

## **SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

This Settlement Agreement and Mutual Release (“Agreement”) is made and entered into as of November 20, 2025 (the “Effective Date”) by and among (i) The City of Cupertino (“Cupertino”) and (ii) Kathleen Garfield (“Garfield”) to settle and resolve with prejudice all claims that they have asserted or could have asserted against one another in the Litigation (as defined below) and to terminate any and all of their contractual relationships and agreements on the terms set forth below. Cupertino and Garfield may each be referred to herein individually as a “Party” and may be collectively referred to herein as the “Parties.”

### **1. RECITALS.**

**1.1** WHEREAS, in or around 2001, Garfield and her late husband purchased 10505 Madrone Court, Cupertino, California 95014 through Cupertino’s Below Market Rate housing program. The Parties entered into a Property Value Restrictions, Resale Agreement and Option to Purchase.

**1.2** WHEREAS, in or around October 2022, Garfield defaulted on her mortgage(s) and lender Mortgage Lender Services, Inc. (“MLS”) provided the Parties with a Notice of Default and Election to Sell Under Deed of Trust.

**1.3** WHEREAS, on February 3, 2023, MLS sold the property at a public auction foreclosure sale for \$818,000.00. Both Parties made claims to MLS for the surplus funds from the foreclosure sale.

**1.4** WHEREAS, on July 26, 2024, MLS filed the Petition and Declaration Regarding Unresolved Claims and Deposit of Undistributed Surplus Proceeds of Trustee’s Sale giving rise to this litigation in the Superior Court of the State of California, County of Santa Clara, case number 24CV443930 (the “Litigation”). The Petition states that “[a]fter payment of the amounts required by Civil Code section 2924k(a)(1)–(2), there were surplus proceeds from the trustee’s sale available to potential claimants in the total amount of: \$438,275.49.”

**1.5** WHEREAS, on February 5, 2025, this Court ordered MLS to deposit the surplus funds, after deducting attorneys’ fees and costs. On February 28, 2025, MLS deposited Check #2179 with this Court for a total of \$433,786.74.

**1.6** WHEREAS, the Court scheduled a hearing on distribution of the surplus funds for November 12, 2025.

**1.7** WHEREAS, the Parties wish to avoid the burden, expense, inconvenience, and distraction of further litigation, to end the Litigation, and to terminate their contractual relationship.

**1.8** WHEREAS, the Parties have agreed to fully and finally settle and compromise all disputes that exist or may exist between them and thereby dispose of all claims (including counterclaims), complaints, and cross-complaints that have been or could have been raised by the Parties in the Litigation and to terminate any and all of their contractual relationships and agreements on the terms and conditions set forth herein.

**1.9** The Parties each acknowledge the truth and accuracy of the recitals set forth herein.

NOW, THEREFORE, in consideration of the mutual promises, covenants, warranties, representations, conditions, and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the terms and conditions set forth below, the Parties desire to, and hereby do, resolve their differences related to the Litigation and terminate any and all of their contractual relationships and agreements as follows:

**2. SETTLEMENT PAYMENT AND TERMINATION DOCUMENTS.**

In consideration of the agreements and obligations contained in this Agreement, the Court shall cause to be paid to Cupertino the total lump sum of three hundred and eighteen thousand, seven hundred and eighty six dollars and seventy four cents (\$318,786.74) payable to the “City of Cupertino” to 10300 Torre Avenue, Cupertino CA, 95014. Additionally, in consideration of the agreements and obligations contained in this Agreement, the Court shall cause to be paid to Garfield the total lump sum of one hundred and fifteen thousand dollars (\$115,000.00), payable to “Law Office of Neil Opdahl-Lopez in care of Kathleen Garfield” to 473 E. Carnegie Drive Suite 200, San Bernardino CA, 92408. Both payments are to be made within thirty (30) business days after a conformed copy of the entered Stipulated Judgment is served on the Parties.

**3. DISMISSAL OF ACTION.**

Within seven (7) calendar days after receipt of the settlement payment, Garfield shall file a request for dismissal with prejudice of her Cross-Complaint.

**4. STIPULATED JUDGMENT AND REQUEST FOR DISBURSEMENT OF FUNDS.**

Within three (3) calendar days of full execution of this Agreement by all Parties, the Parties shall file with the Court the Stipulated Judgment and Request for Disbursement of Funds, signed by a representative of each Party.

