

32218

REPAIR AGREEMENT

I. PARTIES

The parties to this Repair Agreement (hereafter the "**Agreement**") are the City of Long Beach (the "**City**"), and Olson 737 – Long Beach 2, LLC ("**Olson**") All parties hereto are hereafter collectively referred to as the "Parties" or "Party".

II. RECITALS

A. Olson was the landowner and original developer of a mixed use condominium community located in Long Beach, California commonly known as 133 Promenade Walk (the "**Project**"). City is the owner of the public right-of-way known as the Promenade located adjacent to the Project.

B. In or about February 2010, a sink hole appeared within the Promenade adjacent to the Project (the "sink hole"). In or about March 2008, the 133 Promenade Walk Corporation (the "**HOA**"), the homeowners association for the Project, reported a leak in the lower level ("**LL**") parking garage on the Project adjacent to the Promenade (the "garage leak").

C. The parties are in disagreement and dispute as to the cause and as to who is responsible repairing the sink hole for the claimed leaks and damages. Olson contends, among other things, that the City's contractors compromised the waterproofing system that Olson installed during the original construction of the subterranean garage. Olson further contends that the leak areas in the garage were caused by the City's construction activities on the Promenade, either during the original construction and landscaping or subsequently during the City's attempts to address the sink holes. Olson disputes any and all liability for damages to the HOA property. The City contends, among other things, that the garage leaks caused the sink hole conditions. The City further contends that Olson and/or its design professionals and contractors acted negligently with respect to the installation of water proofing and is liable for all of the HOA and City's alleged damages. The City's and Olson's contentions are hereinafter referred to as the "Dispute".

D. It is the desire of the Parties to implement repairs at the Promenade in the immediate future and to reserve all rights as to any claims between the Parties as to the Dispute except as to the payment of the repair costs contemplated by this Agreement.

III. SETTLEMENT TERMS

A. **Performance and Scope of Work.**

The parties agree that there is a need to perform corrective work on the waterproofing on the lower level garage walls, the correction and remedial compaction of the soils associated with the sink hole, and the removal and replacement of sidewalk

and related plant landscaping along the Promenade. The parties agree that the Scope of Repair Work, more specifically described on Exhibit A hereto, is an acceptable scope of repair for the disputed claims. The City shall perform, or contract to be performed, the repair work set forth on Exhibit A (the "Work"). The City shall commence the Work within thirty (30) days of the effective date of this Agreement, and shall complete it within thirty (30) days of commencement of the Work.

B. City Agreement and Inspections

The City agrees to inspect all such work in a timely manner, and acknowledges such work for purposes of permits or bonds to be warranty repairs to existing work and shall not be deemed new construction work. The parties agree that Olson may have its experts, at the sole cost and expense of Olson, reasonably observe and inspect the Work during its performance and after its completion.

C. Olson's Contribution to Costs of Work.

The City shall pay for all costs associated with the completion of the Work. Olson shall contribute to those costs by paying to the City, within seven (7) days of the completion of the Work, twelve thousand ninety dollars and 96 cents (\$12,090.96), plus any additional amount paid by the City to Valley Crest Landscape Development under Estimate No, 0006.2 , a copy of which is attached as Exhibit "B" hereto, for additional concrete slurry (calculated at \$376.98 per yard).

D. No Releases

Nothing contained in this Agreement shall be construed to constitute a release by the Parties as to any claims based on or arising out of the Dispute.

E. Enforcement of Agreement

1. Attorneys' Fees, Injunctive Relief: Each Party shall bear its own attorneys' fees and costs (including investigation and expert costs) incurred in connection with the claims asserted in the Action; however, in the event legal action arises relating to this Agreement, the interpretation thereof, or the failure of any Party to perform the terms of Agreement, the prevailing party in such action shall be entitled, in addition to damages, to injunctive relief or other relief, to reasonable costs and expenses not limited to taxable costs, and reasonable attorneys' fees and expert witness costs.

F. Entire Agreement

This Agreement contains the entire agreement between the Parties relating to the rights and obligations contained herein and any representations,

negotiations or agreements between the Parties are merged into this Agreement. No subsequent modification or amendment between the parties shall be effective unless in writing signed by all Parties to this Agreement.

G. No Admission of Liability

Neither the execution of this Agreement nor the exchange of consideration pursuant to the terms hereof shall be deemed or construed as an admission of liability or wrongdoing by any person or entity. This Agreement is executed and the consideration exchanged pursuant to the terms hereof are solely for the purpose of compromising and settling disputed claims, liability for which is expressly denied.

