

**General Mutual Release
And Settlement Agreement**

Attachment 3

GENERAL MUTUAL RELEASE AND SETTLEMENT AGREEMENT

THIS MUTUAL RELEASE AND SETTLEMENT AGREEMENT (HEREINAFTER THE "AGREEMENT") IS ENTERED INTO BY AND BETWEEN THE APPLE VALLEY HEIGHTS COUNTY WATER DISTRICT ("DISTRICT") ON THE ONE HAND, AND DANIEL J. SCHMIDT AND PHYLLIS SCHMIDT ("THE SCHMIDTS") ON THE OTHER HAND.

RECITALS

WHEREAS, on or about September 15, 1999, an action was filed in the Superior Court of the County of San Bernardino entitled Schmidt v. Apple Valley Heights County Water District, et. al., Case No. VCWS 018947, naming the District and others as defendants therein. On or about October 15, 1999, another named defendant, the Secretary of the United States Department of Housing and Urban Development, removed the action to the United States District Court for the Central District of California, Case No. SACV 99-1273 AHS (ANx). The action, as filed in the Superior Court and as removed to the Federal Court, shall herein be referred to as the "Subject Action."

WHEREAS, the parties hereto now wish to settle and forever resolve all differences existing between them with respect to the Subject Action;

NOW THEREFORE, the parties hereto mutually agree as follows:

I.

ACTION BY DISTRICT; CONDITIONS

1.1 In consideration for the mutual covenants and promises set forth herein, and upon delivery to the DISTRICT of an executed copy of this Agreement by the SCHMIDTS, and performance by the SCHMIDTS of the conditions set forth below, the DISTRICT agrees to provide water service to the property commonly known as 9125 Cholla Road. Said conditions are as follows:

- a. The SCHMIDTS shall deliver to the DISTRICT a certified copy from the County Recorder's office of the grant deed conveying title to 9125 Cholla Road to the SCHMIDTS.
- b. The SCHMIDTS shall deliver to the DISTRICT a certified copy from the County Recorder's office of the grant deed ^{or court order} conveying title to the South ^{11 feet} 11 feet of Lot 33 to the SCHMIDTS, said strip being adjacent to 9125 Cholla Road and within the boundaries of the DISTRICT.
- c. The SCHMIDTS shall provide the DISTRICT with a ^{court order or a deed} certified copy from the County Recorder's office of the grant of exclusive easement to the SCHMIDTS of that portion of Lot 33 which includes the point where a water meter connection was previously located and the water lines from that point to 9125 Cholla Road, as well as the right to maintain those lines.
- d. As soon as the completed documentation is available, the SCHMIDTS shall file with the DISTRICT certified copies from the County Recorder's office of the lot-line adjustment and revised legal description with respect to the 9125 Cholla Road property. Although it is not anticipated that any approval by the Local Agency Formation Commission of San Bernardino County ("LAFCO") will be necessary, any LAFCO action which may be required shall be the sole responsibility of the SCHMIDTS.
- e. The SCHMIDTS shall complete and submit to the DISTRICT a standard application for water service and shall be subject to the DISTRICT Rules and Regulations which apply to all DISTRICT customers.

- f. The SCHMIDTS shall pay to the DISTRICT all fees and costs for the re-installation of the subject water meter and any applicable standby fees. It is agreed that the SCHMIDTS will not pay a capital connection fee for the water meter serving 9125 Cholla Road. It is understood that if there is any further development of Lot 33, a new water meter will be required, subject to all applicable fees, including a connection fee.

1.2 The parties hereto acknowledge and agree that this Agreement is contingent upon and subject to the approval of the DISTRICT's Board of Directors.

II.

DISMISSAL OF SUBJECT ACTION

2.1 In consideration for the mutual covenants and promises set forth herein, the SCHMIDTS shall cause a dismissal, with prejudice, to be filed as to the Subject Action with regard to the DISTRICT, with such dismissal to be effective pursuant to Rule 41(a) of the Federal Rules of Civil Procedure.

III.

