

DEFERRED LITIGATION SETTLEMENT AGREEMENT
Re: 4190 North Van Ness Boulevard (APN 434-071-01)

THIS AGREEMENT is entered into this 19th day of October, 2021 (“Effective Date”), by and between EVC HOMES, LLC, a California Limited Liability Company, (“EVC HOMES”), and COUNTY OF FRESNO, a political subdivision of the State of California, (“COUNTY”). EVC HOMES and COUNTY are hereinafter referred to collectively as the “Parties” and individually as a “Party” to this Agreement.

RECITALS

WHEREAS, EVC HOMES, is the owner of record, pursuant to a Grant Deed recorded as Fresno County Recorder Document No. 20121 of real property located at and commonly referred to as 4190 North Van Ness Boulevard, Fresno, California, 93704, within the unincorporated area of the County of Fresno, and described as follows:

The West half of Lot 461 and the West 3 feet of the East half of said Lot 461 and the North 40 feet of the West 220 feet of Lot 460 of Forker-Griffen Fig Garden Subdivision No. 2, in the City of Fresno, County of Fresno, State of California, according to the Map thereof recorded in Book 8 Page 62 of Plats, in the Office of the County Recorder of Said County, APN: 434-071-01 (hereinafter referred to as the “Subject Property”).

WHEREAS, the Subject Property is located within the historical Fig Garden area, an unincorporated area of Fresno County. The natural setting and mature trees within this residential area are essential to the character of this neighborhood.

WHEREAS, in 2018, COUNTY, through the Department of Public Works and Planning, hired certain contractors to plant three oak trees, three Crape Myrtle trees, and one Deodar cedar tree within the COUNTY’S right-of-way near the intersection of West Ashlan Avenue and North Van Ness Boulevard (hereinafter “Right of Way”).

WHEREAS, in July 2021, COUNTY received complaints that contractors, agents and/or employees hired by EVC HOMES were performing work within the COUNTY'S Right of Way adjacent to the Subject Property and near the intersection of West Ashlan Avenue and North Van Ness Boulevard. During the course of this unpermitted work within the Right of Way, EVC HOMES' contractors, agents, and/or employees removed certain trees and other vegetation from within the Right of Way.

WHEREAS, on or about July 30, 2021, the COUNTY issued a stop work letter to provide notice to EVC HOMES that it had been conducting unauthorized work within the COUNTY'S Right of Way resulting in the removal of the COUNTY'S trees and grading without an encroachment permit in violation of Streets and Highway Code section 1480 *et seq.* This letter also served notice to EVC HOMES to cease and desist performing any additional work within the Right of Way (hereinafter "Stop Work Order").

WHEREAS, on or about August 25, 2021, the COUNTY issued a letter to EVC HOMES to demand restoration of the removed trees and other vegetation from the Right of Way adjacent to the Subject Property.

WHEREAS, EVC HOMES and the COUNTY seek to avoid the disruption, inconvenience, uncertainty, and costs associated with further litigation with respect to this matter, and as such, the Parties seek to settle and resolve this matter based upon the terms set forth herein.

With reference to the foregoing recitals, which are incorporated into this Agreement, and in consideration of the mutual terms, covenants, conditions, promises, and benefits set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. EVC HOME'S Obligations:

- a) Install two (2) 36-inch box, or approximate size, Deodar cedar trees along the eastside of North Van Ness Boulevard within the COUNTY'S Right of Way adjacent to the Subject Property and near the intersection

of West Ashlan Avenue and North Van Ness Boulevard. The location of the two (2) 36-inch box, or approximate size, Deodar cedar trees must conform to the Landscaping Plan, discussed below, to be prepared and submitted by EVC HOMES and approved by the COUNTY.

