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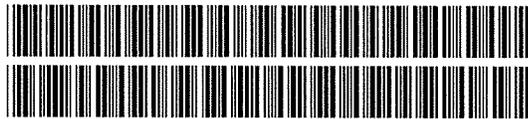
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Settlement AC

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RECORDING REQUESTED BY
AND WHEN RECORDED, MAIL TO:

City of Malibu
Attention: City Clerk
23815 Stuart Ranch Road
Malibu, California 90265

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SETTLEMENT AGREEMENT

This Settlement Agreement (“**Agreement**”) is entered into as of August 14, 2023, (the “**Effective Date**”) by and between Cross Creek Ranch Malibu, LLC, as successor to Malibu Development Company LLC, (“**CCRM**”) and the City of Malibu (“**City**”). CCRM and the City are referred to cumulatively as the “**Parties**,” or singularly as a “**Party**.” The Parties intend by this Agreement to compromise and fully resolve all of CCRM’s claims of tolling under Development Agreement 07-001, approved by Malibu City Council Ordinance No. 330, approved by the Coastal Commission on March 10, 2010, and recorded as Document No. 20150150136 on February 10, 2015, (“**Development Agreement**”) and which pertains to development and operational rights for the Cross Creek Ranch shopping center and development (formerly known as La Paz Ranch) (“**Cross Creek Ranch**”) (“**CCRM’s Tolling Claim**”).

RECITALS

WHEREAS (i) CCRM’s Tolling Claim contends that a time-constrained contractual entitlement to certain benefits pursuant to the Development Agreement has been tolled in accordance with the terms of the Development Agreement, (ii) the City disputes the merit/extent of the Tolling Claim, and (iii) in the absence of a negotiated resolution of CCRM’s Tolling Claim, the claim will need to be resolved by costly and time-consuming litigation.

AGREEMENT

NOW, THEREFORE, in order to resolve their differences in an efficient and economical manner, and in consideration of the mutual covenants, promises and undertakings set forth herein and other consideration, the receipt and adequacy of which the Parties hereby acknowledge, the Parties agree as set forth below.

1. Additional Tolling. The Development Agreement’s term shall be tolled such that it expires on August 14, 2024 (“**Additional Tolling Term**”); however, from the execution of this Agreement to the end of the Additional Tolling Term, CCRM’s rights under the Development Agreement shall be limited as set forth below. No further tolling shall be requested or granted. CCRM understands that this Agreement resolves all disputes regarding tolling of the Development Agreement’s term, and CCRM waives any claim to further tolling that exists now, or that may come to exist at any point in the future, regardless of any contrary provision in the Development Agreement.

2. Formula Retail Restrictions During Additional Tolling Term.

Notwithstanding any contrary provision of the Development Agreement, Cross Creek Ranch shall comply with the Formula Retail Ordinance (Malibu Ordinance No. 431 and Malibu Municipal Code section 17.61) subject to the following exceptions.

a. In addition to the 30 percent formula retail uses allowed under Malibu Municipal Code (“MMC”) section 17.61.030.B(2)(a), during the Additional Tolling Term CCRM may lease to non-exempt formula retail tenants for up to an additional 20 percent of the shopping center’s total gross floor area, excluding the floor area occupied by exempt formula retail defined in Section 17.61.020.A(1)-(8); which tenants may then continue to operate indefinitely like non-exempt formula retail tenants that existed prior to the City’s adoption of the Formula Retail Ordinance so long as those tenants remain, but shall only be replaced by other non-exempt formula retail tenants if doing so complies with the Formula Retail Ordinance as it exists at the time such replacement occurs.

- (1) To avoid doubt, this means that there will be two different types of non-exempt formula retail uses: (i) the standard 30% type that is provided by the Formula Retail Ordinance, and separately (ii) a 20% compromise type that may be secured only during the Additional Tolling Term and has more restrictions than the first type. These two types of non-exempt formula retail tenants will be entirely separate and shall remain distinct so one does not affect the other. For the second type, the Parties agree that submittal of a tenant’s application for a Planning Clearance during the Additional Tolling Period shall allow that tenant to open and operate as detailed herein. To ensure clarity, CCRM shall designate which type of tenant each non-exempt formula retail tenant is upon the submittal of each Planning Clearance Application for a non-exempt formula retail tenant. The Planning Director will review the 20% compromise type for compliance with this Agreement, which shall be reported to the City Council and City Attorney (whereas the standard 30% type shall be reported to the Planning Commission pursuant to MMC section 17.61.030(C)). For the standard 30% type, CCRM waives any claim of exemption from the requirements of the Formula Retail Ordinance except as stated in (b) and (c) of this Section regarding percent of the ground floor that may be occupied, and the provision for three non-exempt formula retail clients to occupy a 5,000 square foot space.
- (2) To avoid a sense of sameness and familiarity that the Formula Retail Ordinance seeks to prevent, the non-exempt formula retail tenants in this additional 20 percent of the center shall be restricted to tenants that do not have ten or more stores anywhere in the counties of Los Angeles, Ventura, and Orange.