MUTUAL RELEASES

3.1 In consideration of the execution of this Agreement by the DISTRICT, the SCHMIDTS do hereby release, acquit, and forever discharge the DISTRICT, and each and all of its agents, officers, employees, representatives, successors, assigns, affiliates, subsidiaries, and principals, both past and present, of and from any and all claims, causes of action, costs, or demands of whatever nature, character, or description, whether known or unknown, which the SCHMIDTS may have had or may now have against the DISTRICT by reason of the acts or omissions on the part of the DISTRICT, which acts or omissions occurred prior to the date of execution of this Agreement, and which acts or omissions are referenced in, or in any way related to or connected with, those matters which are the subjects of this Agreement.

3.2 In executing this Agreement, the parties hereto agree to and do hereby waive and relinquish all rights and benefits afforded under the provisions of Section 1542 of the Civil Code of the State of California, which provides 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.”

3.3 The parties hereto warrant and represent that the effect and import of the provisions of Section 1542 have been fully explained to them by their attorneys and/or other counsel and further warrant and represent that they are the only entities or persons which have any interest in any of the matters herein released, and that none of such claims, causes of action, costs or demands, nor any part thereof, have been assigned, granted or transferred in any way to a person, persons, entity, or entities other than the parties hereto.

IV.

MISCELLANEOUS PROVISIONS

4.1 Each party hereto agrees to pay its own attorney's fees and costs incurred with regard to the negotiation and preparation of this Agreement.

4.2 If any provision of this Agreement as applied to any party or to any circumstance, shall be adjudged by a court to be void and unenforceable, the same shall in no way affect:

- a. Any other provision of this Agreement;
- b. The application of such provision in any other circumstances; or
- c. The validity or enforceability of the Agreement as a whole.

4.3 This Agreement shall not be modified by any party or representation made before or after the execution of this Agreement. All modifications must be in writing and signed by the parties.

4.4 Time is of the essence for performance of each and every covenant contained in this Agreement.

4.5 The parties shall execute and deliver all documents and perform all further acts as may reasonably be necessary to effectuate the provisions of this Agreement.

4.6 This Agreement shall not be construed against the party preparing it, but shall be construed as if all parties prepared this Agreement. This Agreement is entered into and is to be performed in the County of San Bernardino, California, in accordance with the laws of the State of California.

4.7 To the extent that this Agreement inures to the benefit of persons or entities not signatories hereto, this Agreement is hereby declared to be made in and for their respective benefits and uses.

4.8 This Agreement contains the entire agreement between the parties hereto with respect to the matters referred to herein. No other prior contemporaneous agreements, oral or written, respecting such matters, which are not specifically incorporated herein shall be deemed in any way to exist or bind any of the parties hereto.

4.9 This Agreement shall bind and inure to the benefit of the respective successors, assigns, legatees, heirs and personal representatives of the parties hereto.

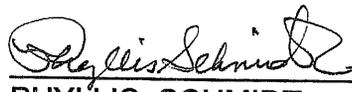
4.10 This Agreement, including all signature pages, may be executed in several counterparts and all so executed shall constitute one Agreement which shall be binding on all parties hereto, notwithstanding that all the parties are not signatories to the original nor same counterpart. Further, the effective date of this Agreement shall be the date of the last signature hereto.

Date: 2/9/00



DANIEL J. SCHMIDT

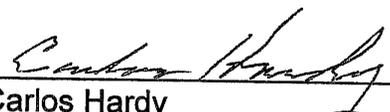
Date: 03-09-00



PHYLLIS SCHMIDT

Date: 3-9-00

APPLE VALLEY HEIGHTS COUNTY WATER DISTRICT

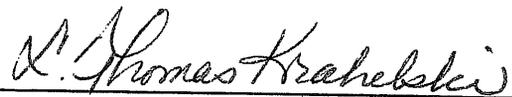
By: 

Carlos Hardy
President, Board of Directors

APPROVED AS TO FORM AND CONTENT

By: _____
Attorney for Plaintiff

ALAN K. MARKS
County Counsel

By: 

L. THOMAS KRAHELSKI
Deputy County Counsel
Attorneys for DISTRICT