**5. WAIVER AND RELEASES.**

**5.1** The term “Claims” as used herein is defined as any claims, counterclaims, actions, causes of action whether described in the pleadings, or any other legal theory in common law, statutory law, or Constitutional law previously articulated or unarticulated, complaints, cross-complaints, grievances, suits, losses, liabilities, rights, debts, dues, sums of money, accounts, obligations, costs, expenses, liens, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, judgments, executions, penalties, fees, wages, demands, or damages of every kind and nature whatsoever, whether now known or unknown, foreseen or unforeseen, accrued or unaccrued, matured or unmatured, vested or unvested, suspected or unsuspected, fixed, conditional or contingent, whether in law, equity, or founded under statute, common law, or contract (including, without limitation, any claims of bad faith and breach of covenant of good faith and fair dealing), and including any request for attorneys’ fees or costs arising out of such Claims, but excepting any claims arising out of the duties and obligations set forth in this Agreement.

**5.2** The terms “City” and “Cupertino” as used herein shall mean, collectively and severally, the City of Cupertino and any of its respective current or former Council members, elected officials, board members, appointees, employees, consultants, third-party contractors, advisers, attorneys, agents, and other representatives acting on their behalf or by, through, under or in concert with the City.

**5.3** The term “Garfield” as used herein shall mean Kathleen Garfield and any of her current or former appointees, employees, consultants, third-party contractors, advisers, attorneys, agents and other representatives acting on behalf of or by, through, under or in concert with the Garfield.

**5.4** The term “Released Parties” as used herein shall mean, collectively and severally, Cupertino, Garfield, and any of their respective current or former predecessors, direct and indirect subsidiaries, parents, affiliated and related entities, interest holders, shareholders, partnerships, venturers, investors, partners, associates, members, managers, employees, consultants, third-party contractors, advisers, attorneys, officers, directors, agents, and other representatives acting on their behalf or by, through, under or in concert with any one or more of them.

**5.5 Release by Garfield.** For and in consideration of the covenants, warranties and releases set forth herein, and only upon the receipt and clearing of the entire Settlement Payment, Garfield does hereby irrevocably release, waive, and forever discharge Cupertino, of and from any and all Claims that Garfield ever had, now has, or hereafter may have in or related to the Litigation. In the event that the Settlement Payment shall subsequently, for whatever reason, be required to be returned or repaid, the releases by Garfield set forth in this Section shall be null and void, the rights of Garfield will be restored to the status quo ante, and all applicable statutes of limitations shall be deemed tolled.

**5.6 Release by Cupertino.** For and in consideration of the covenants, warranties and releases set forth herein, and only upon the receipt and clearing of the entire Settlement Payment, Cupertino does hereby irrevocably release, waive, and forever discharge Garfield, of and from any and all Claims that Cupertino ever had, now has, or hereafter may have in or related to the Litigation. In the event that the Settlement Payment shall subsequently, for whatever reason, be required to be returned or repaid, the releases by Cupertino set forth in this Section shall be null and void, the rights of Cupertino will be restored to the status quo ante, and all applicable statutes of limitations shall be deemed tolled.

**5.7 Waiver of California Civil Code Section 1542.** Without conceding that the foregoing mutual releases set forth in Sections 5.5 and 5.6 of this Agreement are each a “general release” within the terms of California Civil Code section 1542, all rights under California Civil Code section 1542 are hereby expressly waived by the Parties, and each of them, notwithstanding any provision to the contrary. California Civil Code section 1542 provides as follows:

**“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.”**

**5.8** The Parties hereby acknowledge that (a) they have each consulted independent legal counsel (or have had the opportunity to so consult with independent legal counsel) to explain to them the meaning and significance of this Agreement and California Civil Code section 1542; (b) the releases herein in this Section 5 are material terms of this Agreement; and (c) 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 with respect to any of the Released Claims. Nevertheless, by this Agreement, it is the intention of the Parties to fully, finally and forever settle and release all of the Released Claims, and the claims related thereto, which do now exist, may exist, or heretofore have existed, except as expressly set forth in this Agreement, and that in furtherance of such intention, the releases herein given shall be and remain in effect as a full and complete release of such released claims, notwithstanding the discovery of the existence of any additional or different facts or claims relating thereto. The Parties, having been so advised, hereby expressly waive the provisions of California Civil Code section 1542.

**5.9** The foregoing releases shall not release or discharge any Claims or causes of action based upon or arising out of a breach by any Party of any obligation undertaken or made pursuant to this Agreement.

