



Cabazon Water District
14-618 Broadway Street • P.O. Box 297
Cabazon, California 92230

SPECIAL BOARD MEETING

AGENDA

Meeting Location:
Cabazon Water District
14618 Broadway Street
Cabazon CA 92230

Meeting Date:
May 24, 2016 – 4:00 PM

CALL TO ORDER, FLAG SALUTE, AND ROLL CALL

PUBLIC COMMENTS

NEW BUSINESS

- 1. APPROVAL OF SETTLEMENT WITH DESERT HILLS PREMIUM OUTLETS**
Review and Approval of Settlement and Mutual Release Agreement between Cabazon Water District and Simon Property Group, et al.

ANNOUNCEMENTS

ADJOURNMENT

ADA Compliance Issues

In compliance with the Americans with Disabilities Act & Government Code Section 54954.2, if special assistance is needed to participate in a Board meeting, please contact the Clerk of the Board at (951) 849-4442. Notification of at least 48 hours prior to meeting time will assist staff in assuring that reasonable arrangements can be made to provide access.

SETTLEMENT AND MUTUAL RELEASE AGREEMENT

This Settlement and Mutual Release Agreement ("Settlement Agreement") is made and entered into as of the date of the last signatory ("Effective Date") by and between the following Parties: Cabazon Water District ("Cabazon ") and Premium Outlet Partners, L.P. (formerly known as CPG Partners, L.P.), SPG Partners GP, LLC (formerly known as CPG Holdings LLC), Simon Property Group, L.P. and affiliated entities (collectively, "Simon") "Parties" as used in this Settlement Agreement shall collectively refer to Cabazon and Simon. This Settlement Agreement is made with reference to the following facts:

RECITALS

- A. In January 2012, Cabazon and Simon entered into the Water Service and System Dedication Agreement ("System Dedication Agreement"). Section 5 of the System Dedication Agreement contains terms specific to the rates to be charged by Cabazon for continuing water service through a master meter to Simon's Desert Hills Premium Outlets ("DHPO").
- B. Cabazon has undertaken an investigation of the rates charged by Cabazon to Simon for water service to DHPO since the inception of that service in or about May 2012. Due to a variety of circumstances, some of which were beyond the control of Cabazon, it has been determined that Cabazon significantly overcharged Simon for water service under the terms of the System Dedication Agreement between May 2012 and early 2016. This Settlement Agreement refers to these overcharges, collectively, as the "Overbilling".
- C. Cabazon and Simon have reached settlement of all claims and matters relating to the Overbilling. Cabazon, on the one hand, and Simon, on the other hand, now desire to fully and finally settle and resolve any and all rights, claims, disputes, potential causes of action, and claims which currently exist in favor of the Parties, including, but not limited to, all claims arising out of the System Dedication Agreement related to the Overbilling. The Parties expressly intend that this settlement shall further pertain to any claims for interest, attorneys' fees, and/or all other costs or expenses associated with the Overbilling.

NOW, THEREFORE, based upon the foregoing recitals which are incorporated herein by this reference as though set forth in full, and for valuable consideration the receipt and adequacy of which is hereby acknowledged, it is agreed by and between the parties hereto as follows:

1. Settlement

1.1 Cabazon agrees to pay Simon the total sum of Two Hundred Forty-Three Thousand Eighty-Eight Dollars and Two Cents (\$243,088.02) ("Settlement Amount") within fourteen (14) days after the execution of this Settlement Agreement by both Parties. The parties also acknowledge that Cabazon has already returned uncashed to Simon its check in the amount of \$9,753.61 sent to Cabazon to cover March 2016 water service by Cabazon to DHPO.

1.2 The Settlement Amount payment check is to be made out to "Premium Outlets Partners, L.P." and hand-delivered to Tina Venetis or her designee at Desert Hills Premium Outlets, 48400 Seminole Drive, Suite 601, Cabazon, CA 92230 after this Settlement Agreement has been executed by both Parties.

1.3 The parties also agree that, going forward, a member of Cabazon management staff and a member of the Simon/DHPO management team will jointly read the DHPO master meter on a monthly basis on an agreed upon day of the month so there is no further confusion or disagreement about the water master meter reads.

1.4 Regular water service billing for DHPO water service will resume as of the execution of this Settlement Agreement, with that billing including water deliveries made by Cabazon to DHPO beginning on April 1, 2016.

1.5 The terms of the Settlement Agreement will not affect the terms or continuing validity of the System Dedication Agreement.

