

SETTLEMENT AGREEMENT AND MUTUAL SPECIAL RELEASE

This Settlement Agreement and Mutual Special Release (the "**Agreement**") is made effective as of the last date of execution below, and entered into by and between Rodeo Holdings, LLC ("**Rodeo**"), on the one hand, and the City of Pasadena ("**City**"), on the other. Rodeo and City will at times hereinafter be referred to collectively as "**Parties**," and individually as "**Party**."

RECITALS

A. On or about April 15, 2014, Rodeo filed and there is pending an action in the Los Angeles Superior Court, bearing the caption *Rodeo Holdings, LLC v. City of Pasadena, et al.*, Case No. BC 542643 (the "**Action**"). In its complaint, Rodeo alleged, *inter alia*, that:

1. It is the owner of the property commonly known as 497 S. Lake, Pasadena, California (the "**Property**");

2. City trees in front of the Property (the "**Trees**") were causing damage to the Property, and that Rodeo's request for a permit to remove the trees had been denied.

B. During the pendency of the Action, Rodeo again requested a permit to remove the Trees. A site inspection, which included the removal of the sidewalk, was conducted. After the inspection, additional geotechnical and arborist reports were prepared and provided to the City. After review of the reports by the City, the City determined that it was prudent for the public health, safety, or welfare to remove the Trees.

C. The City has authorized removal of the Trees, subject to certain terms and conditions outlined in the written authorization (the "**Authorization**"), a true and correct copy of which is attached hereto as Exhibit 1, and incorporated herein by reference. Rodeo has agreed to the conditions set forth in the Authorization.

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

TERMS

1. **Purpose of Agreement.** This Agreement is entered into in good faith for the purpose of settling the Action.

2. **Compromise Only.** Each Party acknowledges that this Agreement effects, among other things, the settlement of claims which are denied and contested by the other, and that nothing contained herein shall be construed as an admission of liability or wrongdoing by or on behalf of any Party. This Agreement shall be inadmissible for any and all purposes against the Parties other than in a motion or action to enforce its terms.

3. **Authorization.** Within 3 business days after receipt of a fully executed copy of this Agreement, the City shall issue and deliver to counsel for Rodeo the Authorization.

4. **Dismissal.**

4.1 Within 3 business days after delivery of the Authorization, Rodeo shall file a dismissal with prejudice of the Action which notes the Court's retention of jurisdiction as provided in 4.2 below.

4.2 It is expressly understood and agreed that the Court shall retain jurisdiction under California Code of Civil Procedure §664.6 to enforce the terms of this Agreement.

5. **Mutual Special Releases.**

5.1 Except for the promises, covenants and warranties contained in this Agreement, and upon receipt of the fully executed Agreement, Rodeo, on its own behalf, and on behalf of each of its present and former affiliated entities, parents, subsidiaries, companies, and divisions, and each of their respective present and former agents, representatives, assigns, officers, directors, members, managers, principals, executives, partners, successors, heirs, insurers, and any other person or entity claiming by or through it, in their capacities as such, and each of them (collectively the "**Rodeo Releasing Parties**"), hereby fully and forever releases, acquits and discharges the City, its present and former council members, agents, officers, employees, assigns and all persons acting by, through or under it, in their capacities as such, and each of them (hereinafter, collectively the "**City Released Parties**"), of and from (and forever withdraws, retracts and waives), any and all manner of claims (contractual and extra-contractual), rights, actions, contentions, allegations, charges, complaints, demands, causes of action, defenses, liabilities, potential liabilities, suits, debts, accounts, liens, contracts, agreements, promises, losses, losses of rights, damages, judgments, offsets, obligations, benefits, claims for sums of money, claims for injunctive relief, claims for declaratory relief, controversies, costs, settlement costs, attorney's fees, court costs and expenses, of every kind and nature whatsoever, in law or in equity, whether known or unknown, whether suspected or unsuspected, whether fixed or contingent, that now exist, may exist, or may be claimed to have existed, that the Rodeo Releasing Parties or any of them ever held, hold, or may hold against the City Released Parties, which arise out of or relate to the Action.

