

**SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE (“Agreement”) is entered into by and between American Towers Home Owners Association (“American Towers”) and the Utah Division of Oil, Gas, and Mining (the “Division”), via the office of the Utah Attorney General, Natural Resources Division as of the date it is fully executed.

**RECITALS**

A. American Towers is the association for the American Towers Condominium project.

B. On or about March 29, 2017, the Division commenced foreclosure proceedings on Unit R-2404-N of the American Towers Condominium Project (the “Unit”) in an action before the Board of Oil, Gas and Mining, Department of Natural Resources, State of Utah.

C. On or about May 17, 2017, the Division took possession of the Unit.

D. A lien for \$16,680.82 in unpaid past owners association dues was pending on the unit at the time the Division took possession. The Division paid the amount of \$16,680.82, under protest, to satisfy the lien to facilitate a sale of the Unit to a third party.

E. On or about July 1, 2017, the Division sold the Unit.

F. The parties dispute the amount owed to the Association under these circumstances, and have entered into negotiations regarding the lien amount.

G. The parties hereto now desire to avoid the further burden and expense of time-consuming litigation and desire to resolve the disputes existing between them on the terms set forth below.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Neither this Agreement nor any of the terms hereof or payments made pursuant hereto nor any of the negotiations or proceedings in connection herewith shall constitute or be construed as or be deemed to be evidence of an admission on the part of any of the parties of any liability or wrongdoing whatsoever, or the truth of any of the claims made by any of the parties in the Lawsuit or the lack of any merit of any of the defenses thereto or that any party has suffered any injury by reason of any alleged act of any other party or otherwise.

2. The parties have agreed on the sum of \$12,890.38, to be refunded by American Towers to the Division, in full satisfaction of its claim to a refund arising from the \$16,680.82 payment authorized by the Division, under protest.

3. This Agreement is subject to delivery of a check in the amount of \$12,890.38 to the Division from American Towers, or such other payment method as agreed upon by the parties in writing, no later than 30 days after execution of this Agreement by the parties. ("Date of Payment").

4. With the exception of American Towers' obligations created herein, the Division absolutely and unconditionally releases all claims it has against American Towers regarding the Unit that exist up through and including the Date of Payment.

5. With the exception of The Division's obligations created herein, American Towers absolutely and unconditionally release all claims it has against the Division regarding the Unit that exist up through and including the Date of Payment.

6. The parties agree that no action will be filed with the court on this matter, unless necessary to enforce the express terms of this Agreement.

7. The parties agree that the terms of this Agreement shall be and remain confidential; to be disclosed only as required by law or as is reasonably necessary in the ordinary course of business affairs. Either party's sole remedy for the breach of this covenant shall be specific enforcement of this covenant.

8. Each of the parties agrees to execute and deliver all documents, provide all information, and take or forebear from all such action as may be necessary and appropriate to achieve the purposes of this Agreement.

9. If any action is commenced to enforce any of the terms hereof, the successful party in such action shall be entitled to recover all necessary and reasonable attorneys' fees and costs in connection with such action.

10. The parties hereto represent and warrant that they have been independently represented by counsel of their own choice and that each party has made a full investigation into the facts surrounding the matter and the settlement reflected in this Agreement and that each enters into this Agreement based upon his/her or its own investigation and the advice of counsel.

11. Each party hereto acknowledges that such party has read and understands the effect of the above and foregoing instrument and executes the same of his/her or its free will and accord for the purposes and consideration set forth. None of the parties, nor anyone on their behalf, has made any representation of fact, opinion or promise to induce the other to enter into this Agreement other than as set forth herein.

12. This Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings between the parties on all subjects in any way related to the transactions or occurrences described in or related to this Agreement. No oral understandings, statements, promises or inducements contrary to or inconsistent with the

terms of this Agreement exist. This Agreement may be modified, amended, waived or supplemented only by means of a writing signed by all of the parties.

13. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

14. This Agreement and each other document contemplated hereby will be, when duly executed and delivered, legal, valid and binding obligations of such party, enforceable in accordance with the terms thereof.

15. This Agreement and each other document contemplated hereby are and shall be binding upon and inure to the benefit of each of the parties hereto and their respective heirs, successors and assigns.

16. This Agreement shall be governed and construed according to the laws of the State of Utah.

17. Any notice or directive hereunder by any party intended for any other party shall be in writing and shall be physically delivered or sent by registered or certified mail, return receipt requested with postage prepaid, to such other party at the address set forth below, unless such other party shall have previously designated a different address by due notice:

To the Division:

Steven F. Alder  
Meg Osswald  
Utah Attorney General's Office  
Natural Resources Division  
1594 W. North Temple, Suite 300  
Salt Lake City, Utah 84116  
Email: [stevealder@utah.gov](mailto:stevealder@utah.gov)  
[mosswald@utah.gov](mailto:mosswald@utah.gov)

To American Towers:

c/o Steven W. Dougherty  
Anderson & Karrenberg  
50 W. Broadway, Suite 700  
Salt Lake City, Utah 84101  
Email: [sdougherty@aklawfirm.com](mailto:sdougherty@aklawfirm.com)

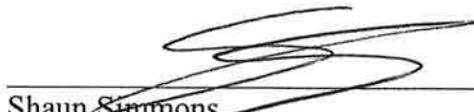
18. This Agreement may be executed in separate counterparts. Each counterpart, when so executed and delivered, shall be an original, and all counterparts together shall constitute one and the same instrument. This Agreement shall become effective upon the last date of execution as shown below.

Dated this 17<sup>th</sup> day of January, 2017.



  
\_\_\_\_\_  
Steven F. Alder  
Utah Attorney General  
Natural Resources Division

Dated this 16 day of January, 2017.

  
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Shaun Simmons  
American Towers General Manager