2. Mutual Release

Contingent upon the full completion of the terms of this Settlement Agreement and the full payment of the Settlement Amount, the Parties hereby release and discharge one another, and their respective officers, directors, trustees, shareholders, heirs, executors, administrators, attorneys, successors, assigns, principals, agents, servants, employees, consultants, representatives, parents, owners, brokers, affiliates, subsidiaries, board members and related entities and each of them of and from any and all claims, lawsuits, demands, debts, liabilities, remedies, damages, accounts, obligations, costs, expenses (including attorneys' fees), liens, indemnity, actions, and causes of action of every kind and nature, whether known or unknown, suspected or unsuspected, that they now own or hold or at any time heretofore has owned or held, based upon, related to or arising from any transaction, contract, tort, lien, liability, matter, cause, cause of action, fact, thing, conduct, act, or omission whatsoever, which the Parties may now have or may hereafter have arising out of or connected with the Overbilling.

3. Waiver of Civil Code Section 1542

Contingent upon the full completion of the terms of this Settlement Agreement and the full payment of the Settlement Amount, it is the intention of the Parties that the release entered into as part of this Settlement Agreement shall be effective as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of any character, nature and kind, known or unknown, suspected or unsuspected, to be so barred; in furtherance of which intention the Parties expressly waive any and all right and benefit conferred upon them by the provisions of Section 1542 of the California Civil Code, which 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.

The Parties hereby acknowledge that the foregoing waiver of the provisions of Section 1542 of the California Civil Code was bargained for separately. The Parties hereto expressly agree that the release provisions herein contained shall be given full force and effect in accordance with each and all of their express terms and provisions, including but not limited to those terms and provisions relating to unknown or unsuspected claims, demands and causes of action hereinabove specified. The Parties specifically agree to assume the risk of the subsequent discovery or understanding of any matter, fact or law which if now known or understood would in any respect have affected this Settlement Agreement.

4. Representations and Warranty

Each Party represents and warrants that there has been no assignment or other transfer of any interest in any of the claims which are being released hereunder and that no person or entity other than the Parties hereto has or have any interest or claim against any of the other Parties regarding the Recitals above or as expressly reserved herein.

5. Compromise

This Settlement Agreement is the result of a compromise and shall never at any time or for any purpose be considered an admission of liability or responsibility on the part of any Party herein released, nor shall the payment of any sum of money in consideration for the execution of this Settlement Agreement constitute or be construed as an admission of any liability whatsoever, by any Party herein released, all of which continue to deny such liability and to disclaim such responsibility.

6. Consultation with Counsel

The Parties each represent and declare that they have carefully read this Settlement Agreement and know and understand its contents of, and have had the advice of counsel regarding same (or ample opportunity to consult with counsel of their choosing), and that they sign the same freely and voluntarily.

7. Neutral Interpretation

The language of this Settlement Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any party.

8. Complete Agreement

This Settlement Agreement constitutes the entire agreement and understanding between the Parties concerning the subject matter hereof, and supersedes and replaces all prior negotiations and proposed agreements, written and/or oral. Each Party acknowledges to the other Party that no Party or agent or any attorney of any party has made any promise, representation or warranty whatsoever, express or implied, written or oral, not contained herein concerning the subject matter hereof to induce it to execute this agreement and each party acknowledges that it has not executed this Settlement Agreement in reliance upon any promise, representation or warranty not contained herein.

9. Applicable Law, Jurisdiction, and Venue

This Settlement Agreement shall, in all respects, be interpreted, enforced, and governed exclusively by and under the laws of the State of California.

10. Attorneys' Fees and Costs

Each Party will bear their own pre-Settlement Agreement attorneys' fees and costs.

11. Individuals Authorized

The Parties represent and warrant that the Party signatories to this Settlement Agreement have full authority to bind the Party each represents.

12. Signature in Counterpart and Fax

This Settlement Agreement may be executed in one or more counterparts, any one of which shall be binding on any Party signing thereon. Photocopied copies, facsimile copies, and scanned original documents shall be deemed originals and shall be valid, binding, and enforceable in accordance with their terms.

13. Severability

If any portion of this Settlement Agreement is declared by a court of competent jurisdiction to be invalid, illegal, unconstitutional or unenforceable, such portion shall be deemed severed from this Agreement and the remaining parts shall remain in full force and effect as if no invalid or unenforceable provisions had been part of this Settlement Agreement.

EACH OF THE UNDERSIGNED HEREBY DECLARES THAT THE TERMS OF THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE HAVE BEEN COMPLETELY READ AND ARE FULLY UNDERSTOOD, AND BY EXECUTION HEREOF VOLUNTARILY ACCEPTS THE TERMS WITH THE INTENT TO BE LEGALLY BOUND THEREBY.

Dated: _____, 2016

PREMIUM OUTLET PARTNERS, L.P.
BY: SPG PARTNERS GO, LLC, ITS
GENERAL PARTNER

By: _____
NAME:
TITLE:

Dated: _____, 2016

CABAZON WATER DISTRICT

By: _____
NAME:
TITLE: