

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) is entered into this 2nd day of June, 2014, by and between KS TACOMA HOLDINGS, LLC, a Delaware limited liability company (“KS Tacoma”) and the CITY OF TACOMA, a Washington municipal corporation (the “City”). The FOSS WATERWAY DEVELOPMENT AUTHORITY (“FWDA”) also signs below acknowledging and consenting hereto in the capacity of intended third party beneficiary.

RECITALS:

1. Since late 2009, KS Tacoma, the City and the FWDA have been involved in legal actions in Washington State courts regarding the proposed development of a hotel at the real property legally described and depicted in Exhibit A, as attached hereto (“Site 4”). The only currently pending legal action relevant to Site 4, in which KS Tacoma is plaintiff and the FWDA is defendant, originated in Pierce County Superior Court under Cause No. 13-2-11783-1. This matter is now on appeal to Division Two of the Washington State Court of Appeals as Cause No. 45664-8-II (the “Present Suit”).

2. As of the date of this Agreement, KS Tacoma and the City have reached terms under which the Present Suit will be dismissed with prejudice, along with other attendant agreements as memorialized herein below.

NOW, THEREFORE, in consideration of the covenants undertaken and memorialized in this Agreement, the parties hereby agree as follows:

I. RECITALS AND EXHIBITS

The foregoing recitals and any terms defined therein, as well as all exhibits, whether referenced in the Recitals or in the body of this Agreement, are hereby incorporated as integral parts of this Agreement.

II. KS TACOMA OBLIGATIONS

KS Tacoma hereby agrees to the following:

A) Within five (5) business days after mutual execution of this Agreement, KS Tacoma shall take all necessary actions to dismiss the Present Suit with prejudice and without award of attorneys' fees or costs to any party; provided, however, that if dismissal of the Present Suit requires the consent or approval of FWDA, then the obligation to dismiss the Present Suit is conditioned upon the cooperation of FWDA in providing such consent or approval.

B) KS Tacoma hereby covenants that after mutual execution of this Agreement, KS Tacoma shall neither bring nor facilitate any new legal action or claim of any kind against the development of Site 4. For purposes of this section and section II. C. below, "facilitating legal actions or claims" does not include any participation by KS Tacoma in any litigation or claim legally required, such as that required by subpoena, deposition, document production, or the like.

C) KS Tacoma further covenants that after mutual execution of this Agreement, KS Tacoma shall neither bring nor facilitate any legal action or claim of any kind against the development of the real property immediately adjacent to the Greater Tacoma Convention and

Trade Center as legally described and depicted in Exhibit B (“GTCTC”), provided that in the course of such development, the City does not provide any subsidy to the development. For purposes of this covenant, the term "subsidy" means:

any payment, performance of work, or conferral of a pecuniary benefit (collectively, a “City Benefit”) made directly or indirectly by the City of Tacoma or any division, department or agency thereof, acting for itself or in coordination with any other governmental agency pursuant to intergovernmental agreement or otherwise (the “City”) to the developer or owner of the hotel site immediately adjacent to the GTCTC, to the extent that:

(1) the City receives no legally sufficient consideration in return for the City Benefit or is not otherwise acting lawfully in its sovereign role for a public purpose, such that the City would be in violation of the Washington State Constitution's prohibition on the gifting of public funds or lending of credit (Wa. Const. Art. VIII s. VII), or

(2) the City Benefit is not legislatively authorized and is not available as a matter of right to, or upon request by, similarly situated developers/property owners undertaking development in the urban core area surrounding the GTCTC.

For purposes of illustration, a “subsidy” may include, the provision by the City of development specific benefits in the form of bonding where the proceeds are used to finance any portion of the development of the GTCTC hotel development that will not be owned by the City, below market rate loans, loan guaranties, financial assistance, certificates of participation, tax discounts that violate subsection (2) above, grants that violate subsection (2) above, incentives or rebates that violate subsection (2) above, discounted land sale, reduced or waived charges for City services, permits or development fees, room block purchase guaranties, newly established site specific taxing districts, and tax rebates or other revenue support arrangements that violate subsection (2) above. Notwithstanding the foregoing, no obligation in any contract to which the City is a party that predates this Agreement and does not relate specifically to the development or use of the hotel site immediately adjacent to the GTCTC shall be considered a "subsidy." In addition, any incidental portion of the hotel development that the City pays fair value to have built and will own for its own use or public use upon completion shall not be considered a “subsidy.” The parties acknowledge that the above is not necessarily an exhaustive list, but that anything not listed above will be evaluated against the “subsidy” test set forth above ending at subsection (2).

