

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (“Agreement”), effective as of the ____ day of June, 2011, is entered by and between Plaintiffs, in their individual capacity as plaintiffs, complainants in intervention, and class members (hereinafter collectively “Plaintiffs”) and Defendants GOLDEN GATEWAY CENTER, LP, GOLDEN GATEWAY CENTER, INC., GOLDEN GATEWAY APARTMENT TOWERS and TOWNHOUSES, INC., GOLDEN MANAGEMENT LP (hereinafter collectively “GGC”), and ALPHA RESTORATION AND WATERPROOFING, INC. (hereinafter as “Alpha”) (hereinafter collectively referred to as “Defendants”). Plaintiffs and Defendants are collectively referred to as “Parties” herein.

WHEREAS, a lawsuit against Defendants was filed in the Superior Court of the State of California in and for the City and County Of San Francisco, Action No. CGC-06-454919 entitled *WENDY EDWARDS, KYLE EDWARDS, AMY BEKOWICH, DAVID MAIZENBERG, BREE BECKER, LINDA WALKER, REGINA MACIAS, BARBARA RASTATTER, NANCY CHAN, WILLIAM SEAWARD, NORA TUNG, and CATALIN VASII, individually, on behalf of all others similarly situated and in the Interest of the General Public of the State of California, v. GOLDEN GATEWAY CENTER, LP, a California limited partnership, GOLDEN GATEWAY CENTER, INC., a California corporation, GOLDEN GATEWAY APARTMENT TOWERS and TOWNHOUSES, INC., a California corporation, ALPHA RESTORATION AND WATERPROOFING, INC., a California corporation and DOES 1 – 500 inclusive*, (hereinafter the “Class Action Litigation”) and in the same action a Complaint-In-Intervention brought by individual claimants VIJAYTA BANSAL, SEREFIM BATZOGLOU, LAURENCE BENNETT, MARGERY BENNETT, ANNA BISPING, KENNETH BRENNAN, BRIAN BROWNE, CHRISTOPHER DO, TATJIANA EGGERT-REICH, MARY GANNAWAY, ELDORA

GARDENER, PHILLIP GARDENER, CASSANDRA JONES, ROSEMARIE KLAHN, ROBERT KLAHN, KEVIN LAU, THEODORE LEVAN, MARY JO MARTIN, JEFF MCLAUGHLIN, DIANNE MIDDLETON, LEILA NORONHA, DANIELE POGGETTA, MICHAEL PALOMO, TIMOTHY RIEFKE, MAYRA RODRIGUEZ-GIOVANNELLI, MATTHEW RUDIE, MERYL SCHREIBSTEIN AND MATTHEW SMITH (“Complaint-in-Intervention”) (hereinafter the Class Action Litigation and the Complaint-In-Intervention collectively referred to as the “Litigation”) alleging various causes of action arising from construction work that was performed at the Golden Gateway Center, located at 550 Battery Street, San Francisco, between April 2006 and October 2007, as more fully alleged in the Litigation;

WHEREAS, Plaintiffs sought class certification, which was granted by the Court on August 3, 2007, and thereafter modified by order of the Court on June 16, October 9, 2009, February 23, August 17, August 26, and November 1, 2010, and January 20, 2011. All Plaintiffs, class representatives and complainants-in-intervention fall within the definition of the Plaintiff Class as defined by an order of the Court entered February 23, 2010 and consisting of the following: All tenants of the William Henry Dana Building located at 550 Battery Street, San Francisco, California, at any time between the date of commencement of the concrete construction project, on or about April 2006, and the date of completion of the concrete construction project, who 1) are named class representatives or 2) on or before March 1, 2010 respond to the Joint Special Interrogatories to Non-Representative Class Members served pursuant to Court order dated November 5, 2009.

WHEREAS, Defendants contend they have no liability to Plaintiffs, deny all of the allegations made against them in the Litigation, and deny any wrongdoing, misconduct or liability;

WHEREAS, the Parties to this Settlement Agreement wish to finally and forever resolve all of the claims of the Plaintiffs in the Litigation, as set forth more fully below:

NOW, THEREFORE, in consideration of the promises and other valuable consideration as set forth in this Agreement, the sufficiency of which are hereby agreed, the Parties agree as follows to resolve, settle and dispose of the claims in the Litigation on the following terms:

1. **Settlement Payments**

1.1. The total settlement amount herein shall be TWO MILLION, THREE HUNDRED FIFTY THOUSAND DOLLARS (\$2,350,000.00). Such payment includes all payments, of every kind and nature, to all Plaintiffs in every capacity pertaining to the Litigation, including as plaintiffs to the complaint, complainants in intervention and class members, whether named or unnamed, and including any and all lien payments made on their behalf. Such payment also included all costs and legal fees arising out of or relating to the Litigation. In no event shall the total amount collectively paid by the Defendants under this Agreement exceed \$2.35 million to all plaintiffs, complainants in intervention or class members, named or unnamed, to whom the Litigation applies, inclusive of their legal costs, fees and lien payments.

