

SETTLEMENT AGREEMENT AND RELEASE

This Settlement and Release Agreement (“Agreement”) is entered into by and between Plaintiff CVSR Holdings, LLC (“CVSR” or “Plaintiff”) and Defendants City of Santa Rosa (“City”) and Molly Dillon (“Dillon”) (City and Dillon collectively, “Defendants”) as of the last date executed below (“Execution Date”). CVSR, the City, and Dillon are referred to herein collectively as the “Parties” and each individually as a “Party.”

RECITALS

- A. The City is a municipal corporation and charter city created under the laws and constitution of the State of California, located in the County of Sonoma. The City enacted and administers the Southwest Area Development Impact Fee Ordinance (“SWADIF Ordinance”), which requires developers in the southwest region of Santa Rosa to pay development impact fees (“SWADIF fees”) prior to receiving a building or use permit, which fees would then be used to finance public facilities or improvements (“SWADIF program”).
- B. CVSR is a limited liability corporation registered and qualified to do business in California. CVSR is the successor to Courtside Village Partnership (“Courtside”), the original developer of a 68.1-acre parcel in southwest Santa Rosa known as “Courtside Village.”
- C. Dillon is an individual licensed to practice law by the State of California and employed by the City of Santa Rosa as its Assistant City Attorney. Prior to her employment with the City of Santa Rosa, Dillon practiced law with the private firm of Clement, Fitzpatrick and Kenworthy (“CFK”).
- D. On November 21, 1995, the City entered a development agreement (“DA”) with Courtside regarding its development of Courtside Village. The DA includes four subsequent Operating Memoranda, which together constitute the “Contract” between the City and CVSR.
- E. Under the Contract, Courtside agreed to construct specific public improvements and the City in turn agreed to credit the estimated cost of those improvements against SWADIF fees payable by Courtside under the SWADIF Ordinance. The credits were known as “SWADIF credits.” CVSR succeeded to Courtside’s interest in the SWADIF credits.

- F. On November 17, 2014, CVSR filed a complaint against the City in Sonoma County Superior Court, case number SCV-256350 (the "Litigation"). On October 20, 2015, CVSR amended its complaint to add Dillon as a defendant. In its operative Third Amended Complaint, CVSR alleges causes of action for Breach of Contract and Declaratory Relief against the City and for Malpractice and Breach of Fiduciary Duty against Dillon.
- G. In the Litigation, CVSR contends that the City failed to adequately compensate CVSR, as assignee of Courtside, for the value of the public improvements Courtside constructed as required under the Contract and that the City owes CVSR in excess of \$455,854.06. CVSR also contends that Dillon violated Rule 3-310(E) of the California Rules of Professional Conduct by representing CVSR while in private practice with CFK and later representing the City in related matters. The City and Dillon deny all allegations in the Litigation.
- H. The parties recognize the expense, time, effort, and risk involved in litigation. Thus, the Parties desire to settle their differences, compromise their disputes, and release each other from any and all liability.

In consideration of the mutual promises and covenants contained in this Agreement, the Parties agree as follows:

AGREEMENT

1. Notice of Conditional Settlement

No later than three court days after the Execution Date, CVSR shall file a Notice of Conditional Settlement of the Litigation.

2. Release and Waiver of Claims


a. Except for the obligations created by this Agreement, including but not limited to Section 5, CVSR, on behalf of itself and its affiliates, partners, members, shareholders, officers, agents, employees, successors and assigns, fully releases, discharges, and forever waives any and all claims, demands, rights, liabilities, debts, and obligations, known or unknown (collectively, "Released Claims") against, and agrees not to sue, Defendants, or either of them, and any of Defendants' employees, officers, directors, officials, representatives, agents, contractors, or attorneys, related to the facts or claims alleged in the Litigation and regarding any issues relating to the Courtside Village development or the SWADIF program. This release applies equally to all CVSR employees, officers, directors, officials, representatives, and agents.

b. CVSR understands that if any facts concerning the Released Claims should be found hereafter to be other than or different from the facts now believed to be true,

CVSR will remain bound by this Agreement and specifically by the release in this Section 2. Therefore, with respect to the Released Claims, CVSR hereby expressly, knowingly, and voluntarily waives any rights or benefits provided by Section 1542 of the Civil Code and any other similar law of any jurisdiction. Section 1542 reads as follows:

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 the release, which if known by him or her must have materially affected his or her settlement with the debtor.

CVSR has been advised by her/its legal counsel and understands and acknowledges the significance and consequence of this release and of the specific waiver of Section 1542.

CVSR agrees to the above Release and Waiver.  [Initials]

3. Settlement Payment

The City shall pay \$295,000 to CVSR to settle the Litigation, including all causes of action against the City and Dillon ("Settlement Payment"). The Settlement Payment shall be made payable to Copeland Law Firm Client Trust delivered to CVSR's attorney Steven Copeland within thirty (30) days after the Execution Date.

As a condition precedent to the City's payment obligation, CVSR must complete, sign, and deliver to the City a federal Form W-9, Request for Taxpayer Identification Number and Certification.

The Settlement Payment is a full, complete, and final settlement of any claim that CVSR currently has or may have against Defendants relating in any way to the Litigation or the SWADIF program.

4. Dismissal of Litigation

Within three (3) court days after the City pays the Settlement Payment called for in Paragraph 3, CVSR agrees to dismiss with prejudice the Litigation against Defendants by executing, serving, and filing a form request for dismissal. If for any reason the court refuses filing of the request for dismissal form or fails to enter dismissal in accordance with that request, the Parties shall meet and confer and CVSR will take all reasonable steps necessary to ensure dismissal with prejudice of the action against Defendants. Notwithstanding said dismissal, the Court shall retain jurisdiction to enforce this Settlement Agreement pursuant to Code of Civil Procedure Section 664.6 or otherwise.