D) The covenants set forth at II. B. and C. (the “Covenants”) above shall apply to all affiliates and subsidiaries of KS Tacoma as well to KS Tacoma, and KS Tacoma hereby agrees to enforce the Covenants against its affiliates and subsidiaries.

E) In consideration for the City’s conveyance to KS Tacoma (or its designated affiliate) of the Parking Lot Properties, KS Tacoma shall pay a purchase price of One Million Two Hundred Forty-Five Thousand Dollars (\$1,245,000.00) in readily available funds to the City. At closing of the purchase of the Parking Lot Properties, the parties shall be responsible for the following costs either prior to, or at closing:

(1) KS Tacoma shall pay the actual cost of completing any boundary line adjustment or segmentation necessary or desirable relevant to the conveyance of the Parking Lot Properties in KS Tacoma’s desired configuration; provided that the City shall be responsible for completing any such segmentation or boundary line adjustment,

(2) KS Tacoma shall be responsible for paying the premium for any title insurance policy KS Tacoma desires for the Parking Lot Properties,

(3) each party shall pay one-half of any escrow fees incurred,

(4) the City shall pay any applicable real estate excise tax; and

(5) KS Tacoma shall pay the cost of recording the deed and any other documentation costs.

Any property taxes and assessments for the current year, water and other utility charges shall either be prorated as of the closing date, or shall be handled in accordance with existing agreements in place regarding the Parking Lot Properties. The City is a property tax exempt organization pursuant to R.C.W. 84.36.010, and therefore property taxes should only be due

from KS Tacoma for its ownership from and after the closing date.

III. CITY OBLIGATIONS

The City hereby agrees to the following:

A) The City shall be responsible for obtaining the release of the Parking Lot Properties from the restriction on sale encumbering the Parking Lot Properties in favor of the United States.

B) In exchange for the performance of KS Tacoma's obligations set forth above, the City agrees to convey by validly executed quit claim deed, subject only to property taxes, easements and covenants, conditions and restrictions of record, in "AS IS" "WHERE IS" condition, the real property legally described and depicted in Exhibit C, as attached hereto (the "Parking Lot Properties"). In addition to the foregoing, KS Tacoma shall take title to the Parking Lot Properties subject to any easements which are necessary for access and maintenance of existing City of Tacoma utilities which are located on the Parking Lot Properties as set forth on Exhibit D.

C) The City agrees to work cooperatively with KS Tacoma after the execution of this Agreement and prior to closing as KS Tacoma conducts its due diligence on the Parking Lot Properties. The City acknowledges that KS Tacoma must satisfy itself as to the condition of title and the insurability of the Parking Lot properties as a condition precedent to closing.

D) Closing of the sale of the Parking Lot Properties shall occur within thirty (30) days following (i) release of the restriction on sale described in section III.A., and (ii) completion of the segmentation or boundary line adjustment described in section II.E.1.

IV. REPRESENTATIONS and CONDITIONS

The parties each declare that no representations external to this Agreement were used to

induce them to make this settlement. Each party further represents that its signatory below has the authority to enter into this Agreement on behalf of the entity for which he or she is signing.

V. NO ADMISSION OF LIABILITY

Each of the parties hereto understands and acknowledges that they admit no liability of any sort by reason of this Agreement.

VI. BINDING EFFECT

Each of the parties hereto agrees that, as a further consideration and inducement of this compromise and settlement, this Agreement shall be binding and apply to any and all legal representatives, assigns, or successors in interest to the parties.

VII. VOLUNTARY AGREEMENT

Each of the parties hereto states that they have carefully read this Agreement, have discussed the same with their attorneys, and fully understand the contents hereof.

VIII. REMEDIES

In the event of any default of this Agreement, the non-defaulting party shall be entitled to any remedies available at law or in equity. The parties hereby expressly state that it is their intention that this Agreement may be specifically enforced.

IX. ASSIGNMENT

The parties agree that neither shall make any assignment of their respective rights or responsibilities hereunder without the prior written consent of the other.

X. COMPLETE AGREEMENT

This Agreement constitutes and contains the entire agreement and understanding of the parties and supersedes all prior agreements and negotiations among the parties, if any, whether

written or oral, and to that extent, the parties acknowledge that this Agreement is an integrated agreement.

XI. SEVERABILITY

If any provision of this Agreement is held invalid, the invalidity shall not affect other provisions of the Agreement that can be given effect without the invalid provisions.

XII. JOINT PREPARATION OF AGREEMENT

Each party's counsel has had the opportunity to prepare and cooperate in the drafting and preparation of this Agreement. Therefore, in any construction or interpretation of the Agreement, the terms shall not be construed for or against any party.

XIII. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed an original, all of which shall together constitute one agreement. Further, this Agreement shall be executed in triplicate originals.

XIV. HEADINGS NOT BINDING

The use of headings in this Agreement is only for ease of reference, and the headings have no legal effect and are not to be considered an actionable part of this Agreement.

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XV. ATTORNEY'S FEES

In the event a party employs an attorney to enforce any of the terms of this Agreement (whether or not suit is commenced), it is agreed that the prevailing party shall be entitled to reasonable attorney's fees and costs.

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

CITY OF TACOMA



ELIZABETH A. PAULI
City Attorney, City of Tacoma

KS TACOMA HOLDINGS, LLC



Gordon Sandland, authorized agent

Acknowledging and Consenting to the Foregoing:
FOSS WATERWAY DEVELOPMENT AUTHORITY



Su Dowie, Executive Director

**EXHIBIT A – LEGAL DESCRIPTION & DEPICTION
FOSS SITE 4**

That portion of the Southeast quarter of the Southwest quarter of Section 04, Township 20 North, Range 03 East, W.M. more particularly described as follows:

The South 20 feet of Lot 8, and Lots 9 through 13 and the North 5 feet of Lot 14, of Block 59, according to the Map of Tacoma Tide Lands, as filed in the Office of the Commissioner of Public Lands at Olympia, Washington 3 September 1895;
Less the East 120 feet measured parallel to the East line of said Plat

Also Known As:

Revised Parcel “C” of corrected Tacoma Boundary Line Adjustment recorded June 29, 2005 under recording no. 200506295008 which is a correction of boundary line adjustment recorded January 7, 2005 under Recording No. 200501075002, which was amended by affidavit of minor correction of survey recorded February 28, 2005 under recording No. 200502281035, in Pierce County, Washington.



**EXHIBIT B – LEGAL DESCRIPTION & DEPICTION
of the GTCTC PROPERTY**

A portion of:

That portion of the Northwest quarter of the Southwest quarter of Section 04, Township 20 North, Range 03 East, W.M. more particularly described as follows:

Lots 1 through 18, inclusive, Block 1505, MAP OF NEW TACOMA, WASHINGTON TERRITORY, according to plat filed for record February 3, 1875 in the office of the county auditor, in Pierce County, Washington;

Together With:

Lots 1 through 26, inclusive, Block 1506 of said Plat;

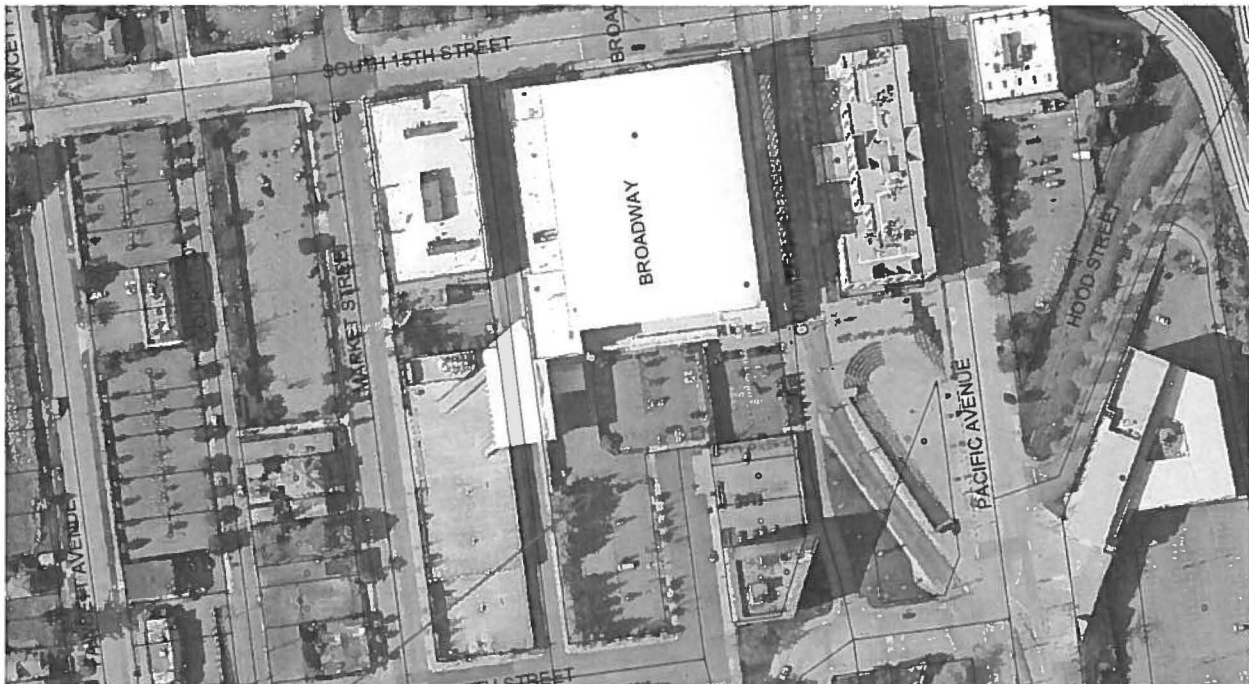
Also Together With:

Lots 13 through 26, inclusive, Block 1507 of aforementioned Plat;

Also Together With:

Vacated Broadway Street as vacated by City of Tacoma Ordinance #26958 as recorded under Auditor File Number 200207310894, records of Pierce County Auditor.

Situate in the City of Tacoma, County of Pierce, State of Washington



Area to be developed

EXHIBIT C – LEGAL DESCRIPTION & DEPICTION
PARKING LOT PROPERTIES

Abbreviated Legal (Block 1307):
(Pavilion Lot)

That portion of Lots 17 through 26, Block 1307, as contained within the plat of Map of New Tacoma, Washington Territory, according to plat filed for record on February 3, 1875, records of Pierce County, Washington inclusive of vacated Court C Street abutting thereon, as vacated by the City of Tacoma Ordinance No. 20361 and recorded under Auditor File Number 2595834.

All lands situate in SW Quarter of Section 04, Township 20 Range 03 East.

Together with:
(Hotel Lot)

That portion of Lots 13 through 26, Block 1306, Map of New Tacoma, Washington Territory, according to the plat filed for record February 3, 1875 in the office of the Pierce County Auditor, lying southerly of the following described line:

Commencing at the Southeast corner of said Block 1306; Thence North 08°47'01" West, along its east line, 364.81 feet to the true Point of Beginning; Thence South 81°9'29" West, 119.87 feet to the west line of said Block 1306 and the Terminus of said line;

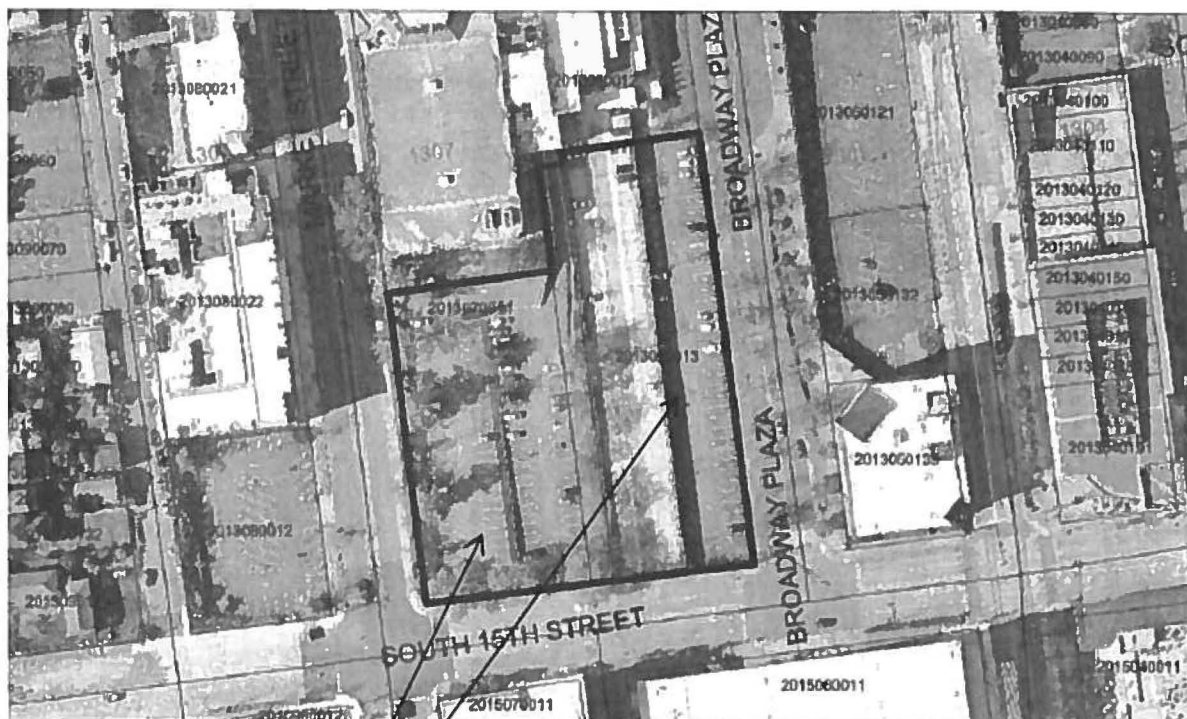
Together with: The East ½ of Court C abutting thereon:

Also together with a non-exclusive easement for ingress and egress over the following:

That portion of Block 1306, Map of New Tacoma, Washington Territory, according to the plat filed for record February 3, 1875 in the office of the Pierce County Auditor, described as follows:

Beginning at the southeast corner of said Block 1306; Thence North 08°47'01" West, along its east line, 368.195 feet to the True Point of Beginning; Thence North 61°35'01" West, 9.758 feet to the P.C. of a curve concave to the south, the radius point of which bears South 28°24'59" West, 4.698 feet; Thence westerly along said curve, thru a central angle of 91°06'00", 7.469 feet; Thence South 27°18'59" West, 10.325 feet; Thence South 81°09'59" West, 18.837 feet to the P.C. of curve concave to the northwest, a radius point of which bears North 30°13'25" West, 15.465 feet; Thence northeasterly along said curve, thru a central angle of 38°52'10", 10.492 feet; Thence North 20°54'25" East, 17.435 feet to the P.C. of a curve concave to the west, the radius point of which bears North 69°05'35" West, 27.511 feet; Thence northerly along said curve, thru a central angle of 29°41'26", 14.256 feet; Thence North 08°47'01" West, parallel with said east line of Block 1306, 58.304 feet to the P.C. of a curve concave to the east, the radius point of which bears North 81°12'59" East, 65.00 feet; Thence northerly along said curve,

thru a central angle of $12^{\circ}58'12''$, 14.714 feet to the P.C. of a curve concave to the east, the radius point of which bears South $85^{\circ}48'49''$ East, 39.739; Thence northerly along said curve thru a central of $8^{\circ}16'36''$, 5.741 feet to the P.C. of a curve concave to the Southeast, the radius point of which bears South $77^{\circ}32'13''$ East, 90.00 feet; Thence northeasterly along said curve, thru a central angle of $19^{\circ}44'57''$, 31.022 feet to said east line of Block 1306; Thence South $08^{\circ}47'01''$ East, along said east line, 136.871 feet to the True Point of Beginning; Situate in the City of Tacoma, County of Pierce, State of Washington.



SCALE 1 : 1,607



The Parking Lot Properties

**EXHIBIT D – RESERVED CITY EASEMENTS
(LEGALS WILL BE REPLACED/SUPERCEDED UPON COMPLETION OF BLA AND
INCORPORATED INTO THE CONVEYANCE DEED)**

POWER EASEMENT– BLOCK 1307

Retaining herein a perpetual easement in favor of the City of Tacoma for Tacoma Public Utilities dba as Tacoma Power over, under, along, across and through the westerly 20.0 feet of vacated Court C Street as authorized by Ordinance No. 20361, approved by the Tacoma City Council on March 11, 1975 and filed for record with the Pierce County Auditor’s Office under Auditor’s File Number 2595834, said easement abuts that portion of Lots 17 through 26, Block 1307, as contained within the plat of Map of New Tacoma, Washington Territory, according to plat filed for record on February 3, 1875, records of Pierce County, Washington.

All lands situate in SW Quarter of Section 04, Township 20 Range 03 East.

SEWER EASEMENT

Retaining herein a 20.0 foot wide perpetual sanitary sewer easement in favor of the City of Tacoma for its Environmental Services Division centered over the existing sanitary sewer line located within vacated Court C Street as authorized by Ordinance No. 20361, approved by the Tacoma City Council on March 11, 1975 and filed for record with the Pierce County Auditor’s Office under Auditor’s File Number 2595834 said easement abuts that portion of Lots 17 through 26, Block 1307, as contained within the plat of Map of New Tacoma, Washington Territory, according to plat filed for record on February 3, 1875, records of Pierce County, Washington.

All lands situate in SW Quarter of Section 04, Township 20 Range 03 East.

ACCESS EASEMENT – FIRE LANE

A nonexclusive easement over all drive isle areas of the “Pavilion Lot” (Block 1307) of the Parking Lot Properties legally described in Exhibit C above for ingress and egress of emergency response vehicles serving this same property. The City acknowledges that this easement may be revised or terminated in the event that KS Tacoma redevelops the property; provided that any modification or redevelopment of the property remains in compliance with any then existing fire codes applicable to the changed use or redevelopment.