

CONDITIONAL RESTORATION AGREEMENT

THIS CONDITIONAL RESTORATION AGREEMENT (this "Agreement") is made and entered into on this the ~~10th~~ day of December, 2013, by (i) **CENTREPOINTE VERTICAL, LLC**, a Kentucky limited liability company, having a mailing address of 250 West Main Street, Suite 3000, Lexington, Kentucky 40507 (the "Developer"), (ii) **FAYETTE LAND COMPANY, LLC**, a Kentucky limited liability company, having a mailing address of 250 West Main Street, Suite 3000, Lexington, Kentucky 40507 (hereinafter referred to as the "Fayette Land Company"), (iii) **CENTREPOINTE PARKING COMPANY, LLC**, a Kentucky limited liability company, having a mailing address of 250 West Main Street, Suite 3000, Lexington, Kentucky 40507 (the "Parking Company"), and (iv) the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the Commonwealth of Kentucky, having a mailing address of 200 East Main Street, Lexington, Kentucky 40507 (hereinafter referred to as the "LFUCG").

W I T N E S S E T H:

WHEREAS, Fayette Land Company is the fee simple owner of the following described property in Lexington, Fayette County, Kentucky, to-wit:

BEING all of that consolidated lot designated as **100 West Main Street** [consisting of Lot 1 (0.94 acres) and Lot 2 (0.94 acres) for a total of 1.88 acres], in Lexington, Fayette County, Kentucky, as shown by that Amended Consolidation Final Plat for Centrepointe, LLC, of record in Plat Cabinet R, Slide 110, in the Fayette County Clerk's Office; and

BEING the same property conveyed to Fayette Land Company, LLC, a Kentucky limited liability company, by (i) Town Branch Investments, LLC, a Kentucky limited liability company, through deed dated October 24, 2013, of record in Deed Book 3194, Page 84, and (ii) 126, LLC, a Kentucky limited liability company, through deed dated October 25, 2013, of record in Deed Book 3194, Page 161, both in the Fayette County Clerk's Office (and hereinafter referred to as the "Property"); and

WHEREAS, Fayette Land Company has contracted with the Developer to develop the Property into a mixed use project consisting of a hotel/residential condominium building, an office building and an apartment building (with a retail component on the first floor), all to be situated atop a three (3) level subterranean parking garage (all of the foregoing being hereinafter collectively referred to as the "Project", and the subterranean parking garage being referred to as the "Parking Garage"); and

WHEREAS, the Parking Garage is to be constructed at the expense of the Parking Company as the leasehold owner of the subterranean space within which the Parking Garage is to be situated; and

WHEREAS, Fayette Land Company, the Parking Company and the Developer are desirous of commencing the excavation of the Property in order to construct the Parking Garage, however, such excavation requires various approvals and permits from the LFUCG; and

WHEREAS, the LFUCG supports the development of the Project and is desirous of issuing the requisite approvals and permits, but, among other reasons, due to the prominence of the Property in the heart of the "Downtown" central business district of Lexington-Fayette County, and the need to protect the public interest in the event that the excavation commences but comes to a halt prior to the completion of the Parking Garage, the LFUCG is requiring the execution of this Agreement as a condition to the issuance of such approvals and permits.

NOW THEREFORE, for and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

1. Covenant to Restore Surface. The Developer does hereby agree that once the construction of the Parking Garage commences (i.e. – the excavation), but subsequently no work is made toward completing the Parking Garage for a period of sixty (60) consecutive days, then, upon its receipt of a written demand from the LFUCG, absent good cause shown, the Developer will cause the Property to be restored to its pre-existing condition, by filling the excavated area with dirt comparable to the quality of the dirt removed during the excavation project, graded and compacted to the standards set forth on Exhibit A, replacing the four (4) plank "horse farm" type fence along the perimeter of the Property, restoration and/or repair of all sewers and other public works or utilities that have been disturbed, and planting grass so that the surface of the Property has the same general appearance that it had prior to the excavation (such work being hereinafter referred to as the "Restoration Work", and the covenant on the part of the Developer to cause the Restoration Work to be performed being hereinafter referred to as the "Restoration Covenant"). Should the Restoration Work become necessary, any partially completed underground elements of the Parking Garage may be left in place as long as upon completion of the fill project, the surface of the Property is restored to the same general appearance it had prior to the excavation and such partially completed elements are completely concealed underground.

2. Binding Effect. The Restoration Covenant on the part of the Developer shall run with the title to the Property, and shall be binding against any subsequent owner of the Property, including any mortgagee which might acquire title to the Property by foreclosure or via a deed in lieu of foreclosure, and the right of the LFUCG to enforce the Restoration Covenant shall have priority over and not be subordinate to the lien of any first mortgage holder of the Property.

