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November 13, 2012

Hon. John A. Marlo (Ret.)
7278 Mesa Drive
Aptos, CA 95003

Re: Reddy, Anil and Divya vs. Ruby
Hill Owners Association

Dear Judge Marlo:

Enclosed please find the Mediation Brief from Anil and Divya Reddy.

Very truly yours,


Jeffrey P. Widman

Enc.

cc: Jim McKeehan, Esq.
Anil Reddy

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5

6 JUDICIAL ARBITRATION AND MEDIATION SERVICES (JAMS)
7 (SAN JOSE BRANCH OFFICE)
8

9 ANIL REDDY and DIVYA REDDY,) NO. 1110015219
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11) PETITIONERS' MEDIATION BRIEF
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INTRODUCTION

The parties to this dispute are Anil Reddy and Divya Reddy (together, "Reddy"), owners of a newly constructed residence ("Residence") on a lot within a subdivision governed by Ruby Hill Owners Association ("Association"). Reddy substantially completed construction in March of 2012. The construction was based upon plans approved not only by the City of Pleasanton, but also by Association itself. Moreover, Association supervised the construction as it progressed; and Reddy paid the Association for that service. However, when Reddy applied for final approval so that they could occupy the Residence, Association refused on grounds that can only be called petty, arbitrary, and motivated by

1 bad faith. As a consequence, Reddy has been forced to leave the
2 Residence unoccupied while bearing the expense of carrying costs
3 on the Residence plus the loss of rental value.

4 This mediation represents the statutory ADR procedure under a
5 Request for Resolution preceding litigation.

6
7 **I. BACKGROUND**

8 Association, acting through its Architectural Design Committee
9 ("ADC"), Manager, and its Board of Directors ("Board"),
10 collectively and in concert with each other, have arbitrarily
11 refused to give Reddy final approval to occupy the new Residence.

12 Since 2008, Reddy longed to own a house for their young
13 family. Despite an unprecedented economic and housing crisis, Reddy
14 decided to spend their hard earned savings on buying a house in
15 2010. Yet, in their search for existing homes Reddy found
16 themselves wanting something more; and Reddy realized they perhaps
17 should build one.

18 During their travels to Spain in 2009 and then again in early
19 2010 before home search, Reddy fell in love with the Southern
20 Spanish Mediterranean (Andalusian) Architecture and decided this is
21 what Reddy wanted. Reddy had taken hundreds of photos and bought
22 reference books from the region so Reddy could replicate the
23 eclectic architectural style of this beautiful Mediterranean
24 region. They located a suitable lot in the Ruby Hill planned
25 community.

26 Ruby Hill is a 900-acre community consisting of 850 homes. Out
27 the dozen empty lots left, in April of 2010 Reddy settled for a lot
28 that offered the best size for their budget, and most importantly

1 privacy in the backyard. The backyard faced a massive 100-foot
2 wide water tank, but no other neighbor). This lot offered a unique
3 potential to build their dream home.

4 To achieve the best quality home and to save construction
5 costs, Reddy decided to design and build the house themselves as
6 Owner-Builder. Reddy had no previous construction experience or
7 architectural experience. Since custom home construction was a
8 full-time endeavor, Mr. Reddy decided to take a break from his
9 career and focus on building the Residence. Reddy did not
10 anticipate the delays created by Association's belated interference
11 with occupancy of the Residence after its construction.

12 The Residence was constructed according to detailed
13 architectural plans approved by Association's Architectural Design
14 Committee (ADC") in June of 2010. The Residence was built to
15 rigorous State Building Codes and passed all necessary City
16 building inspections. The finished Residence meets Association's
17 Architectural Design Guidelines ("Guidelines") in letter and
18 spirit. Yet the ADC though the Association's Manager (who is also
19 their neighbor two doors away from their house) and the Board have
20 belatedly asserted that portions of the Residence lack approvals
21 and therefore must be replaced or changed at great additional
22 expense. That assertion follows actual completion of construction
23 in March 2012.

24 The construction progressed under ADC's own construction
25 monitoring for which Reddy paid a \$6,000.00 fee at the start of
26 construction in July of 2010. Monitoring continued through
27 completion in March of 2012. The ADC during its routine
28 inspections and the Manager, during his twice-daily drives past the

1 house, could readily observe the construction. Therefore they
2 possessed full and immediate knowledge of the details of
3 construction and all materials installed.

