

## SETTLEMENT AND RELEASE AGREEMENT

# 32004

**THIS SETTLEMENT AND RELEASE AGREEMENT** ("Agreement") is made and entered into effective as of the date set forth in Section 2.8 hereof between the CITY OF LONG BEACH, a municipal corporation, ("City"), acting in accordance with actions taken at its meeting of January 4, 2011, and BIG LEAGUE DREAMS USA, LLC, a California limited liability company ("BLD USA"), BIG LEAGUE DREAMS CONSULTING, LLC, a California limited liability company ("BLD Consulting"), and BIG LEAGUE DREAMS LONG BEACH, LLC, a California limited liability company in dissolution ("BLD Long Beach", and together with BLD USA and BLD Consulting, the "BLD Entities").

1. RECITALS. This Agreement is made with reference to the following facts and objectives:

1.1 City intended to develop a sports park on certain City-owned real property located south of Spring Street between Orange Avenue and California Avenue (the "Sports Park"). After proposing and evaluating various alternatives for development of the Sports Park, City sought the assistance of the BLD Entities to construct and operate the Sports Park.

1.2 City and BLD USA executed a License Agreement dated July 1, 2006 (the "License Agreement"), pursuant to which, among other things, BLD USA granted City a license to use its trademarks and logos and agreed not to develop another Big League Dreams Sports Park within an agreed noncompete area proximate to the City in exchange for payment of a fee in the amount of \$400,000 (the "License Fee"), which City has paid in full.

1.3 City and BLD Consulting executed a Consulting Services Agreement dated October 2, 2007 (the "Consulting Agreement"), pursuant to which, among other things, BLD Consulting would provide City with project evaluation, financing and consulting services during the planning, design and construction phases of the Sports Park in exchange for payment of phased fees, of which City paid \$160,000 in aggregate.

1.4 City and BLD Long Beach intended to execute a Maintenance and Operations Agreement (the "MOA", and together with the License Agreement and the Consulting Agreement, the "BLD Agreements"), pursuant to which, among other things, the completed Sports Park would be operated and maintained by BLD Long Beach. Due to City's inability to obtain adequate financing and inability to acquire adjacent property necessary for construction of the Sports Park, further efforts to design and construct the Sports Park were suspended, and the MOA was never executed.

1.5 City terminated both the License Agreement and the Consulting Agreement, and requested full reimbursement of the License Fee

pursuant to the terms of Section 5.3 of the License Agreement, which provides for partial or full reimbursement of the License Fee to City under certain conditions. BLD USA responded that, given the number of years BLD USA had refrained from developing another Big League Dreams Sports Park within the City's noncompete area, the delays encountered in the development of the Sports Park and the City Council's approval of the MOA, the partial (50%) reimbursement provisions of Section 5.3 of the License Agreement should instead apply.

2. SETTLEMENT. In an effort to settle and resolve the above issue the parties have reached the following agreements:

2.1 Reimbursement. In full discharge of BLD USA's reimbursement obligations to City, BLD USA shall pay to City the amount of Three Hundred Thousand Dollars (\$300,000), payable in equal monthly installments and otherwise in accordance with the terms of the Promissory Note attached hereto as Exhibit "A".

2.2 Releases.

2.2.1 Release of the BLD Entities. City, on behalf of itself, its agents, boards, agencies, employees, elected officials and officers, hereby releases and forever discharges the BLD Entities and affiliated entities and their respective agents, boards, employees, members, managers, directors and officers from any and all claims, demands, damages, costs and expenses, and causes of action arising from or related to the development of the Sports Park and/or the BLD Agreements, whether or not now known to City.

2.2.2 Release of City. The BLD Entities, on behalf of themselves, their affiliated entities and their respective agents, boards, employees, members, managers, directors and officers, hereby release and forever discharge City and its agents, boards, agencies, employees, elected officials and officers from any and all claims, demands, damages, costs and expenses, and causes of action arising from or related to the development of the Sports Park and/or the BLD Agreements, whether or not now known to the BLD Entities.

2.2.3 Unknown Claims. City and the BLD Entities each certify that they are familiar with the provisions of Section 1542 of the California Civil Code which reads:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

City and the BLD Entities each waive their respective rights under said Civil Code Section 1542.

2.3 Disclaimer of Liability. This Agreement constitutes a compromise of disputed claims, and nothing contained herein shall be construed or interpreted as an admission of liability on the part of City or the BLD Entities.

2.4 Prior Actions. Each of the parties hereby warrants and represents that it is the lawful owner of the claims released hereunder, and that as of the date of this Agreement, the parties have not assigned, transferred or otherwise conveyed such claims.

2.5 Authority. Each party represents that it has the requisite authority to enter into this Agreement and that the persons whose signatures appear below for such party has the authority to execute this Agreement on behalf of said party and that such signature is given for the purpose of binding such party to the terms of this Agreement.

2.6 Legal Counsel. In entering into this Agreement, City and the BLD Entities acknowledge that they have been represented by or have sought the advice of legal counsel and that their respective boards and officials have been given adequate legal advice regarding the claims set forth in this Agreement.

