

**SETTLEMENT AGREEMENT AND RELEASE**

This Confidential Settlement Agreement and Release (“Agreement”), effective as of the last date of execution below (“Effective Date”), is made by and between California River Watch, a non-profit corporation, on behalf of itself and its members (“CRW”), and Napa Valley Marina, Inc., a California corporation (“Corporation”), Napa Valley Marina, a California general partnership (“Partnership”), and Thomas Giovannoni and Daniel Giovannoni, individually (hereinafter collectively referred to as “Owners”). Corporation, Partnership and Owners shall hereinafter sometimes be referred to collectively as “Napa Valley Marina.” CRW and Napa Valley Marina are sometimes hereinafter each referred to as a “Party” or collectively as the “Parties.”

**RECITALS**

- A. California River Watch (“CRW”) is a 501(c)(3) non-profit public benefit corporation organized under the laws of the State of California, dedicated to protect, enhance, and help restore the surface waters and groundwater including all rivers, creeks, streams, wetlands, vernal pools and tributaries of California.
- B. Corporation owns and operates a marine repair and maintenance facility on property leased from Partnership and/or Owners. Such property is located at 1200 Milton Road in Napa, California (“Site”). The Site is subject to various federal and state regulatory requirements under the federal Clean Water Act (“CWA”), including compliance with the State Water Resource Control Board’s General Industrial Activities Storm Water Permit (“General Permit”). Napa Valley Marina (WDID # 2\_28I014841) filed a Notice of Intent and is regulated under the General Permit.
- C. On February 8, 2013, CRW served Napa Valley Marina with a 60-Day Notice of Violations and Intent to File Suit (“Notice Letter”) alleging various violations of the CWA relating to activities at the Site. The Notice Letter alleges that Napa Valley Marina, and the owner, operator, and site manager are responsible for the alleged violations.
- D. On April 9, 2013, NVM responded to the Notice Letter advising that any alleged violations of the General Permit were either already addressed and corrected and/or did not exist in the first instance.
- E. CRW conducted a site visit of the Napa Valley Marina facility on March 27, 2013. The site visit demonstrated to CRW Napa Valley Marina’s efforts to comply fully with the requirements of the General Permit.
- F. Napa Valley Marina denies all of CRW’s allegations that it is liable to CRW for any claims that were, or could have been asserted against Napa Valley Marina based upon the Notice letter.
- G. The Parties have exchanged information regarding the Site, as well as engaged in settlement negotiations.

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H.. The Parties now wish to resolve and settle all disputes, obligations, and purported or actual claims or causes of action, which may exist by and between CRW and Napa Valley Marina, including without limitation any disputes, obligations, claims and/or causes of action that were or could have been asserted in or pursuant to the Notice Letter relating to the Site.

NOW, THEREFORE, in consideration of the execution of this Agreement and the releases, satisfactions and promises made herein, it is hereby agreed upon by the Parties as follows:

### **TERMS AND CONDITIONS**

1. **Parties Bound By This Agreement and Length of Agreement.** This Agreement, and each of its provisions, including all representations, warranties, and promises contained herein, binds, and inures to the benefit of CRW and Napa Valley Marina, and each of their respective assigns, present and future affiliates, parents, subsidiaries, predecessors and successors in interest whether by merger, consolidation, or otherwise, as well as their respective representatives, officers, directors, agents, and administrators, past, present, and future. The “Effective Date” is the last date on which the signature of a Party to this Agreement is executed, and the “Termination Date” is the date that all of the requirements under Sections 2 and 3 are finished by Napa Valley Marina, or two years after the “Effective Date,” whichever occurs first.

