

## SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

This Settlement Agreement and Release of Claims (“Agreement”) is between the City of Palo Alto (“City”) and SPG Center LLC (“Developer”) (individually, a “Party” or collectively, the “Parties”). The Parties enter into this Agreement for the purpose of resolving threatened litigation (the “Potential Action”) without further expense or dispute.

### RECITALS

A. On November 6, 2019, Developer submitted plans for redevelopment of the former Macy’s Men’s Building at the Stanford Shopping Center (“Project”). The plans included the construction of three new buildings, including a restaurant building known as “Building EE.” The submitted plans showed a gas line leading from the City gas main to Building EE.

B. On February 20, 2020, the City approved an Architectural Review (“AR”) application for the Project, including project plans indicating the provision of natural gas to Building EE.

C. On December 24, 2019, Developer applied for a building permit to prepare the Project site and install new gas meters and gas infrastructure to serve Building EE (“Sitework Permit”). On this same date, Developer submitted a utility service application for gas service in Building EE.

D. On November 5, 2020, the City approved the sitework permit to install new gas meters and gas infrastructure to serve Building EE and the installation of the gas infrastructure was completed in January 2021 at a cost of approximately \$120,000.

E. On May 19, 2022, Developer sought an updated AR approval that would increase the size of Building EE. The plans submitted for this AR approval indicated the newly installed gas line serving Building EE. The City approved the AR application on September 12, 2022.

F. On January 1, 2023, the City’s local amendments to the 2022 California Green Building Standards Code became effective. Among these local amendments is a requirement for “full electrification” of all new commercial construction (“all-electric requirement”). This local amendment would preclude the use of natural gas in Building EE.

G. Because Developer had not submitted a building permit application for Building EE prior to the effective date of the all-electric requirement, City staff asserted that Building EE was subject to the all-electric requirement and could not install or utilize plumbing for natural gas.

H. On April 28, 2023, Developer sent a letter to the City, asserting that it had acquired a vested right to install and utilize gas plumbing in Building EE, that denial of this right would constitute a taking of property without just compensation, and that the all-electric requirement as applied to Building EE is preempted by the Energy Policy and Conservation Act.

I. On May 3, 2023, Developer submitted a building permit application for Building EE that included plumbing for natural gas.

J. In light of the particular facts, recited above, relating to the Project, the Parties now mutually seek to resolve the dispute without the need for further legal proceedings, and believe this Agreement is fair, reasonable, and in the best interests of the Parties and the public.

### **AGREEMENT**

In consideration of the foregoing recitals, the mutual covenants and promises set forth in this Agreement, and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree to all of the following conditions and terms:

1. **Building Permit for Building EE.** City hereby agrees that Developer may install and utilize natural gas plumbing and use natural gas in Building EE. In all other respects, Developer shall be subject to the 2022 California Building Codes with the City's local amendments. The authorization in this Agreement to install and utilize natural gas plumbing applies to Building EE only.

2. **No Admission of Liability.** Developer and City understand that liability for the matters encompassed in Developer's April 28, 2023 letter is disputed by the Parties and that this Agreement is a compromise and shall not be construed as an admission of any fact, claim or allegation of liability or responsibility on the part of the Parties, or any of them.

3. **Mutual Release.** Except for the rights and obligations expressly created by this Agreement, each Party, and all of its predecessors, successors, and assigns, fully, finally and forever releases each other Party, and all of its predecessors, successors, and assigns, from any and all known or unknown, direct or indirect, actual or potential, suspected or unsuspected claims, demands, causes of action, damages, claims for attorneys' fees, interest, expenses, costs, contracts, orders, execution, and liabilities for claims relating to or arising out of the subject matter of this Agreement.

Each Party is aware that it may have claims against the other Party in connection with the subject matter hereof, of which such Party may have no present knowledge or suspicion. Having taken into account such a possibility in entering into this Agreement, and subject to the obligations and limitations set forth in this Agreement, the Parties agree that any releases set forth in this Agreement shall be full and final releases applying to all unknown and unsuspected claims, as of the Effective Date of this Agreement, that each may have against the released Party in connection with the subject matter thereof. Each Party expressly waives any right or claim of right to assert hereafter that any such claim has, through oversight or error, been omitted from the terms of this Agreement. Each Party acknowledges that it has the opportunity to receive independent legal advice from attorneys with respect to the advisability of executing this Agreement and expressly waives any rights or benefits that it otherwise might have under California Civil Code Section 1542 or any other similar state or federal statute, 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 THIS RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

4. **Notice.** Any notice related to this Agreement shall be sent by both email and mail to a physical address, per below. The Parties shall give notice in writing to the other of a change of address to which notices should be sent.

**For City:**

City Attorney's Office  
250 Hamilton Ave, 8<sup>th</sup> Floor  
Palo Alto, CA 94301

**For Developer:**

Steven E. Fivel  
General Counsel  
225 West Washington Street  
Indianapolis, IN 46204

5. **Good Faith.** The Parties shall cooperate in good faith to timely effectuate the terms and conditions of this Agreement, including execution of any additional documents required to be signed.

6. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the Parties. This Agreement may be amended or modified only by a written instrument executed by both Parties.

7. **Severability.** The invalidity of any portion of this Agreement shall not invalidate the remainder.

8. **Agreement Admissible.** The Parties agree that this Agreement is admissible as evidence in any action to enforce this Agreement.

9. **Successors and Assigns.** This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors, heirs, administrators, and assigns.

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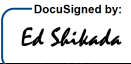
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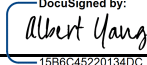
10. **Counterparts.** This Agreement may be executed in one or more counterparts (including multiple signature pages), and may be signed and exchanged by facsimile or by email.

**CITY OF PALO ALTO**

By:  \_\_\_\_\_  
Ed Shikada  
City Manager

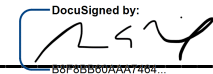
DATED: 05/15/2023

**APPROVED AS TO FORM:**

By:  \_\_\_\_\_  
Albert S. Yang  
Assistant City Attorney

**DEVELOPER**

**SPG CENTER, LLC, a Delaware limited liability company**

By:  \_\_\_\_\_  
Steven E. Fivel  
General Counsel and Secretary

DATED: May 12, 2023