3. Financial Limitation. The parties hereto acknowledge that the financial limitation of this Agreement is \$4,400,000.00 and is based upon a quote submitted by Hunt Construction Group, Inc. ("Hunt"), a general contractor based in Indianapolis, Indiana, which is contemplated to be the general contractor for the entire Project. Attached to this Agreement is a letter from Hunt addressed to the Developer [with the LFUCG and City National Bank (the construction lender for the construction of the Parking Garage) being named therein as third-party beneficiaries thereof] confirming its agreement to perform the Restoration Work for a total price not to exceed \$4,400,000.00. Should the Restoration Work be required, the Developer [or its successor in the event of the subsequent sale of the Property (or deed in lieu of foreclosure to a mortgagee)] bid the Restoration Work and award to the lowest qualified bidder or, if no bid is

lower than Hunt's quotes, then contract with Hunt to complete the Restoration Work (at the \$4,400,000.00 "not to exceed" price quoted by Hunt).

4. Termination. The effect of this Agreement shall terminate in the event that (a) the Property is not disturbed or excavation of the Parking Garage as set forth in the Development Agreement does not commence, and, as a result, the various grading and excavation permits issued by the LFUCG expire upon their terms, (b) the excavation of the Property commences, comes to a halt, and the Restoration Covenant is satisfied, or (c) the construction of the Parking Garage has been completed and the closing of the construction loan for the office building component of the Project has been achieved; following which, the LFUCG shall be obligated to execute a recordable instrument releasing and nullifying the terms of this Agreement. Provided, however, the indemnity obligation set forth in paragraph 5, below, shall survive until the Office Building is completed.

5. Indemnification. If the Developer commences the excavation of the Property for the construction of the Garage and thereafter fails to complete such construction of the Garage (or, alternatively, to perform the Restoration Work as defined herein), and such failure continues for a period of sixty (60) days following Developer's receipt of a written demand from LFUCG that such construction of the Garage be completed or perform the Restoration Work, then LFUCG shall have the right, but not the obligation, to perform the Restoration Work and enforce this Agreement in all respects. Notwithstanding the foregoing, Developers shall jointly and severally indemnify LFUCG for all costs and expenses actually incurred by LFUCG in connection with the enforcement of this Agreement, the Restoration Work or any breach of this Agreement by the parties hereto should LFUCG determine that Developer has failed to do so, and shall have the further right to foreclose the Property and be awarded a judgment sufficient to cover the cost of Restoration Work, not to exceed \$4,400,000.00 to pay for such Restoration Work, such judgment to have priority over all other claims, liens or encumbrances, secured or unsecured, of record or not, in which event Developer shall jointly and severally indemnify LFUCG for all costs and expenses actually incurred by LFUCG in connection therewith. Developer and Fayette Land hereby grant LFUCG and its agents and contractors the irrevocable license and right to enter upon the Property for the purpose of performing such restoration work. Nothing herein shall be deemed to alter any construction timeline or to limit any force majeure provisions contained in the Development Agreement or any agreements related thereto.

6. Joinder of Parties. Fayette Land Company and the Parking Company join in the execution of this Agreement for the purpose of consenting to, and agreeing to be bound to, the terms and conditions thereof.

7. Miscellaneous Provisions.

A. Headings. Paragraph titles or captions contained in this Agreement are inserted only as a matter of convenience and reference, and in no way define, limit, extend or describe the scope of this Agreement, or the intent of any provision hereof.

B. Severability. If any provision of this Agreement, or the application thereof, to any person, entity or circumstance, shall be invalid or unenforceable to any extent, the remainder of this Agreement, and the application of such provision to other persons, entities or

circumstances, shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

C. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns.

D. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Kentucky.

E. Entire Agreement. This Agreement contains the entire agreement of the parties pertaining to its subject matter and supersedes all prior and contemporaneous oral and written agreements pertaining thereto.

F. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one and the same agreement.