2.7 Termination of Agreements and the Sports Park Project. City and the BLD Entities agree that the BLD Agreements have each been validly terminated, and that neither party owes any further obligations to the other party with respect to the BLD Agreements or the development of the Sports Park in general, except as described in this Agreement.

2.8 Effective Date. This Agreement shall be effective upon execution by the City Manager of City.

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IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date set forth in Section 2.8 above.

2/16, 2011

CITY OF LONG BEACH, a municipal corporation  
Assistant City Manager

By [Signature] EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.  
City Manager

2/14/11, 2011

BIG LEAGUE DREAMS USA, LLC, a California limited liability company

By [Signature]  
Its: Chief Executive Officer

2/14/11, 2011

BIG LEAGUE DREAMS CONSULTING, LLC, a California limited liability company

By [Signature]  
Its: Chief Executive Officer

2/14/11, 2011

BIG LEAGUE DREAMS LONG BEACH, LLC, a California limited liability company in dissolution

By [Signature]  
Its: Chief Executive Officer

APPROVED AS TO FORM

2-16, 2011  
ROBERT E. SHANNON, City Attorney  
By [Signature]  
RICHARD ANTHONY  
DEPUTY CITY ATTORNEY

**EXHIBIT A**  
**PROMISSORY NOTE**

**\$300,000**

**January 31, 2011**

**Long Beach, California**

**FOR VALUE RECEIVED**, the undersigned, Big League Dreams USA, LLC, a California limited liability company ("Obligor"), hereby promises to pay to the order of the CITY OF LONG BEACH, a municipal corporation or its successors (collectively the "City"), in lawful money of the United States of America, the principal sum of Three Hundred Thousand Dollars (\$300,000), together with interest thereon and other amounts payable hereunder at the times and on the dates set forth herein and in any event on April 15, 2014 (the "Maturity Date"). A monthly payment schedule is attached hereto and incorporated herein as Exhibit "1".

1. Definitions. In addition to the other terms defined in this Note, the following definitions shall apply for all purposes of this Note:

"Business Day" means any day other than a Saturday, Sunday or other day on which is a City-recognized holiday.

"Payment Date" means the fifteenth (15th) day of each calendar month for which a payment is scheduled.

"Note" means this Promissory Note, as amended, restated, supplemented, extended or otherwise modified from time to time.

2. Interest.

(a) Amounts outstanding under this Note shall not accrue interest. Notwithstanding the foregoing, immediately upon an Event of Default Obligor promises to pay interest on any delinquent amounts under this Note at the rate of seven percent (7%) per annum, compounded annually, in legal tender of the United States of America ("Default Interest"), until paid in full. Payments will be applied first towards outstanding interest and second towards outstanding principal.

(b) All Default Interest payable under this Note shall accrue and be computed on the basis of a 360 day year and shall be charged for the actual number of days elapsed from the Event of Default.

3. Payment; Maturity Date. Obligor shall make the required monthly payments on each Payment Date. The entire unpaid principal balance of this Note and any accrued but unpaid interest thereon shall become due and payable on April 15, 2014.

4. Method of Payment. Obligor will have the right to prepay all or any portion of the outstanding principal amount without premium or penalty. Principal and all other

amounts due under this Note shall be payable in U.S. dollars to City at such address as designated from time to time by City in writing to Obligor or by electronic wire funds transfer of immediately available funds pursuant to written instructions provided to Obligor by City. If any payment of principal on this Note is due on a day that is not a Business Day, such payment will be due on the next succeeding Business Day.

5. **Defaults.** The occurrence of any one or more of the following events with respect to Obligor will constitute an event of default hereunder ("Event of Default"): (a) if Obligor fails to pay when due any payment of principal or interest on this Note by the date which is fifteen (15) days after any Payment Date and such failure continues for a period of ten (10) days after City gives written notice of such failure to Obligor; or (b) if Obligor, under the laws of any jurisdiction: (i) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official; (ii) makes a general assignment for the benefit of its creditors; or (iii) institutes a proceeding, or has an involuntary proceeding instituted against it, seeking a judgment of insolvency, bankruptcy, or any other similar relief under any bankruptcy, insolvency, or other similar law affecting creditors' rights that is not dismissed within ninety (90) days thereafter. Upon the occurrence of an Event of Default hereunder (unless waived in writing by City), City may, at its option, by written notice to Obligor, declare the entire unpaid principal balance of this Note, together with all accrued and unpaid interest thereon, and all other amounts and payments due hereunder, immediately due and payable.

6. **Miscellaneous.**

6.1 **Waiver.** Obligor hereby waives grace, diligence, presentment, demand, notice of demand, dishonor, notice of dishonor, protest, notice of protest, any and all exemption rights against the indebtedness evidenced by this Note and the right to plead any statute of limitations as a defense to the repayment of all or any portion of this Note, and interest thereon, to the fullest extent allowed by law, and all compensation of cross demands pursuant to California Code of Civil Procedure Section 431.70. No delay, omission or failure on the part of City in exercising any right or remedy hereunder shall operate as a waiver of such right or remedy or any other right or remedy of City.

6.2 **Successors.** All of the terms, agreements, covenants, representations, warranties, and conditions of this Note are binding upon, and inure to the benefit of and are enforceable by, Obligor and City and their respective successors and permitted assigns.

6.3 **Notices.** All notices, requests, demands, claims, and other communications hereunder shall be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given if (and then three (3) Business Days after) it is sent by registered or certified mail, return receipt requested, postage prepaid, or if (and then one (1) Business Day after) it is sent by prepaid nationally recognized guaranteed overnight delivery or courier service such as FedEx, and addressed to the intended recipient as set forth below:

If to Obligor:

Big League Dreams USA, LLC  
16339 Fairfield Ranch Road  
Chino Hills, CA 91709  
Attn: Chief Executive Officer

If to City:

City of Long Beach  
333 W. Ocean Boulevard, 13<sup>th</sup> Floor  
Long Beach, CA 90802  
Attn: City Manager

Either party hereto may send any notice, request, demand, claim, or other communication hereunder to the intended recipient at the address set forth above using any other means (including personal delivery, messenger service, telecopy, telex, ordinary mail, or electronic mail), but no such notice, request, demand, claim, or other communication shall be deemed to have been duly given unless and until it actually is received by the intended recipient. Either party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other notice in the manner herein set forth.

6.4 Time. Time is of the essence in the performance of this Note.

6.5 Headings. The article and section headings contained in this Note are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Note.

6.6 Governing Law. This Note and the performance of the obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the State of California, without giving effect to any choice of law principles.

6.7 Amendments and Waivers. No amendment, modification, replacement, termination, or cancellation of any provision of this Note shall be valid, unless the same shall be in writing and signed by each party sought to be bound by such amendment, modification, replacement, termination or cancellation. No waiver by any party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, may be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising because of any prior or subsequent such occurrence.

6.8 Severability. If any provision of this Note should be held unenforceable or void, that provision shall be deemed severable from the remaining provisions and shall in no way affect the validity of this Note except that if such provision relates to the payment of any monetary sum, then City may, at its option, accelerate this Note and all

outstanding principal and accrued interest thereon shall be immediately due and payable.

6.9 Attorneys' Fees. In the event of default or breach by Obligor of any obligations or other provisions set forth in this Note, Obligor agrees to pay all costs of collection, including reasonable attorneys' fees, incurred by City in connection therewith.

6.10 Authority. Obligor hereby represents and warrants to City that, by its execution below, Obligor has the full power, authority and legal right to execute and deliver this Note and that the indebtedness evidenced hereby constitutes a valid and binding obligation of Obligor without exception or limitation.

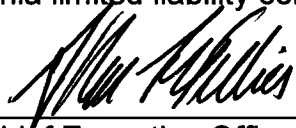
6.11 Assignment. Obligor shall not assign or transfer this Note or any of its rights or obligations under this Note without express prior written consent of City, which consent may be withheld, conditioned or delayed in City's sole discretion.

6.12 Remedies. Except as expressly provided herein, the rights, obligations and remedies created by this Note are cumulative and in addition to any other rights, obligations or remedies otherwise available at law or in equity. Except as expressly provided herein, nothing herein will be considered an election of remedies.

IN WITNESS WHEREOF, Obligor has executed and delivered this Note as of the date first above written.

OBLIGOR:

BIG LEAGUE DREAMS USA, LLC,  
a California limited liability company

By  \_\_\_\_\_  
Its: Chief Executive Officer



## EXHIBIT 1

### PAYMENT SCHEDULE

1 - February 15, 2011	\$10,000
2 - March 15, 2011	\$10,000
3 - April 15, 2011	\$10,000
4 - May 15, 2011	\$10,000
5 - June 15, 2011	\$10,000
6 - July 15, 2011	\$10,000
7 - August 15, 2011	\$10,000
8 - September 15, 2011	\$10,000
9 - October 15, 2011	\$10,000
10 - February 15, 2012	\$10,000
11 - March 15, 2012	\$10,000
12 - April 15, 2012	\$10,000
13 - May 15, 2012	\$10,000
14 - June 15, 2012	\$10,000
15 - July 15, 2012	\$10,000
16 - August 15, 2012	\$10,000
17 - September 15, 2012	\$10,000
18 - October 15, 2012	\$10,000
19 - February 15, 2013	\$10,000
20 - March 15, 2013	\$10,000
21 - April 15, 2013	\$10,000
22 - May 15, 2013	\$10,000
23 - June 15, 2013	\$10,000
24 - July 15, 2013	\$10,000
25 - August 15, 2013	\$10,000
26 - September 15, 2013	\$10,000
27 - October 15, 2013	\$10,000
28 - February 15, 2014	\$10,000
29 - March 15, 2014	\$10,000
30 - April 15, 2014	\$10,000