

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

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PACIFICA BUILDING, LLC,

Index No. 610288/2020

Petitioner/Plaintiff,

For a Judgment Pursuant to Article 78 of the Civil Practice Law  
and Rules and a Declaratory Judgment Pursuant to CPLR §3001

**STIPULATION OF  
SETTLEMENT**

- against -

CITY OF LONG BEACH and RAYMOND FLAMMER,  
ASSESSOR OF THE CITY OF LONG BEACH,

Respondents/Defendants.  
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**IT IS HEREBY STIPULATED AND AGREED**, under this Stipulation of Settlement (the "Stipulation") dated April \_\_\_\_, 2022, by and between, petitioner/plaintiff, PACIFICA BUILDING, LLC ("Petitioner") and respondents/defendants, CITY OF LONG BEACH (the "City") and RAYMOND FLAMMER, ASSESSOR OF THE CITY OF LONG BEACH (the "Assessor") (the City and Assessor, collectively "Respondents") (Petitioner and Respondents, collectively the "Parties" and each a "Party"), that the above-referenced hybrid CPLR Art. 78 Proceeding/Declaratory Judgment action/proceeding ("Special Proceeding") and all claims asserted or that could have been asserted therein, are hereby settled, upon due consideration, the receipt and legal sufficiency of which is hereby acknowledged by the Parties, upon the following terms and conditions:

**RECITALS**

**WHEREAS**, Petitioner is the owner of a three-story multi-residential building located at 765 Shore Road, Long Beach, New York consisting of 44 units of rental apartments with a small swimming pool and limited on-site parking ("Subject Premises"); and

**Error! Unknown document property name.**

**WHEREAS**, the City provides garbage collection and disposal services within the City as set forth in Chapter 12 of the City Code of Ordinances; and

**WHEREAS**, the Assessor is responsible to maintain the tax roll for all properties within the City, including special assessments for garbage collection and disposal services within the City; and

**WHEREAS**, the City agrees to suspend/withhold the special assessment/sanitation charges from Petitioner's tax roll until December 31, 2031; and

**WHEREAS**, Petitioner agrees that the special assessment/sanitation charges shall be reapplied to the tax roll for the subject premises beginning on the 2032 tax roll and continuing thereafter; and

**WHEREAS**, Petitioner acknowledges that the City's trash removal schedule for the Subject Premises upon being reapplied to the tax roll shall be as follows (unless the collection schedule in that area is changed for all properties in that area by the City):

Sunday: Regular garbage pickup. Petitioner must place receptacle(s) in the designated location (as defined in Section 4 below) no later than 7 a.m.

Monday: Regular garbage pickup. Petitioner must place receptacle(s) in the designated location no later than 7 a.m.

Tuesday: Regular garbage pickup. Petitioner must place receptacle(s) in the designated location no later than 7 a.m.

Wednesday: Recycling pick up. Petitioner must place receptacle(s) in the designated location no later than 7 a.m.

Thursday: Regular garbage pickup. Petitioner must place receptacle(s) in the designated location no later than 7 a.m.

Friday: Regular garbage pickup. Petitioner must place receptacle(s) in the designated location no later than 7 a.m.

Saturday: Regular garbage pickup. Petitioner must place receptacle(s) in the designated location no later than 7 a.m.

**WHEREAS**, the Parties are desirous of settling the present action without further cost or expense to either side.

**NOW THEREFORE**, for and in consideration of the promises, agreements, covenants and conditions herein, the adequacy and sufficiency of which are hereby expressly acknowledged by each of the Parties hereto

**IT IS HEREBY STIPULATED AND AGREED**, by and between the Parties, as follows:

1. RECITALS. The Parties agree, to the best of their knowledge, the recitals set forth above are true, complete and correct and are hereby incorporated into this Stipulation by reference, as if set forth at length herein.

2. SUSPENSION OF ASSESSMENT OF SPECIAL ASSESSMENTS. Respondents shall cease special assessments on the Subject Premises for City residential garbage collection and disposal services as set forth in Chapter 12 of the City's Code of Ordinances from the present through calendar year 2031.

