action is commenced in connection with this Agreement, venue for such action or proceeding shall be proper only in a court of competent jurisdiction located in Pima County, Arizona.

7. Independent Legal Counsel. The Parties acknowledge that they have been represented by independent legal counsel in negotiations leading up to this Agreement, and in executing this Agreement. The Parties further acknowledge that they have consulted with and have been advised by their respective attorneys, and that they have executed this Agreement after independent investigation and without fraud, duress, or undue influence. Each of the Parties has read this Agreement carefully, knows and understands the contents thereof, and has made such investigation of the facts pertaining to its subject matter in the provisions of this Agreement, and all of the matters pertaining hereto as each respective party deems necessary or desirable.

8. Remedies Upon Breach. In the event that any of the Parties to this Agreement materially breaches the terms of the Agreement, the non-breaching Party

may exercise any and all remedies available to them under Arizona law consistent with their rights under this Agreement. Unless otherwise provided for in this Agreement, in the event an action is brought against a party to enforce any of the terms or provisions of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable expenses, including but not limited to, reasonable attorneys' fees and costs.

9. Counterparts. This Agreement may be signed in any number of counterparts; all counterparts are deemed to constitute one and the same instrument, and each counterpart is deemed to be an original of that instrument. Facsimile and electronically transmitted signatures shall be deemed originals.

10. Entire Agreement. This Agreement represents the entire agreement between the Parties and supersedes and controls over any and all prior agreements, understandings, and obligations that exist or may exist between the Parties, jointly and/or severally, related to the settlement and compromise of the dispute between the Parties. However, except as provided in Section 3 above, the Parties agree that this Agreement does not supersede or waive any rights or obligations under the CC&Rs between Mr. Batista and the Association.

11. Construction. This Agreement shall be deemed drafted equally by all Parties, the language of all parts of this Agreement shall be construed as a whole, according to its fair meaning, and the Parties expressly waive any common law or statutory rule of construction that ambiguities should be construed against any party.

12. Incorporation of Recitals. The Parties incorporate the Recitals to this Agreement by reference in their entirety and agree that they shall have the force and effect of stipulations of fact.

13. Captions and Headings. The captions and headings in this Agreement are inserted for convenience of the Parties only and shall not be used to interpret, construe, or in any way affect the meanings of the terms and provisions of this Agreement.

14. Execution. By signing below, the Parties certify that they have carefully read this Agreement and fully understand its contents.

15. Successors and Assigns. The Parties hereby agree that this Agreement shall be binding upon any and all successors, heirs, administrators, representatives, executors, affiliated entities, and assigns of the Parties.

16. Survival of Representations and Warranties. The representations, warranties, covenants, agreements, and releases set forth in this Agreement and in

any other instrument, document, agreement, or certificate delivered pursuant to this Agreement, shall survive the intermediate performances required of the Parties under the terms of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

**TANGERINE CROSSING
HOMEOWNERS ASSOCIATION**

CITY OF TUCSON

By: Susan V. Broomall

By: _____

Its: President

Its: _____