

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE ("Agreement") is entered into as of the last date of execution of the Agreement, by and among Plaintiff, CP III Centrepoint, LLC ("Plaintiff") and Defendants, City of San Diego ("City"), Kelly Broughton ("Broughton"), in his capacity as Director of the Development Services Department of the City of San Diego, and Afsaneh Ahmadi ("Ahmadi"), in her capacity as the Chief Building Official of the Development Services Department of the City of San Diego (collectively "Defendants"). Plaintiff and Defendants may collectively be referred to hereinafter as "the Parties."

A. Plaintiff is owner and developer of real property located at the intersection of 63rd Street and El Cajon Boulevard, in the City of San Diego, commonly known as, and with addresses including, 6303 El Cajon Boulevard, 6345 El Cajon Boulevard, 6351 El Cajon Boulevard, 6363 El Cajon Boulevard, 4645 63rd Street, 4720 Seminole Drive, and 4740 Art Street, San Diego, California 92115 ("Property").

B. Plaintiff has obtained a grading, demolition, public improvement, and building permit (see Exhibit A for list of said permits) for the construction of a mixed-use project on the Property consisting of 332 residential apartment units, approximately 10,000 square feet of commercial space, and a parking structure ("Project"). The permits referenced above and listed in Exhibit A hereto for the Project shall hereinafter be referred to as "the Existing Permits."

C. On May 7, 2013, Centrepoint filed a Complaint for Injunctive Relief (Mandamus), Declaratory Judgment, Violation of 42 U.S.C. § 1983 (Procedural Due Process), Violation of 42 U.S.C. § 1983 (Equal Protection), Violation of Cal. Const. Art. I § 7(a) (Procedural Due Process), and Violation of Cal. Const. Art. I § 7(a) (Equal Protection) ("Complaint") in the United States District Court, Southern District of California, Case No. 13 CV 1089L ("Lawsuit").

D. Plaintiff and Defendants have agreed to settle the Lawsuit on the terms and conditions specifically set forth in this Agreement, and Plaintiff has agreed to dismiss the Lawsuit in exchange for valuable consideration, as herein described.

NOW THEREFORE, in consideration of the forgoing and for good and valuable consideration, the Parties hereby agree as follows:

1.0 Completion Under Existing Permits. Subject to the provisions below, the Parties agree the Project may proceed under the Existing Permits. The City agrees that it will not stop construction or issue a Stop Work Order in accordance with San Diego Municipal Code section 121.0309 or withhold certificates of occupancy on the basis of facts presently known to the City of San Diego Development Services Department Director, Kelly Broughton, subject to all of the provisions below:

- 1.1. Upon Defendants' execution of this Agreement, Plaintiff shall immediately file a request for dismissal of the Lawsuit without prejudice;
- 1.2. Upon City's issuance of the final Certificate of Occupancy for the Project, Plaintiff agrees the above dismissal shall automatically be with prejudice

and shall thereupon forever bar Plaintiff from any claims, relief or damages against Defendants pertaining to the facts which give rise to Plaintiff's Complaint or any actions related thereto;

- 1.3. Plaintiff further agrees to abide by all of the obligations set forth in Exhibit B hereto ("Centrepont's Additional Obligations") and expressly made part hereof;
- 1.4. Plaintiff hereby waives any and all rights, claims, causes of action, damages and/or relief (whether in equity or at law) against the Defendants if, in a contested action against the City (including without limitation an action between the Parties), a court of competent jurisdiction makes a final and non-appealable determination that the Existing Permits are not valid, that additional permits are or were required for the Project, and/or orders the City to issue a Stop Work Order pursuant to San Diego Municipal Code section 121.0309; and
- 1.5. Subject to the provisions above, the City agrees to process in accordance with the ordinary course of City business any and all applications for certificates of occupancy and construction permits necessary to complete the Project under the Existing Permits, including without limitation, (i) site masonry walls, (ii) fire alarms and sprinklers, and (iii) pools and spas.

2.0 Waiver of Claims. Conditioned on the City's compliance with the City's obligations set forth above in sections 1.0-1.5, plaintiff hereby agrees to waive and relinquish any and all rights, claims and causes of action arising from the City's actions alleged in the Lawsuit, including without limitation claims for writ relief, declaratory relief, monetary damages, attorneys' fees and costs against Defendants that have accrued (or may have accrued) prior to this Agreement. The foregoing waiver shall constitute an absolute bar to any claim of any kind whether any such claim be based on contract, tort, warranty, mistake or any other theory whether legal, statutory or equitable.

3.0 Right to Lease To Students. The City acknowledges Plaintiff's right to market and lease to individuals who are or may be students of any college or university, including but not limited to San Diego State University.

4.0 Compromise of Disputed Claims. This Agreement is a compromise of disputed claims and shall never at any time or for any purpose be considered an admission of any liability or responsibility on the part of any Party; nor shall the furnishing of any consideration for the execution of this Agreement constitute or be construed as an admission of any liability whatsoever by either Party.

5.0 Integration. The undersigned, and each of them, acknowledge and represent that no promise or inducement not expressed in this Agreement has been made in connection with this Agreement. This Agreement contains the entire agreement and understanding between the Parties as to the subject matter of this Agreement and is intended to be and is a final integration thereof. There are no representations, warranties, agreements, arrangements, undertakings, oral

or written, between or among the Parties hereto relating to the terms and conditions of this Agreement that are not fully expressed herein.