2. **Actions By Napa Valley Marina.** In exchange for the delivery, execution, and performance of this Agreement and of the Release by CRW as provided herein, Napa Valley Marina shall perform the below specified projects at the Site. Napa Valley Marina reserves the right, in its sole discretion, to determine (i) which persons shall perform any work described herein, including contractors; and (ii) the scope and technical details of, and manner to implement, any such work, subject to review and approval by the Regional Water Quality Control Board (or such other regulatory agency as may, from time to time, exercise jurisdiction with respect to environmental matters at the Site):

2.1. **Prepare and Implement a Revised SWPPP and Monitoring Plan.** Within sixty (60) days after the Effective Date of this Agreement, Napa Valley Marina shall prepare a revised Storm Water Pollution Prevention Plan (“SWPPP”) and provide a copy to CRW, that complies with the General Permit, and includes:

2.1.a. – General provisions ensuring the SWPPP generally conforms, where applicable, to provisions contained in (i) *Stormwater Best Management Practice Handbook*, California Stormwater Quality Association January 2003, and (ii) the Best Management Practices (“BMPs”) detailed in the EPA’s “Industrial Stormwater Fact Sheet Series, Sector R: Ship and Boat Building or Repair Yards” (EPA Office of Water, EPA-833-F-06-033, December 2006; [www.epa.gov/npdes/pubs/sector\\_r\\_shipbuilding.pdf](http://www.epa.gov/npdes/pubs/sector_r_shipbuilding.pdf)), unless and until the .

2.1.b. – Specific additional amendments to the current SWPPP:

- A revised site map that identifies accurately the location of each storm water discharge point from the Napa Valley Marina site, and each monitoring location from which samples will be taken and reported on the Annual Report.
- A description of the underground drainage system transporting storm and non-storm water to the two detention ponds.
- Provisions confirming that NVM shall sample and conduct analysis of samples as required under the General Permit, including the annual collection of two wet weather samples of any discharge from a qualifying event through all discharging outfalls on the Napa Valley Marina Site, the analysis of those samples that for, by example and subject only to what is required under the General Permit or otherwise directed by any duly authorized California State Agency, pH, Total Suspended Solids (TSS), Turbidity, Specific Conductance (SC), Total Organic Carbon (TOC) or oil and Grease (O&G), as well as Copper (Cu) and Zinc (Zn) using the current EPA Methods and/or other methods approved by the Regional Water Quality Control Board, for analysis, and for total petroleum hydrocarbons, and diesel TPHg and TPHd), and provisions identifying BMPs to reduce these pollutants in any discharges that exceed EPA Benchmarks to below EPA Benchmarks for these pollutants, where achievable. Regardless of whether or not there are two qualifying storm events, Napa Valley Marina will take at least two (2) storm water samples from each sampling point provided there is a sufficient discharge from which to sample. Subject to and except as to the foregoing, nothing in this provision is intended to expand the obligations now imposed on Napa Valley Marina, or any of them, under the General Permit.

- 2.2 *Management of Stormwater and Non-Stormwater Discharges to Ponds.* Napa Valley will conduct quarterly “water mass balance” tests of the pond currently used for the collection and retention of storm and non-storm water. This testing (generally described as the water entering the pond must equal the evaporation rate minus any precipitation that will be added to the pond) will continue until the existing pond is replaced with Napa Valley's new Regional Water Quality Control Board-approved retention pond that is lined and engineered not to percolate. The replacement pond will be completed and placed in operation no later than 24 months after the Effective Date of this Agreement.

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- 2.3. Submission of Additional Reports to CRW. To the extent that annual or other monitoring reports are not otherwise uploaded to and made available on the Regional Water Quality Control Board's stormwater database, Napa Valley Marina agrees to provide CRW with a copy of any reports (e.g., monitoring reports) concerning matters addressed in this Agreement. Napa Valley Marina may furnish copies of any such reports to CRW in either hard copy or digital form.
3. Payment to CRW. Within fifteen (15) days after the Effective Date, Napa Valley Marina shall pay to CRW the total sum of \$35,000. Payment will be made in the form of a single check made payable to "California River Watch" and will be mailed to Law Office of Jack Silver, P.O. Box 5469, Santa Rosa, CA 95402-5469.
4. Release. It is the intent of the Parties that the execution and delivery of this Agreement constitutes a full and complete satisfaction of all rights, claims and demands by CRW against Napa Valley Marina, or any one of them, with respect to any and all allegations and claims under the Federal Water Pollution Control Act (33 U.S.C. section 1251, *et seq.*, or California Proposition 65 (California Health & Safety Code section 25249.5, *et seq.*, including those allegations and claims made in the Notice Letter under the Clean Water Act "the Released Claims"). CRW, on behalf of itself and any and all of its agents, representatives, successors, members, affiliates, officers, directors, shareholders, partners, attorneys, and assigns, does hereby absolutely, fully, and forever release, relieve, remise, and discharge Napa Valley Marina, including, without limitation, Corporation, Partnership, and Owners, and their past and present employees, officers, directors, shareholders, partners, attorneys, and the predecessors, successors, and assigns of any of them, (hereinafter sometimes referred to as "Released Parties," from any and all causes of action, claims, damages (including punitive damages), demands, debts, actions, attorneys' fees, costs of suit, and liabilities of every kind or nature whatsoever, arising out of the Released Claims. The release provided for herein shall be valid and effective whether the claims, causes of action, or liability hereby released (i) are known or unknown, suspected or unsuspected, (ii) are based in contract, tort, statute, or otherwise, or (iii) arise at law or in equity. This release shall survive the termination of this Agreement, whether by satisfaction of the terms and conditions hereof or operation of law.

