

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (“**Agreement**”) is entered into as of September 5, 2017 (“**Effective Date**”) by and between CHP Enterprises, Inc., a California corporation (“**CHP**”) and the City of Carson, a general law city and municipal corporation (“**City**”) (both parties are collectively referred to herein as the “**Parties**”).

1. RECITALS

WHEREAS, CHP Enterprises, Inc. (“CHP”) currently leases the real property located at 21126, 21140, 21212 South Avalon Boulevard and 640 East 213th Street in the City of Carson (“**Subject Property**”) from the Kott Family Trust; and

WHEREAS, CHP uses the Subject Property for the auction of vehicles, equipment, furniture, and other related items under the business name “Ken Porter Auctions,” together with the sale of classic, antique, or specialty automobiles under the name of “Back in the Day Classics” (collectively “Ken Porter”); and

WHEREAS, CHP’s use of the Subject Property was approved until December 31, 2016 in 2011 by the City’s Conditional Use Permit No. 881-11 (“the Initial CUP”), and

WHEREAS, CHP filed an application to extend the Initial CUP for three additional years in 2016 as Conditional Use Permit No. 1016-16 (“CUP Extension”); and

WHEREAS, on or about December 13, 2016, the City’s Planning Commission (“**Planning**”) approved the CUP Extension; and

WHEREAS, the CUP Extension approved by Planning was appealed to the City Council; and

WHEREAS, on or about February 7, 2017, the City Council determined to reverse the Planning Commission's decision approving CHP’s application for a CUP Extension, thereby revoking CHP’s CUP Extension; and

WHEREAS, on or about March 30, 2017, The City issued Citation No. 12650 to Robert Eugene Covoreau (“Covoreau”), an employee of Ken Porter, for allegedly violating Carson Municipal Code (“CMC”) § 6310, a misdemeanor, in unlawfully commencing or conducting an unlicensed business in the City; and

WHEREAS, on or about May 4, 2017 the City filed a Misdemeanor Complaint, Case No. 7CS02037 (“**Complaint**”) against Covoreau in the Superior Court of the State of California, County of Los Angeles South Central District for allegedly violating CMC § 6310; and

WHEREAS, on or about June 2, 2017 CHP filed a Verified Petition for Writ of Mandate (“**Petition**”) against the City challenging the City Council’s decision to reverse the Planning Commission's decision approving CHP’s application for a CUP Extension (“**Ken Porter Dispute**”); and

WHEREAS, on or about July 5, 2017, the City filed an Answer to CHP's Petition ("Answer"); and

WHEREAS, City and CHP desire to fully and finally resolve the CUP Extension Request dispute ("Dispute") to avoid litigation between them arising out of such dispute, and without acknowledging fault or responsibility in connection with the positions of any party in such disputes.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and without any admission of fault or liability, the Parties agree as follows:

2. SETTLEMENT

2.1 The foregoing recitals are true and correct and incorporated herein by this reference.

2.2 CHP stipulates the City's May 4, 2017 Misdemeanor Complaint against Covoreau shall be amended to name CHP Enterprises, Inc. and Ray Claridge ("Claridge"), CHP's President and sole shareholder, as additional Defendants and City agrees to dismiss Covoreau.

2.3 CHP and Claridge shall all plead "No Contest" to one Count, each, for violating CMC § 6310, a misdemeanor, as described in the City's Complaint. Defendants convicted of a misdemeanor under CMC § 6310 shall risk punishment of a fine up to one-thousand dollars (\$1,000), or by imprisonment in the County Jail for a period up to six (6) months, or by both such fine and imprisonment. City shall reduce the Count to an infraction for all parties if the following terms of City's Conditional Plea Offer are met:

- (a) City shall grant CHP and Ken Porter a temporary extension of previously approved uses granted in the Initial CUP to end the temporary use of Subject Property and relocate all unpermitted business activities on or before December 31, 2018.
- (b) Commencing on the Effective Date of this Settlement Agreement, CHP shall post a One-Hundred Thousand Dollar (\$100,000.00) surety bond directly with the City which will be held in a separate interest bearing City account ("CHP Surety Bond").

Failure to satisfy the requirements set forth in this Settlement Agreement shall expose Claridge and CHP representatives to a fine up to one-thousand dollars (\$1,000), or by imprisonment in the County Jail for a period up to six (6) months, or by both such fine and imprisonment. If, consistent with the terms set forth in this Settlement Agreement, any and/or all of these terms are not met:

- (a) Count One of the City's Complaint shall remain a Misdemeanor for all named parties; and

- (b) The \$100,000 Surety Bond shall be forfeited, in its entirety, to the City; and
- (c) Named Defendants shall be subject to a sentence of the maximum fine and jail time for violating CMC § 6310; and
- (d) The Court may order probation and/or other post-adjudicative measures to ensure compliance of this Settlement Agreement.

