

COMPROMISE SETTLEMENT AGREEMENT AND RELEASE

Keller Independent School District (“KISD”) and Centurion American Enterprises, L.L.C. (“Centurion” or “Contractor”) hereby enter into the following Compromise Settlement Agreement and Release.

WHEREAS, KISD is the owner of certain real property within the District and is constructing a new school on that site, to wit: 11773 Brae Birch Lane, Fort Worth, Texas (hereinafter referred to as “the site”);

WHEREAS, Centurion is the developer of property adjacent to the site, Lennar Homes (“Lennar”) is constructing new homes on the adjoining property developed by Centurion, and Carter & Burgess (“CB”) is the engineer for Centurion responsible for determining and setting grades on the adjoining property during the development phase; and

WHEREAS, the site was altered without the knowledge or consent of KISD such that drainage from the site onto the adjoining property developed by Centurion and owned by Lennar is affected; and

WHEREAS, the parties have various claims against each other arising from the alterations to the site, but wish to amicably resolve those claims and disputes by entering into the following agreement:

NOW, THEREFORE, the parties hereby enter into and agree to the terms of this Compromise Settlement Agreement and Release (“Agreement”);

1. Centurion agrees to construct the retaining wall on the site as designed by KISD’s engineers, Teague Nell & Perkins. Such work shall be performed by Centurion at no expense to

KISD. Said work shall be started within seven days of the execution of this Agreement and shall be completed no later than forty-five days from the execution of this Agreement. Centurion agrees that all construction work shall be reviewed by, monitored by, and subject to the final approval of KISD's Construction Manager at Risk on the site, Steele-Freeman, Inc. Prior to beginning construction of the retaining wall, Centurion shall procure, maintain, and provide proof of insurance to protect from claims arising out of the construction of the retaining wall on the site, such insurance to be in a form approved by KISD. Centurion shall maintain such insurance in full force and effect and uninterrupted during its construction of the retaining wall on the site and after the completion of services under this Agreement until the completion of any applicable statute of limitations, such period to not be less than two years from the final completion of the work as to comprehensive general liability and comprehensive automobile liability. Centurion shall furnish to KISD certificates of insurance upon request at any time during the construction or the applicable statute of limitations. Centurion shall name KISD as an additional insurer under the policies for comprehensive general liability and comprehensive automobile liability. Insurance shall be obtained from companies licensed to do business in the State of Texas by the Texas Department of Insurance and the policies shall include a waiver of subrogation in favor of KISD. Insurance coverage shall be of the following types and in at least the following amounts:

1. Workers' Compensation-statutory limits
Employer's Liability-\$100,000;
2. Comprehensive General Liability - bodily injury/property damage/personal injury of \$500,000 each occurrence or equivalent;
3. Comprehensive automobile liability -

- a. bodily injury - \$300,000 per person; \$300,000 per occurrence; or \$300,000 combined limit per occurrence
- b. property damage \$300,000 per occurrence.

2. A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Workers' Compensation Commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory Workers' Compensation insurance coverage for the person's or entity's employees providing services on a Project is required for the duration of the Project.

Duration of the Project includes the time from the beginning of the work on the Project until the contract's/person's work on the Project has been completed and accepted by the governmental entity.

Persons providing services on the Project ("subcontractor" in Texas Labor Code 406.096) include all persons or entities performing all or part of the services the contractor has undertaken to perform on the Project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity that furnishes persons to provide services on the Project.

Services include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a Project. Services do not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code 401.011(44) for all employees of the contractor providing services on the Project for the duration of the Project.

The contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the Project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

The contractor shall obtain from each person providing services on a Project, and provide to the governmental entity:

a. A certificate of coverage, prior to that person beginning work on the Project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the Project,; and

b. No later than seven (7) days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

The contractor shall retain all required certificates of coverage for the duration of the Project and for one (1) year thereafter.

The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

The contractor shall post on each Project site a notice, in the text, form, and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing

services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

The contractor shall contractually require each person with whom it contracts to provide services on a Project, to:

a. Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code 401.011(44) for all of its employees providing services on the Project for the duration of the Project;

b. Provide to the contractor, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project for the duration of the Project;

c. Provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

d. Obtain from each other person with whom it contracts, and provide to the contractor:

(1) A certificate of coverage, prior to the other person beginning work on the Project; and

(2) A new certificate of coverage showing extension of coverage prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

e. Retain all required certificates of coverage on file for the duration of the Project and for one (1) year thereafter;

f. Notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after the person knew, or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and

g. Contractually require each person with whom it contracts to perform as required by items a-f, with the certificates of coverage to be provided to the person for whom they are providing services.