6.0 Waiver and Amendment. No provision of this Agreement, or breach of any provision, can be waived except in writing. Any waiver by the City must be formally approved by the City Council. Waiver of any provision or breach shall not be deemed to be a waiver of any other provision, or of any subsequent breach of the same or other provision. This Agreement may be amended, modified or rescinded only in writing signed by City and Plaintiff.

7.0 Captions. Paragraph titles and captions contained in this Agreement are inserted as a matter of convenience and for reference, and are not a substantive part of this Agreement.

8.0 Interpretation and Intent. This Agreement is the result of arms-length negotiations by the Parties, each of whom had their own counsel. Accordingly, all Parties hereto acknowledge and agree that this Agreement shall not be deemed prepared or drafted by one party or another, or the attorneys for one party or another. No provision of this Agreement shall be interpreted against any Party because that Party, or their legal representative, may have drafted that provision.

9.0 Benefit and Burden. This Agreement shall be binding upon and inure to the benefit of the Parties and their heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, partners, partnerships, parent companies, subsidiaries, affiliated and related entities, officers, directors, principals, agents, servants, employees, representatives, public officials, elected officials, and all persons, firms and/or persons or entities connected with each of them, including, without limitation, their insurers and sureties.

10.0 Governing Law. This Agreement has been executed in the State of California, and shall be interpreted and enforced under California law.

11.0 Warranty of Authority. Each of the signatories hereto represents and warrants that he or she is competent and authorized to enter into this Agreement on behalf of the Party for whom he or she purports to sign.

12.0 No Assignment. Each Party represents and warrants that it has not assigned or transferred any claims released herein, and that it is the sole owner of that claim.

13.0 Signatures. This Agreement may be signed in counterparts. Signatures transmitted by facsimile shall be deemed to be originals.

14.0 Representation by Counsel. The undersigned and each of them acknowledge and represent that they are affecting this compromise and settlement and are executing this Agreement after having received full legal advice as to their rights from an attorney of their choice.

15.0 Agreement Voluntarily. The undersigned and each of them acknowledge and represent that they have read this Agreement in its entirety, understand all of its terms and provisions, and sign this Agreement voluntarily and of their own free will, knowing that it is a legally binding document and with the intent to be bound hereby.

16.0 No Reliance On Other Party. The undersigned and each of them acknowledge and represent that they are affecting this compromise and settlement and are executing this Agreement (i) after they and their respective legal counsel had the opportunity to and did conduct an independent investigation of the relevant facts; and (ii) without relying on representation made by the other Party or the other Party's attorney.

17.0 Severability. Even if a court holds one or more parts of this Agreement ineffective, invalid, or void, all remaining provisions shall remain valid.

18.0 Time of Essence. Time is expressly declared to be of essence in this Agreement, and of every provision in which time is an element, if any.

19.0 Attorney's Fees Arising Out of Enforcement of Agreement. In the event any action or proceeding is brought to enforce this Agreement, the prevailing party shall be entitled to the reasonable fees, out-of-pocket expenses, and costs of attorneys and experts against the non-prevailing Party, in addition to all other relief to which that Party may be entitled. In no event may the court award as reasonable attorney's fees a sum greater than the amount incurred by the non-prevailing party.

IN WITNESS THEREOF, the undersigned have executed this Agreement as follows:

CP III CENTREPOINT, LLC

Dated: 5/23/13

By: 
Its: Authorized Agent

APPROVED AS TO FORM:

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

Dated: _____

By: _____
Valentine S. Hoy
Attorneys for Plaintiff
CENTREPOINT III, LLC

CITY OF SAN DIEGO

Dated: _____

By: _____
Its: _____

KELLY BROUGHTON

Dated: _____

By: _____

AFSANEH AHMADI

Dated: _____

By: _____

APPROVED AS TO FORM:

JAN I. GOLDSMITH City Attorney

Dated: _____

By: _____

Deputy City Attorney
Attorney for Defendants, CITY OF SAN
DIEGO, KELLY BROUGHTON, AND
AFSANEH AHMADI

EXHIBIT A

EXHIBIT B

Centrepoint's Additional Obligations

A. Plaintiff agrees to the following additional obligations and conditions which shall become effective and due upon issuance by the City of a final Certificate of Occupancy for the Project:

1. Centrepoint agrees to contribute to the City \$150,000, which funds City agrees shall be used exclusively for the enhancement of Clay Park in anticipation of the extra wear and tear imposed by the Project;

2. Centrepoint agrees to participate with the City and community representatives in the creation of a parking management plan for the adjacent single-family neighborhood acceptable to Centrepoint, the City, and community representatives;

3. Centrepoint agrees it and its assigns shall not rent dwelling units within the Project to tenants by the bed or the bedroom; and

4. Centrepoint agrees to institute and use commercially reasonable efforts to enforce leasing policies to control, and procedures to resolve, any disturbances emanating from the Project, including (i) day-to-day enforcement of community rules and regulations; (ii) disturbance compliance and eviction process for violations; and (iii) lease provisions that protect both onsite residents and neighbors from disruptive behavior.

B. In addition to the above, Centrepoint agrees to construct a single closet, and not multiple closets, in each bedroom within the four (4)-bedroom units. The single closet will be of equal or greater size to the existing approved closet design, at Centrepoint's sole discretion. The City agrees to promptly review and approve plan changes, if any, necessary to implement the design change. Centrepoint will initiate this plan change with the City within 30 days of the execution of this Agreement.