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Exempt from filing fees pursuant to
Government Code section 6103.

5 Attorneys for Plaintiff
6 People of the State of California, ex rel. City of San
Clemente and the City of San Clemente
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ORANGE
11 CENTRAL JUSTICE CENTER

SILVER & WRIGHT LLP
IRVINE | DUBLAND | EMERYVILLE | DAY AREA | SACRAMENTO

12 PEOPLE OF THE STATE OF CALIFORNIA, ex
rel. CITY OF SAN CLEMENTE, a California
13 municipal corporation; and
CITY OF SAN CLEMENTE, a California
14 municipal corporation,
15 Plaintiffs,
16 v.
17 URBAN DEVELOPMENT CORPORATION, a
California corporation;
18 JACK BURK, an individual; and
and DOES 1 through 50, inclusive,
19 Defendants.
20

Case Number: 30-2022-01261890-CU-OR-CJC
Action Filed: May 27, 2022

**SETTLEMENT AGREEMENT AND
RELEASE PURSUANT TO CCP § 664.6**

Judge: Hon. Nathan Vu
Dept.: N15

1 **SETTLEMENT AGREEMENT AND RELEASE PURSUANT TO CCP § 664.6**

2 This Settlement Agreement and Release (“Agreement”) is made and entered into between
3 Plaintiffs People of the State of California, ex rel. City of San Clemente, and City of Clemente
4 (collectively “City”), and Defendant Urban Development Corporation, a California Corporation
5 (“Defendant”). This Agreement is entered into pursuant to Code of Civil Procedure section 664.6. It
6 shall be effective as of the date of the City signing this Agreement (“Effective Date”).

7 **I. RECITALS**

8 A. Defendant owns and controls the following parcel of real property within the City that is the
9 subject matter of this Action: 422 North Avenida De La Estrella, San Clemente, California 92673,
10 Assessor’s Parcel Number 057-132-28 (“Subject Property”).

11 B. The Subject Property contained, at one-point, an operating service station. The City alleges
12 that the service station use was abandoned and that, the San Clemente Municipal Code (“SCMC”)
13 required Defendant to remove all underground tanks, all fuel pumps, pump islands, and free-standing
14 canopies. Defendant denies these allegations. Some items including the underground tanks and all fuel
15 pumps and pump islands were removed, other items were not and remain on the Subject Property to
16 date. In addition, Defendant alleges three permitted signs (a pole sign and two monument signs), air
17 compressor and office kiosk also remain on the Subject Property. Defendant alleges the kiosk is
18 currently used for business and security operations pursuant to a valid business license and certificate of
19 occupancy. The City alleges that the Subject Property constituted a public nuisance and nuisance per
20 se. Defendant denies these allegations and asserts, inter alia, that the City is selectively enforcing alleged
21 SCMC violations at the Subject Property while similar structures and conditions exist on numerous
22 other former service station properties throughout the City. The City denies such assertions.

23 C. The City alleges that it has been working to gain compliance on the Subject Property since
24 at least March of 2013. Defendant alleges that it has been in compliance and/or working to gain
25 compliance for many years; that it, its agents, and prospective tenants have attended numerous meetings
26 and/or had contacts with City personnel to try to come up with a mutually compatible use of the Subject
27 Property; and that Defendant filed an application with the City for a demolition permit concerning the
28 Subject Property several months ago. The City denies such assertions.

1 D. On May 27, 2022, the City filed this Action in the Superior Court of the State of California
2 for the County of Orange (“Court”), seeking preliminary and permanent injunctive orders to abate the
3 nuisance conditions and violations of law present thereon (“Action”). Jack Burk, an individual, was
4 named by City as a defendant in the Action. He has no legal interest in the Subject Property and shall
5 be dismissed as a party to the Action by City as part of this Agreement.

6 E. Pursuant to an agreement of the parties, Defendant's time to file a responsive pleading in the
7 Action has been extended to provide adequate time to negotiate and finalize this Agreement.

8 F. This Agreement entered into by City and Defendant is intended to resolve all issues and
9 differences regarding the Action and City-issued administrative citations, and to provide reimbursement
10 to the City for its enforcement actions to the extent provided by law, as well as addressing all outstanding
11 administrative citations and any potential -claims by Defendant relating to the Action.

12 G. By entering into this Agreement, the City and Defendant are not making any admission that
13 they have engaged , or are now engaging, in any unlawful conduct. It is understood that this settlement
14 is not an admission of liability, but is a compromise of disputed allegations. City and Defendant agree
15 that their settlement and this Agreement shall not be admissible in any proceeding or action involving
16 any party to this Agreement, except to enforce this Agreement.

17 **II. AGREEMENT**

18 Therefore, the City and Defendant agree as follows:

19 1. **Recitals.** The parties acknowledge and agree that all the statements in the Recitals are true
20 and correct to the best of their knowledge. The Recitals are hereby incorporated into and made part of
21 this Settlement Agreement to the same extent and the same effect as if fully set forth herein.