H. Binding Agreement

This Agreement and each and every provision hereof, shall bind and shall inure to the benefit of the respective heirs, personal representatives, successors-in-interest and assigns of the Parties.

I. Counterparts

This Agreement may be executed in counterparts and transmitted by facsimile, all of which, taken together, shall be deemed one original.

J. Applicable Law

This Agreement shall be deemed to have been entered into in the State of California and all questions concerning the validity, interpretation or performance of any of its terms or provisions or of any rights or obligations of the parties thereto, shall be governed by and resolved in accordance with the laws of the State of California.

K. Advice of Counsel

The Parties represent that advice of legal counsel has been obtained by the Parties prior to entering into this Agreement. Specifically, the Parties, and each of them, represent that they have selected and retained their own attorneys, experts and consultants to inspect, analyze, and advise them regarding the nature, extent, and cause of the claims asserted in the Action and the appropriate prosecution thereof which are the subject of the Action and this Agreement. In entering into this Agreement, the Parties represent that they have not been induced to enter into this Agreement by reliance on the opinions, representations, conclusions or contentions of the other or of the other's counsel or experts.

L. Further Documentation – Duty to Cooperate

The Parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

M. Notices

Unless otherwise provided, any notice to be given pursuant to this Agreement shall be deemed effective if given in writing and delivered personally, or by United States mail or facsimile. Notice by regular mail shall be deemed effective seventy-two (72) hours after deposit in the United States mails, and properly addressed with postage prepaid. Notice by overnight mail shall be deemed effective twenty-four (24) hours after delivery to the courier and properly addressed.

Notices to the City shall be given as follows:

Rebecca Wood
Development Director
Long Beach Redevelopment Agency
333 West Ocean Blvd., 3rd Floor
Long Beach, CA 90807-4894
Telephone: (562) 570-6071
Facsimile: (562) 570-6215

And

Heather Mahood, Esq.
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664
Telephone: (562) 570-2210
Facsimile: (562) 436-1579

Notices to Olson shall be given as follows:

Katherine M. Chandler, Esq.
SVP, General Counsel
The Olson Company
3010 Old Ranch Parkway, Suite 100
Seal Beach, CA 90740-2751
Telephone: (562) 370-2270
Facsimile: (562) 598-9853

And

Thomas L. Vincent, Esq.
Payne & Fears LLP
4 Park Plaza, Suite 1100
Irvine, CA 92614
Telephone: (949) 851-1100
Facsimile: (949) 851-1212

N. Time of the Essence

Time is of the essence for the performance of each and every covenant and the satisfaction of each and every condition contained in this Agreement.

O. Execution of Agreement

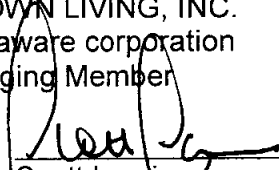
EACH PARTY WHOSE SIGNATURE APPEARS BELOW HAS READ THE AGREEMENT IN ITS ENTIRETY, AND UNDERSTANDS, AGREES TO, AND WILL PERFORM EACH AND EVERY OF ITS PROVISIONS AND CONDITIONS. THIS AGREEMENT SHALL BE EFFECTIVE ON THE DATE SET FORTH OPPOSITE EACH PARTY'S SIGNATURE BELOW. THOSE INDIVIDUALS WHO ARE SIGNING THIS AGREEMENT ON BEHALF OF ENTITIES REPRESENT THAT THEY ARE, RESPECTIVELY, DULY AUTHORIZED TO SIGN ON BEHALF OF SUCH ENTITIES AND TO BIND SUCH ENTITIES FULLY TO EACH AND ALL OF THE OBLIGATIONS SET FORTH IN THIS AGREEMENT.


IN WITNESS WHEREOF, the Parties have executed this Agreement as of May 9, 2011.

OLSON 737 – LONG BEACH 2, LLC,
A California limited liability company


By: OLSON URBAN HOUSING, LLC
A Delaware limited liability company

By: IN TOWN LIVING, INC.
a Delaware corporation
Managing Member

By: 
Scott Laurie
Its: President and Chief
Operating Officer

By: 
Katherine M. Chandler
Its: Senior Vice President, General
Counsel & Secretary

THE CITY OF LONG BEACH
Assistant City Manager

By: 
EXECUTED PURSUANT
TO SECTION 001 OF
THE CITY CHARTER.