5. Indemnification

To the fullest extent permitted by law, and in addition to (and not in lieu of) and other obligations of CVSR hereunder, CVSR shall indemnify, defend, and hold harmless Defendants, and their respective officials, officers, employees, and agents (“Indemnified Parties”), jointly and severally, from and against any and all claims, demands, liens, liabilities, actions, causes of action, losses, costs, attorneys’ fees, expert witness’ fees, damages and expenses of any kind against Indemnified Parties by CVSR’s employees, agents, lenders, purchasers, successors, representatives, affiliates, partners, attorneys, or other parties under any agreement with CVSR seeking to recover any damages or other amounts arising out of the Litigation, the Courtside Village Development or SWADIF credits issued by the City.

6. Attorney’s Fees and Costs

All parties agree to bear their own attorneys’ fees and all other legal and non-legal costs associated with the Litigation, the SWADIF program, and this Agreement.

7. No Admission

This Agreement and its provisions and any proceedings taken under this Agreement are for settlement purposes only and are not intended to be, and shall not in any event be construed or deemed to be, any admission or concession on the part of the Parties, or any of them, of any liability or wrongdoing whatsoever. Neither this Agreement nor any negotiations or proceedings in pursuance of this Agreement shall be offered or received in any action or proceeding as an admission or concession of liability or wrongdoing of any nature on the part of the Parties, or any of them, or anyone acting on the Parties’ respective behalves. This Agreement is predicated upon unique facts which exist between the Parties and none of the Parties intend this Agreement to be a waiver of any right or position in regards to any third party.

8. Successors

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective representatives, successors, and assigns. No Party may assign its right under this Agreement without the prior written consent of the other Parties.

9. No Third Party Beneficiaries

This Agreement is between the Parties and does not and is not intended to confer any rights or remedies upon any person other than the Parties.

10. Entire Agreement

This Agreement constitutes the entire agreement between the Parties. There are no further or other agreements or understandings, written or oral, in effect between the Parties relating to the subject matter of this Agreement.

11. Modification of Agreement

It is expressly understood and agreed by the Parties that this Agreement may not be altered, amended, modified, or otherwise changed in any respect except by a writing duly executed by authorized representatives of the Parties.

12. Mutual Preparation

The Parties cooperated in the drafting and preparation of this Agreement and thus it shall be deemed drafted by all Parties to this Agreement. The language of all parts of this Agreement shall be construed as a whole, according to its fair meaning, and not strictly for or against any Party as the drafter of this Agreement.

13. Authority

Each Party respectively represents and warrants to each other Party that the undersigned representative for such Party has full and complete authority to execute, enter into and perform this Agreement and bind that Party to the terms of this Agreement.

14. Non-Liability of City Officials, Employees, and Agents

Notwithstanding anything to the contrary in this Agreement, no board member, officer, employee or agent of the City shall be personally liable to the other Parties, their successors, or assigns in the event of any default or breach by the City for any obligation of the City under this Agreement.

15. Enforcement

If any Party initiates, or if any Party is required to defend, any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover from the non-prevailing party in such action or proceeding the prevailing party's reasonable costs and attorney's fees.

16. Counterparts

This Agreement may be executed in counterparts and delivered by PDF, and each counterpart shall be considered an original, and all of which, taken together, shall constitute one and the same instrument.

17. Recitals Incorporated

The recitals set forth above, including all definition in the Recitals, are expressly incorporated as terms of this Agreement.

18. Captions

The captions contained in this Agreement are intended solely for convenience and shall not be construed as full or accurate descriptions of the terms in this Agreement.

19. Governing Law

This Agreement has been executed and delivered in the State of California and its validity, interpretation, performance, and enforcement shall be governed by the laws of the State of California.

20. Severability

If any immaterial portion or portions of this Agreement are held by a court of competent jurisdiction to conflict with any federal, state, or local laws, and as a result such portion or portions are declared to be invalid and of no force or effect in such jurisdiction, all remaining portions of this Agreement shall otherwise remain in full force and effect and be construed as if such invalid portions had not been included in this Agreement.

21. Independent Investigation

Each Party has made such investigation of the facts pertaining to this Agreement and of all matters pertaining to those facts as it deems necessary.

22. Voluntary and Knowing Execution

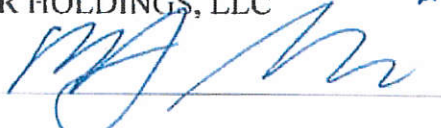
Each Party respectively represents and warrants to each other Party that it has thoroughly read and considered all aspects of this Agreement, that it understands all provisions of this Agreement, that it has had the opportunity to consult with counsel, and that it is voluntarily and knowingly entering into this Agreement without duress or coercion of any kind.

[signatures next page]

SO AGREED

Dated: 8/29/17

CVSR HOLDINGS, LLC

By: 

Name: MICHAEL A. SMITH
ACTING CVSR MANAGER BY

Its: WAY OF POWER OF ATTORNEY

Dated: 8/29/17

CITY OF SANTA ROSA

By: 

Name: CHRIS COURSEY

Its: Mayor

Dated: 8/31/17

MOLLY DILLON

By: 

Dated: 8/29/17

APPROVED AS TO FORM FOR THE CITY

Shute, Mihaly & Weinberger LLP

By: 
FOR Andrew W. Schwartz

APPROVED AS TO FORM
CITY ATTORNEY

BY 