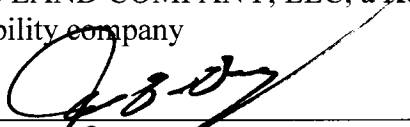
G. Facsimile or Scanned Email Signatures. The parties agree that this Agreement may be signed by facsimile signature or "scanned email", acknowledge that such facsimile signature or scanned email will be effective for all purposes, and waive all defenses to enforceability based on the fact that the signature was delivered by facsimile transmission or scanned email.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CENTREPOINTE VERTICAL, LLC, a Kentucky limited liability company

BY: 
RONALD C. TRITSCHLER, Manager

FAYETTE LAND COMPANY, LLC, a Kentucky
limited liability company

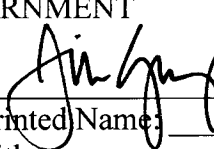
BY: 
JOE L. ROSENBERG, Co-Manager

BY: 
RONALD C. TRITSCHLER, Co-Manager

CENTREPOINTE PARKING COMPANY, a Kentucky
limited liability company

BY: 
RONALD C. TRITSCHLER, Manager

LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT

BY: 
Printed Name: JIM GRAY
Title: MAYOR

STATE OF KENTUCKY)
)
COUNTY OF FAYETTE)

The foregoing Conditional Restoration Agreement was acknowledged before me on this the 10th day of December, 2013, by Ronald C. Tritschler, as the duly-authorized Manager of Centrepointe Vertical, LLC, a Kentucky limited liability company, on behalf of said company.

My Commission Expires: May 17, 2017

Shirley Matus
NOTARY PUBLIC, KENTUCKY,
STATE AT LARGE

STATE OF KENTUCKY)
)
COUNTY OF FAYETTE)

The foregoing Conditional Restoration Agreement was acknowledged before me on this 10th day of December, 2013, by Joe L. Rosenberg, as the duly-authorized Co-Manager of Fayette Land Company, LLC, a Kentucky limited liability company, on behalf of said company.

My Commission Expires: May 17, 2017

Shirley Matus
NOTARY PUBLIC, KENTUCKY,
STATE AT LARGE

STATE OF KENTUCKY)
)
COUNTY OF FAYETTE)

The foregoing Conditional Restoration Agreement was acknowledged before me on this 10th day of December, 2013, by Ronald C. Tritschler, as the duly-authorized Co-Manager of Fayette Land Company, LLC, a Kentucky limited liability company, on behalf of said company.

My Commission Expires: May 17, 2017

Shirley Matus
NOTARY PUBLIC, KENTUCKY,
STATE AT LARGE

STATE OF KENTUCKY)
)
COUNTY OF FAYETTE)

The foregoing Conditional Restoration Agreement was acknowledged before me on this the 10th day of December, 2013, by Ronald C. Tritschler, as the duly-authorized Manager of CentrepoinTE Parking Company, LLC, a Kentucky limited liability company, on behalf of said company.

My Commission Expires: May 17, 2017

Josh Matts
NOTARY PUBLIC, KENTUCKY,
STATE AT LARGE

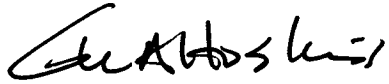
STATE OF KENTUCKY)
)
COUNTY OF FAYETTE)

The foregoing Conditional Restoration Agreement was acknowledged before me on this 12th day of December, 2013, by JIM GRAY, as the duly-authorized MAYOR of the Lexington-Fayette Urban County Government, an urban county government of the Commonwealth of Kentucky, on behalf of said government.

My Commission Expires: 1/9/2016

Monte Joe ID 457846
NOTARY PUBLIC, KENTUCKY,
STATE AT LARGE

THIS INSTRUMENT PREPARED BY:



GLENN A. HOSKINS
GLENN A. HOSKINS, P.S.C.
P.O. Box 55254
1077 Eastland Drive
Lexington, Kentucky 40555
(859) 231-1077

GAH/133012gh

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EXHIBIT A

Close attention to the soil classifications of the borrow source(es). Proctors would be needed for each significantly different classification proposed for use. Because soil horizons can change as the borrow area expands horizontally and vertically, there should be periodic visual inspection of the borrow area to confirm whether soil being taken closely resembles soils for which proctors have already been run. Additional proctors may be needed as soil types and conditions change. All this should occur under the oversight of a qualified geotechnical engineering firm selected by the LFUCG.

Soil placement should include dynamic compaction, typically by sheepsfoot roller. Lift thicknesses are typically on the order of 6" compacted depth. The contractor will want to size his compactor(s) such that the filling and compacting operations are continuous. Each lift should be tested until the specified density is reached, as determined by nuclear density gauge, before additional fill is added. Density should be 98-100% of standard proctor. Usual exclusions of organic matter and frozen soil should apply. Rock larger than six inches in any dimension should generally be excluded as well, unless otherwise approved by the geotechnical consultant.

To the best of his ability, the contractor will want to bring the fill up in a manner that maintains positive drainage within the excavation. Water pumped out will need to be filtered to remove suspended solids. The contractor should be prepared to address soils that are too wet or too dry, by whatever means necessary, to achieve proper compaction.