22 2. **Enforcement.** This Agreement is enforceable and binding and shall be admissible for
23 purposes of enforcing it. The Parties expressly agree that the Orange County Superior Court and the
24 Judge assigned to this Action shall retain and have jurisdiction over the parties to enforce the settlement
25 until performance in full of the terms set forth herein, pursuant to Code of Civil Procedure section 664.6.
26 Pursuant to that Section, the Parties shall present a written request to the Court to retain jurisdiction
27 pursuant to Code of Civil Procedure section 664.6. In the event the Court declines such request, the City
28 may, in its discretion, pursue any remedies or legal process required of it by the Court or law in order to

1 enforce this Agreement and/or the law, including a motion for injunctive relief or receiver to the Court
2 in this present Action. Any dismissal required under Code of Civil Procedure section 664.6 or otherwise
3 shall not be submitted or entered until and unless the Court issues an order agreeing to retain jurisdiction
4 under Code of Civil Procedure section 664.6, and full compliance with this Agreement is achieved. The
5 prevailing party in any action to enforce this Agreement shall be awarded their reasonable attorneys'
6 fees and costs.

7 **3. Compliance & Performance of Demolition.** Upon execution of this Agreement, or within
8 60 calendar days of notice of the City's issuance of a demolition permit with mutually acceptable
9 conditions, whichever is later, Defendant shall fully comply with said permit. To the extent there is any
10 conflict between any other permits issued by the City in the future and this Agreement, the terms of this
11 Agreement shall control. The Subject Property shall thereafter be maintained in compliance with the
12 law, including the San Clemente Municipal Code, including but not limited to, applicable regulations
13 concerning trash, debris, non-permitted signs, and vegetation, and any other violations of law.
14 Notwithstanding the foregoing, demolition fencing at the Subject Property will be allowed to secure the
15 Subject Property until the demolition process is complete, including a final inspection, and/or the City
16 issues a permit to install new fencing and/or gates.

17 **4. Defendant's Costs.** Defendant shall bear its own fees and costs, including attorneys' fees
18 and costs, incurred in this Action, or otherwise related to the City's enforcement efforts regarding the
19 Subject Property through the date of the Agreement.

20 **5. City's Enforcement Costs and Outstanding Administrative Fines.** Defendant agrees to
21 reimburse the City, and the City agrees to accept as full reimbursement and payment the sum of \$18,200
22 as full and final payment relating to the City's enforcement efforts and outstanding administrative fines
23 to date regarding the Subject Property and this Action. The enforcement costs and outstanding
24 administrative fines are due to the City as set forth below. The settlement draft shall be made payable
25 to the "City of San Clemente", and sent directly to the City, attention Adam Atamian, Deputy
26 Community Development Director, 910 Calle Negocio, San Clemente, California 92673. Payment shall
27 be made within **30 calendar days** of the effective date of this Agreement.
28

1 5.1. **Failure to Pay.** In the event full reimbursement of the enforcement costs owed to the
2 City is not made as provided in this Agreement, the City may recover the full amount agreed upon, as
3 well as any additional amounts, fines, fees, and costs relating to the Subject Property that are owed to
4 the City by any means authorized by law.

5 6. **Reservation of Rights.** Subject to the terms and conditions contained in this Agreement,
6 the City hereby reserves its right to enforce present and future violations of law on the Subject Property
7 or those violations currently unknown, as provided by law, and shall be entitled to recover its full
8 attorneys' fees and costs associated with any present and future enforcement action to the extent
9 provided by the SCMC and State law. Defendant reserves its right to continue any application or plans
10 to develop the Subject Property and/or to apply for future development permits for the Subject Property,
11 and the City agrees that the same shall receive neutral and timely treatment during processing of the
12 same. Defendant reserves its right to bring appropriate action for the alleged denial and/or enforcement
13 of Defendant's future due process rights including all rights and remedies permitted by law, following
14 the performance of this Agreement. Nothing in this Agreement shall be deemed a waiver by Defendant
15 of any claims relating to any alleged just compensation owed for the taking and/or damaging of the
16 Subject Property in any eminent domain action subsequently filed by the City to acquire the Subject
17 Property or any portion thereof.

18 7. **Release of Liability.** The Defendant and the City hereby release the each other and each
19 other's agents, employees, attorneys, elected officials, appointed officials and representatives, from any
20 and all existing potential actions, causes of action, losses, claims, demands, damages, costs, loss of use,
21 loss of revenue, expenses, compensation, and all other forms of damages arising from, or relating to, this
22 Action, and the City's current and past nuisance abatement and code enforcement efforts relating to the
23 Subject Property, and its existing condition, including those which Defendant and/or City do not know
24 at the time of executing this Agreement which, if known by Defendant and/or City, might have materially
25 affected this Agreement. However, this release provision does not extinguish, release, or discharge any
26 of the obligations and rights of the parties as set forth and encompassed in this Agreement. Subject to
27 the terms and conditions contained in this Agreement, the City expressly reserve its rights to take
28 enforcement action relating to future violations of law on the Subject Property, and any associated rights

1 or laws relating to cost recovery, and other rights of the City. Defendant expressly reserves its right to
2 pursue any denial of future due process or other claims with respect to any pending or future
3 development application for the Subject Property by Defendant and/or taking of the Subject Property by
4 the City. The parties reserve all rights, defenses, privileges, immunities, and claims they may have
5 against each other arising under this Agreement until there is full performance by each.

