

## SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS (“Agreement”) is entered into as of this 26<sup>th</sup> day of October, 2016 (the “Effective Date”), by and among the CITY OF LONG BEACH (“City”), ENSEMBLE INVESTMENTS, LLC (“Ensemble”), RAINTREE-EVERGREEN LLC (“Raintree”), BROADWAY BLOCK, LLC (“Broadway”), LONG BEACH TRANSPORTATION AND PARKING SOLUTIONS (“LBTAPS”), and the following individuals, DEBORA DOBIAS and LAURA GRECO (collectively, the “LBTAPS Representatives”), with respect to the facts set forth in the Recitals below. City, Ensemble, Raintree, Broadway, LBTAPS, and LBTAPS Representatives shall hereinafter be referred to collectively, as the “Parties” and, each, a “Party.”

### RECITALS

A. On June 24, 2016, LBTAPS filed a Petition For Writ Of Mandate in the Los Angeles Superior Court entitled *Long Beach Transportation and Parking Solutions, Inc. v. City of Long Beach; Ensemble Investments, LLC*, Los Angeles Superior Court Case No. BS163275, alleging the City violated the California Environmental Quality Act (“CEQA”) in taking certain actions relating to the sale of property located at 3<sup>rd</sup> Street and Pacific Avenue, Long Beach, CA (“Ensemble property”) to Ensemble. The purchase/sale and proposed development of such property is hereinafter referred to as the “Ensemble Project.”

B. On July 11, 2016, LBTAPS filed a Petition For Writ Of Mandate in the Los Angeles Superior Court entitled *Long Beach Transportation and Parking Solutions, Inc. v. City of Long Beach; Raintree-Evergreen, LLC*, Los Angeles Superior Court Case No. BS163377, alleging the City violated CEQA in taking certain actions relating to the sale of property located at 125-133 North Long Beach Boulevard and 234-248 East Broadway, Long Beach, CA (together with the property formerly owned by the City’s Redevelopment Agency located at 127-135 East Broadway, Long Beach, California, collectively, “Raintree property”) to Raintree. The purchase/sale and any future development of the Raintree Property is hereinafter referred to collectively as the “Raintree Project.”

C. On July 28, 2016, LBTAPS filed a Petition For Writ Of Mandate in the Los Angeles Superior Court entitled *Long Beach Transportation and Parking Solutions, Inc. v. City of Long Beach; Broadway Block, LLC*, Los Angeles Superior Court Case No. BS163765, alleging the City violated CEQA in taking certain actions relating to the sale of property located at 200-232 Long Beach Boulevard, Long Beach, CA (“Broadway property”) to Broadway. The purchase/sale and proposed development of such property is hereinafter referred to as the “Broadway Project.” The three actions filed by LBTAPS and described above are hereinafter collectively referred to as the “LBTAPS Actions.”

D. For purposes of this Agreement, the Ensemble property, Raintree property and Broadway property shall be referred to as the “Subject Properties.”

E. The Parties have engaged in negotiations to resolve their disputes concerning the Ensemble Project, the Raintree Project, and the Broadway Project and avoid further litigation, on the terms set forth herein.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties to this Agreement covenant and agree as follows:

1. **City Parking Study.** City agrees to conduct a parking study at the City's expense, not to exceed a total cost of \$250,000, as further described in this section.

City will conduct a nationwide RFQ and/or RFP process to select a highly qualified, professional parking consultant ("Consultant") to prepare a parking study for two areas in Long Beach, Downtown and Alamitos Beach, each of which is defined more specifically below ("Parking Study"). The RFQ/RFP will expressly specify that the City is looking for a "solution oriented" consultant to conduct the Parking Study. The RFQ/RFP will also set forth the following goal for the Parking Study: "This should be a comprehensive on-street and off-street parking analysis that includes developing a public and private parking system that is inclusive of all users of parking in the project area."

City will provide a set of the responses to the Parking Study RFQ/RFP to LBTAPS once all proposals are received. City staff will meet with LBTAPS before a consultant recommendation is made to the City Council and will consider any recommendations that LBTAPS has regarding which consultant to recommend to the City Council. If LBTAPS does not concur with City staff's recommendation to the City Council, the City Council selection shall be set on its agenda as a business item to allow LBTAPS to provide input directly to City Council before a decision is made. LBTAPS will be given at least one week notice of this City Council meeting.

If LBTAPS does not concur with the City Council's selection of a consultant for the Parking Study, \$10,000 shall be provided to fund a peer review of the Parking Study by a consultant of LBTAPS' choice, if LBTAPS so desires.