b. Notwithstanding MMC section 17.61.030.B(2)(b), during the Additional Tolling Term Cross Creek Ranch may lease to non-exempt formula retail tenants that cumulatively occupy up to 60 percent of the ground floor spaces (compared to 40 percent in the Formula Retail Ordinance), which tenants may then continue to operate indefinitely like non-exempt formula retail tenants that existed prior to the adoption of the Formula Retail Ordinance but shall only be replaced if doing so complies with the Formula Retail Ordinance as it exists at

the time such replacement occurs.

c. Notwithstanding MMC section 17.61.030.B(1), during the Additional Tolling Term Cross Creek Ranch may lease to up to three non-exempt formula retail tenants that occupy up to 5,000 square feet (compared to 4,000 square feet in the Formula Retail Ordinance), which tenants may then continue to operate like non-exempt formula retail tenants that existed prior to the adoption of the Formula Retail Ordinance but shall only be replaced if doing so complies with the Formula Retail Ordinance as it exists at the time such replacement occurs.

3. Expedited Processing During Additional Tolling Term. During the Additional Tolling Term the City shall comply with Section 5.5 of the Development Agreement (“CITY Processing of Permit Applications On An Expedited Basis”) by expediting the processing of all permits, including concurrent processing of applications by various City departments (e.g., Planning Clearances for tenant spaces and Building & Safety-issued tenant improvement permits). Failure to provide expedited processing shall not result in additional tolling of this Agreement or the Development Agreement.

4. Expanded City Rights Regarding Parcel C. CCRM waives all rights with respect to Parcel C including, but not limited to, all rights for Parcel C to be reconveyed to it pursuant to Section 6.4 of the Development Agreement as well as the those provided in Section 6.3 of the Development Agreement, subject to the following:

- a. The City shall not use Parcel C as a wastewater treatment facility;
- and
- b. The City shall use Parcel C only for an approved use under Section 6.3.2 of the Development Agreement or any of the following additional uses to which CCRM hereby consents:
 - (1) a municipal auditorium/community performing arts center;
 - (2) art gallery or exhibition space;
 - (3) a movie theater;
 - (4) sports or recreation facilities with appropriate sound attenuation; or
 - (5) any other City-approved use that does not substantially negatively impact the operations, peacefulness, or economic health of Cross Creek Ranch in CCRM’s reasonable business judgment, confirmation of which CCRM shall not unreasonably withhold.

5. Planning Support to the City Regarding Parcel C. To assist the City in planning for the future use of Parcel C, upon the City’s request and at CCRM’s sole expense, not to exceed \$100,000, CCRM shall provide to the City site planning and preliminary design services using CCRM’s in-house and outside planning and design team.

6. Free Parking For Parcel C. To assist the City in the future use of Parcel C, and provided that the City obtains a joint use and common parking facilities approval pursuant to MMC section 17.48.040 and/or Malibu Local Implementation Plan section 3.14.4 (to which CCRM shall consent and not object or challenge, but CCRM may express any concerns or preferences to the Planning Commission and/or City Council), CCRM shall allow the City to use parking facilities at Cross Creek Ranch to provide up to half of the parking required for the City’s

future use of Parcel C, at no charge to the City.

7. Additional Financial Support to the City Regarding Parcel C. In addition to any other benefits or payments provided to the City pursuant to the Agreement and Development Agreement, CCRM shall pay the City an additional \$250,000 in five equal annual installments, with the first \$50,000 payment to be made within 30 days after the first Cross Creek Ranch tenant opens to the public and with the remaining four \$50,000 payments to be made on the annual anniversaries of that first payment date.

8. Release of CCRM's Tolling Claim. CCRM, on behalf of itself and its directors, managers, members, agents, representatives, successors, and assigns, whether current or former, as applicable and to the extent any exist (Releasors), hereby releases, waives, acquits and forever discharges the City and its boards, commissions, departments, bureaus, representatives, agents, employees, attorneys and assigns, from any and all claims, demands, causes of action, obligations, damages, rights of subrogation or indemnity, attorneys' fees, costs and liabilities of any nature whatsoever, whether known or unknown, which CCRM ever had, now has or may claim to have against the City or its boards, commissions, departments, bureaus, representatives, agents, employees, attorneys and assigns for any reason that relates or pertains to and/or arises out of CCRM's Tolling Claim or the Development Agreement (Released Claims). CCRM covenants that none of the Releasors will sue or otherwise institute or in any way actively participate in or voluntarily assist in the prosecution of any legal or administrative proceedings regarding the Released Claims. Releasors understand and acknowledge that the foregoing release extends to any claims or damages, without limitation, arising out of the Released Claims that may exist on the date of the execution of this Agreement, but which Releasors do not know to exist, which, if known, would have materially affected their decision to execute this Agreement, regardless of whether their lack of knowledge is a result of ignorance, oversight, error, negligence or any other cause.