3. REINSTATEMENT OF ASSESSMENT OF SPECIAL ASSESSMENT. Commencing the calendar year 2032, the City shall reinstate the special assessment for the Subject Premises and resume sanitation collection as per the schedule set forth in the recitals. Petitioner shall be bound to satisfy the special assessment and comply with all related provisions of the City Code of Ordinances, except as otherwise provided for in this stipulation of settlement.

4. DESIGNATION OF PICKUP/DROP OFF LOCATION. Upon the resumption of sanitation collection by The City, petitioner shall designate in writing the pickup and drop off location for its trash receptacles and notify the City of same prior to January 1, 2032 which location shall be situated on Petitioner's property ("designated location"). It being the intent of the parties that refuse and recycling containers remain at their designated locations save and except when same are being emptied by Sanitation Personnel. City employees shall pick up and/or remove the trash receptacles from their designated location, on each scheduled collection date (regardless of

the volume of refuse contained in such container) in a workman like manner with due regard for Petitioner's property, collect the refuse therein, and return the receptacles to the designated location.

5. REASONABLE CARE. The City shall use reasonable care to prevent damage to Petitioner's trash receptacles as well as the Subject Premises, not including ordinary wear and tear.

6. REMEDY. Commencing on January 1, 2032, if Petitioner's trash receptacles are damaged as a result of the City's negligent acts or omissions, the Petitioner agrees to notify City and the City agrees it will repair/replace the damaged trash receptacle as soon as practicable. Commencing on January 1, 2032 on a rolling 12-month basis, if the City fails to provide the sanitation collection service as set forth herein, the City shall be liable for the following payments after Petitioner has notified the City that it has failed to provide such service and the City fails to promptly remedy such failure:

- a. \$100 for each day for the first 5 occurrences;
- b. \$200 for each day for the next 10 occurrences; and
- c. \$500 per day thereafter for each subsequent failure to provide such service.

7. SERVICE COMMENTS OR CONCERNS. Should Petitioner have any issues regarding the day-to-day operations of its garbage collection services, Petitioner may contact the Office of the Corporation Counsel at (516) 431-1003. The Office of the Corporation Counsel will attempt to remedy any such issue as soon as practicable.

8. STIPULATION OF DISCONTINUANCE WITH PREJUDICE. Petitioner hereby discontinues the above captioned action with prejudice.

9. NOTICE. Any notice or other communication which the Parties are required to give the other pursuant to the Stipulation shall be deemed sufficient if in writing and mailed by a

nationally recognized overnight courier to the following addresses or to such other address as either Party may hereinafter designate in writing and shall be deemed given when mailed:

If to Petitioner to: Pacifica Building, LLC  
315 Central Park West, Suite 1200  
New York, NY 10025  
(212) 873-7575  
Attention: Contract Administration

With a copy to: Andrew M. Mahony, Esq.  
Jaspan Schlesinger LLP  
300 Garden City Plaza, 5<sup>th</sup> Floor  
Garden City, New York 11530  
(516) 393-8262  
E-mail: [amahony@jaspanllp.com](mailto:amahony@jaspanllp.com)

If to Respondents: Office of the Corporation Counsel  
City of Long Beach  
One West Chester Street, Room 402  
Long Beach, New York 11561  
(516) 431-1003  
Attn: Joseph A. Lupo, Esq.  
Assistant Corporation Counsel  
E-mail: [jlupo@longbeachny.gov](mailto:jlupo@longbeachny.gov)

10. WAIVER. The failure of a Party to object to, or the waiver by any Party of, one or more breaches or violations of this Stipulation shall not constitute a waiver or limitation upon the right of such Party to object to any other breach or violation of this Stipulation. No waiver by any Party of any breach of any right under this Stipulation shall be valid unless in writing and signed by an authorized representative of such Party.

11. BINDING AGREEMENT. This Stipulation is a valid, binding and enforceable obligation of each Party and does not violate any law, rule or regulation, or any contract or agreement to which any Party is a party.

12. AUTHORIZATION. Each Party hereto represents and warrants that they have been duly authorized to execute and deliver this Stipulation and to act in any manner both necessary and proper to the exercise of the power to execute and deliver this Stipulation. As set forth in ¶13 below, City Council has authorized Corporation Counsel to execute this Stipulation on behalf of the City.