Its: City Manager

By: _____

Its: _____

APPROVED AS TO FORM

6/7, 2011
ROBERT E. SHANNON, City Attorney

By: 
HEATHER A. MAHOOD
ASSISTANT CITY ATTORNEY


Initials 

Exhibit A

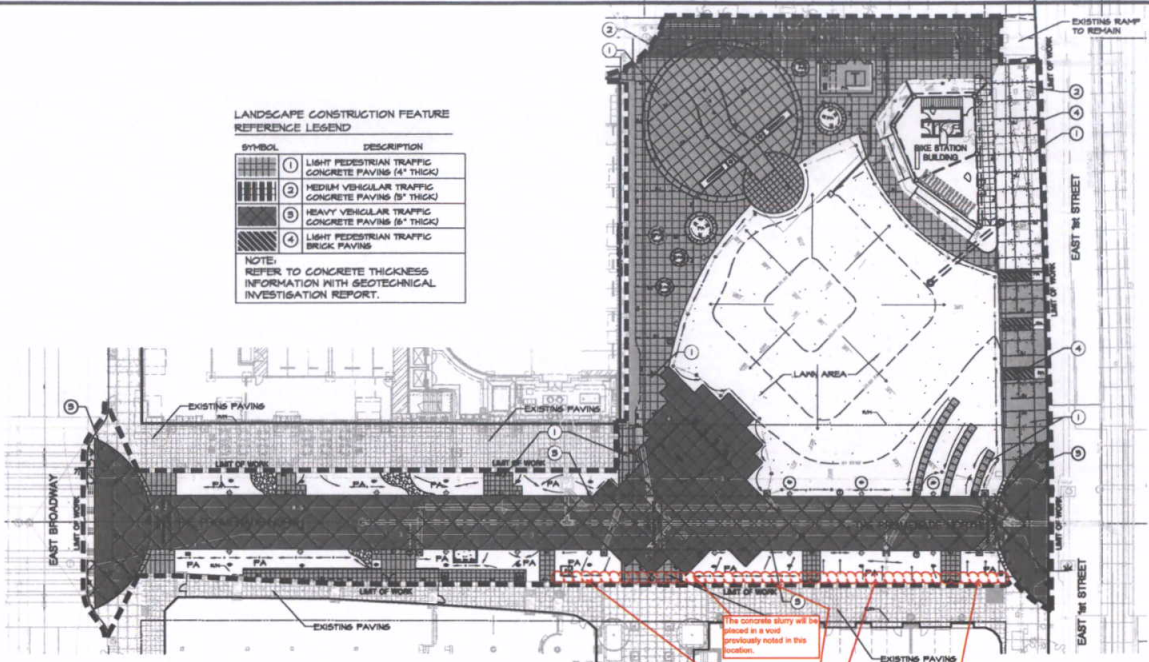
Scope of Repair Work

1. Obtain a permit from the Public Works Department for all work to be performed.
2. Install safety barricades and temporary construction fencing.
3. Shut off all irrigation water to the existing planter areas.
4. Remove landscape plants and replace any ground cover impacted by construction.
5. Extend the decorative concrete pavement into the existing planters a minimum of 2 feet from the edge of the existing pavement.
6. Construct a concrete cutoff wall at the edge of the new pavement extension.
7. Modify the existing irrigation system in order to engineer the location of the sprinkler heads (including electrical wires to existing valves).
8. Modify the existing drain system in order to engineer the location of the drain inlets.
9. Contact City of Long Beach to inspect.

LANDSCAPE CONSTRUCTION FEATURE
REFERENCE LEGEND

SYMBOL	DESCRIPTION
(1) [Symbol]	LIGHT PEDESTRIAN TRAFFIC CONCRETE PAVING (4" THICK)
(2) [Symbol]	MEDIUM VEHICULAR TRAFFIC CONCRETE PAVING (5" THICK)
(3) [Symbol]	HEAVY VEHICULAR TRAFFIC CONCRETE PAVING (6" THICK)
(4) [Symbol]	LIGHT PEDESTRIAN TRAFFIC BRICK PAVING

NOTE:
REFER TO CONCRETE THICKNESS
INFORMATION WITH GEOTECHNICAL
INVESTIGATION REPORT.



The concrete slurry will be placed in a wood previously noted in this location.

Remove existing plant material within 2' of west edge of concrete paving. Remove irrigation heads and lateral lines, cut in-completion in the top 18" of soil, pour 2' wide by 175' long Westwood Brown Concrete in clouded area.