5.2 Except for the promises, covenants and warranties contained in this Agreement, and upon receipt of the fully executed Agreement, the City, on its own behalf and on behalf of its present and former council members, agents, officers, employees, insurers, assigns and all persons acting by, through or under it, in their capacities as such, and each of them (collectively the "**City Releasing Parties**"), hereby fully and forever releases, acquits and discharges Rodeo, and all of its respective present and former parents, subsidiaries, parents' subsidiaries, affiliated entities, companies, and divisions, and each of their respective present and former representatives, executives, employees, officers, directors, shareholders, owners, partners, managers, members, principals, agents, predecessors, successors, heirs, administrators, executors, assigns, insurers, and attorneys, and any other person or entity claiming by or through any of them, and each of them (hereinafter, collectively the "**Rodeo Released Parties**"), of and from (and forever withdraws, retracts and waives), any and all manner of claims (contractual and extra-

contractual), rights, actions, contentions, allegations, charges, complaints, demands, causes of action, defenses, liabilities, potential liabilities, suits, debts, accounts, liens, contracts, agreements, promises, losses, losses of rights, damages, judgments, offsets, obligations, benefits, claims for sums of money, claims for injunctive relief, claims for declaratory relief, controversies, costs, settlement costs, attorney's fees, court costs and expenses, of every kind and nature whatsoever, in law or in equity, whether known or unknown, whether suspected or unsuspected, whether fixed or contingent, that now exist, may exist, or may be claimed to have existed, that the City Releasing Parties or any of them ever held, hold, or may hold against the Rodeo Released Parties, which arise out of or relate to the Action.

5.3 The Parties each acknowledge the risk that subsequent to the execution of this Agreement, a Party may discover facts or may incur, suffer or discover losses, damage or injuries which are unknown and unanticipated at the time this Agreement is signed, which if known on the date of this Agreement, may have materially affected the decision to give the releases contained in this Agreement. It is understood and agreed that the releases set forth above are for all claims of every nature and kind whatsoever arising from or relating to the Action, whether such claims are known or unknown, suspected or unsuspected, and all rights under Section 1542 of the California Civil Code, to the extent applicable, and all other similar statutes in any other applicable jurisdiction, are hereby expressly waived. The Parties agree that they, and each of them, will not invoke the benefits of California Civil Code Section 1542 or any other federal, state or local statutory rights or rules or principles of common law or equity similar to Section 1542 in order to assert any claims released under this Agreement. Section 1542 provides 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 DEBTOR.”

5.4 Each Party acknowledges that it has obtained the advice of legal counsel of its choice prior to executing this Agreement and represents that the waiver of rights set forth in paragraph 5.3 above is given voluntarily and with full knowledge of its legal consequences.

6. **Specific Representations And Warranties.**

6.1 Each Party represents and warrants that with respect to the respective mutual releases given by the Party hereto, no portion of any claim, right, demand, action or cause of action released hereunder, and no portion of any recovery or settlement to which any Party might be entitled based upon any such claim, right, demand, action or cause of action, has been assigned or transferred to any other person, firm or entity, in any manner, including by way of subrogation, operation of law, attorneys' lien, or otherwise. Each of the undersigned Parties individually represents and warrants that it owns, directly or indirectly, the entirety of all claims that person or Party is releasing herein, and has the right, power and authority to enter into this Agreement. Each Party agrees to indemnify and hold harmless the other Parties from all claims, expenses and liabilities arising from a breach of the representations and warranties set forth in this paragraph.

6.2 Each Party represents and warrants that it has been represented by legal counsel of his/her/its own choosing in connection with this Agreement and the settlement to which it relates and executes this Agreement knowingly and voluntarily after receiving such legal advice.

6.3 Each Party represents and warrants that, in executing this Agreement, it has relied solely on the statements expressly set forth herein and in the Authorization, and has placed no reliance whatsoever on any statement, representation, or promise of any other Party, or any other person or entity not expressly set forth herein, or upon the failure of any other Party or any other person or entity to make any statement, representation or disclosure of anything whatsoever. The discovery by any Party, subsequent to the execution of this Agreement, of any facts not heretofore known to that Party, or that the facts or law upon which any Party relied in executing this Agreement was not as that Party believed it to be (other than as expressly set forth herein), shall not constitute grounds for declaring this Agreement void, avoidable or otherwise unenforceable.

6.4 Each Party represents and warrants that it has made such investigation as it deems necessary or desirable of all matters contained in or relating to this Agreement.

6.5 Each individual signing this Agreement on behalf of a Party represents and warrants to the other Party that such individual is duly authorized to sign this Agreement on behalf of the Party for whom such individual is signing this Agreement, and bind that Party to the terms and conditions of this Agreement. Each such individual agrees to indemnify and hold harmless the other Parties from all claims, expenses, costs, attorney's fees and liabilities arising from a breach of the representations and warranties set forth in this paragraph.

7. **Miscellaneous Provisions.**

7.1 **Costs And Attorney's Fees.** Except as set forth in Paragraph 7.2 below, each Party shall bear his/hers/its own costs, expenses, and attorney's fees incurred in connection with or arising out of the Parties' dispute, the Action and the matters and claims released hereunder.

7.2 **Enforcement Of Agreement.** This Agreement, including, without limitation, all of the transactions contemplated hereunder is enforceable pursuant to the Code of Civil Procedure Section 664.6. In the event that any motion, action or proceeding is brought arising out of or related to this Agreement, the prevailing party shall be entitled to recover all of his/her/its costs and reasonable attorney's fees incurred or sustained in connection with such motion, action or proceeding.

7.3 **Binding Effect.** All covenants and other agreements contained in this Agreement by or on behalf of any of the Parties hereto shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns, heirs, executors, administrators and personal representatives, whether expressed or not.

7.4 **Entire Agreement.** This Agreement, including the transactions and documents addressed herein, represents the sole and entire agreement between the Parties and supersedes any and all prior agreements, negotiations, or discussions between the Parties and/or their respective counsel with respect to the subject matter addressed in this Agreement. The Parties acknowledge that in considering and deciding whether to sign this Agreement they have not made,

nor have they relied upon any promise, representation or statement, either oral or written, nor have they been promised any consideration that is not specifically addressed in this Agreement.

7.5 No Oral Modification. All Parties agree that any amendment or modification to this Agreement shall be deemed to be null and void unless such amendment or modification is in writing, specifically refers to this Agreement, and is signed by all Parties to be bound by the amendment or modification.

7.6 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, provided that each Party receives a signed counterpart of all the other Parties. Facsimile or otherwise electronically transmitted signatures (such as via e-mail in pdf format) may be used with the same force and effect as original signatures.

7.7 Governing Law, Venue And Personal Jurisdiction. This Agreement shall be interpreted in accordance with and governed in all aspects by the laws of the State of California. Any legal proceedings involving or arising out of this Agreement shall be venued in State or Federal Courts of competent jurisdiction located in Los Angeles County, CA. Each Party irrevocably consents to exclusive personal jurisdiction in such Court(s) and agrees and acknowledges having adequate notice of this provision.

7.8 Headings. The article, section, subsection, paragraph and/or other headings of this Agreement are for convenience only and in no way limit or enlarge the scope or meaning of the language hereof.

7.9 Invalidity And Waiver. If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Agreement shall be deemed valid and operative, and, to the greatest extent legally possible, effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall not be deemed to be a waiver of such party's right to enforce against the other party the same or any other such term or provision in the future.

7.10 Construction. The terms of this Agreement have been negotiated at arm's length among sophisticated parties. As a result, the rule of "interpretation against the draftsman" shall not apply in any dispute over interpretation of the terms of this Agreement. When necessary, all terms used in the singular shall apply to the plural, the masculine shall include the feminine and the neuter, the neutral pronoun "it" shall include the masculine and feminine, and all terms used in the plural shall apply to the singular.

7.11 Further Assurances And Cooperation. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered in connection with this Agreement, each Party agrees to perform, execute and deliver, on or after the execution of this Agreement, any further instruments, deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

7.12 Effective Date. This Agreement shall be deemed to have been executed as of the date the last Party signs the Agreement. This Agreement is not enforceable unless signed by all parties.