6 **7.1. Civil Code Section 1542 Waiver.** The Defendant and the City further waive any
7 rights arising under Civil Code section 1542, which reads as follows: A GENERAL RELEASE DOES
8 NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
9 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
10 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
11 SETTLEMENT WITH THE DEBTOR. The Defendant and the City represent and warrant that they
12 understand and acknowledge the significance and consequence of this waiver of Civil Code section
13 1542. The Defendant and the City further waive any provisions that may exist under federal law, or the
14 laws of any other state that may have jurisdiction over the claims released herein, that are similar in
15 language, purpose, or effect to Civil Code section 1542. Except as otherwise expressly provided in this
16 Agreement, Defendant and the City agree that: (a) this Agreement shall be effective as a bar, waiver,
17 and release of each and every known or unknown claim, demand, cause of action, obligation, damage,
18 and liability mentioned in this Settlement Agreement; and (b) it is their intent to provide a full and final
19 release of all claims against and obligations of any and all releases referred to above, including claims
20 and obligations that are not presently known or anticipated.

21 **8. Legal Notices.** Notices relating to this Agreement must be in writing and sent to the physical
22 addresses set forth below. A party may change its address for notices by giving notice as required by
23 this provision. Written notice will be considered effective: (a) the day it is personally delivered or
24 actually received; (b) five business days after deposit with the United States Post Office as certified first-
25 class mail with return receipt requested and postage prepaid; or (c) two business days after deposit with
26 a reputable overnight delivery service for next day delivery.

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8.1. City
Matthew R. Silver, Esq.
Daniel K. Ohl, Esq.
Silver & Wright LLP
3 Corporate Park, Suite 100
Irvine, California 92606

8.2. Defendant
Gary A. Kovacic, Esq.
Sullivan Workman & Dee, LLP
600 N. Rosemead Boulevard, Suite 209
Pasadena, California 91107-2154

9. **Successors.** This Agreement and all terms, conditions, and obligations contained herein are binding upon and inure to the benefit of any purchasers, transferees, heirs or other successors-in-interest, of the parties, and may be recorded on title.

10. **Transfers.** Neither this Agreement, nor any interest, right, duty, or obligation herein, may be transferred, assigned, delegated, conveyed, hypothecated, or encumbered without the prior written approval of the parties.

11. **Governing Law.** This Agreement shall be governed and interpreted in accordance with the laws of the State of California.

12. **Venue.** Should the need to file any separate action to enforce this Agreement arise at any point, the venue for any such action shall be in the County of Orange.

13. **Modification.** This Agreement can only be changed, modified, amended, supplemented, or rescinded in a separate writing signed by all parties.

14. **Waivers.** A waiver of any provision of this Agreement must be in writing. Failure to insist upon strict performance of any provision, right, duty, or obligation in this Agreement is not a waiver of the right to future enforcement of that provision, right, duty, or obligation, nor any other provision, right, duty, or obligation.

1 15. **Severability.** If any of the provisions of this Agreement are found to be unenforceable,
2 those provisions shall be reformed to prevent the unenforceable result in a manner that best preserves
3 the original intent of the provision to the fullest extent possible, and all other provisions of this Settlement
4 Agreement shall remain in full force and effect.

5 16. **Integration.** This Agreement constitutes the final, complete, and exclusive expression of
6 all the terms and provisions of the agreement between the parties. This Agreement supersedes any
7 previous agreements or negotiations between the parties, whether oral or written.

8 17. **Legal Counsel.** The parties represent that they have discussed this Agreement with legal
9 counsel, and this Agreement shall not be interpreted in favor of, or against, any party.

10 18. **Counterparts.** This Agreement may be signed in counterparts, each of which shall
11 constitute an original.

12 19. **Authority.** The signatories represent and warrant that they were duly authorized to execute
13 this Agreement, and the parties hereby agree to all the terms and conditions set forth in this Settlement.

14
15 Dated: 12-7-22

CITY OF SAN CLEMENTE
Sign: Sean Joyce
By: SEAN JOYCE
Its: Interim City Manager

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20 Dated: 12/25/2022

APPROVED AS TO FORM
Silver & Wright LLP
Sign: [Signature]
Matthew R. Silver
Daniel K. Ohl
Attorneys for Plaintiff
City of San Clemente

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SILVER & WRIGHT LLP
ATTORNEYS AT LAW

1 Dated: 10-20-2022

DEFENDANT URBAN DEVELOPMENT
CORPORATION

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3
4 Sign: Wanda Burk

5 Print: WANDA BURK

6 Title: PRESIDENT

7
8 Dated: 10-20-2022

DEFENDANT URBAN DEVELOPMENT
CORPORATION

9
10
11 Sign: Wanda Burk

12 Print: WANDA BURK

13 Title: Secretary

14
15 Dated: 10/25/2022

APPROVED AS TO FORM

Sullivan Workman & Dee LLP

16
17
18 Sign: Gary A. Kovacic

Gary A. Kovacic
Attorney for Defendant
Urban Development Corporation