Further, the parties acknowledge that they are familiar with Section 1542 of the California Civil Code. The foregoing release is intended to extend up to the Termination Date for any other claims against each other, known or unknown, suspected or unsuspected, and each party expressly waives and relinquishes any rights and benefits which they have or may have under Section 1542 of the Civil Code of the State of California, which provides:

*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*

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*or her settlement with the debtor.*

The Parties acknowledge that each has specifically reviewed with its attorney the meaning and effect of the release set forth herein, the language of California Civil Code Section 1542, and the waiver contained herein. The Parties acknowledge that their attorneys have fully explained the impact of these provisions, and the Parties knowingly accept the risks associated with these provisions.

5. Termination of Agreement and Covenant Not to Sue. This Agreement terminates five (5) years from the Effective Date. Further, for a period of five (5) years following the Effective Date of this Agreement, CRW agrees that neither CRW, nor its officers, executive staff, members of its governing board, nor any organization under the control of CRW, its officers, executive staff, and/or members of its governing board, will serve any Notice of Violations and Intent to Sue or file any lawsuit against any of the Released Parties, including, without limitation, Corporation, Partnership, and Owners, and each of them, seeking relief for alleged violations of the the Federal Water Pollution Control Action (33 U.S.C. section 1251, *et seq.*, or California Proposition 65 (California Health & Safety Code section 25249.5, *et seq.*), nor will CRW act affirmatively to initiate, encourage, assist or support such lawsuits specifically against any of the Released Parties brought by other groups or individuals by providing financial assistance, personnel time, names or other information, or take any other affirmative actions.

6. No Admission. This Agreement is the direct result of a compromise of disputed allegations and claims. As such, this Agreement shall not, for any purpose, be considered as an admission of liability by Napa Valley Marina, nor shall the payment of any sum of money in consideration for the execution of this Agreement constitute or be construed as an admission of any liability by Napa Valley Marina, which expressly denies any such liability or wrongdoing.

7. Delays in Schedule Implementation. In the event implementation by Napa Valley Marina of the remedial measures set forth in Section 2 of this Agreement does not occur by the agreed to dates, despite the timely good faith efforts of Napa Valley Marina to acquire any necessary approvals and/or permits, or due to factors unforeseen at the time this Agreement was entered into, Napa Valley Marina agrees to notify CRW in writing as soon as practicable after the anticipated delay becomes apparent, and in any case except in a case of force majeure described below, not less than twenty (20) days prior to any deadline set forth in Section 2, and shall describe the reasons for the anticipated delay.

8. Force Majeure. Napa Valley Marina shall not be deemed in default or breach of this Agreement by reason of any event which constitutes a force majeure. For purposes of this Agreement, a force majeure is defined as any event arising from causes beyond the reasonable control of Napa Valley Marina or its contractors that delays or prevents performance. This includes, without limitation, acts of God, acts of war, acts of terrorism, fire, explosion, extraordinary weather events, restraint by court order or public authority, or other causes beyond Napa Valley Marina's reasonable control. Neither increased costs nor economic hardship shall constitute a force majeure.

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9. Breach of Agreement and Dispute Resolution. Any disputes between CRW and Napa Valley Marina concerning any alleged breach of this Agreement shall be subject to the following dispute resolution procedures.

