

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This **SETTLEMENT AGREEMENT** ("Agreement") is made on the last date written below by and between Stephen Gary Tom and Patrick Michael Mooney, as landlords ("Landlords"), on the one hand, and Kelly Corcoran and Joe Monforton, as Tenants ("Tenants") on the other hand. Landlords and Tenants shall be referred to collectively as "parties."

RECITALS

A. **WHEREAS**, Kelly Corcoran and Joe Monforton, Tenants, and no other persons, are in possession of the residential Premises located at 62 Carmelita Street, San Francisco, CA 94117 (the "Premises"); and,

B. **WHEREAS**, the Premises and building containing the Premises, commonly known as 60-62 Carmelita Street, San Francisco, CA 94117, including areas appurtenant thereto, including all garage, storage, yard, corridor, laundry, and other common areas (the "Building"), have been directly or indirectly undergoing or impacted by construction and improvement work from approximately September 18, 2015, to present (the "Incident"); and,

C. **WHEREAS**, Tenants allege the Incident has decreased their housing services, including, but not limited to, by depriving them of laundry, relocating and decreasing in quality their storage, and causing intermittent interruptions in water and utilities, and negatively impacted their use and enjoyment of the Premises, including, but not limited to, by creating noise, inconvenience, and other disruptions to their housing, and resulted in damage, loss, and/or conversion of personal property, including, but not limited to, loss of plants, planters, and other items of economical and sentimental value, and accordingly Tenants believe they have the right to pursue various claims and causes of action against Landlords before the San Francisco Residential Rent Stabilization and Arbitration Board and/or Superior Court; and,

D. **WHEREAS**, Landlords deny any wrongdoing, negligence, or liability, and believe they have acted legally and reasonably in accordance with all local, state, and federal laws and regulations pertaining to the Incident, and further believe they would prevail against any claims or causes of action that Tenants may pursue against them; and,

E. **WHEREAS**, the parties wish to settle, compromise, and resolve any and all disputes in relation to the Incident amicably and without the risks, stress, and costs of litigation, and hereby freely, voluntarily, and intelligently enter into this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated by this reference as though fully set forth herein, and the Covenants and the Releases contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Time is of the essence of this Agreement.

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2. Tenants' vacating of the Premises will not be deemed complete until Tenants deliver to Landlords or Landlords' agent, all keys to the Premises, within their possession, custody, or control, and have delivered the Premises and areas of the Building used by Tenants, if any, in a "broom-clean" condition. "Broom-clean" shall be defined as follows: Free of all personal property, debris, and garbage. The Premises shall be swept with a broom. The definition of "broom-clean" shall not include the scrubbing of walls ceilings, appliances or fixtures, nor shall it include repair or maintenance of defective conditions, patching nail holes or painting.

3. Landlords agree to perform a walk-through and refund Tenants' security deposit, with interest, not later than the time the Premises are vacated by Tenants.

4. For the remainder of the tenancy, the tenancy will continue on the same terms and conditions under which Tenants currently hold possession of the Premises.

5. Conditioned upon Tenants' compliance with the terms of this Agreement, Landlords agree to pay Tenants a settlement for their cooperation and release of claims and causes of action, as follows:

- a. Upon execution of this Agreement by all parties, Landlords will pay to Tenants \$2,850.
- b. Upon Tenants' delivery of possession of the Premises from the date of execution of this Agreement until February 29, 2016, Landlords agree to reimburse Tenants the prorated value of Tenants' unused days of tenancy at the rate of \$87.22 per day, beginning the day after Tenants vacate until February 29, 2016.

6. If any of Tenants attempts to rescind or rescinds this Agreement, all Tenants shall be jointly and severally liable for the return of all monies paid to Tenants within three (3) business days, as well as for any and all damages occasioned by or arising out of said attempted rescission or rescission or the breach of this Agreement.

7. As further consideration for this Agreement, Landlords will provide Tenants a neutral reference letter stating in form or effect as follows: "Ms. Corcoran and Mr. Monforton have been tenants of 62 Carmelita Street, San Francisco, CA 94117 since April 1, 2010. We purchased the building containing their rental unit in September 2015. We are not aware of any issues or disputes between either Ms. Corcoran or Mr. Monforton and our predecessor-owner. During our short duration as their landlords, Ms. Corcoran and Mr. Monforton have been respectful and cooperative tenants. They are vacating the rental unit in order for us take possession of it and reside there as our residence. We are grateful to them that they are not fighting our desire to owner occupy their unit or otherwise interfere with our rights as property owners. We wish them the best in their new housing."

8. Tenants acknowledge and agree that any property left on the Premises or anywhere in the Building after Tenants vacate is abandoned property and worth less than \$700, and such property may be immediately disposed of by Landlords without serving Tenants with a notice of

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abandonment of property under Civil Code Section 1980 et seq. This paragraph is intended solely as a waiver of Tenants' rights pursuant to Civil Code Section 1980 et seq. and shall not be construed to limit Tenants' obligations under this Agreement.

9. In consideration of this Agreement, Tenants agree to withdraw any and all pending administrative actions and not to file any future administrative actions concerning or relating to any matters resulting from the Incident which are now known to exist or which have occurred in the past, including, but not limited to, any matters filed with the San Francisco Residential Rent Stabilization and Arbitration Board, the San Francisco Department of Building Inspection, the San Francisco Department of City Planning, the San Francisco Department of Public Works, the San Francisco Board of Appeal, or the San Francisco Planning Commission.