1.2. In consideration of the agreements and promises contained within this Agreement, Defendants shall pay or cause to be paid to each Plaintiff, the sum allocated from the total settlement as determined by the court and entered in the court's order approving this settlement (hereinafter "Settlement Order"). Plaintiffs shall seek such an order at their own

expense from the court approving this settlement and the allocation of settlement proceeds as among Plaintiffs and any allocation from such settlement proceeds for their legal costs and fees.

1.3. Each Plaintiff who is to receive a payment shall separately sign an Addendum to this Agreement, which is incorporated herein by reference as if fully set forth herein, setting forth the payment allocated as to such Plaintiff. The term "Agreement" used herein shall include the Agreement and the Addendum.

1.4. Any payment obligation of Defendants described herein is expressly conditioned on issuance of a final Settlement Order by the court in the Litigation approving this Agreement, including the allocation of settlement proceeds as among the Plaintiffs and any allocation from such settlement proceeds for their legal costs and fees.

1.5. The Settlement Order shall provide for the dismissal of the entire Litigation with prejudice.

1.6. Payment shall be made pursuant to the terms of this Agreement and the Settlement Order, within 10 days after all of the following conditions have occurred: (1) the execution of the Agreement by each named plaintiff, individually and on behalf of the class, and by each complainant in intervention; (2) the Settlement Order becomes final, and not subject to appellate review of any kind; (3) Defendants' receipt of all documentation required in section 7 (excepting only section 7.3), below; and (4) Defendants' receipt of Plaintiffs' executed Addendum under paragraph 1.3 of this Agreement.

1.7. In the event an unnamed class member (other than a complainant in intervention) fails to execute this Addendum on or before September 1, 2011, and the court has approved the Settlement Order, payment shall be made in accordance with the terms of this

agreement to all other Plaintiffs who have executed this Agreement, including the disbursement of allocated litigation costs and fees.

1.8. Any payment allocated to a Plaintiff who has not executed this Agreement within six months of the date the Settlement Order becomes final shall revert to the Defendants.

1.9. This Agreement, including any payment obligation of the Defendants there under shall be null and void in the event the court does not issue a Settlement Order approving this Agreement.

1.10. In the event that any named class representative or complainant in intervention fails to execute this Agreement, this Agreement shall be null and void at the option of the Defendants, and each of them.

2. **Release of Claims**

In consideration of the settlement payments, and except for any obligations created by this Agreement, each and every Plaintiff, individually and collectively, for him/herself and any past, present and future partners, agents, employees, heirs, executors, administrators, representatives, insurers, reinsurers, attorneys, successors and assigns hereby releases and discharges Defendants, and each and all of their respective past, present and future officers, directors, members, shareholders, partners, agents, employees, heirs, executors, administrators, parents, subsidiaries, affiliates, representatives, insurers (including, but not limited to, American International Specialties Lines Insurance Company, Lexington Insurance Company, Chartis, Inc., and Steadfast Insurance Company), reinsurers, attorneys, successors and assigns, from any and all claims, demands or causes of action of any kind whatsoever, whether accrued or unaccrued, at law or equity, known or unknown, fixed or contingent, based upon, arising out of or relating to the construction project that was the subject of the Litigation, all causes of action set forth in the

complaint in the Litigation, and all claims that were brought or could have been brought in the Litigation to the fullest extent enforceable under the law.

3. **Waiver**

Plaintiffs hereto acknowledge that they are familiar with and understand the provisions of California Civil Code § 1542, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

With respect to all claims released and discharged by and through this Agreement, Plaintiffs expressly waive and relinquish all rights and benefits under California Civil Code § 1542 or any other Federal or State statute or common law principle of similar effect.

Each Plaintiff further agrees to waive any and all future actions against Defendants, including but not limited to any private cause of action for damages pursuant to 42 U.S.C. § 1395y(b)(3)(A) et seq.