13. CITY COUNCIL RESOLUTION. This Stipulation may be subject to the approval of the City Council for the City. If so required, this Stipulation shall become fully enforceable upon passage of a resolution by the City Council authorizing Corporation Counsel to enter into this Stipulation on behalf of Respondents. Within ten (10) business days of such approval, Respondents shall provide Petitioner's counsel, with a fully-executed copy of this Stipulation along with a copy of the authorizing resolution.

14. COSTS AND ATTORNEY FEES. Each Party shall bear all attorneys' fees and costs arising from the action of their own counsel with regard to the Special Proceeding, and this Stipulation, and all matters released hereby. In the event that it shall be necessary for any Party hereto to institute legal action to enforce any of the terms and conditions or provisions contained herein, or for any breach thereof, the prevailing Party in any such action shall be entitled to recover its costs and attorney fees incurred in such action from the other Party without regard to the value of the issue that is the subject of such litigation.

15. NO ADMISSION OF LIABILITY. This is a compromised settlement of disputed claims. No Party to this Stipulation admits any liability to any other Party by executing this Stipulation.

16. RULES OF CONSTRUCTION. The Parties to this Stipulation and their counsel have reviewed this Stipulation and specifically agree that any rule of construction, to the effect

that ambiguities are to be resolved against the drafting party, shall not apply to the interpretation of this Stipulation.

17. COUNTERPARTS. This Stipulation may be signed in counterparts, all of which together shall constitute a single Stipulation. This Stipulation may be executed in counterparts and by facsimile or email transmission, which shall be deemed an original.

18. INDEPENDENT ADVICE OF COUNSEL. The Parties hereto represent and declare that in executing this Stipulation they relied solely upon their own judgment, belief, and knowledge. The Parties represent and acknowledge that each of them has had the opportunity to consult with legal counsel with respect to this Stipulation. In executing this Stipulation, no Party has relied upon, or been influenced to any extent whatsoever in executing the same by any representations or statements covering any matter made by any other Party hereto or by any person representing any other Party hereto.

19. VOLUNTARY AGREEMENT. The Parties hereto, and each of them, further represent and declare that they have carefully read this Stipulation and know the contents thereof and that they signed the same freely and voluntarily.

20. DEFENSE TO SUIT. Each Party hereto agrees that this Stipulation may be pleaded by either of them as a full and complete defense to and may be used as the basis for an injunction against any action, suit, or other proceeding which may be instituted, prosecuted, or attempted by the other Party, or any person, firm, corporation, or organization on that Party's behalf, or as a successor in interest to that Party wherein the claim concerns any fact related to the Special Proceeding insofar as allowed by law.

21. INVALIDITY OF STIPULATION. Should any provision of this Stipulation be held invalid or illegal, such illegalities shall not invalidate the whole of this Stipulation, but rather

this Stipulation shall be construed as if it did not contain the illegal part, and the rights and obligations of the Parties shall be construed and enforced accordingly.

22. FULFILLMENT OF TERMS. Each Party to this Stipulation agrees to execute such other and further papers and documents as may be necessary and proper in order to fulfill the terms and conditions of this Stipulation.

23. AMENDMENTS. This Stipulation and the documents incorporated by reference herein may only be altered, amended, or modified by written agreement of all the Parties hereto.

24. JURISDICTION OF COURT. This Court shall retain jurisdiction over the undersigned Parties for the purpose of ensuring compliance with the terms of this Stipulation and enforcing its terms.

25. FILING OF STIPULATION WITH COURT. This Stipulation shall be submitted to the Court by counsel for Petitioner, to be "So-Ordered" at which time it shall be an Order of the Court. The Parties agree to be bound by the terms of this Stipulation regardless of whether it is "So-Ordered" by the Court.

**IN WITNESS WHEREOF**, the Parties, by their duly authorized representatives, have executed this Stipulation as of the date appearing above.

JASPAN SCHLESINGER, LLP.

CORPORATION COUNSEL  
CITY OF LONG BEACH

By: \_\_\_\_\_  
Andrew Mahoney, Esq.  
*Attorney for Petitioner*

By: \_\_\_\_\_  
Richard Berrios, Esq.  
*Attorney for Respondents*

SO ORDERED:

By: \_\_\_\_\_ J.S.C.