City will control the scope of work for the Parking Study, and agrees to give the Consultant the following parameters for the Parking Study:

### **Area 1 - Downtown**

**Goal:** Focus on balanced parking management approach for visitors, businesses and residents, within the context of the City's Complete Streets Program, General Plan (including the Mobility and Land Use Elements), and Zoning Code.

**Boundaries:** Seaside Way to 5th Street, Golden Avenue to Alamitos Avenue

**Scope of Work:** Consultant will conduct a comprehensive review of public parking management strategies, practices and opportunities, in the Downtown area, including an examination of how to protect the integrity of parking for all existing

residential buildings. The selected parking management consultant will also consider all existing standards as part of this effort. Specifically, the selected parking management consultant will undertake the following tasks as appropriate:

1. Assess parking inventory, availability, parking rates, utilization, turnover and duration for:
  - Existing parking lots (either publically owned or privately owned)
  - Existing commercial buildings
  - Existing residential buildings
  - On street parking locations
2. Survey all on-street parking restrictions (e.g. white, green, yellow and red zones and street sweeping restrictions) to determine whether the restrictions can or should be revised.
3. Develop potential parking management strategies and recommendations.
  - Recommend parking management and pricing strategies for public parking lots or garages (owned by City) and on-street parking. Consider options to integrate private facility parking for public use.
  - Develop transportation demand management strategies such as peer to peer rideshare programs, expanded bike share, etc.
4. Consider applicability of preferential parking districts on a block by block basis.
5. Consider whether there would be a benefit for the area property owners to form a parking assessment district.
6. Survey streets on block-by-block basis for applicability of diagonal parking.
7. Identify potential benefits and challenges related to integrating parking and multi-modal transportation system.
8. Identify funding, financing, and revenue sharing opportunities.
9. Make any recommendations deemed warranted based on the data analyzed.

## Area 2 - Alamitos Beach

Goal: Focus on balanced parking management approach for visitors, residents and businesses within the context of the City's Complete Streets Program, General Plan (including the Mobility and Land Use Elements), and Zoning Code.

Boundaries: The Beach to Fifth Street, Alamitos Avenue to Junipero Avenue

Scope of Work: Consultant will conduct comprehensive review of public parking management strategies, practices and opportunities, including an examination of how to protect the integrity of parking for all existing residential buildings. The Consultant will also consider all existing standards as part of this effort. Specifically, the Consultant will undertake the following tasks as appropriate:

1. Assess parking inventory, availability, parking rates, utilization, turnover and duration for:
  - Existing parking lots (either publically owned or privately owned)
  - Existing commercial buildings
  - Existing residential buildings
  - On-street parking locations
2. Survey all on-street parking restrictions (white, green, yellow and red zones and street sweeping restrictions) to determine whether the restrictions can or should be revised.
3. Develop recommendations regarding municipal code modifications for preferential parking programs or preferential parking by vehicle size (e.g. compact car parking areas and motorcycle parking areas).
4. Survey streets on block-by-block basis for applicability of diagonal parking.
5. Consider whether there would be a benefit for the area property owners to form a parking assessment district.
6. Identify potential benefits and challenges related to integrating parking and multi-modal transportation system.
7. Identify funding, financing, and revenue sharing opportunities.
8. Make any recommendations deemed warranted based on the data analyzed.

9. Develop Potential Parking Management Strategies and recommendations, including:

- Recommend parking management and pricing strategies for public parking lots or garages (owned by City) and on-street parking. Consider options to integrate private facility parking for public use.
- Develop Transportation Demand Management strategies such as peer to peer rideshare programs and expanded bike share.

The schedule for selection of Consultant, preparation of the Parking Study Report (“Report”), review of the Report, and presentation to the City Council shall be as follows:

- City staff shall complete preparation of the draft RFQ/RFP and provide a copy to LBTAPS within 45 days after this Agreement is fully executed.
- LBTAPS shall review the draft RFQ/RFP to confirm consistency with the terms of this Agreement and shall provide any comments to the City within 30 days from the date LBTAPS is provided with a copy of the draft RFQ/RFP.
- City staff shall finalize and issue the RFQ/RFP within 20 days after receiving comments from LBTAPS or written notification that no comments will be provided.
- Responses to the RFQ/RFP shall be due within 45 days after its issuance.
- The City shall provide copies of all RFQ/RFP responses to LBTAPS within 10 days after the deadline for receipt of responses.
- LBTAPS and City staff shall meet to provide LBTAPS with an opportunity to give input to the City on the potential consultants within 20 days after responses are provided to LBTAPS.
- The City Council meeting to select the Consultant shall be held within 30 days after the City staff meeting with LBTAPS. LBTAPS shall be given at least 10 days’ notice of the meeting if LBTAPS and City staff have not reached agreement as to the Consultant to be recommended to the City Council.
- The City will award and execute a contract with Consultant and Consultant shall provide a certificate of insurance to City within 30 days after the City Council action to select Consultant.
- Consultant shall be required to provide a first draft (Draft No. 1) of the Report to the City for review by City staff within 10 months from execution of the contract.