4 5 III. DISPUTED FEATURES OF THE CONSTRUCTED RESIDENCE.

6 A. ARCHITECTURAL STYLE.

7 1. Association's Position:

8 Association contends that the Architectural style of the
9 Residence does not conform to any style allowed under the
10 Guidelines. Specifically, Association insists that the Residence
11 fails to meet the criteria for "Spanish Eclectic/ Monterey."

12 2. Reddy's Position.

13 Association is incorrect for several reasons. First, the
14 Guidelines do not mandate any particular architectural style, even
15 though the Guidelines do list some desirable ones. The Guidelines
16 emphasize flexibility in architectural design. Second, at the
17 outset the Association approved Reddy's plans which unmistakably
18 display their intended architectural style. Association's
19 objection comes late and must be overruled for that reason alone.
20 Third, the actual design of Residence meets the criteria for a
21 Spanish Eclectic architectural style. The addition of "Monterey"
22 makes no difference except to add a local flavor.

23 The disputed features of finished Residence are in substantial
24 conformity with the Guidelines and to what was previously reviewed
25 and approved by the ADC. Those components (entry doors, stucco
26 colors, column detail, gazebo design, etc.) conform with the
27 Southern Spanish Mediterranean (Andalusian) architecture, simply
28 referred by Reddy now as "Spanish Eclectic." Notwithstanding

1 Association's objection, there exist numerous precedents within
2 Ruby Hill Community of existing homes with similar design features
3 and details.

4 The ADC belatedly claims this Residence must conform to
5 California "Spanish Eclectic/ Monterey" style as "required" by the
6 "approved" list of architectural styles in the Guidelines. The ADC
7 claims it approved Reddy's plans under that style though no mention
8 of it is made on any plans or emails until after Reddy requested
9 final approval in March of 2012. Only at that late date did the
10 ADC take the position that the various details such as stucco
11 colors, columns, iron entry doors, gazebo, horizontal band, gate,
12 etc. do not conform to that style and must therefore be removed
13 and/or changed.

14 To the contrary, the Guidelines clearly state: "It is not
15 the intent of these guidelines to dictate specific Architectural
16 styles that must be used within the community," and "these
17 guidelines are created to encourage a community of individual
18 outstanding Architectural statements". The Guidelines also
19 acknowledge that: "Architectural designs should be customized for
20 each homesite." The Guidelines explain: "It is desirable for the
21 homes of the Ruby Hill community to exhibit the individuality of
22 their owners as well as the characteristics of the selected
23 architectural style", and that what is more important is that
24 "building materials allow a pleasing and harmonious exterior
25 appearance for the residence" and that "features [have] been
26 researched to achieve a degree of authenticity" and express the
27 "individuality of their owners as well as the characteristics of
28 the selected architectural style." The Guidelines warn the ADC not

1 to act despotically on Owners because "terms such as 'sound design'
2 and 'good taste' are difficult to describe and even more difficult
3 to legislate." The Guidelines, in short, tolerate subjective
4 differences in taste.

5 Moreover, the Guidelines mention various styles merely as
6 '**Architectural Examples.**' The Guidelines place the styles in
7 Appendix A; they are not even part of the main document. By
8 insisting that those examples of architectural styles are the only
9 ones approved by the Association, the ADC misreads the Guidelines.

10 The Guidelines further explain: "The following elements are
11 to be encouraged: intelligent selection of details related to a
12 well designed floor plan; sensitive interpretation of styles within
13 constraints of budget and site; consistency of site planning,
14 landscaping and Architecture; and logical use of materials.
15 Openings should be properly placed and spaced, and have well
16 executed details that are consistent with the Architectural style."

17 [Emphasis supplied.]

