

## SETTLEMENT AGREEMENT AND MUTUAL GENERAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL GENERAL RELEASE is made and entered into by and between Plaintiffs JANE DOE, an individual, and JOHN DOE, an individual (“Plaintiffs”), on the one hand, and Defendants ROBERT ROE, an individual, ROBERT ROE as Trustee of the Roe Revocable Trust dated January 1, 2000, RHONDA ROE, an individual, RHONDA ROE as Trustee of the Roe Revocable Trust dated January 1, 2000, (“Roes”), on the other hand. Plaintiff and Roes are each sometimes referred to herein individually as a “Party” and are sometimes referred to herein collectively as the “Parties”.

### RECITALS

A. There is pending, in the Superior Court of California for the County of San Diego, a Complaint entitled *JANE DOE et al. v. ROBERT ROE et al* (Case No. GIC 1234567)(the “Action”) in which, among other things, Plaintiffs allege that Roes: 1) misrepresented the square footage of a single family residence sold by Roes to Plaintiffs; and 2) failed to disclose to Plaintiffs the fact that the residence contained an unpermitted garage conversion.

B. Roes have answered the Complaint in the Action, denying the material allegations contained therein.

C. Plaintiffs and Roes desire to settle all disputes which exist between them, including, but not limited to, the Action.

## AGREEMENT

WHEREFORE, for valuable consideration, including the mutual promises and the payment of monies as set forth below, Plaintiffs and Roes agree as follows (hereinafter referred to as the “Settlement”):

1.     **Settlement Amount.** Fifteen (15) days after receiving good faith approval of this settlement by the San Diego Superior Court pursuant to Code of Civil Procedure §877.6, and upon receipt of an executed Request for Dismissal with prejudice from Plaintiffs, Roes shall pay the total sum of Seventeen Thousand Dollars (\$25,000) to Plaintiffs.

2.     **Confirmation That Settlement Meets Requirements of Code of Civil Procedure §877.6.** Plaintiffs and Roes acknowledge and agree that this Settlement must be approved by the San Diego County Superior Court pursuant to Code of Civil Procedure §877.6 and that such approval is a condition precedent to this Settlement. Plaintiffs agree to utilize their best efforts in aiding the Roes’ efforts to obtain Court approval pursuant to Code of Civil Procedure §877.6 of the Settlement. Such best efforts may include, but not be limited to, the execution of declarations or affidavits attesting to the good faith of the settlement effected by this Agreement, the execution of declarations or affidavits attesting to the reasonableness of the settlement effected by this Agreement, and providing Roes with facts, documents and other information that may assist in obtaining a determination of “good faith” for this Settlement pursuant to Code of Civil Procedure §877.6.

3.     **Mutual General Release of All Claims.** Plaintiffs, and each of them, on the one hand, and Roes, and each of them, on the other hand, each for themselves and on behalf of their respective present and former agents, employees, employers, officers, directors,

shareholders, corporations (including, but not limited to, professional corporations), parent and subsidiary corporations, partners, joint venturers, heirs, spouses, children, issue, trustors, trustees, estates, beneficiaries, representatives, executors, administrators, attorneys, insurers, predecessors, successors and assigns, and each of them, and all those claiming by, through, under or in concert with them or any of them (collectively “Releasing Parties”), hereby absolutely, forever and fully, generally and specifically, release and discharge each other and each of their respective present and former agents, independent contractors, employees, employers, officers, directors, shareholders, corporations (including, but not limited to, professional corporations) parent and subsidiary corporations, partners, joint venturers, heirs, spouses, children, issue, trustors, trustees, estates, beneficiaries, representatives, executors, administrators, attorneys, insurers, predecessors, successors and assigns, and each of them, (collectively the “Released Parties”) from any and all claims, demands, and liabilities of any nature or kind, from all actions and causes of action at law or in equity, including, but not limited to, actions for malicious prosecution, whether already filed or hereafter to be filed, arising from or at any time to arise by reason of any matter whatsoever, from the beginning of time to the date of this Settlement Agreement, whether or not related to the Action, but including without limitation all claims, demands and liabilities referred to or relating to the Action. Notwithstanding anything contained in this Settlement Agreement to the contrary, it is the express intention of the Parties, and each of them, that the Claims released pursuant to this General Release do not include (i) Claims, if any, which arise from, pertain to, or are based upon a breach of this Settlement Agreement; and (ii) Claims, if any, which arise from, pertain to or are based upon the executory obligations of this Settlement Agreement including, but not limited to, any or all of the indemnifications set forth in this Settlement Agreement.

4. **No Admission of Liability.** The Parties acknowledge that this Agreement is a compromise of disputed claims and shall never be treated as an admission of liability by any Party for any purpose. The Parties further acknowledge that they each expressly deny any and all responsibility or liability for the disputes, transactions or damages compromised and settled herein and intend merely to avoid litigation and to buy their peace.

5. **Waiver of Civil Code §1542.** Releasing Parties, and each of them, hereby waive any and all rights or benefits which any of them may have under Civil Code §1542, providing that:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.”