- Staff will review Draft No. 1 and provide comments to Consultant within 30 days after its receipt.
- Consultant shall be required to provide a second draft (Draft No. 2) of the Report to City and LBTAPS simultaneously for review by City staff and LBTAPS within 30 days from receipt of City staff's comments on Draft No. 1.
- LBTAPS and City staff shall provide Consultant with comments on Draft No. 2 within 30 days after receipt of the Report.
- One meeting shall be scheduled between Consultant, City staff, and LBTAPS during the LBTAPS/City staff review period on Draft No. 2. LBTAPS and the City staff shall endeavor to meet prior to the 20<sup>th</sup> day after Draft No. 2 is provided to the City and LBTAPS.
- Consultant shall produce the final Report (with any recommendations deemed warranted based on data analyzed) within 45 days after receipt of the comments on Draft No. 2.
- City staff shall present the final Report to the City Council for consideration at a public meeting to be held within 60 days of City staff's receipt of the final Report. LBTAPS shall be given at least 15 days' notice of the City Council meeting at which the Report will be presented.

**2. Dismissal of the LBTAPS Actions.** Within 3 business days of the full execution of this Agreement, LBTAPS will file requests for dismissal, with prejudice, of the LBTAPS Actions, including all respondents and real parties, in their entirety. As a material inducement to cause the other Parties to enter into this Agreement, LBTAPS and the LBTAPS Representatives hereby represent and warrant to the other Parties that there are no other directors, officers, shareholders, employees or non-attorney representatives of LBTAPS other than the LBTAPS Representatives.

**3. Reimbursement of Attorneys' Fees.** The City shall reimburse LBTAPS for its actual attorney fees and costs incurred in connection with the LBTAPS Actions, up to a total of \$30,000, to be paid within 30 days of the City's receipt of documentation of the fees incurred by LBTAPS. Ensemble, Raintree and Broadway (each a "Buyer") shall each reimburse City a pro-rata share of such attorney fees, up to a total of \$10,000 each, to be paid only in the event of, and concurrently with, the close of escrow of the Ensemble Project, the Raintree Project and/or the Broadway Project, respectively. Aside from the payments described in this section, the Parties and their legal counsel expressly waive and release any and all claims for any additional attorneys' fees, costs, expenses, or any other liabilities, relating to or arising out of the Released Claims (as defined below).

**4. Parking Solution Implementation Fund.** The City shall reserve five percent (5%) of the 75% that is retained for non-recurring economic programs in the Downtown Project area of the City's share of the net sale proceeds from the sale of the Subject Properties. These funds shall be used to address parking issues downtown and to implement recommendations and suggestions

identified in the Parking Study. In addition, prior to the issuance of their certificates of occupancy, Buyers shall each contribute \$20,000 for the same purpose. In the event any of the three pending transactions with the Buyers fails to close, the City shall contribute to the fund the \$20,000 that would have been contributed by that Buyer.

**5. Moratorium on Challenges; Release of Claims.** LBTAPS and the LBTAPS Representatives agree not to file, directly or indirectly, any further legal challenges to, and waive their rights to challenge, the Ensemble Project, the Raintree Project, and/or the Broadway Project. LBTAPS and the LBTAPS Representatives further agree not to challenge the sale by the City of the Subject Properties and/or any other property formerly owned by the City's Redevelopment Agency. In addition, LBTAPS and the LBTAPS Representatives agree not to assert, directly or indirectly, any legal challenges to, and waive their right to challenge, any development projects located within the Downtown area, as defined above, until the Report is presented to the City Council and the Council completes its analysis and initial action, if any, on the Report, but in all events such agreement shall end after the City Council has had a reasonable opportunity to complete its analysis of the Report and take initial action thereon.

**6. Release of Claims; Section 1542 Waiver.**

**A. Release.** As further consideration for this Agreement, it is the express and understood intent, purpose, desire and agreement of the Parties that the LBTAPS and the LBTAPS Representatives shall, and hereby do, release and forever discharge the City and Buyers, as well as their respective officers, employees, attorneys and representatives (collectively, the "Released Parties") of and from any and all claims, demands, actions or causes of action of every kind and character (including without limitation, any attorneys' fees, costs, expenses, or any other liabilities in connection therewith), known or unknown arising from the LBTAPS Actions, any development projects located within the Downtown area (but only until the Report is presented to the City Council and the Council completes its analysis and initial action, if any, on the Report), the Ensemble Project, the Raintree Project, the Broadway Project, and/or the sale by the City of any other property formerly owned by the City's Redevelopment Agency. The Parties retain their rights to enforce this Agreement. The claims released hereby are hereinafter referred to as the "Released Claims."