- b) Install three (3) 24-inch box, or approximate size, Crepe Myrtle trees along the southside of West Ashlan Avenue within the COUNTY'S Right of Way adjacent to the Subject Property and near the intersection of West Ashlan Avenue and North Van Ness Boulevard. The location of the three (3) 24-inch box, or approximate size, Crepe Myrtle trees must conform to the Landscaping Plan, discussed below, to be prepared and submitted by EVC HOMES and approved by the COUNTY.
- c) Install additional drought resistant groundcover and planting material that matches the aesthetics and characteristics of similar groundcover and planting material found at the northeast side of the intersection at West Ashlan Avenue and North Van Ness Boulevard, excluding boulders or large stones. The location of the additional installed drought resistant groundcover and planting material must conform to the Landscaping Plan, discussed below, to be prepared and submitted by EVC HOMES and approved by the COUNTY.
- d) Prepare and submit an integrated Landscaping Plan, prepared in conformity with all applicable state laws and COUNTY ordinances and policies, including but not limited to, the following: (1) proposed landscaping to be installed by EVC HOMES for both off-site (within the COUNTY'S Right of Way) and on-site (on the Subject Property), (2) the ingress and egress foot print of the Subject Property, (3) sufficient vehicle sightline distance for all installed landscaping, and (4) compliance with COUNTY'S Model Water Efficient Landscaping Ordinance ("MWELO"). The Landscaping Plan will be submitted by EVC HOMES for review and approval by COUNTY. COUNTY reserves the right to propose comments and changes to the Landscaping Plan prior to approval.

- e) Install an automatic irrigation system to service any and all installed trees and other vegetation by EVC HOMES within the COUNTY'S Right of Way, as required by this Agreement.
- f) Maintain, including but not limited to providing adequate irrigation for, the installed trees and other vegetation on a continuing and ongoing basis in a safe condition. This obligation to maintain the installed trees and vegetation by EVC HOMES per this Agreement shall be binding and enforceable against EVC HOMES successors, heirs and assigns and future owners of record of the Subject Property as set forth in Section 7 of this Agreement.
- g) Apply and obtain all required encroachment permits and grading permits, as necessary, for work in COUNTY'S Right of Way along the southeast corner of the intersection of West Ashlan Avenue and North Van Ness Boulevard.
- h) EVC HOMES must satisfy all obligations imposed in Section 1 of this Agreement within one hundred-eighty (180) calendar days from the Effective Date.

2. COUNTY'S Obligations:

- a) Waive and release its rights to any claims against EVC HOMES regarding and related to EVC HOMES removal of the trees and other vegetation from COUNTY'S Right of Way upon satisfactory installation of the trees and other vegetation by EVC HOMES, as required by Section 1 of this Agreement.
- b) Release and vacate the Stop Work Order issued on July 30, 2021.
- c) Defer taking any further code enforcement or other legal action regarding and related to EVC HOMES' unpermitted encroachment into COUNTY'S Right of Way, unpermitted grading, and damages and injury to property within COUNTY'S Right of Way.

3. **COUNTY'S Remedy for Breach.** In the event that EVC HOMES does not timely satisfy all of its obligations pursuant to Section 1 of this Agreement, COUNTY shall be entitled to install two (2) 36-inch box, or approximate size, Deodar cedar trees along the eastside of North Van Ness Boulevard within the COUNTY'S Right of Way and three (3) 24-inch box, or approximate size, Crepe Myrtle trees along the southside of West Ashlan Avenue, and all other landscaping as identified on EVC HOMES approved landscaping plan within the COUNTY'S Right of Way. In the event there is no approved landscaping plan, the other landscaping, as identified in this Agreement, may be installed by the COUNTY within the Right of Way at COUNTY'S discretion. Upon COUNTY'S installation of the trees and other landscaping required per this Agreement, COUNTY shall be entitled to recover the cost to purchase and install the trees and other landscaping from EVC HOMES. Upon written demand for payment from COUNTY for the costs incurred as provided for in Section 3, EVC HOMES must remit payment to COUNTY within thirty (30) calendar days from the date notice of this written demand is provided in accordance with Section 9 of this Agreement. In the event EVC HOMES fails to timely remit payment upon notice of COUNTY'S demand, COUNTY is entitled to file a collection action to recover these costs and may enforce any monetary judgment in accordance with all applicable law. COUNTY may enforce EVC HOME'S obligations contained in Section 1(e)-(g) of this Agreement through an injunctive relief action to compel EVC HOME'S performance of its obligations herein contained.
4. **Notice of Breach.** If any Party believes that any other Party is in breach of any of the terms set forth in this Agreement, the Party asserting a breach shall give written notice to the other Party of the breach, which notice shall set forth with reasonable particularity the alleged breach and the action required to remedy the alleged breach. The Parties shall meet, confer and attempt to resolve the alleged breach within fifteen (15) working days of such notice. If the Parties cannot resolve the alleged breach within such time, either Party may seek judicial enforcement of this Agreement. Notice shall be provided pursuant to Section 9 of this Agreement.