18 The finished Residence meets all requirements of the
19 Guidelines and does ample justice to the community and its
20 surroundings. Reddy has built a authentic Spanish home with
21 eclectic Mediterranean design details from various parts of
22 Southern Spain (Andalusia). The Residence incorporates appropriate
23 stucco colors, historical column details and proportions, ornate
24 iron work, uniform scale, proportions, and choice of materials.
25 Each elevation and feature of the Residence was designed from
26 actual Architecture elements of various towns and buildings of that
27 Spanish Mediterranean region. For example, the front entry
28 elevation comes from Alhambra, columns from Granada, two-level

1 loggia breezeway from Generalife, tower from Cordoba, roof deck and
2 courtyard from Seville, etc. In fact, the Residence is one of the
3 very few homes on Ruby Hill that can make this claim to
4 architectural authenticity and a high quality of
5 materials/workmanship which was privately acknowledged by even the
6 two members of the ADC. It even meets the Association's criteria
7 for "Spanish Eclectic."

8 To state the obvious, Spain is older than Monterey,
9 California. The latter region imported the Spanish Eclectic style
10 as the inspiration for its own architecture. There is no
11 meaningful difference between the two 'eclectic' styles.

12
13 **B. Lack of Approval for Colors, Columns, Entry doors, and Other**
14 **Details.**

15 **1. Association's Position.**

16 Association contends that it had not pre-approved all exterior
17 materials and colors incorporated into the Residence, even after
18 approval of Reddy's architectural plans. Association relies upon a
19 single statement in the ADC's initial approval letter dated June
20 30, 2010.

21 **2. Reddy's Position.**

22 The approval letter followed Association's review of Reddy's
23 detailed building plans; and the plans disclosed the details now
24 challenged by Association. This letter was required by the City's
25 Building Department in order to issue Reddy the construction
26 permit. It is a form letter, and Association has not consistently
27 adhered to its requirements.

1 Association conveniently ignores other statements in that same
2 letter. Here are other statements that ADC made in this letter
3 which ADC did not really mean or had no intention of enforcing:

4 1. Prior to commencing with construction, you must submit a
5 copy of your permit to the ADC. (This is never required and was
6 not done in this case.)

7 2. Please note: If not using a featured builder, you must
8 submit your builder for approval. (ADC already knew Reddy had never
9 before designed or built a home, and that Reddy is not using their
10 'featured builder' or any other builder.)

11 3. The builder must provide the ADC a general certificate of
12 liability insurance policy for the construction period listing Ruby
13 Hill Owners' Association as additionally insured. Limits are \$1
14 million per occurrence and \$2 million aggregate. (Reddy, as Owner-
15 Builder, was never asked for this.)

16 4. Periodic inspection of the construction of the home to
17 assure compliance with the Architectural Design Guidelines, as
18 described in the Ruby Hill Declaration of Covenants, Conditions and
19 Restrictions will be made. (Although Association now claims the
20 opposite, the Guidelines require this from ADC. Reddy paid ADC a
21 \$6,000.00 fee to include this construction monitoring service.) No
22 objections were raised during entire construction period to any
23 colors, materials, or any other detail, until after the building
24 was finished and Reddy requested in March 2012 their final approval
25 letter.

26 5. ADC reserves the right to cure oversight errors on its part
27 in the review of the plans and specifications which may appear or
28 be **observed during construction**. (This statement requires ADC to

1 raise any objection during construction, not after construction
2 ends and the owner requests final occupancy approval.)

3 The ADC, Association Manager, and the Board Members had daily
4 access and to the construction site over the 1.5 year construction
5 period. All materials and colors stood in full view of all who
6 passed on the main thoroughfare -- Ruby Hill Drive-- where this
7 Residence is situated. Bobby Jones, Association's manager, lives
8 two houses away from Reddy's; he drove past the Residence hundreds
9 of times (twice each day) without making any objection to currently
10 disputed items. He stopped by twice in 2011 to ask Reddy to clear
11 debris, which Reddy promptly did to his satisfaction. Even a Board
12 Member, Diana Nathan, routinely walked past the site during the
13 construction period with a friend, stopping to chat with Mr. Reddy
14 and to inquire on progress and admire the quality of construction
15 over a dozen times. The ADC itself performed at least two
16 construction monitoring inspections that Reddy is aware of without
17 raising any objection to the details. Yet ADC now claims not to
18 have done any.

