

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Agreement”) is entered into this \_\_\_th day of March 2021 by and among South Fresno Community Alliance, an unincorporated association, (“SFCA”) on the one hand and G4 Enterprises, Ltd. (“Developer”) on the other hand. SFCA and Developer are sometimes referred to herein as a “Party,” and collectively as the “Parties.” Developer includes its successors, assigns, assignees, and successors-in-interest.

WHEREAS, Developer has applied to the City of Fresno (“City”) for land use entitlements necessary to develop a proposed distribution center, consisting of one building, totaling approximately 469,569 square feet (“Project”) located in the City at 3611 South Northpointe Drive (APN 330-021-82s) (“Project Site”);

WHEREAS, the entitlements sought to develop the Project include Development Permit Revised Exhibit Application No. P20-03406 and Environmental Assessment No. P20-0346, an Addendum to the Mitigated Negative Declaration Environmental Assessment for Vesting Tentative Parcel Map No. 2012-06 (collectively, “Initial Approvals”);

WHEREAS, on December 7, 2020, the City Development and Resource Management Director issued the Initial Approvals. On December 22, 2020, Leadership Counsel for Justice & Accountability (“Leadership Counsel”) filed with the City an Appeal of the issuance of the Initial Approvals (“Appeal”) (in the form of the letter attached hereto as Exhibit “A”);

WHEREAS, Developer disputes the allegations contained in the Appeal;

WHEREAS, the Parties desire to settle their dispute regarding the City’s issuance of the Initial Approvals; and

WHEREAS, the Parties have engaged in settlement negotiations, and have reached terms, as set forth herein, upon which to settle their disputes, and wish to avoid litigation and resolve their disputes concerning the Project on the terms set forth herein.

NOW, THEREFORE, the Parties hereby agree as follows:

1. Developer and SFCA shall use good faith efforts to create and implement a community benefits fund (“Community Benefits Fund” or “Fund”) which shall be used to fund improvements to benefit the community near the Project (“Community Area”) in accordance with terms and conditions established for the Community Benefits Fund. Developer and SFCA shall use good faith efforts to work with the City to establish the Fund. SFCA shall work with the City, or a third party administrator (“Third Party Administrator”) if necessary, to determine how money in the Fund will be allocated to benefit the community and mitigate the impact of this and other projects. Possible improvements paid for by the Fund shall include but are not limited to the purchase and subsequent retention of a contractor

to install and provide home retrofits as necessary for HVAC systems, dual paned windows, and sound and vibration-deadening insulation and curtains as well as door retrofitting to mitigate sound and air pollution.

2. Developer shall pay the City Three Hundred Thousand Dollars (\$300,000) (“Settlement Payment”) within seventy-five (75) days of execution of this Agreement to be placed into the Community Benefits Fund, except that if any administrative or judicial challenges are made against the Initial Approvals within 75 days of the effective date of the Initial Approvals, Developer shall pay the Settlement Payment within 75 days of the date that any such challenges are resolved in favor of Developer so that the Project can be developed, constructed and operated in accordance with the Initial Approvals. The Settlement Payment shall be used to fund improvements to benefit the community near the Project.

3. If, within seventy-five (75) days of execution of this Agreement, the City has not established a Community Benefit Fund in accordance with Paragraph 1, SFCA and the City cannot come to terms on a settlement agreement between SFCA and the City, or the City fails to accept payment into the fund by Developer as set forth in Paragraph 2, SFCA may identify a third party (“Third Party Administrator”), for approval by Developer, to create and implement the Community Benefit Fund. Developer shall not unreasonably withhold approval of a Third Party Administrator of the funds identified by SFCA. Upon selection of a Third Party Administrator by the Parties, Developer shall pay the Settlement Pay into the fund held by the Third Party Administrator within ten (10) business days of establishing the Community Benefit Fund.

4. Developer agrees to hold a virtual job fair held in partnership with the end-user of the Project (“End-User”) and local workforce organizations during the period in which End-User is conducting initial hiring for operations on the Project Site. Developer agrees to contribute Fifty Thousand Dollars (\$50,000) to local workforce or economic development organizations, which shall be selected based on the mutual agreement of the Parties, to support a program providing job training in skills related to logistics and warehouse management focused on residents of the geographic area covered by the City of Fresno’s draft South Central Specific Plan, West Fresno, Malaga, and Calwa. The training will be made available in advance of End-User’s announcement of job openings at the Project Site in order to allow recipients of the training to better compete for those jobs. Developer, in collaboration with SFCA, will work to disseminate information about the virtual job fair and job training opportunities to residents of the geographic area covered by the City of Fresno’s Draft South Central Specific Plan, West Fresno, Malaga, and Calwa, including but not limited to through direct mailings and social media.