**B. Section 1542 Waiver.** With respect to the Released Claims, LBTAPS and the LBTAPS Representatives specifically waive the provisions of Section 1542 of the California Civil Code, and any other similar statute or provision, which provides as follows:

*Section 1542.* Certain claims not affected by general release. 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.

LBTAPS and the LBTAPS Representatives expressly waive and release any right or benefit which they have or may have under Section 1542 of the California Civil Code, to the fullest extent that they may waive all such rights and benefits pertaining to the Released Claims. In connection with this waiver, LBTAPS and the LBTAPS Representatives acknowledge that they

are aware that they may in the future discover claims presently unknown or unsuspected, or facts in addition to or different from those which they now know or believe to be true, regarding the matters released in this Agreement. Nevertheless, it is their intention, through this Agreement, and with the advice of counsel, to fully, finally and forever settle and release the Released Claims. This release shall be and remain in effect as a full and complete release of the Released Claims notwithstanding the discovery or existence of any such additional or different claims or facts relative to those matters.

7. **Entire Agreement.** This Agreement contains the entire agreement of the Parties with respect to the LBTAPS Actions, and supersedes any prior written or oral agreements between them concerning the LBTAPS Actions. This Agreement may only be waived, modified or amended by the written agreement of all Parties to this Agreement.

8. **Headings.** The headings, subheadings and numbering of the different paragraphs of this Agreement are inserted for convenience and reference only and are not to be taken as part of this Agreement or to control or affect the meaning, construction or effect of the same.

9. **Governing Law.** This Agreement shall be interpreted and enforced in accordance with the laws of the State of California.

10. **Advice of Counsel.** Each Party hereto, by its due execution of this Agreement, represents to every other Party that it has reviewed each term of this Agreement with its counsel of its choosing, and that hereafter no Party shall deny the validity of this Agreement on the ground that the Party did not have advice of counsel generally or advice of its counsel in the aforementioned litigation. Each Party has had the opportunity to receive independent legal advice with respect to the advisability of making the compromise and settlement provided for herein.

11. **Execution.** This Agreement may be executed in counterparts and by facsimile signature; provided, however, that any Party executing this Agreement by facsimile signature shall provide the original of his signature to every other Party within one (1) business day. When each Party has signed and delivered at least one such counterpart to each Party's counsel, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all Parties. One fully executed original is to be delivered to counsel for each Party hereto.

12. **No Duty To Acquire or Develop.** Notwithstanding any contrary provision of this Agreement, nothing herein shall be construed as creating any obligation on the part of any of the Buyers to proceed with the acquisition or development of any of the Subject Properties.

13. **Further Action.** Each of the Parties hereto agrees to execute and deliver all such documents and instruments, if any, as may be necessary, appropriate, or as may be reasonably requested to effectuate the terms of this Agreement.

14. **Amendments.** This Agreement may not be amended except by a writing signed by all of the Parties hereto.

15. **Authority.** Each signatory warrants that he or she is authorized to enter into and execute this Agreement on behalf of the Party for whom he or she is signing.



16. **Interpretation of Agreement.** This Agreement is the product of negotiation and preparation by each of the Parties hereto and their respective attorneys. This Agreement is to be interpreted without regard to the draftsman. The terms and intent of the Agreement shall be interpreted and construed on the express assumption that all Parties participated equally in its drafting. This Agreement shall not be construed for or against any Party, and the Parties hereby waive California Civil Code Section 1654.

17. **No Third Party Beneficiaries.** Except for the Released Parties, there shall be no third party beneficiary, expressed or implied, of this Agreement.

18. **Successors and Assigns.** Subject to the terms hereof, this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns.

19. **Legal Fees.** Apart from the payments required pursuant to Section 3 above, the Parties shall bear their own legal fees, costs, and any other expenses incurred in connection with the subject matter of this Agreement, including expenses incurred in the documentation and implementation of the Agreement itself. Without limiting the foregoing, all Parties shall be responsible for all taxes or other governmental fees, if any, related to the rights and obligations set forth in this Agreement. However, in the event of any dispute arising under this Agreement, the prevailing party shall be entitled to an award of its reasonable costs and attorneys' fees in connection with the judicial enforcement of this Agreement.

Signatures Begin On Next Page