10. With respect to this tenancy only, Tenants waive and relinquish any claim that either of them is disabled or a member of any protected class of tenants for any purpose under any federal, state, or local statute or ordinance. Tenants shall be forever estopped from alleging any such claim with respect to this tenancy.

11. Tenants acknowledge that Landlords will suffer significant financial harm if Tenants breach any of the aforesaid covenants, including, but not limited to, any of Tenants attempting to rescind or rescinding this Agreement and that Tenants will be jointly and severally liable to Landlords for all damages proximately caused by such breach.

12. Landlords acknowledge that Tenants will suffer significant financial harm if Landlords breach any of the aforesaid covenants, including, but not limited to, failing to make the agreed-upon payments, and that Landlords will be jointly and severally liable to Tenants for all damages proximately caused by such breach.

13. Subject to, and expressly contingent upon each party's performance and satisfaction of each and every one of the parties' respective obligations in this Agreement, as described above, the parties, for good consideration, receipt of which is hereby acknowledged, agree to the following:

- a. Tenants fully and finally release Landlords and will indemnify Landlords and hold Landlords free and harmless, along with all owners of the Premises, past and present, as well as trustees, successor trustees, attorneys, employees, agents, including, but not limited to David Clarke, relations, assignees, beneficiaries, heirs, and predecessors- and successors-in-interest, from all damages, rights, claims and causes of action of any kind or character through the assertion by any party or stranger hereto of a claim or claims resulting from Tenants' tenancy or occupancy of said Premises and the Incident.
- b. Landlords fully and finally release Tenants from all damages, rights, claims and causes of action of any kind or character, arising out of or in any way connected with or resulting from Tenants' tenancy or occupancy of the Premises and the Incident.

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14. With respect to the above-described releases, Landlords and Tenants each waive all of their respective rights or benefits which they now have or in the future may have under the terms of State of California Civil Code Section 1542. Incorporated within this Release is consideration for release of any rights which may inure to Tenants pursuant to that section, which states:

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.

15. In the event that litigation is commenced to interpret or enforce this Agreement, the prevailing party shall recover from the other party reasonable attorney fees and costs of litigation.

16. The covenants, conditions, obligations, and rights contained in this Agreement apply to, bind, and inure to the benefit of, the respective heirs, successors, executors, administrators and assigns of all of the parties hereto.

17. Landlords and Tenants agree that the terms "Landlords," and "Tenants," whether used or intended in the singular or plural, and whether capitalized or lower case, are used for convenience only and are not construed to create a landlord/tenant relationship where none exists. The parties further agree that this Agreement shall not cause an unauthorized subtenant to become authorized, or for a subsequent occupant who is not an original occupant to become a co-occupant as those terms are defined in San Francisco Residential Rent Stabilization and Arbitration Board Rules and Regulations, Section 6.14(a).

18. This Agreement is being entered into voluntarily by Landlords and Tenants, and each party acknowledges that said party is not being coerced, pressured, or unduly influenced by the other party, or the other party's agents to sign this Agreement. Rather, the determination of the terms of, and the drafting of, this Agreement has been by mutual agreement after negotiation, with consideration by, and participation of, all of the parties hereto and their respective counsel, if any. Thus, the presumption found in Civil Code Section 1654, that uncertainties in a contract are interpreted against the party causing the uncertainty to exist, is hereby waived by all parties.

19. In the event any portion of this Agreement is found void or voidable by a court or arbitrator, such portion will be stricken, and the Agreement reformed to as closely approximate, as the law permits, the intent of the stricken portion or portions. The remainder of said stricken provisions and of the entire Agreement will remain in effect.

20. This Agreement may be executed in counterpart and faxed or e-mailed signatures may be deemed originals.

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21. The parties acknowledge and agree that this is not a "buyout agreement" or the result of "buyout negotiations" as those terms are defined in Section 37.9E of the Rent Ordinance. This Agreement is intended solely to settle Tenants' alleged claims and causes of action against Landlords resulting from the Incident. Accordingly, this Agreement is not subject to any of the disclosure, filing, or record keeping provisions of Section 37.9E of the Rent Ordinance.

22. This Agreement contains the entire agreement between the parties hereto. The terms of this Agreement are contractual and not a mere recital. By executing this Agreement, each party has either executed with advice of independent counsel, or has been provided an opportunity to obtain such counsel and has voluntarily waived such opportunity.

23. This Agreement is executed without reliance upon any representation by any releasee or any representative of same, and the undersigned has carefully read and understands the contents of this Agreement and signs the same as the undersigned's own free act.

24. Each person executing this Agreement on behalf of the respective parties warrants he or she is the person lawfully empowered to execute this Agreement so as to perform the functions or obligations described in the Agreement, effectuate its purposes, and that the execution of this Agreement is a lawful act of each of the respective parties and thereby is binding on them.

INTENTIONALLY BLANK


SIGNATURES TO FOLLOW

Executed at San Francisco, California.



Kelly Corcoran, Tenant

Dated: 2/2/16



Joe Monforton, Subtenant

Dated: 2/2/16



Stephen Gary Tom, Landlord

Dated: 2/4/16



Patrick Michael Mooney, Landlord

Dated:

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