By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the Project will be covered by Workers' Compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

The contractor's failure to comply with any of these provisions is a breach of contract by the contractor that entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the governmental entity.

The coverage requirement recited above does not apply to sole proprietors, partners, and corporate officers who are excluded from coverage in an insurance policy or certificate of authority to self-insure that is delivered, issued for delivery, or renewed on or after January 1, 1996. 28 TAC 110.110(i).

3. Centurion shall furnish payment and performance bonds in accordance with Chapter 2253 of the Texas Government Code prior to beginning construction of the retaining wall referred to in paragraph 1 above. Any surety company must be licensed to do business in the State of Texas. Such bonds provided by Centurion or any subcontractor shall comply with the requirements of Article 7.19-1 of the Texas Insurance Code. The amount of each bond provided by Centurion shall be equal to One Hundred Percent (100%) of the estimated price of the work, \$88,512.11.

All bonds shall be originals. Centurion shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the Power-of-Attorney. The name, address, and telephone number of a contact person for the bonding company shall be provided.

Upon the request in writing of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the contract, Centurion shall promptly furnish a copy of the bonds or shall permit a copy to be made.

Bonds shall be signed by an agent resident in the State of Texas and the date of the bond shall be the date of execution of the Agreement. If at any time during the construction of the retaining wall the surety of Centurion's bonds becomes insufficient, Owner shall have the right to require additional and sufficient sureties which Centurion shall furnish to the satisfaction of the Owner within ten (10) business days after notice to do so. In default thereof, the work may be suspended by KISD, and Centurion declared to be in breach of the Agreement.

4. Centurion shall warrant construction of the retaining wall in a good and workmanlike manner and to warrant to repair any defects or failures to the retaining wall for a period of four years from final completion of the retaining wall. Centurion shall further indemnify and hold harmless KISD of and from any claims, damages, causes of action, or other liability arising out of defective construction of the retaining wall or failure to follow the specifications of KISD's engineer for construction of the retaining wall.

5. In exchange for consideration paid by the Released Parties to KISD, KISD hereby compromises, settles, and fully releases the Released Parties, their heirs, assigns, shareholders, partners, members, officers, subsidiaries, affiliates, agents, employees, directors, and insurers of and

from any and all claims, demands, rights, controversies, actions, causes of action, damages, or any other liability of any kind whatsoever, known or unknown, arising out of the alterations of the site and construction of the retaining wall made necessary by the alterations of the site. This release shall not release the Released Parties for any alterations to the site or alterations to the drainage on or from the site arising after the execution of this Agreement.

6. The parties acknowledge and agree that all monies paid or other consideration given is paid and given to compromise and settle disputed claims, to avoid the time, expense, and uncertainty of litigation, and to buy peace, and is not and should not be construed as any admission of any wrongdoing or liability, and all such wrongdoing or liability being expressly denied by the Released Parties.

7. The parties hereby represent and warrant that they are authorized and have agreed to enter into this Agreement in order to compromise and settle all claims which were or could have been alleged concerning the alterations of the site and the drainage corrections made necessary by the alterations to the site.

8. The parties agree to mutually cooperate in the execution of documents, in the exchanging of the information necessary to expedite this settlement, and in any construction resulting on the site arising out of or relating to the alterations to the site or drainage corrections made necessary by the alterations to the site, if any.

9. The parties agree that this Agreement shall be governed by the laws of the State of Texas and that should any dispute arise out of or concern the Agreement, venue for any such dispute shall be in state courts in Tarrant County, Texas. The prevailing party in any such dispute shall be

entitled to recover reasonable and necessary attorney's fees, as provided by Section 271.159, Texas Local Government Code.

10. The parties agree and understand that the terms hereof are contractual and not merely recitals. The parties agree and understand that this Agreement contains the entire Agreement between the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement on the latest date set forth below.

Date

KELLER INDEPENDENT SCHOOL
DISTRICT

Date

CENTURION AMERICAN ENTERPRISES,
L.L.C.