5. Developer shall ensure that upper visors shall be installed on building mounted lights and perimeter pole lights so as not to produce obtrusive glare onto the public right of way or properties in the area surrounding the Project Site, including but not limited to properties located on East Central Avenue. Vertical light shields on the light fixtures shall be used to direct light away from Central Avenue. The visors and light shields shall be installed

no later than the date the lights are operational. If SFCA determines that an obtrusive glare exists despite the installation of the visors and light shields, upon notice to Developer, the Parties shall work in good faith to identify solutions to mitigate such glare and Developer shall take all reasonable measures necessary to mitigate the obtrusive light impact on homes in the area.

6. Developer shall ensure that a photovoltaic solar system of not less than 800kW is installed on the Project. The solar system shall be installed within one year from commencement of the operation of the Project.

7. Developer shall use solar-reflective cool pavement, which may include conventional concrete, in the circulation areas surrounding the truck docks within the Project to reduce Project heat impacts. Mature trees and shrubs shall be used throughout the Project Site to implement the landscaping plan to reduce Project heat impacts.

8. On or before completion of construction on the Project Site, Developer shall ensure that ten (10) EV charging stations shall be installed at the Project site for cars which shall be made available solely for use of employees of the Project.

9. Before operations commence on the Project Site, Developer shall ensure that landscaping is installed with mature tree and shrubs on the western border of Project Site. The landscaping installed on the Western border of the Project Site will be consistent with Fresno Municipal Code (“FMC”) with respect to tree and shrub spacing.

10. Developer shall construct and designate an area for employee pick-up to prevent traffic congestion. If SFCA determines that traffic congestion relating to employee pick up, drop off, and parking activity associated with the Project is impacting local roadways, including South Orange Avenue or East Central Avenue, or pedestrian safety, the Parties shall work in good faith to identify solutions to mitigate the congestion and shall take feasible measures to mitigate the congestion.

11. Developer shall post signs requiring drivers to limit vehicle idling to five (5) minutes or less. A provision will also be added in the End-User lease to limit idling to five (5) minutes or less. Developer will support the City Traffic Officer in implementing the vehicle idling rules and ordinances.

12. Developer shall use good faith efforts to engage the City and the County of Fresno, as applicable, to limit truck traffic in front of Orange Center Elementary School. Developer will support the implementation of the City’s plan for truck routes in the area of the South Central Specific Plan, West Fresno, Malaga, and Calwa.

13. If, by the initiation of project operations, the City fails to secure a location for the placement of a regulatory grade air quality monitor provided by the San Joaquin Valley Air Pollution Control District on the ponding basin property located adjacent to the Southern

border of the Project Site by the initiation of Project operations, Developer shall make available a location for the placement of such an air quality monitor that is within the North Pointe Business Park, adjacent to a roadway. Should the air quality monitor be sited on the Developer's property in the North Pointe Business Park, the Developer will allow the San Joaquin Valley Air Pollution Control District and its representatives access to the air quality monitor for monitoring and maintenance purposes.

14. Developer shall comply with all provisions of the FMC regarding light, noise, dust or other air pollution standards with respect to Project construction and operations. Developer will modify its construction practices and operations to comply with the FMC as needed. Developer will also designate a construction liaison to address noise, dust, light or other construction related concerns raised by SFCA or other members of the public. Developer will provide to SFCA and post in a publicly accessible location at the Project Site contact information for the construction liaison. The construction liaison will respond to any concerns raised by SFCA within twenty-four (24) hours. The Developer and/or the construction liaison will promptly institute all feasible measures necessary to correct construction related concerns raised by SFCA and members of the public.

15. Within twenty-four (24) hours of the Effective Date of this Agreement, SFCA shall cause Leadership Counsel, as its designated representative, to issue and deliver to the City a signed letter withdrawing the Appeal (the "Withdrawal Letter"). SFCA, on their own behalf and/or through its participating members, officers, representatives, business managers, agents, or attorneys, will not (i) participate in any meetings or hearings to challenge, oppose or contest the Initial Approvals; (ii) file any administrative or other appeals or objections challenging the Initial Approvals; (iii) file any administrative or legal action challenging the issuance of any Initial Approval or the construction of the Project; (iv) take any affirmative act to cause or attempt to cause the City or any other government agency to withhold issuance and/or disapprove any Initial Approval needed for the construction or operation of the Project; or (v) take any actions to object, appeal, disrupt, or otherwise interfere either administratively or judicially with development of the Project in accordance with the Initial Approval; or (vi) collaborate or communicate with any Project opponents in a manner that supports or facilitates their efforts to oppose the Project's attainment of its Initial Approvals. This Section shall not limit SFCA's right to challenge, oppose, contest or object to the Project's impacts following approval of the Initial Approvals or to challenge, oppose, contest or object to a request for or issuance of entitlements other than the Initial Approvals, as defined in this Agreement herein.