December 09, 2013

CentrepoinTE Vertical, LLC
Attention: R. Dudley Webb, Its Chairman
3000 Lexington Financial Center
Lexington, Kentucky 40507

Re: Site Restoration Commitment for CentrepoinTE Project

Dudley,

We have been advised by you that CentrepoinTE Vertical, LLC (the "Developer"), in order to obtain the necessary approvals from the City of Lexington ("City") to permit the start of excavation for the Parking Garage component ("Garage") of the CentrepoinTE Project ("Project"), Developer and City have entered into that certain "Conditional Restoration Agreement" ("CR Agreement"). The general terms of the CR Agreement being that, in the event work on the excavation and/or Garage is stopped and the Project is terminated by the Developer prior to the completion of this work, the Developer has a commitment from the Project's general contractor, Hunt Construction Group, Inc ("Hunt"), to backfill the excavation to ground surface level and to perform certain other general site restoration work (collectively the "Restoration Work"). The precise scope of the required Restoration Work being set forth in Schedule 1 which is attached hereto and made a part hereof.

This letter is to confirm to the Developer, City and City National Bank (the Garage "Lender") that Hunt is committed to Developer to perform the Restoration Work for a price not to exceed Four Million Four Hundred Thousand (\$4,400,000.00) dollars, (the "Price"). This commitment to perform the Restoration Work for a sum not to exceed the Price is expressly conditioned upon: (i) the scope, terms, assumptions and qualifications for the Restoration Work set forth in the attached Schedule 1; (ii) Hunt receives a written directive from Developer (or from the City or Lender to the extent permitted under the CR Agreement) that Hunt is to commence the Restoration Work; (iii) all necessary permits and approvals required to commence the Restoration Work are received by Hunt from the City and any other necessary governmental authorities; and (iv) Hunt is provided reasonable evidence from the Developer (or from the City or Lender if they are the party who sent Hunt the required written directive under item (ii) above), that sufficient funds are available to pay for the Restoration Work in full as it is performed.

Hunt is under no obligation to commence the Restoration Work unless and until all four of the express condition precedents noted above have been satisfied. Also, once the Restoration Work commences, Hunt's obligation to continue and complete that work is expressly conditioned upon its receipt of timely payments for that work as it is proceeding. In the event the written directive required under item (ii) above is issued to Hunt by either the City or the Lender, Developer acknowledges and agrees that Hunt may rely upon such written directive and to the extent Developer wishes to challenge any such directive, it will do so directly with the party issuing the directive and Developer will indemnify, defend and hold Hunt harmless from any damage, cost or expense (including attorney fees and costs) that might be incurred by Hunt as a result of any such challenge.

It is acknowledged and agreed by Hunt that both the City and Lender are express third party beneficiaries of this letter agreement, subject to all of the terms and conditions expressed herein.

If this letter agreement is acceptable to the Developer, please counter-sign a copy of this letter where noted below and return that counter-signed copy to us. If you have any questions regarding any of the above, please don't hesitate to contact me.



Eric Schreiner, V.P.

On behalf of Centrepointe Vertical, LLC (the "Developer"), I acknowledge and agree that the terms and conditions of the above letter agreement are hereby accepted by the Developer.



R. Dudley Webb, Its Chairman

CentrePointe Development

SCHEDULE 1

Property:

All of that consolidated lot designated as **100 West Main Street** [consisting of Lot 1 (0.94 acres) and Lot 2 (0.94 acres) for a total of 1.88 acres], in Lexington, Fayette County, Kentucky, as shown by that Amended Consolidation Final Plat for Centrepointe, LLC, of record in Plat Cabinet R, Slide 110, in the Fayette County Clerk's Office

Scope:

Backfill of hole as follows: Close attention to the soil classifications of the borrow source(s). Proctors would be needed for each significantly different classification proposed for use. Because soil horizons can change as the borrow area expands horizontally and vertically, there should be periodic visual inspection of the borrow area to confirm whether soil being taken closely resembles soils for which proctors have already been run. Additional proctors may be needed as soil types and conditions change. All this should occur under the oversight of a qualified geotechnical engineering firm.

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It is acknowledged and agreed by Hunt that both the City and Lender are express third party beneficiaries of this letter agreement, subject to all of the terms and conditions expressed herein.

If this letter agreement is acceptable to the Developer, please counter-sign a copy of this letter where noted below and return that counter-signed copy to us. If you have any questions regarding any of the above, please don't hesitate to contact me.



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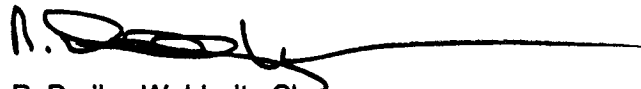
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R. Dudley Webb, Its Chairman

CentrePointe Development

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