

## SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (hereafter referred to as "this Agreement") is entered into as of February \_\_\_\_\_, 2012, by and between Dina R. Galassini, Gregory J. Larson and David Frederikson (hereinafter "Claimants") and Gila County, a body politic. Claimants and Gila County are sometimes hereafter collectively referred to as "the Parties."

### RECITALS

1. During the period from approximately 2005 through 2007, Strawberry Ridge Estates, LLC developed Phase III of the Strawberry Creek Foothills Subdivision a/k/a Strawberry Ridge Estates, a residential subdivision located in northern Gila County, Arizona ("the Subdivision").

2. In order to assure the completion of all of necessary improvements in the Subdivision, the Gila County Planning Manager, the Gila County Deputy County Manager, Strawberry Ridge Estates, LLC and Arizona Business Bank entered into an Assurance of Subdivision Improvements Agreement (Set Aside Funds) dated August 7, 2006 (the "Assurance Agreement").

3. The Gila County Board of Supervisors authorized John Nelson to execute the Assurance Agreement on behalf of the County on August 21, 2006. The Assurance Agreement created a set-aside fund in the amount of \$716,010.00 to ensure completion of the improvements in the Subdivision, including its roadways.

4. The Assurance Agreement further authorized the County to utilize the set aside fund to complete the improvements if Strawberry Ridge Estates, LLC failed to "complete construction of the Improvements in accordance with the standards of the County within two (2) years of the date of this Agreement" or if Strawberry Ridge Estates, LLC abandoned the project, abandonment being defined as an absence of work on the project for a period of thirty days.

5. In connection with the development of the Subdivision, the Arizona Department of Real Estate issued a Subdivision Public Report effective December 14, 2006. As of the time of the issuance of the Subdivision Public Report, Western Way and Tomahawk Trail, roads within the Subdivision, had not been completed. However, the Report provided that "[t]he Developer will pave Western Way and Tomahawk Trail with asphalt by August 7, 2007, at which time they will be accepted and maintained by Gila County."

6. The entirety of the set aside fund was subsequently released to Strawberry Ridge Estates, LLC.

7. Strawberry Ridge Estates, LLC offered for sale and Claimants purchased Lots 51, 85, 86 and 87 in the Subdivision. These lots are located on Tomahawk Trail.

8. Tomahawk Trail and a portion of Western Way were neither completed to Gila County standards nor approved by Gila County. Tomahawk Trail and a portion of Western Way are now compromised and failing.

9. On July 6, 2011, Gila County recorded a Notice of Gila County Subdivision Code Violation documenting that the developer had failed to receive final approval from Gila County and that no building permits would be issued for certain lots in the Subdivision, including the lots owned by Claimants.

10. On approximately August 24, 2011, Claimants submitted a Notice of Claim (the "Notice of Claim") to Gila County relating to the condition of the roadways in the Subdivision, the contents of which are incorporated herein by this reference.

11. The Parties have now determined that it is in their respective best interests to resolve the matters set forth in the Notice of Claim on the terms and conditions stated in this Agreement.

### COVENANTS

NOW, THEREFORE, in consideration of the covenants, promises, representations, releases, and other terms and conditions contained herein, the Parties named above agree as follows:

1. The foregoing Recitals are incorporated herein as a material part of this Agreement.

3. Within thirty (30) days following the execution of this Agreement Gila County shall approve a Resolution immediately accepting ownership of and the maintenance obligation relating to the roadways in the Subdivision. In so doing, Gila County agrees to promptly take all remedial action required to bring the roadways into compliance with Gila County standards and act upon the reports received by the County relating to the condition of the roadways, including but not limited to a Supplemental Geotechnical Exploration Report from Terrane Engineering September 20, 2007, the contents of which are incorporated herein by this reference.

4. Upon the completion of the remedial efforts described in the preceding paragraph, Gila County shall record notice that all deficiencies giving rise to the Notice of Gila County Subdivision Code Violation recorded on July 6, 2011 have been corrected and that building permits may be issued for the lots in the Subdivision.

5. Except as provided below, and effective only upon the performance of the obligations contained in paragraphs 1 through 4 above, Claimants hereby release and discharge Gila County, and its agents, employees, and managers, from all claims, causes of action, liabilities, or obligations relating to the matters set forth in the Notice of Claim; provided, however, that nothing contained in this provision shall limit or impair the right of any party to enforce this Agreement.

6. This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof. There are no promises, agreements, covenants, representations, warranties, or other terms or conditions pertaining to the subject matter hereof, except as may be implied by law.

7. Nothing contained in this Agreement shall be construed as an admission of any wrongdoing or liability on the part of any of the Parties, their employees, agents or representatives, all of which is denied.

8. This Agreement may not be modified except by a writing signed by all of the Parties hereto.

9. Time is and shall remain of the essence of this Agreement.

10. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona, without regard to its choice of law rules.

11. The initial draft of this Agreement has been prepared by counsel for Claimants as a convenience to all parties; however, each of the other Parties hereby acknowledges that they and their counsel, if desired, have reviewed the initial draft and have participated fully in any revisions thereof. Therefore, no presumption regarding the interpretation of this Agreement shall arise from the fact that the initial draft hereof was prepared by counsel for Claimants.

12. In any action to enforce this Agreement or to obtain any remedy for the breach hereof, the prevailing party shall be entitled to recover its reasonable attorneys' fees and other expenses of litigation.

13. Each person executing this Agreement in a representative capacity on behalf of one of the Parties hereby warrants and represents that he/she is duly authorized to do so.

14. This Agreement shall be binding upon the parties and their respective heirs, successors and assigns.

“CLAIMANTS”

\_\_\_\_\_  
Dina R. Galassini

Date: \_\_\_\_\_

\_\_\_\_\_  
Gregory J. Larson

Date: \_\_\_\_\_

\_\_\_\_\_  
David Frederikson

Date: \_\_\_\_\_

GILA COUNTY, a body politic

By \_\_\_\_\_  
Its \_\_\_\_\_

Date: \_\_\_\_\_