

## SETTLEMENT AND RELEASE AGREEMENT

This settlement and release agreement (hereafter "Agreement") is entered into and by and between Toy Warehouse Lofts Owners Association (hereafter "the Association"), Beven and Brock Management Co. (aka Beven & Brock Property Management Company, Inc.) (hereafter "B&B"), and Arts District, LLC (hereafter "AD"). The Association and B&B shall collectively be referred to as "Defendants". The Association, B&B, and AD shall collectively be referred to as "the Settling Parties". The terms of this Agreement are intended to be binding on each of the Settling Parties.

### RECITALS

A. The Toy Warehouse Property ("Total Property") is located at 215-255 S. Santa Fe Avenue in Los Angeles, California. "Lot 1" of the Total Property consists of residential condominium units on the second and third floor of the building and parking for the residential condominium units on the Basement Level. "Lot 2" of the Total Property consists of the First Floor of the building for commercial purposes and includes parking for use by the commercial units.

B. The Association is a not for profit common interest development duly organized and incorporated pursuant to the laws of the State of California for the purpose, among other things, of providing maintenance, repair and preservation of Lot 1 and limited portions of Lot 2, as defined by the relevant Building CCRs. Membership in the Association is limited to owners of Lot 1 Residential Units.

C. B&B is a corporation duly organized pursuant to the laws of the State of California. B&B has provided, and currently provides, property management services for the Association.

D. AD is a Limited Liability Company duly organized pursuant to the laws of the State of California. AD has owned, and currently owns, Lot 2 of the Total Property and leases portions of Lot 2 to commercial tenants.

E. As a result of certain disputes that have arisen between the Settling Parties, AD filed its Superior Court lawsuit, L.A.S.C. Case No. BC 537918 against the Defendants and other parties in or about February 2014 ("the Action"). The operative Complaint in the Action alleges causes of action for breach of contract, conversion, accounting, and negligence against the Association and alleges causes of action for accounting and negligence against B&B. The

Association and B&B deny each allegation made by AD. The Association has alleged numerous defenses and offsets in the Action and alleges numerous affirmative claims that are not currently part of the Action. AD denies each such defense and allegation made by the Association and/or B&B.

F. The relationship between the Association and AD is generally governed by the *Declaration of Covenants, Conditions and Restrictions and Grant and Reservation of Easements* recorded in the official records of Los Angeles County as Instrument No. 01 1199778 (hereafter “CCRs”).

G. It is the intent of the settling parties, for valuable consideration to each of the settling parties, to forever resolve the issues and disputes that form the subject matter of the action and create procedures to help avoid future disputes between the Association and AD and create a streamlined, efficient procedure for resolving future issues and disputes, if any, between them.

## **AGREEMENT**

For and in consideration of the recitals, covenants and conditions herein contained, the Settling Parties hereby agree as follows:

A. The CCRs provide that: 1) a Committee consisting of four (4) persons shall be appointed to make decisions concerning the rights, duties and obligations set forth in the CCRs; 2) the Association, through its elected Board of Directors, shall be entitled to appoint two (2) members of the Committee; 3) the Commercial Lot Owner(s) is also entitled to appoint two (2) members; 4) a determination by the Committee shall require the vote of at least three Committee members; and 5) in the event of an impasse on the Committee, the matter shall be submitted to a third party arbitrator to cast the deciding vote.

The parties agree that the CCR provisions referenced above in this paragraph are not an efficient means for making decisions and resolving disputes. Consequently, as long as the Commercial Lot is solely owned by Arts District, LLC, or its successor in interest, the parties agree to the following modified protocol to govern the function of the Committee and resolving impasses on the Committee.