9.1. Good Faith Negotiations. CRW and Napa Valley Marina shall make good faith efforts to resolve informally any alleged breach of the Agreement. If informal efforts to resolve the alleged breach are unsuccessful, that Party shall provide written notice of the alleged breach and that Party's intent to initiate the dispute resolution procedure of this Section 9. The notice shall include a recitation of all facts and circumstances giving rise to the dispute, including the particular provisions of the Agreement alleged to have been breached.

9.2 Mediation. If the dispute is not resolved by the Parties within thirty (30) days after such notice is given, such dispute shall be submitted to mediation before a mutually agreeable neutral mediator. The Parties shall each bear their own costs and attorney's fees incurred in connection with such mediation.

10. Notices. All notices, consents, approvals, requests, demands and other communications (collectively, "Notice") which the Parties are required or desire to serve upon or deliver to the other Party shall be in writing and shall be given by nationally-recognized overnight courier, by certified United States mail, return receipt requested, postage prepaid, addressed as set forth below, or by facsimile or electronic mail addressed as set forth below:

If to CRW: Jack Silver / Law Office of Jack Silver  
P.O. Box 5469 Santa Rosa, CA 95402-5469  
Tel:(707) 528-8175 Fax:(707) 528-8675  
Email:warrioreco@yahoo.com

If to Napa Valley Marina: Therese Y. Cannata  
Cannata, Ching & O'Toole, LLP  
100 Pine Street, Suite 350  
San Francisco, CA 94111  
Tel: 415.409.8900; Fax 415.409.8904  
Email: [tcannata@ccolaw.com](mailto:tcannata@ccolaw.com)

The foregoing addresses may be changed by Notice given in accordance with this Section 10. Any Notice sent by mail shall be deemed received five (5) days after the date of mailing. Any Notice sent by facsimile shall be deemed received upon electronic confirmation of the successful transmission thereof, and any Notice sent by electronic mail shall be deemed received upon electronic transmission thereof provided sender does not receive electronic notice of non-delivery. Any Notice sent by overnight courier service shall be deemed received on the day of actual delivery as shown by the confirmation of delivery by the messenger or courier service. If the date of receipt of any

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Notice to be given hereunder falls on a weekend or legal holiday, then such date of receipt shall automatically be deemed extended to the next business day immediately following such weekend or holiday for purposes of calculating time periods commencing upon the date of service.

11. Attorneys' Fees. Other than the payment to CRW under Section 3, each Party shall bear its own past and future attorneys' fees and costs relating to the subject matter of this Agreement.
12. Parties' Acknowledgment of Terms. This Agreement has been carefully and fully read and reviewed by CRW and Napa Valley Marina and their respective counsel, if any, who hereby represent that the contents of this Agreement are understood, and agree that this Agreement is binding on each Party or its respective predecessors, successors, and assigns and as described above.
13. Interpretation and Applicable Law. This Agreement shall be construed and interpreted in accordance with the laws of the United States and the State of California. This Agreement shall be interpreted and construed as a whole, according to its fair meaning and not strictly for or against any Party, and without regard to which Party drafted the Agreement. All of the promises, representations, and warranties contained in this Agreement survive the execution of this Agreement.
14. No Assignments. Each Party to this Agreement represents and warrants that it has not assigned, transferred, hypothecated, or sold to any third person or entity, any of the rights or obligations released by or entered into under this Agreement.
15. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall evidence one and the same agreement.
16. Headings. The headings used in this Agreement are for convenience of reference and shall not be used to define any provision.
17. Entire Agreement In Writing. This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter set forth herein and supersedes all previous or contemporaneous negotiations, commitments (oral or written), and writings with respect to the subject matter set forth herein.
18. Modification or Amendment. This Agreement or any of its provisions may be modified or amended only by written agreement executed by all Parties to this Agreement.
19. Severability. The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision. If, in any action before any court or other tribunal of competent jurisdiction, any term, restriction, covenant, or promise is held to be unenforceable for any reason, then such term, restriction, covenant, or promise shall be deemed modified to the extent necessary

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to make it enforceable by such court or other tribunal and, if it cannot be so modified, that this Agreement shall be deemed amended to delete herefrom such provision or portion adjudicated to be invalid or unenforceable, and the remainder of this Agreement shall be deemed to be in full force and effect as so modified. Any such modification or amendment in any event shall apply only with respect to the operation of this Agreement in the particular jurisdiction in which such adjudication is made.