5. **Future Code Enforcement Action.** This Agreement does not constitute a waiver by the COUNTY of any lawful exercise of discretion COUNTY has under the law, nor does this Agreement preclude the COUNTY from exercising its land use and police powers, or limit the COUNTY'S rights to pursue future code enforcement action(s) against EVC HOMES and the Subject Property for any Ordinance Code and Zoning Ordinance Code violations, violations of state or federal law, and other nuisance conditions that may arise after the Effective Date of this Agreement.
6. **Recordation of Agreement.** The Parties agree that this Agreement shall be recorded on the Subject Property with the Fresno County Recorder's Office to provide notice of this Agreement to subsequent and future owners of record of the Subject Property and any person or entity who may seek an interest in the Subject Property. COUNTY shall cause this Agreement to be recorded with the Fresno County Recorder's Office at COUNTY'S cost and expense.
7. **Successor Owners' Maintenance Obligation of Trees and Vegetation in COUNTY'S Right of Way.** The Parties agree that EVC HOMES' obligation to maintain the installed trees and other vegetation within COUNTY'S Right of Way, per this Agreement, is a material term of this Agreement. EVC HOMES will obtain an agreement with any future purchaser(s) of the Subject Property to obligate this future purchaser(s) to maintain the installed trees and other vegetation, as required by this Agreement, on a continuing and ongoing basis in a safe condition. This maintenance agreement with any future purchaser(s) of the Subject Property shall be for the benefit of the COUNTY, as a third-party beneficiary, and shall provide COUNTY the right to enforce the terms of the maintenance agreement with successor owners. This maintenance agreement with any future purchaser(s) of the Subject Property shall require that any successor owners shall be obligated to enter similar maintenance agreements with COUNTY to bind these successor owners to maintain the trees and other vegetation on a continuing an ongoing basis in a safe condition and shall be for the benefit of COUNTY and authorize COUNTY to enforce the terms of these subsequent maintenance agreements with successor owners.

8. **COUNTY'S Discretion to Remove Trees and Other Improvements in Right of Way**. The Parties agree that COUNTY may remove the trees, other landscaping, and other improvements installed by EVC HOMES or successor owners within COUNTY'S Right of Way, as required by this Agreement, at COUNTY'S discretion when necessary to protect public safety, facilitate road improvement projects along West Ashlan Avenue and/or North Van Ness Boulevard, or any other circumstances that are in the public's interest without the need to pay compensation to EVC HOMES or successor owners for the removal of any trees, other landscaping and/or other improvements within COUNTY'S Right of Way. Any such removal of trees, other landscaping, or other improvements within COUNTY'S Right of Way shall not constitute a taking as defined in the Constitution of the United States of America or Constitution of the State of California. EVC HOMES agrees to waive any right to just compensation that might otherwise be allowed for the removal of the trees, other landscaping, and other improvements within COUNTY'S Right of Way as provided for in the Taking Clause of the Constitution of the United States of America; Article 1, Section 19 of the Constitution of the State of California; and as provided for in California's Eminent Domain Law, California Code of Civil Procedure section 1230.010 *et seq.* Section 8 of this Agreement shall be binding on successor owners of the Subject Property.
9. **Notice**. All notices, consents, approvals, requests, correspondences, documents, reports, demands and other communications (collectively hereinafter referred to as "Notice") which the Parties are required or desire to serve upon or deliver to one another shall be in writing and shall be sent by any of the following methods: (a) personal delivery, in which case notice is effective upon delivery; (b) certified or registered United States mail, return receipt requested, in which case notice shall be deemed delivered upon receipt of delivery is confirmed by a return receipt; or (c) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service addressed in the appropriate manner for the method of service, as set forth below:

If to COUNTY:

Attn: Director of Department of Public Works and Planning
County of Fresno Department of Public Works and Planning
2220 Tulare Street, #800
Fresno, CA. 93721
Telephone: (559) 600-4537

If to EVC HOMES:

Attn: Cleadus Shelton, Managing Member
EVC Homes, LLC
4105 Pico Avenue
Clovis, California 93619
Telephone: (559) 301-7087

Any Party may change the recipient of notice for that Party and/or address stated herein by giving notice in writing to the other Party as specified in this Section, and thereafter notices shall be addressed and transmitted to the new recipient and/or address.