1. The Association's Board of Directors appoints Director Ann Wallace as its representative on the Committee. If Ms. Wallace becomes unable or unwilling to serve on the Committee, then the Association's Board of Directors shall appoint a different representative.
2. AD appoints Corinne Grassini-Mathern as its representative on the Committee. If Ms. Grassini-Mathern becomes unable or unwilling to serve on the Committee, then AD shall appoint a different representative.
3. The Committee shall meet at least every other month, either in person or telephonically, to make decisions concerning the rights, duties, and obligations set forth in the CCRs including, but not limited to, the creation and approval of yearly operating budgets as to those line items that are Shared Expenses. Either Committee member shall be entitled to request an interim meeting upon ten (10) business days written notice delivered by email to the other Committee member. The Committee members shall attempt, in good faith, to schedule both the regular meeting and interim meetings so as to be convenient for both. Other members of the Association's Board of Directors and/or relevant expert consultants can attend and participate at the Committee meetings, but only the Committee members shall have the power to vote.
4. In the event the Committee cannot agree unanimously to a particular decision or determination, the matter shall be submitted to the Mediator herein to break the impasse and decide the matter. Unless directed otherwise by the Mediator, each Committee member shall submit a position paper in writing to the Mediator and each other, not to exceed two (2) pages in length, setting forth the issue(s) and their respective positions. The Mediator shall have the authority to determine whether additional information is necessary and shall determine the timing of submissions. Within ten (10) business days after the Parties have submitted their respective positions to the Mediator, the Mediator shall issue a decision in writing to both Committee members and said decision shall be binding. The Parties shall bear equally the expense of the Mediator in reviewing the position papers and rendering a final determination.
5. The Association and AD appoint Hon. Diane Wayne (Ret.) of JAMS to serve as Mediator for purposes of deciding future disputes, if any, between the Association and AD. If Judge Wayne becomes unable or unwilling to serve as Mediator, the parties shall attempt to agree to a suitable replacement. In the event that the parties are unable to agree to a

replacement Mediator, JAMS shall select a neutral with experience with community association law and interpretation of Declarations of CCRs.

6. In the event that AD ceases to be the sole Owner of the Commercial Lot, this modified protocol shall be terminated unless the Association's Board of Directors and the new Commercial Lot owner(s) agree in writing to keep the protocol described in this Agreement in place.

7. The streamlined dispute resolution described in this Section A is intended to modify the provisions of Article IV of the CCRs.

B. The CCRs further provide in Article III, Section 7.10 that the Association and the Commercial Lot Owner shall share the costs described in Exhibit C and the costs of any utility service that is not separately metered or separately billed to the respective Lots in the ratio that the square footage area of the Commercial Lot (Lot 2) and the Residential Lot (Lot 1) bear to the total square footage of the Total Property as depicted on the applicable Tract Map. The Parties hereby agree that for purposes of allocating the shared costs from Exhibit C, the CCRs, this Agreement, or per mutual agreement, AD shall bear 24.9% of said costs and the Association shall bear 75.1% of said costs.

C. Exhibit C to the CCRs lists categories of expenses which are to be allocated pursuant to the percentages set forth in Section B above. The Parties agree that the description of categories of expense in Exhibit C are not sufficiently detailed and need to be refined and clarified. The Parties agree that the following categories listed on Exhibit C shall be amended as follows:

1. Property casualty insurance (including, but not limited to fire, earthquake, and liability), which covers all elements of the Property for which the Association is obligated or authorized under the CCRs to procure on behalf of the Residential Lot and the Commercial Lot;

2. Electricity costs that benefit both lots;
3. Exterior landscaping and landscape supplies;
4. Refuse disposal for Lots 1 and 2;
5. Pest control for Lots 1 and 2;
6. Window washing of all exterior windows of both Lots;

7. Beginning with the preparation of the next full Reserve Study, future Reserve Studies will contain a section or column solely for all elements/components of building or Total Property for which the Association is obligated to repair, replace or maintain pursuant to the CCRs. To the extent that the Association has a duty to maintain, replace or repair other components of the Residential Lot which are defined as Common Area by the Condominium Plan for the Residential Lot only or the Association CCRs only, such items shall be reflected in a separate section, column, or similar of the Reserve Study.

8. Roof repair and replacement reserve. Notwithstanding 7 above and notwithstanding that the roof of the Toy Warehouse building is located entirely within the Residential Lot and may be designated in the Condominium Plan as Common Area, the allocation of expenses for roof repairs, maintenance and replacement shall be a shared expense allocated according to the percentages set forth in B above;

9. Exterior lighting.

10. Maintenance and repair of the emergency and exit lighting systems for Lots 1 and 2.

11. Repairs or Replacement of Building Components or Elements which the Association is obligated to maintain, repair or replace pursuant to the express terms of the CCRs to which the Commercial Lot Owner is subject. These components include, but are not limited to, structural elements, exterior brickwork, all exterior walls, and building waterproofing elements, and, subject to the provisions of Section D below, awnings, awning frames, grates enclosing the exterior windows, grates enclosing the dumpster(s), and exterior lighting fixtures installed by AD.

12. Fire alarm system for Lots 1 and 2;

13. Wrought iron components;

14. Fire sprinkler system(s) for Lots 1 and 2;

15. Two telephone lines necessary for the alarm system servicing Lots 1 and 2.

16. Professional property management fees and charges;

17. Legal fees incurred relative to interpretation of the CCRs and prosecution or defense of claims which mutually benefit the Parties hereto and are attributable to the Total Property. This does not include legal fees incurred in the context of a dispute between the

Association and a third party which do not benefit Lot 2 or legal fees incurred in the context of a dispute between AD and a third party which do not benefit Lot 1.