4. **General Statement for Protection of Medicare's interest**

This settlement is based upon a good faith determination of the parties to resolve a disputed claim. The parties have attempted to resolve this matter in compliance with both state and federal law. The parties have made every effort to adequately protect Medicare's interest and incorporate such into the settlement terms. The parties have not attempted to shift responsibility of medical treatment to Medicare pursuant to 42 U.S.C. Sec. 1395y (b).

5. **Responsibility for Satisfaction of All Liens-General Statement**

Each Plaintiff represents and warrants that all bills, costs, or liens resulting from or arising out of Plaintiff's alleged personal injuries in the Litigation, if any, are Plaintiff's responsibility to pay. Each Plaintiff agrees to assume responsibility for satisfaction of any and

all rights to payment, claims or liens, of any kind, that arise from or are related to payments made or services provided to Plaintiff, or on such Plaintiff's behalf, and expenses, costs, or fees incurred in connection with the claims asserted by Plaintiff related to Plaintiff's alleged injuries in the Litigation including without limitation, all subrogation claims, liens, or other rights to payment, relating to medical treatment or lost wages that have been or may be asserted by any health care provider, insurer, governmental entity, employer, or other person entity.

6. **Hold Harmless**

Each Plaintiff will indemnify, defend and hold Defendants harmless from any and all such claims, liens, and rights to payment, known or unknown. Specifically, if any governmental entity, or anyone acting on behalf of any governmental entity, seeks multiple damages, including double damages, or other damages from Defendants relating to payment by such governmental entity, or anyone acting by contract for such governmental entity, relating to such governmental entity, relating to Plaintiff's alleged injuries arising out of the Litigation, Plaintiff will indemnify and hold harmless the Defendants from any and all such damages, claims, and rights to payment, including any attorneys' fees, sought by such entities.

7. **As to Each Plaintiff who has Received Medicare Payments**

7.1. Each Plaintiff agrees to provide Defendants with a copy of all letters or other written correspondence from Plaintiff's counsel notifying Governmental Entities that Plaintiff's claims arising from the Litigation have settled. Plaintiff and Plaintiff's counsel further agree to provide Defendants' counsel with the following:

7.2. Copies of correspondence from and to CMS/MSPRC relating to Conditional Payments made by Medicare associated with Plaintiff's injuries and/or treatment arising from the Litigation.

7.3. Once this settlement is finalized Plaintiff's counsel will deliver to Defendants' counsel a Final Determination letter (FD) issued by CMS/MSPRC regarding satisfaction of all Conditional Payments with 5 days of FD being issued.

7.4. If any Plaintiff is unwilling or unable to comply with paragraph 7.2 above, Plaintiff's counsel will provide letter to Defendants' counsel stating that Plaintiff's counsel will withhold from the settlement monies an amount sufficient to satisfy any potential Governmental Entities' liens including Medicare Conditional Payments for past payments related to Plaintiff's injuries and/or treatment arising from the Litigation, and that the monies so withheld will be used solely for the purpose of satisfying any Governmental Entities' liens including Medicare Conditional Payments until all such liens and Conditional Payments have been satisfied.

7.5. As to future medical payments, each Plaintiff and Plaintiff's counsel agree that it is the Plaintiff's sole and continuing responsibility to maintain an accounting of all Medicare-covered expenses relating to this Litigation and sufficiently set aside and administer such funds for future medical expenses.

7.6. If the amounts the Plaintiff and Plaintiff's counsel withhold and set aside for satisfying any Governmental Entities' liens including Medicare Conditional Payments and future medical expenses prove to be insufficient to finally and completely satisfy all Conditional Payments and future medical expenses related to the Litigation, Plaintiff agrees to indemnify and hold Defendants harmless from any and all damages, claims and rights to payment, including any attorneys' fees.

8. **As to Any Plaintiff who has NOT Received Medicare Payments**

Each such Plaintiff and Plaintiff's counsel shall warrant that Plaintiff is not a Medicare beneficiary. Each such Plaintiff and Plaintiff's counsel shall further represent and warrant that they are aware of no Medicare Conditional Payments that have been made on Plaintiff's behalf. Each such Plaintiff and Plaintiff's counsel agree to provide the Defendants' counsel with a letter certifying that Plaintiff's counsel has exercised due diligence and, to the best of his knowledge, no liens of any Governmental Entities including Medicare Conditional Payments exist.