19 The ADC's current main objections pertain to stucco colors,
20 iron entry doors, and columns. Those objections are belated. Those
21 details were reviewed extensively as part of the review of the
22 initial plans. Those plans referenced hundreds of photos of
23 structures taken in Spain. Features of the Residence were detailed
24 on the plans to the extent possible or necessary. Further, samples
25 and details for stucco and stone colors, and columns were submitted
26 to ADC by the stucco and stone contractor before they were applied
27 -- again without objection.

28

1 Yet another late objection - intended to prevent Reddy's
2 occupancy and so to discriminate against Reddy - concerns the
3 gazebo. The design of the gazebo went through three iterations
4 with ADC. Only after Reddy asked for final approval did its design
5 come into question.

6 The ADC's letter on March 22, 2012 states on page 3, item 35:
7 "The gazebo is incomplete." This suggests that the approved gazebo
8 then remained under construction and must be completed for final
9 approval. No objection was raised to the gazebo design itself
10 until two months later when ADC decided to attack other design
11 features.

12 Yet another example of Association's arbitrary actions: Under
13 the Guidelines and by precedent, installation of landscaping is not
14 required to be completed prior to home occupancy. Yet Association
15 denied Reddy's repeated requests for permission to occupy the
16 Residence during the last several months based upon incomplete
17 portions of the Landscaping.

18 19 C. COLORS

20 1. Association's Position.

21 Apparently the Association dislikes the colors used on the
22 exterior of the Residence. Association's reasons are obscure.
23 Association may believe that the colors do not blend well with the
24 landscape or conform with colors on other homes in the subdivision.
25 Or perhaps Association wishes for more muted tones. In any case,
26 Association makes a subjective judgment.

1 **2. Reddy's Position,**

2 The colors used are perfectly appropriate to the intended
3 architectural style. The colors have been used in aesthetically
4 pleasing ways, and in keeping with old-world Spanish style of house
5 and remain consistent surrounding community.

6 White-washed stucco is the most commonly used exterior body
7 color through out Southern Spain, and this Residence emulates the
8 designs in that region. Numerous photos documenting this were
9 presented during the initial design review stage in May/June of
10 2010. At that time the ADC made no objection to them.

11 Several examples of white body color exist within the Ruby
12 Hill community.

13 As with rest of the material and construction, Reddy planned
14 to use a high quality stucco supplier in California -- La Habra.
15 The supplier was identified on the approved plans. La Habra has
16 only one white color to choose from in their catalog and that is
17 what was used on the Residence.

18 Moreover, Reddy chose the meticulous hand applied technique of
19 smooth troweled finish (referred to as SBMF or Santa Barbara
20 Mission Finish) in La Habra's catalog. This is the highest quality
21 and most expensive application of this product giving the walls a
22 distinct Venetian-plastered type mottled, marble-like smooth
23 finish.

24 Stucco work was completed by the summer of 2011. All exterior
25 wall elevations visible from the street or by neighbors are
26 finished with this white stucco color.

27 For the rear elevation seen by no one because of the 100-foot
28 by 40-foot water tank behind the Residence, Reddy wanted to create

1 a pueblo plaza style of colors on jointed buildings. Reddy
2 continued to use only La Habra as noted on the plans, and Reddy
3 chose old world colors from their product line to achieve this
4 effect successfully. This is a private part of the building and
5 the colors give a remarkable old world town square look for the
6 rear elevation, again visible to no one from the street.

7 ADC again chose to belatedly object to this \$200,000.00+
8 stucco and color application. Now ADC simplistically suggests to
9 paint it over with a color ADC prefers. Not only there is no good
10 reason to do so, but the stucco cannot be 'painted over' because
11 the finishes are hand troweled Venetian-plaster style smooth
12 mottled finishes. Re-painting will destroy the special texture.

13 Once again, one can see several examples of similar muted, old
14 world colors on existing homes within the Ruby Hill community.

15

16 **D. COLUMNS.**

17 **1. Association's Position.** Association claims the columns
18 were not pre-approved. Association objects to the columns because
19 they are not historically accurate, proportionate to the size of
20 the Residence, and in any case, because they appear too "ornate."
21 The objection is, again, purely subjective. Whether a design is
22 too ornate or too plain depends entirely on one's taste.
23 Association asks that the columns be replaced, whatever the cost.