Releasing Parties, and each of them, hereby represent and warrant to the Released Parties, and each of them, that they understand the effect of this waiver and said Civil Code Section and that they are represented and have been advised on the scope and effect of the General Release by an attorney licensed to practice law in the State of California.

6. **Release of Unknown Claims.** Releasing Parties, and each of them, acknowledge that they, or any of them, may hereafter discover Claims and/or facts now unknown or unsuspected, or in addition to, or different from, those which Releasing Parties now know or believe to be true with respect to the General Release. Nevertheless, Releasing Parties, and each of them, intend by this General Release to release fully, finally, and forever all Claims released hereby. Accordingly, this General Release shall remain in full force as a complete release of

such Claims notwithstanding the discovery or existence of any such additional or different Claims and/or facts before or after the date of this General Release.

7. **Bar to Future Actions.** The Parties further expressly agree and covenant that this Settlement Agreement may be pled as a defense and as a bar to any action or proceeding that might be brought, instituted or taken by any party to this Settlement Agreement or any other person on their behalf, against any party, on account of any alleged injury or damage arising out of the disputes, claims or causes of action to which this Settlement Agreement pertains except an action brought to interpret or enforce this Settlement Agreement.

8. **Covenant Not to Sue.** The Parties hereto covenant not to bring, institute, file, commence, cause to be commenced, voluntarily aid in any way or otherwise prosecute any action or proceedings against any other Party hereto, asserting any claim, obligation or other liability from which the Party has been released by virtue of the General Release.

9. **Attorneys' Fees.** In any legal action or proceeding brought to interpret or enforce the provisions of this Settlement Agreement, the prevailing party shall recover his or her reasonable attorney's fees, costs and expert witness fees, including any such fees and costs on appeal, in addition to any other relief as may be awarded by the Court or other tribunal of competent jurisdiction.

10. **Applicable Law.** The Parties agree that this instrument is made, executed and entered into and is intended to be governed, construed and performed in accordance with the laws of the State of California.

**11. Benefit of Release.** This Settlement Agreement shall inure to the benefit of the Parties, their antecedents, successors, assigns, principals, agents, employers, employees, servants, corporations, stockholders, trusts, trust beneficiaries, trustees, heirs, legatees, beneficiaries, partnerships, general partners, limited partners, associates, subsidiaries, affiliates, directors, officers, representatives, insurers and attorneys, and shall be binding upon each of the signing parties and their antecedents, successors, assigns, principals, agents, employers, employees, servants, corporations, stockholders, trusts, trust beneficiaries, trustees, heirs, legatees, beneficiaries, partnerships, general partners, limited partners, associates, subsidiaries, affiliates, directors, officers, representatives, insurers and attorneys.

**12. No Assignment.** The Parties warrant that they have made no assignment, and will make no assignment, of all or any part of their claims against each other to any other person or entity. In addition to the foregoing, the Parties agree to indemnify and hold the other harmless from all damages, claims, and expenses, including, but not limited to, all actual court costs and attorneys' fees by reason of any claim or alleged claim arising out of or in any way relating to the incident which may be presented by any person claiming to be a successor or assignee of one of the parties.

**13. Warranty of Execution.** The Parties warrant that they have read the terms of this instrument and have availed themselves of the opportunity to have the terms used herein and the consequences thereof explained by an attorney representing their sole and separate interest prior to the signing hereof. Each of the Parties signing this Settlement Agreement warrants that they have the legal power and capacity to bind themselves and any other persons or entities on whose behalf this Settlement Agreement is executed.

**14. Integration.** This document supersedes and replaces all prior negotiations and agreements between the parties and constitutes the entire agreement of the Parties. No other oral or written representations have been made to the Parties or any of their agents. The terms of this document are contractual and not a mere recital.

**15. Waiver, Modification and Amendment.** No breach of this Settlement Agreement or of any provision herein can be waived except by an express written waiver executed by the Party waiving such breach. Waiver of any one breach shall not be deemed a waiver of any other breach of the same or other provisions of this Settlement Agreement. The Settlement Agreement may be amended, altered, modified or otherwise changed in any respect or particular only by a writing duly executed by the Parties hereto or their authorized representatives.

**16. Counterparts.** This document may be executed in multiple counterparts, with each of the counterparts, taken together, deemed to be an original.

DATED: \_\_\_\_\_

\_\_\_\_\_  
JANE DOE

DATED: \_\_\_\_\_

\_\_\_\_\_  
JOHN DOE

DATED: \_\_\_\_\_

\_\_\_\_\_  
ROBERT ROE

DATED: \_\_\_\_\_

\_\_\_\_\_  
RHONDA ROE

**APPROVED AS TO FORM:**

DATED: \_\_\_\_\_

THE McMILLAN LAW FIRM, APC

By: \_\_\_\_\_  
Scott A. McMillan  
Attorneys for Plaintiffs, JANE DOE and JOHN  
DOE

DATED: \_\_\_\_\_

TOP GUN LITIGATORS LLP

By: \_\_\_\_\_  
JESUI AVOCAT  
Attorneys for Defendants, ROBERT ROE,  
Trustee of the Roe Revocable Trust dated January  
1, 2000; RHONDA ROE, Trustee of the Roe  
Revocable Trust dated January 1, 2000;

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