9. **Confidentiality**

Each of the Plaintiffs and their counsel of record agree that each of them will maintain the confidentiality of the terms of this Agreement and will not permit the terms hereof to be disclosed to any person with the exception of tax preparers, lawyers, and other persons affiliated with the Parties with a business need to know the terms of this Agreement. Each of the parties may reveal, however, that the parties have settled the dispute by way of a confidential settlement without disclosing the other terms of this Agreement. Notwithstanding the foregoing, the parties may disclose the terms of this Agreement: (1) in connection with the enforcement of this Agreement or any part thereof, (2) to the extent necessary to obtain approval of the court for the terms of the settlement described herein and to comply with the orders of a court of competent jurisdiction, or (3) to the extent it is essential to provide certain information to the parties' directors, officers, insurers, reinsurers, or accountants, or to tax authorities.

10. **Publicity And Non-Disparagement.**

Plaintiffs and Plaintiffs' Counsel shall refrain from disparaging Defendants, or taking any action designed to harm the public perception of Defendants regarding any issue related to the settlement Agreement or the Litigation. None of the Parties or their counsel shall issue press

releases or otherwise communicate with the media regarding this Agreement or the settlement contemplated hereby except as set forth herein or as may be required by law.

11. **Waiver of Right to Appeal or Object**

Each Plaintiff who executes this Agreement hereby expressly waives any right to appeal, object to or otherwise challenge the Settlement Order approving this Agreement. As to each Plaintiff that executes this Agreement, the Settlement Order shall be deemed final upon its filing with the clerk of the court.

12. **Good Faith**

The Parties agree that this Agreement has been reached in good faith pursuant to the terms of Code of Civil Procedure section 877.6; provided, however, that this Agreement shall not affect the contractual rights and obligations, including but not limited to contractual indemnity rights and obligations, between Defendants Alpha and GGC. Additionally, while it is impossible to accurately predict the need for medical treatment, this settlement is based upon a good faith determination of the parties in order to resolve a disputed claim. The Parties have attempted to resolve this matter in compliance with both state and federal law and it is believed that the settlement terms adequately consider and protect Medicare's interest and do not reflect any attempt to shift responsibility of treatment to Medicare pursuant to 42 U.S.C. Sec. 1395y(b). The Parties acknowledge and understand that any present or future action or decision by CMS or Medicare on this settlement, or Plaintiff's eligibility or entitlement to Medicare or Medicare payments, will not render this release void or ineffective, or in any way affect the finality of this liability settlement.

13. **Notice**

Members of the class will be notified of the terms of this agreement pursuant to applicable law. The form of notice approved by the Court will be directly mailed to last known mailing address of each class member. Plaintiffs will bear the cost of Notice.

ADDITIONAL TERMS

14. This Agreement is a result of a compromise and accord of disputed claims and is not to be construed as an admission of any wrongdoing or breach of any duty on the part of any of the Parties hereto.

15. The Parties represent and warrant that there has been no assignment, sale or other transfer or disposition of any interest in any of the claims hereinabove released and discharged and that, to the best of their knowledge, no party has obtained such an interest by operation of law.

16. The Parties hereto acknowledge that they have been represented in negotiations and preparation of this Agreement by counsel of their own choosing. The Parties represent that they have read, know and understand the contents of this Agreement and its legal effect; that they have executed it voluntarily; that they have not been influenced by other persons or other parties; and fully understand that they may never again proceed against each other with respect to any of the claims released herein.

17. This Agreement shall not be subject to a presumption or construction against any signatory hereto. Each signatory expressly waives the doctrine of contra proferentem.

18. This Agreement constitutes the entire agreement and understanding between the Parties with respect to the matters addressed herein and, except as set forth in this Agreement, no

representations, warranties or promises have been made or relied upon by the Parties to this Agreement. This Agreement shall prevail over any prior communications regarding the matters contained herein.

19. This Agreement shall be governed by California law.

20. This Agreement may be executed in multiple counterparts, each of which shall be deemed the original, and shall be effective upon the date executed by the last signatory hereto.

The signature by each Plaintiff to the Addendum shall be deemed a signature to this Agreement.

21. Any modifications or amendments to this Agreement must be in writing executed by authorized representatives of the Parties.

Executed by the following Parties, each of whom represents and warrants that he or she is duly authorized to enter into this Agreement on behalf of their respective party to this Agreement and to agree to the terms contained herein on behalf of such Party.

//

//

//

//

//