18. Accounting fees incurred relative to obligations under the CCRs;

19. Expenses related to lobby custodial, lobby flooring, lobby lighting and lobby paint shall not be Shared Expenses;

20. Expenses defined in the CCRs, at locations other than Exhibit C of the CCRs, as Shared Expenses, shall remain Shared Expenses, unless otherwise agreed to by the Committee. Unless otherwise agreed in writing, all Shared Expenses shall be shared in the percentages set forth in B above.

D. AD shall engage, at its sole expense, an insured vendor to remove the awnings and frames which it has installed on the exterior of the building, to facilitate the Association's performance of "pointing" of the masonry exterior walls and reinstall said awnings and frames after completion of the pointing project. Upon reinstallation of the awnings and frames, Association shall assume responsibility for the maintenance, repair and replacement of the awnings and frames at the conclusion of their useful life and said expenses for same shall be included in the Reserve Study described in Section C7 herein and shall be reserved for accordingly. Upon the Association's assumption of this particular maintenance responsibility, the Association's Board of Directors shall have the sole discretion to determine when and with what product the awning components are to be replaced. In the event, however, that the Board decides to remove the awnings permanently or decides to replace the awnings with inferior product/materials, such matter will be submitted to the Committee for discussion and decision.

E. Association, through its liability insurance provider, Farmers Insurance, shall pay AD the sum of \$43,525.00 within twenty (20) days of execution of this Agreement.

F. AD shall pay Association the sum of \$21,762.50 within thirty (30) days of execution of this Agreement as its share of shared expenses for the time period through and including March 31, 2015. AD shall commence payment of its percentage of shared expenses as defined in this Agreement effective April 1, 2015.

G. The Association shall maintain a reserve account which shall contain solely reserves that relate to elements/components of the building or the Total Property for which the Association is obligated to repair, replace or maintain pursuant to the CCRs and the roof

system of the Toy Warehouse Building. AD shall contribute to such reserve account in the percentage specified in B above. Such reserve account shall be separate from the Association's reserve account for Lot 1. Any and all funds that the Association has collected and will collect from AD for reserves that relate to elements/components of the building or the Total Property shall be conveyed to such reserve account.

H. *Billing and Reconciliation Relating to Shared Costs.* The Association shall deliver monthly shared expense statements to AD that will be based on the items in the currently operative budget of the Association that are Shared Expenses. AD shall timely pay the amounts stated in the monthly shared expense statements.

At least once per year, the Association shall deliver to AD a reconciliation, including a written accounting, comparing the monthly billings for the preceding year or other applicable time period with actual shared costs incurred. In the event that the amount billed to and received from AD for the preceding time period exceeds the reconciled actual shared costs incurred, the Association shall deliver payment to AD for such excess amount. In the event that the reconciled actual shared and other applicable costs exceeds the amount billed to and received from AD for such time period, AD shall pay the excess amount to the Association within thirty (30) days of receipt of the written reconciliation. The Association may prepare and deliver more than one reconciliation per year at its discretion.

I. *Right to Review Backup Documentation.* Upon written request and reasonable notice, AD shall have the right to review and copy relevant backup documentation relating to shared costs, expenses, and any other costs and/or expenses billed to AD by the Association.

J. *Releases.*

1. *Association Release of Claims Against AD.* Effective upon full execution of this Agreement, and except for the obligations, rights, and exceptions contained in this Agreement, the Association, on behalf of itself and its officers, directors, employees, servants, agents, assigns, predecessors, successors, attorneys, insurers, and consultants hereby release and discharge AD and its members, officers, employees, servants, agents, assigns, successors, predecessors, attorneys, and consultants for any and all claims relating to or arising out of the Action or relating to "shared cost" or other monies allegedly owed by AD to Association or by the Association to AD through March 31, 2015. This release does not apply to damage

allegedly caused by AD's tenants or subtenants to the driveway ramp of Lot 2 that is directly above the parking area for Lot 1.

2. *AD Release of Claims Against Association and B&B.* Effective upon full execution of this Agreement and except for the obligations, rights, and exceptions contained in this Agreement, AD, on behalf of itself and its members, officers, employees, servants, agents, assigns, successors, predecessors, attorneys, and consultants hereby release and discharge the Association and B&B and their respective officers, directors, employees, servants, agents, assigns, predecessors, successors, attorneys, insurers, and consultants for any and all claims relating to or arising out of the Action or relating to "shared cost" or other monies allegedly owed by AD to Association or by Association to AD through March 31, 2015.