24 **2. Reddy's Position.**

25 Columns for this Andalusian Residence are distinct with narrow
26 shafts and wide squared capitals. Not unlike the Corinthian order
27 of capitals on Roman columns, these columns can be quite ornate

28

1 along with rest of stone trim detail surrounding the columns,
2 doors, arches, ceilings and other openings.

3 The columns were discussed with the ADC from the start as they
4 were integral to the final look for the Residence. Dozens of
5 actual original photos were presented, and Andalusian architecture
6 books as well. The approved plans show the capital details simply
7 on the window cutouts and not on larger columns. The design on the
8 plans and front elevations clearly show the Andalusian features,
9 with a large center archway reflecting the original Alhambra
10 structure the Residence imitates.

11 There was never any doubt what the columns were to look like.
12 Though Reddy started by doing detailed CAD drawings copying the
13 original intricate details and investing in carved samples and
14 creating cast molds, Reddy decided to simplify the plans by showing
15 only exact historic proportions and minimal detail taken from
16 original capitals. The material was to be actual powdered
17 limestone applied in a smooth finish to mimic the original as much
18 as possible. Even the color was matched using La Habra's Hacienda
19 color to give the beige/cream contrast against the white stucco,
20 much as the original Andalusian architecture. This was completed
21 in December of 2011 in full view of ADC, Manager, and Board, under
22 their construction monitoring. By all accounts Reddy has been
23 successful in the final product, receiving accolades from neighbors
24 and privately from the ADC members as well.

25 Now Association now belatedly raises objections to the columns
26 too. Association insists upon replacement of all 30 plus finished
27 columns and capitals at cost of over \$150,000.00. This is not only
28

1 unreasonable, arbitrary, whimsical, and discriminatory, but also
2 goes against the letter and spirit of the Guidelines.

3
4 **E. ENTRY DOORS.**

5 1. **Association's Position.** Association's position here is
6 similar to its position on the columns: Too ornate and must be
7 replaced.

8 2. **Reddy's Position.**

9 The entry doors consist of a 16-foot high front center door
10 and two 14-foot doors on either side. These doors are integral to
11 the design. The doors, as with rest of design elements of the
12 house) are proportionate to the size and scale of the wall and
13 overall building mass. More importantly, the Guidelines allow
14 entry doors of this size and design at page 22: "3. The main
15 entrance should have a sense of prominence that is reflected on the
16 design . . . The main entrance should contain more detail than
17 other openings but be consistent in styling."

18 The doors were the focus of the design from the very
19 beginning. In May of 2010 as the plans were being drafted, Reddy
20 looked around for suppliers and found only one that had this size
21 door -- Hubbard Door Company. Reddy reviewed this supplier with ADC
22 and even referenced page 5 of their standard catalog to pick this
23 door style. The doors were then designed into the plans, and even
24 noted on plans as being "16 ft. wrought iron door." Because of the
25 load introduced by incorporating such large and heavy doors, great
26 care had been taken from the start to engineer properly the
27 surrounding structures holding these doors in their final place.
28 The doors were one of the first items to be installed. Even at the

1 framing stage back in March of 2011 the outline of the doors stood
2 in full view from Ruby Hill Drive, a full year before the final
3 approval was requested from ADC.

4 Sadly, the ADC chose to belatedly raise objections to these
5 doors and to demand that Reddy replace them. The doors alone cost
6 over \$150,000.00, Again, several precedents of elaborate iron
7 entry doors currently exist on other Ruby Hill homes.

8
9 **F. GRADING/ENCROACHMENT ONTO NEIGHBOR'S LOT.**

10 **1. Association's Position.** Association asserts that Reddy
11 has encroached on his neighbors lot during grading and installation
12 of irrigation lines.

13 **2. Reddy's Position.**

14 Photo evidence and grading plans will show that there is no
15 such permanent grading or encroachment into the south-side
16 neighbor's lot. Reddy is well within the property line stakes. The
17 Board and ADC is using the neighbor's ranting complaint letter as
18 an excuse to withhold approval.

19 The neighbor is plainly upset about loss of his panoramic
20 views due to construction of the Residence. In reality, this
21 neighbor and the northside neighbor are the ones that have each
22 encroached onto Reddy's property by planting trees and installing a
23 permanent fence a foot inside Reddy's property (shown on grading
24 plans by a civil engineer).