CONCRETE FLAT WORK

CONSTRUCT CONCRETE FLAT WORK PER THE GEOTECHNICAL INVESTIGATION REPORT PREPARED BY LEIGHTON AND ASSOCIATES, PROJECT # 602048-001, DATED JANUARY 18, 2008

NOTE:

1. ALL FLAT WORK STRUCTURAL SECTIONS SHALL BE CONSTRUCTED PER THE GEOTECHNICAL INVESTIGATION REPORT RECOMMENDATIONS.
2. ALL GOLD/CONSTRUCTION JOINTS, AND CRACK CONTROL JOINTS SHALL BE PER THE GEOTECHNICAL INVESTIGATION REPORT RECOMMENDATIONS.
3. ALL EXISTING OR NEW UTILITY BOXES, FOOTINGS, CONCRETE STRUCTURES, AND OTHER VERTICAL FEATURES ETC. LOCATED IN THE NEW CONCRETE FLAT WORK AREAS WILL RECEIVE AN ISOLATION JOINT DETAIL. THE LANDSCAPE CONTRACTOR SHALL PROVIDE JOINT EXPANSION MATERIAL AS NECESSARY TO PREVENT CRACKS TO THE SATISFACTION OF THE GEOTECHNICAL INVESTIGATION REPORT AND THE CITY OF LONG BEACH.
4. ALL GOLD/CONSTRUCTION AND CRACK CONTROL JOINTS WILL BE SAWN CUT.
5. LANDSCAPE CONTRACTOR TO PROVIDE SHOP DRAWINGS FOR REVIEW AND APPROVAL BY GENERAL CONTRACTOR & CITY INSPECTOR TO INCLUDE GOLD/CONSTRUCTION JOINT FOUR PLAN AND CONFIRM ALL JOINT LAYOUT PRIOR TO CONSTRUCTION.
6. INTERFACE DETAIL OF NEW ON-GRADE HARDSCAPE PAVING TO EXISTING OVER-STRUCTURE TO BE SUBMITTED BY LANDSCAPE CONTRACTOR PRIOR TO CONSTRUCTION FOR REVIEW AND APPROVAL BY GENERAL CONTRACTOR & CITY INSPECTOR.

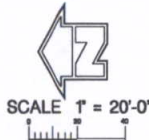
PAVING VIGNETTE PLAN

THE CITY OF LONG BEACH AND THE TRAFFIC ENGINEER HAS ESTABLISHED SPECIFIC TRAFFIC LOADINGS FOR EACH HARDSCAPE AREA AS REFERENCED ON THIS PLAN.

LIGHT PEDESTRIAN TRAFFIC- 4" THICK CONCRETE REFERS TO PEDESTRIAN LOADS ONLY PER GEOTECHNICAL INVESTIGATION REPORT.

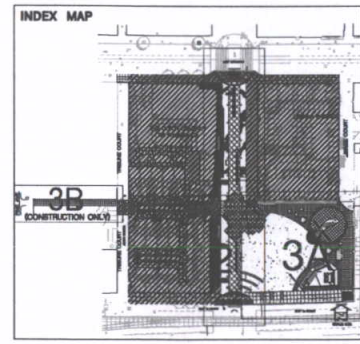
MEDIUM VEHICULAR TRAFFIC- 5" THICK CONCRETE REFERS TO MEDIUM TRAFFIC LOADS PER GEOTECHNICAL INVESTIGATION REPORT.

HEAVY VEHICULAR TRAFFIC- 6" THICK CONCRETE REFERS TO HEAVY TRAFFIC LOADS PER GEOTECHNICAL INVESTIGATION REPORT.



SEE SHEET
LC-3B

REPLACED SHEET L-1 (SHEET 18)
WITH SHEET L-1A (SHEET 18A)



CONSULTANTS

THE CITY OF LONG BEACH

THIS DRAWING IS THE PROPERTY OF LEIGHTON AND ASSOCIATES, INC. NO PART OF THIS DRAWING IS TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT THE WRITTEN PERMISSION OF LEIGHTON AND ASSOCIATES, INC.