3. *B&B Release of Claims Against AD.* Effective upon full execution of this Agreement and except for the obligations, rights, and exceptions contained in this Agreement, B&B, on behalf of itself and its officers, directors, employees, servants, agents, assigns, predecessors, successors, attorneys, insurers, and consultants hereby release and discharge AD and its members, officers, employees, servants, agents, assigns, successors, predecessors, attorneys, and consultants for any and all claims relating to or arising out of the Action or relating to "shared cost" or other monies allegedly owed by AD to Association or by Association to AD through March 31, 2015.

K. *Waiver of Section 1542.* The releases set forth in Sections J above extend to all claims of the releasing parties of any kind or nature; known or unknown; suspected or unsuspected; and all rights under *California Civil Code* §1542 or any other similar law of any other jurisdiction are hereby expressly waived by the releasing parties. That section reads, as follows:

Section 1542. Certain Claims Not Affected by General Release. A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her, must have materially affected his or her settlement with the debtor.

L. *Limitation on Release.* The releases set forth in paragraph J above shall not extend to any other party or parties and shall not apply to claims regarding damage allegedly

caused to the parking ramp at the first level of Lot 2 that is directly above a parking area of Lot 1.

M. *Dismissal of Defendants.* Within seven (7) days of execution of this Agreement, AD shall dismiss the Association and B&B, with prejudice, from the Action.

N. *Further Cooperation.* The Settling Parties agree and promise to perform such acts and take such steps as may be reasonably required to fulfill the intent and provisions of this Agreement.

O. *Advice of Counsel.* Each of the Settling Parties hereto represents that he, she or it has been advised of the effect of this agreement by their own attorneys, has investigated the facts deemed necessary and is not relying upon any representation or acknowledgment, whether oral or in writing, of any other party hereto, except as contained herein.

P. *Governing Law.* This agreement shall be construed in accordance with and governed by the internal laws, other than choice of laws, of the State of California, regardless of where executed. If any provision of this agreement shall be deemed to be invalid, void or illegal, such provision shall be construed and amended in a manner which would permit its enforcement but in no event shall such provision affect, impair or invalidate any other provision hereof.

Q. *Warranties.* Each of the Settling Parties warrant that he/she/it is presently the sole and exclusive owner of its respective rights, claims, demands, causes of action, controversies, obligations and/or liabilities that form the subject matter of this Agreement. (including without limitation all matters released herein), and matters referred to, assigned and/or released hereby, and that there has been no assignment, transfer, conveyance or other disposition by them of any said rights, claims, and/or other matters referred to, assigned, and/or released hereby.

R. *Authority to Execute.* Each person signing this Agreement represents and warrants that he/she has the full authority to sign on behalf of, and to bind, each person and entity on behalf of whom/which that person is signing.

S. *Joint Drafting.* This Agreement shall be deemed to have been jointly drafted by the Settling Parties to this Agreement and shall not be construed against any Party hereto.

T. *Counterparts.* The terms of this agreement are contractual and not merely recital. This agreement may be signed in more than one counterpart, each of which shall be

deemed an original. This agreement shall each be deemed fully executed and effective when all parties have executed at least one of the counterparts thereof, although no single counterpart bears all such signatures. Signatures pages may be transmitted by fax, pdf file, or email.

U. *Entire Agreement.* This agreement shall constitute the entire agreement between the parties hereto. No amendment or waiver shall be binding or effective unless executed in writing by the parties to this agreement. Any prior or contemporaneous agreements, understandings or representations, oral or written, are merged herein and extinguished.

V. *Non-Admission.* This agreement shall constitute a settlement of a disputed claim. Nothing contained herein shall constitute or be asserted as constituting any admission of liability of any party hereto.

W. *Attorneys Fees and Costs.* Each party agrees to bear its own attorney fees and costs and all other fees and costs relating to the Action and the subject matter of the Action. However, in the event of any dispute or disagreement arising out of or relating to the terms and conditions of this Agreement or performance thereof, the Prevailing Party shall be entitled to reasonable attorneys' fees actually incurred, together with other costs relating to any such proceeding subject to the discretion of the Mediator. This attorneys fees provision applies to issues decided by the Mediator pursuant to Section A above.