## **6. NON-DISPARAGEMENT.**

**6.1** Cupertino agrees that, upon full execution of this Agreement by all Parties, neither they nor their present Council members, elected officials, board members, attorneys, employees, managing agents, or any other representatives acting on their behalf shall publicly disparage or otherwise publicly communicate negative, critical, or unflattering statements or opinions, whether orally or in writing, about Garfield.

**6.2** Garfield agrees that, upon the full execution of this Agreement by all Parties, neither they nor their present officers, directors, attorneys, employees, managing agents, or any other representatives acting on their behalf, shall publicly disparage or otherwise publicly communicate negative, critical, or unflattering statements or opinions, whether orally or in writing, about Cupertino.

## **7. NOTICES.**

**7.1** Any notice that any Party desires or is required to give to or serve on another Party pursuant to this Agreement shall be in writing and shall be sent via electronic transmission (email) with confirmation copy sent by first class mail.

**7.2** Emailed notices are conclusively deemed received when emailed (with appropriate electronic confirmation of proper transmission and provided the confirmation copy is mailed no later than the next business day) if such electronic delivery takes place on a business day during general business hours and otherwise on the next business day.

**7.3** Any notice that any Party desires or is required to give to another Party pursuant to this Agreement shall be in writing and addressed to the other Party at the address(es) set forth below. Any Party may change their address(es) by notifying in writing the other Parties of their change of address(es).

The address for Garfield is as follows:

Law Offices of Neil Opdahl-Lopez, Esq.  
473 E. Carnegie Drive Suite 200  
San Bernardino CA, 92408  
(310) 633-5475  
[attorney@neilopdahl.com](mailto:attorney@neilopdahl.com)

The address for Cupertino is as follows:

Cupertino City Attorney's Office  
10300 Torre Avenue  
Cupertino CA, 95014  
(408) 777-3338  
[michaelw@cupertino.gov](mailto:michaelw@cupertino.gov)

and

Aleshire & Wynder, LLP  
1970 Broadway, Suite 920  
Oakland, CA 94612  
(510) 319-7280  
[fandrews@awattorneys.com](mailto:fandrews@awattorneys.com)

## **8. REPRESENTATIONS AND WARRANTIES.**

**8.1** Each person executing this Agreement represents that the Party on whose behalf the person is executing this Agreement has duly authorized the execution of this Agreement and that such person is authorized to execute this Agreement on behalf of such Party.

**8.2** The Parties hereto represent and declare that in executing this Agreement, they rely solely upon their own judgment, belief, and knowledge, and on the advice and recommendations of their own independently selected counsel, concerning the nature, extent, and duration of their rights and claims, and that they have not been influenced to any extent whatsoever in executing the same by any representations or statements covering any matters made by any of the Parties hereto or by any person representing them or any of them.

**8.3** The Parties acknowledge that no Party hereto nor any of the Party's representatives have made any promise, representation, or warranty whatsoever, written or oral, as any inducement to enter into this Agreement, except as expressly set forth in this Agreement.

**8.4** The Parties further acknowledge that this Agreement has been explained to each Party by that Party's respective counsel, and that each Party fully understands the contents and legal effect of this document. The Parties further acknowledge and agree that they enter into this Agreement voluntarily and free from duress, fraud, undue influence, coercion, or oppression of any kind.

**8.5** No Party has assigned, transferred, conveyed, or otherwise disposed of any claim released in this Agreement against any other Party, or any direct or indirect interest in any such claim, in whole or in part.

**8.6** Cupertino and Garfield each represent and warrant that they have the legal power, right and authority to enter into this Agreement and take any steps or action contemplated hereby, and to perform their obligations hereunder, that each has taken all actions and adopted such findings as may be required under applicable law to enter into this Agreement and perform its obligations, and that the execution and delivery of, and performance of their obligations under this Agreement do not violate the laws, acts or agreements pursuant to which they were created and are governed.

**9. TERMINATION OF AGREEMENTS.**

Upon entry of dismissal of the Litigation, any and all contractual relationships and agreements between or among the Parties (except for this Agreement), including without limitation, the Property Value Restrictions, Resale Agreement and Option to Purchase, shall terminate and be null and void and of no further force or effect. For the avoidance of doubt, the provisions in any such terminated agreement stated to survive the termination of any such terminated agreement are hereby terminated and made null, void and of no further force or effect.