16. This Agreement shall be deemed executed and delivered within the State of California; the rights and obligations of the Parties hereunder shall be governed, construed and enforced in accordance with the laws of the State of California. The venue for any dispute arising from or related to this Agreement, its performance, and its interpretation shall be the Superior Court of California, County of Fresno. This Agreement is entered into in full compromise of disputed claims. It is fully acknowledged by all Parties hereto that the execution of this Agreement and the payment of consideration and performance hereunder is

not and shall not be construed in any way as any admission of liability or wrongdoing on the part of any of the Parties hereto, and that all Parties completely and expressly deny any liability and merely intend by their actions pursuant hereto to avoid prolonged and further litigation. This Agreement represents and contains the entire agreement and understanding among the Parties hereto with respect to the subject matter of this Agreement and supersedes any and all prior written and oral agreements and understandings. This Agreement may be amended or modified only in a writing executed by all of the Parties.

17. To the extent any further or additional things or acts are required to be done or taken by any of the Parties hereto to effectuate this Agreement, each party hereby commits to do such things and take such acts, including those to be done or taken through the exercise of executive or administrative authority, to fully carry out the purposes and intent of this Agreement. Furthermore, to the extent further documents or instruments are required to be executed by any of the Parties to effectuate the Agreement, each party hereto agrees to expeditiously execute and deliver such other and further documents as may be required to carry out the terms of this Agreement.

18. If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the Party for whose benefit the unenforceable provision existed may rescind the Agreement, or, in that Party's sole option, may instead choose to enforce the Agreement, through a severing of the unenforceable provision, with the remainder of the Agreement to remain in effect.

19. This Agreement is intended to benefit the Developer, SFCA, and SFCA's members. SFCA's members shall be deemed third-party beneficiaries to this Agreement with authority to enforce the Agreement's provisions.

20. No breach of this Agreement or of any provision herein can be waived except by an express written waiver executed by the Party waiving such breach. Waiver of any one breach shall not be deemed a waiver of any other breach of the same or other provisions of this Agreement.

21. This Agreement may be executed in any number of counterparts each of which shall be deemed an original and all of which shall constitute one and the same agreement, with the same effect as if all Parties had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement and reattached to any other counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.

22. Developer shall have the right to assign all or a portion of the Agreement. Upon completion of an assignment, Developer shall notify SFCA in writing after completion of the Assignment.

23. Each of the signatories hereto represents and warrants that he or she is competent and authorized to enter into this Agreement on behalf of the Party for whom he or she purports to sign. Each Party hereto agrees to defend, indemnify, and hold harmless the other Parties hereto against all claims, suits, actions, and demands, including necessary expenses of investigation and reasonable attorneys' fees and costs, arising out of claims that its signatory was not competent or so authorized to execute this Agreement.

24. Any party that claims any other party has breached this Agreement shall transmit a written notice to cure the alleged breach to the defaulting signatory at least twenty (20) days prior to filing any action in the Fresno County Superior Court. No action may be filed if the defaulting signatory has fully cured the alleged breach within the cure period. The Parties and signatories agree that monetary damages are not available as a remedy in any action to enforce this Agreement, and that the sole remedy to enforce this agreement shall be specific performance, injunction or other equitable relief.

25. If the Leadership Counsel does not submit the Withdrawal Letter timely after execution of this Agreement, or if the Project is not approved by the City or is not developed, constructed or operated, then this Agreement shall automatically terminate and be of no further force and effect.

26. This Agreement shall be effective and binding upon the Parties only after the execution of both (i) this Agreement by SFCA and Developer, and (ii) the execution of a separate agreement between SFCA and the City relating to the Initial Approvals ("Effective Date").

***[Signatures on Following Page]***

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first set forth above.

Developer:

G4 ENTERPRISES, LTD.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

South Fresno Community Alliance:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:

For: G4 ENTERPRISES, LTD.

By: \_\_\_\_\_ Dated: \_\_\_\_\_, 2021  
Bruce Brown of Wild, Carter & Tipton a professional law corporation

For: SOUTH FRESNO COMMUNITY ALLIANCE

By: \_\_\_\_\_ Dated: \_\_\_\_\_, 2021

Name: Ashley Werner, Leadership Counsel for Justice and Accountability

**Exhibit "A"**  
**Appeal Letter**