1 G. OTHER

2 Association challenges other details of the construction.
3 Reddy lists those details here without further explanation of the
4 nature of the dispute:

- 5 1. Lanai iron doors.
- 6 2. Gold accent color on trim of doors.
- 7 3. Motor gate piers (those that support the gate installation)
8 being 6" taller than the 4-foot arbitrary limit set by ADC.
- 9 4. Horizontal band at front elevation.
- 10 5. Features of the installed landscaping.

11
12 CONCLUSION

13 According to the Guidelines, "Ruby Hill is designed to be a
14 unique community of estate and village homes". While the
15 Guidelines proclaim that the ADC "**does not seek to restrict**
16 **individual creativity or preferences**", the ADC has done nothing but
17 the opposite, demanding numerous changes and compromises Reddy were
18 already forced to adopt. Here are some examples of Reddy's past
19 concessions:

20 1. Disapproved of the brick accents, which Reddy initially
21 managed to incorporate into approved plans but later decided to
22 concede and remove from final construction.

23 2. Color of doors was to match originally inspired doors, but
24 changed all exterior iron doors to use same dark brown/bronze
25 color.

26 3. Eliminated or minimized use of gold accents on iron doors
27 commonly used throughout the Spanish world.

1 4. Changed gazebo design twice at ADC's behest, only to be
2 objected to again midway through construction when Reddy
3 incorporated their specific demands to use similar materials as
4 main house (colors, columns, iron work, etc.).

5 5. Painted beautiful cooper foundation vent louvers to body
6 color white at ADC behest.

7 6. Refrained from using planting material of their choice due
8 to ADC's incorrect interpretation of Guidelines concerning Italian
9 Cypress trees, and Sky Rocket Juniper trees.

10 7. Reluctantly paid a hefty \$6,000.00 design review and
11 Construction Monitoring fee, along with additional \$5,000.00
12 Construction Deposit.

13 The Residence is true to the style it subscribes, built of
14 highest quality materials and workmanship, with their blood, sweat
15 and toil. Though now owning a finished, empty, ready-to-be-
16 occupied home over two years since starting construction, and three
17 years since that fateful decision to build their custom home, the
18 Reddy family is still homeless (their children now are 13 and 11)
19 and burdened with unbearable financial costs and emotional
20 distress. Reddy has suffered enough simply for dreaming a dream
21 home.

22 Reddy have already exceed their budgets in construction and
23 lost their reserves through unnecessary carrying costs in the last
24 eight months. Reddy does not have the \$500,000.00 in spare to
25 carry out the whimsical changes demanded from them to replace
26 doors, columns, colors, gate, gazebo, and who knows what more.

1 In this mediation, Reddy seeks to end Association's
2 discriminatory actions against their family and to secure the
3 following:

4 1. Final approval so the Reddy family can move in to
5 their Residence.

6 2. No further discriminatory actions against their family
7 in the future so that Reddy can live in the community
8 without fear of further retribution.

9 3. Compensatory financial damages incurred in excess of
10 \$25,000 per month beginning in April of 2012 for
11 supporting this unoccupied Residence due to Association's
12 failure to approve occupancy without justification.

13 4. Legal fees incurred for this ADR process resulting
14 from Association's actions.

15 5. Refund of Reddy's \$5,000.00 construction deposit
16 demanded by Reddy in September of 2012.

17 6. Partial refund for of the \$6,000.00 arbitrary and
18 previously undisclosed Design Review and Construction
19 Monitoring Fee collected in June 2010. (The Guidelines
20 mention a \$1,500.00 amount.)

21 7. Monthly Association dues of \$215.00 Reddy has paid
22 over the last 30 months without being allowed to move
23 into the community.

24 8. Lost rental value estimated at \$20,000 per month beginning
25 in April of 2012.

26 Association and Reddy have not previously engaged in any
27 meaningful negotiation over the above demands. This is
28 Association's fault. Reddy made several attempts to negotiate with

1 Association but was rebuffed. Association even denied a request
2 for internal dispute resolution.

3
4 Dated: November 13, 2012


Jeffrey P. Widman,
Attorney for Anil and Divya
Reddy

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