10. **Enforcement of Agreement.** The Parties agree that the release of fees and costs set forth herein does not extend to any breaches of this Agreement. If any action is required to enforce the terms of this Agreement, the prevailing party shall be entitled to all attorneys' fees and costs incurred to enforce this Agreement.
11. **Integration.** This Agreement embodies the entire agreement and understanding that exists between the Parties with respect to the matters referred to herein, and supersedes all prior and contemporaneous agreements, representations, and undertakings. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by both Parties.

12. **Modification.** This Agreement may not be altered, amended, or modified in any respect, except by a writing duly executed by the Parties.
13. **Successors.** This Agreement shall be binding and enforceable against the successors, heirs, and assigns of the Parties.
14. **Governing Law, Venue.** This Agreement shall be governed by the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the Fresno County Superior Court.
15. **Headings, Construction, Statutory References.** The headings of the sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. This Agreement is the product of negotiations between the Parties. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. Each Party to this Agreement has had an opportunity to review the Agreement, confer with legal counsel regarding the meaning of the Agreement, and negotiate revisions to the Agreement. Accordingly, neither Party shall rely upon Civil Code Section 1654 in order to interpret any uncertainty in the meaning of the Agreement. All references in this Agreement to particular statutes, regulations, ordinances or resolutions of the United States, the State of California or the County of Fresno shall be deemed to include the same statute, regulation, ordinance or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject.
16. **Severability.** If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this section shall not be applied to the extent that it would result in a

frustration of the Parties' intent under this Agreement. The Parties shall use their best efforts to cure any inadequacies or deficiencies identified by the court in a manner consistent with the express and implied intent of this Agreement and then to adopt or re-enact such part of this Agreement as necessary or desirable to permit implementation of this Agreement.

17. **Review of Agreement.** The Parties warrant they have completely read and reviewed this Agreement, that they were advised to obtain legal advice from attorneys before signing it, have had adequate time to obtain such legal advice, and that they understand the meaning and effect of the Agreement.
18. **Signatures; Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement. Signatures provided by facsimile or portable document format (PDF) shall have the same force and effect as original signatures.
19. **Waiver.** No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provisions whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver.
20. **Additional Documents and Good Faith Cooperation.** The Parties agree to cooperate fully in good faith and execute any and all supplementary documents and to take all additional actions which may be reasonably necessary or appropriate to give full force and effect to the terms and intent of this Agreement.
21. **Authority to Enter Agreement.** Each Party represents and warrants to the other Party that such Party is duly authorized and empowered to execute, enter into, and perform its obligations set forth in this Agreement, and that the individual signing this Agreement on behalf of such Party has been duly authorized to execute this Agreement on behalf of such Party, and will, by signing this Agreement on such Party's behalf, legally bind such Party to the terms and conditions of this Agreement.

Each Party further represents and warrants to the other Party that no other person or entity is required to give its approval or consent to this Agreement in order for such Party to authorize, enter into, and perform its obligations under this Agreement, or that if such approval or consent to this Agreement is required, that such approval or consent has been obtained.

22. **Costs.** Each party to this Agreement shall bear their own attorney's fees and costs related to the review and making of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and year first above written:

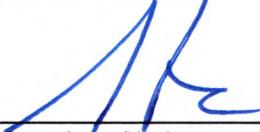
EVC HOMES , LLC
A California Limited Liability Company



Cleadus Sheldon, Managing Member

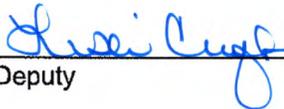
EVC Homes, LLC
4105 Pico Avenue
Fresno, California 93619

COUNTY OF FRESNO



Steve Brandau, Chairman of the Board of
Supervisors of the County of Fresno

ATTEST:
Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

By 

Deputy

ORG:
FUND:
ACCOUNT:
SUBCLASS: