

RESOLUTION NUMBER R- 312163

DATE OF FINAL PASSAGE JAN 11 2019

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO APPROVING THE FIRST AMENDMENT TO
THE SETTLEMENT AGREEMENT AND RELEASE
BETWEEN CP III CENTREPOINT, LLC, AND THE CITY OF
SAN DIEGO, KELLY BROUGHTON AND AFSANEH
AHMADI

WHEREAS, CP III CENTREPOINT, LLC, a Delaware limited liability company (“Prior Owner”) was the 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 63rd Street, and 4740 Art Street, San Diego, California 92115 (“Property”); and

WHEREAS, on May 7, 2013, the Prior Owner filed a Complaint against the City of San Diego (“City”); Kelly Broughton, in his capacity as Director of the Development Services Department of the City of San Diego (“Broughton”); and Afsaneh Ahmadi (“Ahmadi”), in her capacity as the Chief Building Official of the Development Services Department of the City of San Diego, for Injunctive Relief, Declaratory Judgment (Mandamus), Violation of 42 U.S.C. § 1983 (Due Process), 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”); and

WHEREAS, on May 23, 2013, the Prior Owner and the City, Broughton, and Ahmadi entered into that certain Settlement Agreement and Release with respect to the Complaint and the Lawsuit (“Settlement Agreement”); and

WHEREAS, pursuant to the Settlement Agreement, the Prior Owner agreed not to rent dwelling units within the Property by the bed or the bedroom; and

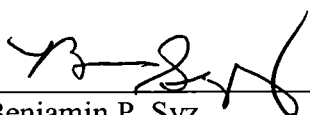
WHEREAS, TREA BLVD63, LLC, a Delaware limited liability company ("BLVD63"), is the successor-in-interest to the Prior Owner and the current owner of the Property; and

WHEREAS, BLVD63 and the City wish to amend the Settlement Agreement to remove the restriction on leasing units in the Property on a by-the-bedroom basis; NOW THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, that the Council authorizes:

1. The City; Elyse Lowe, in her capacity as Director of the Development Services Department of the City; and Afsaneh Ahmadi, in her capacity as Chief Building Official of the Development Services Department of the City ("City Parties") to execute the First Amendment to Settlement Agreement and Release by and between the City Parties and BLVD63, a copy of which is attached to this Resolution as Exhibit "1".

APPROVED: MARA W. ELLIOTT, City Attorney

By 
Benjamin P. Syz
Deputy City Attorney


BPS
December 13, 2018
Or.Dept: City Attorney
CC No. "INSERT Comptroller's Certificate #"
Doc. No.: 1853703

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JAN 07 2019.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 1/11/19
(date)


KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

EXHIBIT 1

FIRST AMENDMENT TO SETTLEMENT AGREEMENT AND RELEASE

THIS FIRST AMENDMENT TO SETTLEMENT AGREEMENT AND RELEASE (“**Amendment**”) made and entered into this ___ day of July, 2018 (“**Effective Date**”) by and between TREA BLVD63, LLC, a Delaware limited liability company d/b/a BLVD63 Apartments (“**BLVD63**”) on the one hand and CITY OF SAN DIEGO (“**City**”), _____, in his/her capacity as Director of the Development Services Department of the City, and _____, in his/her capacity as the Chief Building Official of the Development Services Department of the City (collectively with City, the “**City Parties**”). BLVD63 and the City Parties are referred to hereinafter individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS:

A. BLVD63’s predecessor-in-interest, CP III Centrepoint, LLC, and the City Parties are parties to that certain Settlement Agreement and Release (the “**Agreement**”) effective as of May 23, 2013 with respect to that certain improved real property located at the intersection of 63rd Street and El Cajon Boulevard, in the City of San Diego, 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 and commonly known as “BLVD 63 Apartments” (the “**Project**”).

B. The Parties hereto have agreed to amend the Agreement on the terms and conditions set forth below.

NOW THEREFORE, in consideration of the forgoing and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1 No Restriction on Leasing By the Bedroom. Notwithstanding anything to the contrary in the Agreement, including but not limited to, Item 3 of Exhibit B to the Agreement, BLVD63 shall not be restricted in any way from leasing units at the Project by the bedroom.

2 Additional Obligations. Exhibit B to the Agreement is hereby replaced in its entirety with the Exhibit B attached hereto and expressly made part hereof;

3 Ratification. Except as amended hereinabove, the Agreement remains unmodified and is hereby ratified and confirmed for all purposes and in all respects.

4 Benefit and Burden. This Amendment shall be binding upon and inure to the benefit of the Parties and their heirs, executors, administrators, 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.

5 Counterparts: Facsimile; E-Mail. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute

one and the same instrument. For purposes of this Amendment, any signature transmitted by facsimile or electronically via e-mail shall be considered to have the same legal and binding effect as any original signature.

6 Attorney's Fees Arising Out of Enforcement of Amendment. In the event any action or proceeding is brought to enforce this Amendment, 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.

7 Entire Agreement. The Agreement, as amended by this Amendment, constitutes the entire agreement of the Parties with respect to the subject matter thereof and fully supersedes any and all prior or contemporaneous written or oral agreements and understandings between the Parties pertaining to such subject matter.

[Signature Page Follows]

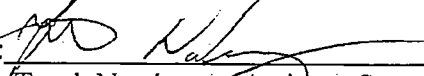
IN WITNESS THEREOF, the undersigned have executed this Amendment as follows:

TREA BLVD63, LLC:

TREA BLVD63, LLC, a Delaware limited liability company

Dated: _____

By: Teachers Insurance and Annuity Association of America, a New York corporation, for the benefit of its Real Estate Account, its Sole Member

By:  _____
Taeuk Namkoong, Assistant Secretary

CITY OF SAN DIEGO

Dated: _____

By: _____
Name: _____
Its: _____

DIRECTOR OF THE DEVELOPMENT SERVICES DEPARTMENT

Dated: _____

By: _____
Name: _____
Its: _____

CHIEF BUILDING OFFICIAL OF THE DEVELOPMENT SERVICES DEPARTMENT OF THE CITY

Dated: _____

By: _____
Name: _____
Its: _____

EXHIBIT B

BLVD63's Additional Obligations

BLVD63 agrees to the following additional obligations and conditions which shall become effective upon the Effective Date:

1. BLVD63 shall offer free parking to all residents.
2. All residents shall be required to sign a Parking Addendum to their lease that shall provide as follows:
 - a. Residents are required to park their vehicle(s) in the Project parking structure.
 - b. Residents shall not park on the streets surrounding the Project or block local driveways or engage in other improper parking conduct.
 - c. Resident's vehicles must display a valid BLVD63 parking permit.
 - d. Residents shall agree that breaching the parking rules contained in the Parking Addendum would subject the resident to a fine to be imposed by BLVD63.
3. BLVD63 shall deploy property management staff (or third party vendors) to neighboring streets, and issue fines to any and all residents parking off-site to the Project in violation of the terms of the Parking Addendum. BLVD63 shall be entitled to keep the fine revenues to offset the cost of policing parking.
4. BLVD63 shall 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.

Passed by the Council of The City of San Diego on JAN 07 2019, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Bárbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gómez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JAN 11 2019

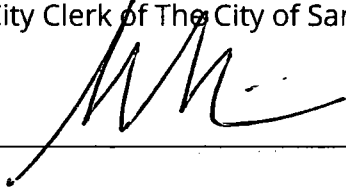
(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By , Deputy

Office of the City Clerk, San Diego, California

312163

Resolution Number R-_____