20. Representations and Warranties. This Agreement is given voluntarily, free of undue influence, coercion, duress, menace, or fraud of any kind. No Party, nor any officer, agent, employee, representative, or attorney of or for any Party, has made any statement or representation to any other Party regarding any fact relied upon in entering this Agreement, and no Party is relying upon any statement, representation, or promise of any other Party, nor of any officer, agent, employee, representative, or attorney of or for any Party, in executing this Agreement or in making the settlement provided herein, except as expressly stated in this Agreement.

21. No Third Party Beneficiaries. . Except as provided in sections 4 and 5 hereof, this Agreement is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Agreement for any cause whatsoever. Subject only to the express restrictions contained in this Agreement, all of the rights, duties and obligations contained in this Agreement shall inure to the benefit of and be binding upon the Parties, and their successors and assigns.

22. Authority. Each of the persons signing this Agreement on behalf of an entity represents and warrants that he or she has actual authority and capacity to execute this Agreement on behalf of the entity and to bind it to all of the terms of this Agreement.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed by their duly authorized representatives.

**NAPA VALLEY MARINA, INC.**

By: \_\_\_\_\_  
Thomas Giovanonni,  
President

Dated: \_\_\_\_\_

**NAPA VALLEY MARINA, A CALIFORNIA GENERAL PARTNERSHIP**

By: \_\_\_\_\_  
Thomas Giovannoni, partner

By: \_\_\_\_\_



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Daniel Giovannoni, partner

OWNERS:

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Thomas Giovannoni

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Daniel Giovannoni

**CALIFORNIA RIVER WATCH**

By:

  
Margaret Bacagalupi  
Board President

Dated:

4-26-13

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18. Modification or Amendment. This Agreement or any of its provisions may be modified or amended only by written agreement executed by all Parties to this Agreement.

19. Severability. The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision. If, in any action before any court or other tribunal of competent jurisdiction, any term, restriction, covenant, or promise is held to be unenforceable for any reason, then such term, restriction, covenant, or promise shall be deemed modified to the extent necessary to make it enforceable by such court or other tribunal and, if it cannot be so modified, that this Agreement shall be deemed amended to delete herefrom such provision or portion adjudicated to be invalid or unenforceable, and the remainder of this Agreement shall be deemed to be in full force and effect as so modified. Any such modification or amendment in any event shall apply only with respect to the operation of this Agreement in the particular jurisdiction in which such adjudication is made.


20. Representations and Warranties. This Agreement is given voluntarily, free of undue influence, coercion, duress, menace, or fraud of any kind. No Party, nor any officer, agent, employee, representative, or attorney of or for any Party, has made any statement or representation to any other Party regarding any fact relied upon in entering this Agreement, and no Party is relying upon any statement, representation, or promise of any other Party, nor of any officer, agent, employee, representative, or attorney of or for any Party, in executing this Agreement or in making the settlement provided herein, except as expressly stated in this Agreement.

21. No Third Party Beneficiaries. Except as provided in sections 4 and 5 hereof, this Agreement is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Agreement for any cause whatsoever. Subject only to the express restrictions contained in this Agreement, all of the rights, duties and obligations contained in this Agreement shall inure to the benefit of and be binding upon the Parties, and their successors and assigns.

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NAPA VALLEY MARINA

By:   
Thomas Giovanonni,  
President

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Dated: 4-26-13

NAPA VALLEY MARINA, A CALIFORNIA GENERAL PARTNERSHIP

By: Thomas Giovannoni  
Thomas Giovannoni, partner

By: Daniel Giovannoni  
Daniel Giovannoni, partner

OWNERS:

Thomas Giovannoni  
Thomas Giovannoni

Daniel Giovannoni  
Daniel Giovannoni

CALIFORNIA RIVER WATCH

By: \_\_\_\_\_  
Margaret Bacagalupi  
Board President

Dated: \_\_\_\_\_