X. *Independent Investigation.* Each of the Settling Parties hereto represents that he/she/it has been advised of the effect of this Agreement by its own attorneys, has investigated the facts deemed necessary and is not relying upon any representation or acknowledgment, whether oral or in writing, of any other Party hereto, except as contained herein.

IN WITNESS WHEREOF, the parties hereto have executed this agreement, effective on the day and year set forth below.

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DATED: July 12, 2015

TOY WAREHOUSE LOFTS OWNERS  
ASSOCIATION



\_\_\_\_\_  
Sign Name

Ann H. Wallace

\_\_\_\_\_  
Print Name

President, Toy Warehouse Lofts HOA

\_\_\_\_\_  
Title

DATED: July \_\_\_\_, 2015

BEVIN AND BROCK MANAGEMENT  
COMPANY

\_\_\_\_\_  
Sign Name

\_\_\_\_\_  
Print Name

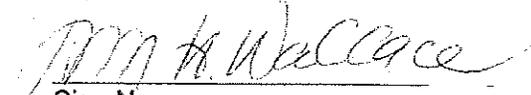
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Title

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DATED: July 12, 2015

TOY WAREHOUSE LOFTS OWNERS  
ASSOCIATION

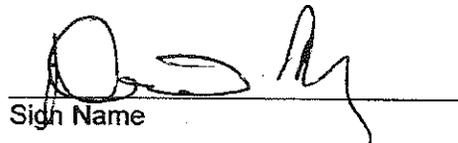
  
\_\_\_\_\_  
Sign Name

Ann H. Wallace  
\_\_\_\_\_  
Print Name

President, Toy Warehouse Lofts HOA  
\_\_\_\_\_  
Title

DATED: July \_\_\_\_, 2015

BEVIN AND BROCK MANAGEMENT  
COMPANY

  
\_\_\_\_\_  
Sign Name

David Brock  
\_\_\_\_\_  
Print Name

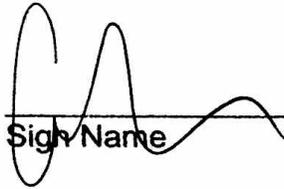
President  
\_\_\_\_\_  
Title

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DATED: July 16, 2015

ARTS DISTRICT, LLC

  
\_\_\_\_\_  
Sign Name

Corinne Mattern  
\_\_\_\_\_  
Print Name

Owner  
\_\_\_\_\_  
Title

Approved as to form:

DATED: July \_\_\_\_, 2015

LOEWENTHAL, HILLSHAFFER & CARTER, LLP

\_\_\_\_\_  
Robert D. Hillshafer  
Kevin P. Carter,  
Counsel for Toy Warehouse  
Lofts Owners Association as  
to Affirmative Claims

DATED: July \_\_\_\_, 2015

EARLY MASLACH & HARTSUYKER

\_\_\_\_\_  
Dennis M. Alexander,  
Counsel for Defendants Toy  
Warehouse Lofts Owners  
Association and Beven &  
Brock.

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DATED: July \_\_\_\_, 2015

ARTS DISTRICT, LLC

\_\_\_\_\_  
Sign Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

Approved as to form:

DATED: July 13, 2015

LOEWENTHAL, HILLSHAFFER & CARTER, LLP

  
\_\_\_\_\_  
Robert D. Hillshafer  
Kevin P. Carter,  
Counsel for Toy Warehouse  
Lofts Owners Association as  
to Affirmative Claims

DATED: July \_\_\_\_, 2015

EARLY MASLACH & HARTSUYKER

\_\_\_\_\_  
Dennis M. Alexander,  
Counsel for Defendants Toy  
Warehouse Lofts Owners  
Association and Beven &  
Brock.

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DATED: July \_\_, 2015

ARTS DISTRICT, LLC

\_\_\_\_\_  
Sign Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

Approved as to form:

DATED: July 13, 2015

LOEWENTHAL, HILLSHAFFER & CARTER, LLP



\_\_\_\_\_  
Robert D. Hillshafer  
Kevin P. Carter,  
Counsel for Toy Warehouse  
Lofts Owners Association as  
to Affirmative Claims

DATED: July 22, 2015

EARLY MASLACH & HARTSUYKER



\_\_\_\_\_  
Dennis M. Alexander,  
Counsel for Defendants Toy  
Warehouse Lofts Owners  
Association and Beven &  
Brock.

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DATED: <sup>July</sup> April 15, 2015

GRASSINI, WRINKLE & JOHNSON,  
A LAW CORPORATION



Lawrence P. Grassini  
Brian Hong,  
Counsel for Plaintiff Arts  
District, LLC.