**11. GOVERNING LAW; JURISDICTION.**

The terms of this Agreement shall be governed by, interpreted and enforced in accordance with the laws of the State of California as applied to contracts made, executed, and fully performed within the State of California, without regard to California's choice of law provisions. Except as set forth in this Agreement, any other legal suit, action, or proceeding arising out of or based upon this Agreement will be instituted in the Superior Court for the State of California, County of Santa Clara and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. The Parties irrevocably and unconditionally waive and agree not to plead or claim in any such court that such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum. In any such legal suit, action, or proceeding arising out of or based upon this Agreement, including without limitation, any suit, action, or proceeding brought pursuant to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

**12. COSTS AND FEES.**

Each Party shall bear its own costs and fees (of any kind whatsoever) incurred in connection with this Agreement.

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**13. NO ADMISSION OF WRONGDOING OR LIABILITY.**

Notwithstanding anything contained herein, this Agreement and compliance with this Agreement shall not be construed as an admission by any Party of any liability whatsoever, any merit in the claims, counterclaims, complaints, or cross-complaints asserted by any of the Parties in the Litigation, or any violation of the rights of any Party or violation of any order, law, statute, duty, or contract whatsoever. The Parties hereto agree that they shall not make any representation, statement, or proffer of evidence or argument, to any court, tribunal, or third party intentionally suggesting that this Agreement constitutes any such admission.

**14. INTEGRATION.**

This Agreement is the entire agreement between the Parties regarding the subject matter hereof. No oral testimony or written declaration about the purported “intent” of this Agreement will be admissible in any subsequent proceeding. No modification, waiver, amendment, discharge, or change of or to this Agreement shall be valid unless made in writing and signed by all of the Parties.

**15. CONSTRUCTION.**

The Parties acknowledge that this Agreement has been negotiated by counsel for each Party at arm’s length and, therefore, agree that any rule of construction of contracts resolving any ambiguities against the drafting Party is waived and shall be inapplicable to this document.

**16. PREDECESSORS, SUCCESSORS, AND ASSIGNS.**

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns (and their respective predecessors to the fullest extent permitted by law.) There are no other express or implied third party beneficiaries of this Agreement.

**17. NO ASSIGNMENT OF RIGHTS.**

The Parties warrant and represent that they have not assigned, transferred, conveyed, or otherwise disposed of any right, claim, counterclaim, or cause of action, or any direct or indirect interest in any such right, claim, or cause of action, in whole or in part, released in Section 5 of this Agreement to any Party or to any other person or entity. This warranty and representation shall survive the execution of this Agreement.

**18. UNENFORCEABLE TERMS.**

If any provision of this Agreement except for Section 2 of this Agreement is adjudicated to be unenforceable or invalid for any reason, that part will be severed from the balance of this Agreement, and the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

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**19. EXECUTION BY EMAIL AND IN COUNTERPARTS.**

This Agreement may be executed in one or more counterparts and by email or other electronic signatures, each of which shall be deemed an original agreement, but all of which together shall constitute one and the same instrument.

**20. WAIVER OF TERMS.**

The waiver of any breach of any term or condition of this Agreement does not waive any other breach of that term or condition or of any other term or condition. No change, waiver, or discharge is valid unless in writing and signed by the Party against whom it is sought to be enforced.

**21. FURTHER ASSURANCES.**

Each of the Parties hereto agrees to execute and deliver all such further documents consistent herewith and to take all such further actions as may be reasonably requested by any other Party to effectuate fully the terms and provisions of this Agreement, provided such documents or action do not materially limit, reduce, or impair the rights or increase the obligations of the Party upon whom such request is made.

**23. RETENTION OF JURISDICTION.**

The Parties agree the Court shall retain jurisdiction over the Parties to enforce the Agreement until performance in full of the terms of the Agreement, pursuant to California Code of Civil Procedure section 664.6, even after dismissal of this matter.

**24. TERMS CONTRACTUAL.**

Each term of this Agreement is contractual and not merely a recital.

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25. **CUPERTINO CITY COUNCIL APPROVAL.**

This Settlement Agreement and Mutual Release is contingent upon the approval of the City Council of Cupertino.

Dated: 12/18/2025, 2025

**KATHLEEN GARFIELD**

*Kathleen R. Garfield*

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Dated: \_\_\_\_\_, 2025

**CITY OF CUPERTINO**

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\_\_\_\_\_, City Attorney