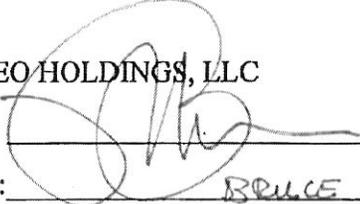
I HAVE READ THE FOREGOING SETTLEMENT AGREEMENT AND RELEASE AND I ACCEPT AND AGREE TO THE PROVISIONS CONTAINED THEREIN AND HEREBY EXECUTE IT VOLUNTARILY AND WITH FULL UNDERSTANDING OF ITS CONSEQUENCES.

Dated: August __, 2016

RODEO HOLDINGS, LLC

By: _____

Name: _____

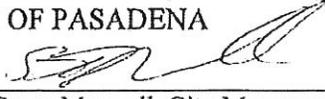

BRUCE MEYER

Its: _____

Dated: August 31, 2016

THE CITY OF PASADENA

By: _____

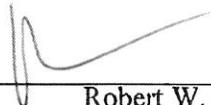

Steve Mermell, City Manager

Approved as to form

DATED: August __, 2016

RESCH POLSTER & BERGER LLP

By: _____


Robert W. Barnes

DATED: August 31, 2016

By: _____


Frank L. Rhemrev
Assitant City Attorney

**CITY OF PASADENA
AUTHORIZATION TO REMOVE PUBLIC TREES
AT 497 S. LAKE AVENUE, PASADENA**

Rodeo Holdings, LLC, made a request to the City of Pasadena to allow for the removal of the three street trees (Ficus) located in front of 497 S. Lake Avenue. After due consideration, the City has determined that the removal of the three Ficus trees located at 497 S. Lake Avenue is prudent for public health, safety and welfare and hereby authorizes Rodeo Holding, LLC, to remove said trees with the following conditions.

Conditions:

1. The three removed trees shall be replaced with three 48 inch box trees, specifically with the male variety of the Chinese Pistache known as "Keith Davies."
2. Rodeo Holding shall obtain the services of a qualified tree removal/planting company to remove the three Ficus trees and to plant the three Keith Davies Chinese Pistache replacement trees. Rodeo Holdings shall obtain the services of a qualified arborist to oversee the removal of the Ficus trees and the planting of the three Keith Davies Chinese Pistache trees.

As to the removal of the trees, the tree stumps and roots shall be removed down to at least 24 inches.

The planting of the replacement trees shall meet the standard specifications for "tree planting in tree well" which is attached hereto as Exhibit 1. The box called for by Exhibit 1 should be a "chemical barrier" that runs around the outside of the planting pit at the edge of the sidewalk cutout as one continuous piece and over-lapped at the ends. The replacement trees shall be inspected by City staff for quality of stock before planting. When the replacement trees are ready to be delivered for planting, Rodeo Holding shall contact City Staff at (626) 744-3880 for such inspection. The placement of the trees in front of 497 S. Lake Avenue shall be 20 feet on center and the actual planting sites will be marked by City Staff with a white line at the curb.

3. Irrigation water (bubblers), as shown in Exhibit 1, shall be provided to all the newly planted trees for the first three years of establishment. These stream bubblers will be directed to stream over the rootball of the newly planted trees.
4. Rodeo Holding shall replace the sidewalk in front of 497 S. Lake with concrete in accordance with the standard plans and specifications for sidewalk replacement on Lake Avenue, which is attached hereto as Exhibit 2, and shall create three 5 foot x 6 foot tree wells for the newly planted trees.
5. The removal of the Ficus trees and the planting of the Keith Davies Chinese Pistache trees can be delayed to take advantage of the cooler fall weather but once the Ficus trees are removed the planting of the replacement trees shall be completed within 20 days. Rodeo shall notify the City

Tree Removal Authorization, pg 2

at least 15 days before the date it intends to remove the trees so that the City can give the required notice.

6. Rodeo Holdings shall be responsible for the cost of removing the three ficus trees, the cost of the three replacement trees (Keith Davies Chinese Pistache), the cost of planting of the replacement trees, the cost of replacing the sidewalk with concrete, the cost of creating the three 5 foot x 6 foot tree wells, the cost of installing an irrigation system for the replacement trees and the associated water costs.

7. Rodeo Holdings and/or its contractors shall obtain a permit from the City to perform the work in the right of way. The fees for said permits shall be waived, but all other requirements of the permit, including but not limited to the requirement for liability insurance, shall remain.

Dated: 8/31/16



Steve Mermell, City Manager