PROJECT: THE PRADERWIS NORTH FRANCHISE CORRIDOR, BETWEEN EAST BROADWAY & EAST FIRST STREET

SHEET: 18A OF 42

DATE: 08/08/08

DRAWN BY: J.L.L. KINGS

CHECKED BY: J.L.L. KINGS

SCALE: AS SHOWN

PROJECT NO.: 08-0000

SHEET NO.: 18A

DATE: 08/08/08

BY: J.L.L. KINGS

APP. BY: J.L.L. KINGS

CONTRACT NO.: 08-0000



ValleyCrest Landscape Development

3242 Halladay
Santa Ana, CA 92705

Phone: 714.327.5344

**Estimate
No. 00006.2**

TITLE: Add 2' of Concrete Mid Block Prom.
PROJECT: Promenade South Block
TO: Attn: Rebecca Wood
Redevelopment Agency of the City of
City of Long Beach, CA
333 W Ocean Blvd 3rd Fl
Long Beach, CA 90802
Phone: 562 570-7738

DATE: 3/22/2011
JOB: 132098
CONTRACT NO BUDGET

RE: EST To: From: Number: 00006.1

DESCRIPTION OF ESTIMATE

Becky,

The following price represents most of the items listed on Exhibit A - Scope of Repair Work dated 3/15/11 (attached) for the landscape area adjacent to the Olson Building on the Mid Block Promenade.

Price for the concrete slurry is based on three (3) yards. Should additional yards of concrete be required the unit cost will be \$376.98 per yard, which includes material, concrete pump and labor to place the concrete slurry.

Over time, additional sink holes may develop. ValleyCrest does not guarantee that this corrective measure will address future soil settlement in the the current or adjacent areas.

Respectfully,

BREAKDOWN OF WORK

Item	Description of Work	Quantity	Units	Unit Price	Net Amount
00001	Place temporary construction fence with green or black wind screen.	1,000	ls	\$675.00	\$675.00
00002	Shut off irrigation and relocate existing irrigation heads and laterals.	1,000	ls	\$2,025.00	\$2,025.00
00003	Remove landscape plants and replace and ground cover that may be impacted by the new construction. Trees and shrubs would remain in their current location.	1,000	ls	\$780.00	\$780.00
00004	Pour 700 s/f of Westwood Brown concrete. Paving will extend two (2) feet into planter from 1st Street to the bollard compressor enclosure approximately 30 feet north of Alta Way. Include a 12" thickened edge or cutoff wall at the east side of the new pavement.	1,000	ls	\$4,500.00	\$4,500.00
00005	Modify existing drain system in planters where necessary	1,000	ls	\$200.00	\$200.00
00006	Permit Cost	1,000	ls	\$1,500.00	\$1,500.00
00007	3 yards of 1 1/2 sack concrete slurry - Price per yard includes cost of concrete, short load cost and tax and 15% markup.	3,000	yds	\$189.32	\$567.96
00008	Concrete pump - based on pumping 3 yds. Includes VC 10% markup	1,000	LS	\$323.00	\$323.00
00009	Labor cost to place concrete 4 hrs - \$60.00 per hour	1,000	LS	\$240.00	\$240.00

Prepared By: Greg Barker

Greg Barker

Date: 3.22.11

Approved By: _____

Rebecca Wood

Date: _____



ValleyCrest Landscape Development

3242 Halladay
Santa Ana, CA 92705

Phone: 714.327.5344

**Estimate
No. 00006.2**

TITLE: Add 2' of Concrete Mid Block Prom.
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TO: Attn: Rebecca Wood
Redevelopment Agency of the City of
City of Long Beach, CA
333 W Ocean Blvd 3rd Floor
Long Beach, CA 90802
Phone: 562 570-7738

DATE: 3/22/2011
JOB: 132098
CONTRACT NO BUDGET

RE: EST To: From: Number: 00006.1

DESCRIPTION OF ESTIMATE

BREAKDOWN OF WORK

Item	Description of Work	Quantity	Units	Unit Price	Net Amount
00010	Compact existing soil within the top 18" of soil	1.000	ls	\$1,280.00	\$1,280.00

TOTAL: \$12,090.96

Estimated Time Extension..... 0 days

This estimate will remain in effect for 30 days, unless otherwise noted. After expiration a new estimate will be submitted upon request.

Notes:

- 1. This work will not be done until approved and a written change order is issued.
- 2. A signature below authorizes us to proceed with the work described above, at the stated prices.
- 3. Extension of time necessary for this change: 0 consecutive working days.
- 4. This work was done in accordance with your order to proceed: please issue change order.

Prepared By: Greg Barker
Greg Barker
Date: 3.22.11

Approved By: _____
Rebecca Wood
Date: _____