9. Attorneys' Fees and Costs. CCRM shall pay the City \$40,000 for the City's attorneys' fees and costs related to this Agreement, to be paid within 30 days after the first Cross Creek Ranch tenant opens to the public. Otherwise, the Parties shall bear their own attorneys' fees and costs in connection with CCRM's Tolling Claim and the negotiation and preparation of this Agreement.

10. Entire Agreement. This Agreement: (i) constitutes the entire agreement between the Parties concerning the subject matter hereof, (ii) supersedes any previous oral or written agreements concerning the subject matter hereof, and (iii) shall not be modified except by a writing executed by the Parties.

11. Benefitted Parties. This Agreement shall be binding upon and inure to the benefit of each of the Parties and their representatives, heirs, devisees, successors and assigns.

12. Running With the Land. This Agreement shall run with the land, and all of CCRM's obligations herein shall be fully binding on its successors and assigns. CCRM is the owner of Parcel A: APN 4458-022-032 and Parcel B: APN 4458-022-033 (together 23465 Civic Center Way), the City is the owner of Parcel C: APN 4458-022-908 (23465 Civic Center Way), and this Agreement shall be recorded against these properties.

13. Construction, Choice of Law and Venue. The terms of this Agreement are the product of arms-length negotiations between the Parties, through their respective counsel of choice, and no provision shall be construed against the drafter thereof. This Agreement shall be governed by and construed in accordance with the laws of the State of California. The venue for any disputes concerning this Agreement shall be in the County of Los Angeles. Any Party may enforce the terms of this Agreement.

14. Counterparts and Electronic Signatures. This Agreement may be executed in counterparts with the same force and effectiveness as though executed in a single document. This Agreement may be signed by some or all signers electronically (e.g., by facsimile, electronic mail, or other electronic means of affixing a signature) and, if so, shall have the same force and effectiveness as an agreement executed with an original ink signature.

15. Authority. Each signatory to this Agreement represents and warrants that the signer is authorized to sign this Agreement on behalf of the Party for which the signer is signing, and thereby to bind that Party fully to the terms of this Agreement.

16. Non-Severability. The Parties agree that each and every provision of this Agreement is critical to the Parties' decision to enter into this Agreement. Therefore, if any provision of this Agreement is held invalid or unenforceable in any final, non-appealable judgment of a court of competent jurisdiction, this Agreement shall become void and the Parties shall be restored to their respective positions prior to the Effective Date to the greatest extent possible.

17. Incorporation of Recitals. The recitals contained herein are hereby incorporated by reference and are material and binding upon the Parties hereto.

AGREED TO AND ACCEPTED AS OF THE EFFECTIVE DATE:

CROSS CREEK RANCH MALIBU, LLC

By: [Signature]
Name: Bryan Gordon
Its: Chief Executive Officer

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

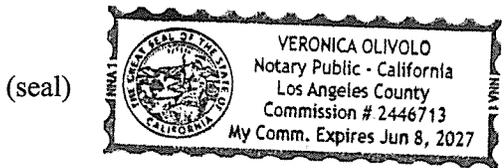
COUNTY OF Los Angeles) ss.

On August 18, 2023 before me, Veronica Olivolo, Notary Public
Date Name and Title Officer (e.g., "Jane Doe, Notary Public")
personally appeared Bryan Gordon
Name of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) acted, executed the instrument.

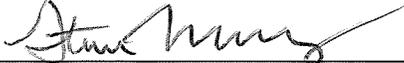
I certify under PENALTY OF PERJURY under the laws of the State of California that the forgoing paragraph is true and correct.

WITNESS my hand and official seal.



[Signature]
Notary Public

CITY OF MALIBU

By: 
STEVE MCCLARY, City Manager

Dated: 8/22/2023

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

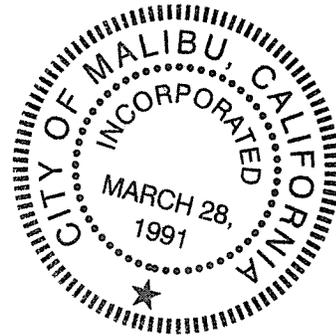
STATE OF CALIFORNIA
County of Los Angeles

On 8/22/23, before me, Kelsey Pettijohn, City Clerk for the City of Malibu, personally appeared Steve McClary, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.


KELSEY PETTIJOHN, City Clerk
(seal)



APPROVED AS TO FORM:

By: 
Treyor Rusin
Interim City Attorney

LATHAM & WATKINS LLP
By: 
Beth P. Gordie
Attorneys for CROSS CREEK RANCH MALIBU, LLC