

## **SETTLEMENT AGREEMENT AND RELEASE**

City of San Jose and all of its affiliated public entities (hereinafter “Plaintiff”), and defendant Green Valley Corporation (hereinafter “GVC”) in consideration of the promises made herein, agree as follows:

### **NATURE OF ACTION**

1. On or about May 31, 2006, Plaintiff filed a Complaint in Santa Clara County Superior Court bearing Case No. 106CV064688 (“Action”) for alleged defects in construction and design of a golf course named Rancho Del Pueblo Golf Course, located on King Road and San Antonio Streets in San Jose, California. (“The Project”).

2. GVC denies any legal liability or responsibility and has filed responsive pleadings generally denying each and every allegation set forth in the Complaint. Plaintiff and GVC have reached a settlement of all claims and this Settlement Agreement and Release is intended to memorialize the terms and conditions of that settlement.

### **EFFECT OF AGREEMENT**

3. This Agreement consists of a compromise and settlement by Plaintiff of its claims against GVC arising from the Action. This agreement is not, and shall not be treated as an admission of liability by any party for any purpose, and this agreement shall not be used to threaten, pursue or enforce any claimed right, obligation or cause of action except the enforcement of the terms of this agreement as set forth herein.

### **PAYMENTS TO PLAINTIFF**

4. Plaintiff hereby agrees to settle all of its claims against GVC that arise from the Action in exchange for GVC paying Plaintiff \$125,000.00 (“Settlement Amount”).

### **RELEASE AND DISCHARGE**

5. In consideration of the provisions contained in Paragraph 4, Plaintiff and all of its affiliated entities hereby completely releases Green Valley Corporation dba Barry Swenson Builders, Graves & Pascuzzo and any subcontractors to Green Valley Corporation (Collectively referred to as “ Released Parties”) and forever discharges the Released Parties’ respective past, present and future officers, directors, employees, agents, servants, stockholders, attorneys, representatives, insurers, subsidiaries, divisions, affiliates, partners, predecessors and successors in interest, and assigns from any and all past, present or future claims, demands, obligations, actions, causes of action (including indemnity causes of action), rights, damages, costs, attorney fees and expenses of every kind and nature whatsoever, in law or in equity, known or unknown, latent or patent, fixed or contingent, including any and all rights to subrogation against the Released Parties in connection with or arising out any of the facts, circumstances or events which are asserted in the Action.

Nothing in this Release shall prevent the Plaintiff from seeking indemnity from Released Parties as a result of any claim, demand, or lawsuit brought against Plaintiff by any third party for damage or injury other than claims for damage to person or property allegedly resulting from golf balls or participation in the sport of golf by any person involved, in any manner, in the sport of golf at the site, including but not limited to, Plaintiff’s employees, contractors, subcontractors, licensees, invitees, spectators, other people participating in the sport of golf, assistants, instructors, and observers, all of which claims are expressly released hereby.

**UNKNOWN CLAIMS**

6. Plaintiff acknowledges and agrees this Release and Discharge is a general release and expressly assumes the risk that by entering into this Release, it forever waives claims about which it does not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect its respective decision to enter into this Release. Plaintiff expressly waives the provisions of California Civil Code section 1542, which reads as follows:

“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.”

Plaintiff expressly assumes the risk that the facts and/or law may be other than it now believes, and acknowledges that the Released Parties have not made a representation concerning such facts and/or law.

### **GVC CROSS-COMPLAINT**

7. GVC cross-complained against Graves & Pascuzzo based on Plaintiff’s allegations of design defects at The Project. While GVC has obtained a release from plaintiff for Graves & Pascuzzo and its work on The Project, GVC is not releasing Graves & Pascuzzo for the indemnity owed to it for settling this claim with Plaintiff. .

### **REPRESENTATIONS BY THE PARTIES**

8. The parties warrant and represent that they fully understand the terms of this agreement. They further acknowledge and represent that, in executing this agreement, they have not relied on any inducements, promises or representations made by each other or any party representing or serving each other, which are not expressed in this agreement. Moreover, Plaintiff warrants and represents that it will not file any actions,

claims and/or lawsuits against any other individuals and/or entities, including, but not limited to, former owners of their property for any claims, losses, damages or injuries arising out of the issues that are the subject of this Settlement Agreement and Release.

### **CONDITIONS OF EXECUTION**

9. The parties acknowledge and warrant that their execution of this Release is free and voluntary.

### **EXECUTION OF OTHER DOCUMENTS**

10. Plaintiff agrees to execute and file a Request for Dismissal with Prejudice of the Complaint of the entire action within fourteen days of receipt of the Settlement Amount. Plaintiff and GVC agree to execute any other documents or writings which may be necessary or appropriate to give full force and effect to the terms of this Settlement Agreement and Release.

### **ATTORNEYS' FEES**

11. Each party to this agreement shall bear all attorney fees and costs arising from that party's own counsel in connection with this lawsuit.

### **ENTIRE AGREEMENT**

12. This agreement contains the entire agreement between the parties.

### **GOVERNING LAW**

13. This agreement is entered into, and shall be construed and interpreted in accordance with the laws of the State of California.

**EFFECT ON SUCCESSORS**

14. This agreement shall be binding upon and inure to the benefit of, the successors and assigns of the executors, trustees, administrators, personal representatives and heirs of Plaintiff and GVC.

**AMBIGUITY NOT CONSTRUCTED AGAINST MAKER**

15. It is agreed and understood by and between the parties hereto that any ambiguity concerning any of the terms or provisions of this Settlement Agreement and Release shall not be construed against Plaintiff and/or GVC.

**TITLES FOR CONVENIENCE**

16. Headings or titles are not to be considered part of this agreement. They have been included solely for the convenience of the parties, and are not intended to be full or accurate descriptions of the contents thereof.

**ENFORCEMENT OF AGREEMENT**

17. This Settlement Agreement and Release may be used to enforce the terms of the settlement under the law, including, but not limited to, requesting judgment to be entered in accordance with its terms pursuant to California Code of Civil Procedure, Sections 664.6 and 664.7.

This Agreement shall be construed in accordance with the laws of the State of California. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation of the release or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in before one arbitrator by JAMS pursuant to its Streamlined Arbitration Rules and Procedures, or by an arbitrator mutually agreeable to

both parties pursuant the JAM's Streamlined Arbitration Rules and Procedures.

Judgment on the Award may be entered in any court having jurisdiction.

Prior to the appointment of the arbitrator(s), and within 10 days from the date of commencement of the arbitration, the parties shall submit the dispute to mediation before the Honorable Richard Silver. If the dispute is not resolved within 30 days from the date of the submission of the dispute to mediation (or such later date as the parties may mutually agree in writing), the administration of the arbitration shall proceed forthwith. Unless otherwise agreed by the parties, the mediator shall be disqualified from serving as arbitrator in the case.

**COUNTERPARTS**

18. This Settlement Agreement and Release may be signed in counterpart, and the counterparts and signatures, when executed, may be made into a composite document that shall constitute one integrated original.

**SIGNATURE BLOCK TO FOLLOW**

Date: September \_\_, 2008

GREEN VALLEY CORPORATION

By: \_\_\_\_\_  
Its Authorized Representative

Date: September \_\_, 2008

CITY OF SAN JOSE

By: \_\_\_\_\_  
Its Authorized Representative

**APPROVED AS TO FORM AND CONTENT:**

\_\_\_\_\_  
Michael J. Dodson, Sr.  
Deputy City Attorney  
Attorney for  
City of San Jose

\_\_\_\_\_  
Daniel J. Smith  
Attorney for Green Valley Corporation