2.4 CHP and Claridge agree to a December 31, 2018 date of sentencing for violating CMC § 6310. If December 31, 2018 is unavailable on the court calendar, CHP, Covoreau, and Claridge shall agree to set the date of sentencing for the first available court date in the month of January in 2019.

2.5 The City shall refund to CHP any and all remaining funds in the CHP Surety Bond in accordance with the terms of this Settlement Agreement. All non-forfeited funds shall be returned to CHP within thirty (30) calendar days of the completion of all terms of this Settlement Agreement.

2.6 Subject to the terms of this Settlement Agreement, CHP agrees to withdraw any and all pending applications to extend the Initial CUP to continue Ken Porter business operations at the Subject Property.

2.7 Subject to the terms of this Settlement Agreement, the Parties agree to mutually dismiss any and all claims related to the Petition, with prejudice, and as set forth in more detail below.

2.8 Except as set forth herein, the Parties agree that each of them shall assume and bear its/their own costs, including attorneys' fees, consultants and other costs that have resulted from or are otherwise connected to the Action.

3. OTHER PROVISIONS

3.1 No Admission of Liability. This Agreement is the compromise of disputed claims. It is expressly understood, acknowledged and agreed that by reason of entering into this Agreement no Party admits, either expressly or impliedly, any fact or liability of any type or nature with respect to any matter, whether or not referred to in this Agreement; no Party has made any such admission; and, this Agreement is entered into solely by way of compromise and settlement.

3.2 Further Assurance. The Parties agree to execute such other documents and to take such other action as may reasonably be necessary to further the purposes of this Agreement.

3.3 Governing Law; Miscellaneous. This Agreement is made and executed in the State of California and shall in all respects be interpreted, enforced and governed under the laws of California. The language in all parts of the Agreement shall, in all cases, be construed as a whole, according to its fair meaning and not strictly for or against any particular Party, or any of them. The individual headings in this Agreement are for reference, only, and shall not be

binding on the Parties with respect to the content of the subject matter or the paragraphs they proceed. Should any provision of this Agreement be declared or determined by a court of competent jurisdiction to be illegal or invalid, the validity of the remaining parts, terms and provisions shall not be affected by such determination, and the illegal or invalid part, term or provision shall be deemed not to be part of this Agreement.

3.4 Waiver and Amendment. No breach of any provision of this Agreement can be waived unless in writing. Waiver of any one breach shall not be deemed to be a waiver of any other breach of the same or any other provision of the Agreement. This Agreement may be amended by a written agreement only, and executed by the Parties in interest at the time of the modification.

3.5 Authority to Sign Agreement. Any individual signing this Agreement on behalf of another individual, a corporation, a partnership or a public entity represents or warrants that he/she has full authority to do so.

3.6 Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter contained in it, and supersedes all prior and contemporaneous agreements, representations and understandings of the Parties.

3.7 Independent Advice of Counsel. In executing this Agreement, each Party acknowledges, represents and declares that it relies solely upon its own judgment, belief and knowledge, and, if desired, on the advice and recommendations of its own independently-selected counsel.

3.8 Voluntary Agreement. Each of the Parties represents to the other Parties and declares that such Party has carefully read this Agreement and knows the contents of it, and that such Party has signed this Agreement freely and voluntarily.

3.9 Interpretation. This Agreement shall be interpreted in accordance with the plain meaning of its terms and not strictly for or against any of the Parties.

3.10 Execution in Counterparts. This Agreement may be executed in counterparts, and, if so executed, shall have the same force and effect it would have as if the Parties executed a single original of this Agreement. Facsimile copies of signatures shall have the same force and effect as an original signature.

3.11 Attorneys' Fees. Should suit be brought to enforce or interpret any part of this Agreement, or respecting any matter arising out of this Agreement, the "prevailing party" shall be entitled to recover as an element of its costs of suit and not as damages, reasonable attorneys' fees, costs and disbursements actually incurred.

3.13 Reservation of Jurisdiction to Enter Further Orders or Judgment. Pursuant to Code of Civil Procedure § 664.6, the Parties hereby stipulate and agree that the Superior Court shall retain jurisdiction over the Parties to enforce this Agreement until there is full performance of the terms herein.

///

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CHP Enterprises, Inc.

Dated:

By: _____

Name/Title: Ray Claridge, President and Sole Shareholder

The City of Carson

Dated:

By: _____

Name/Title: Kenneth C. Farfsing, City Manager

APPROVED AS TO FORM AND CONTENT:

CHP Enterprises, Inc.

Dated:

By: _____

Name/Title: Robert L. Glushon, Attorney

The City of Carson

Dated:

By: _____

Name/Title: Sunny K. Soltani, City Attorney