

SETTLEMENT AGREEMENT and MUTUAL RELEASE

BETWEEN

ASNA Robson Landmark Developments Limited
c/o Boughton Law Corporation
700 - 595 Burrard Street, Vancouver BC V7X 1S8

(“ASNA”)

AND:

1488 Robson Street Holdings Ltd.
c/o Boughton Law Corporation
700 - 595 Burrard Street, Vancouver BC V7X 1S8

(“1488”)

AND:

JMX Contracting Inc.
c/o Weisz Fell Kour LLP
200 Bay Street, Suite 2305, Toronto ON M5J 2J3

(“JMX”)

AND:

2809588 Ontario Inc.
c/o Weisz Fell Kour LLP
200 Bay Street, Suite 2305, Toronto ON M5J 2J3

(“Residual Contracting”)

AND:

Crowe Soberman Inc. as CCAA Monitor for 2809588 Ontario Inc.
c/o Chaitons LLP
10th Floor, 5000 Yonge Street, North York ON M2N 7E9

(“CCAA Monitor”)

WHEREAS:

- A. ASNA and JMX entered into a demolition agreement (the “**Demolition Contract**”) under which ASNA retained JMX to carry out abatement of hazardous materials and

demolish a building known as the 1400 Robson Empire Landmark Hotel in Vancouver, British Columbia (the "**Demolition Project**").

B. 1488 is the owner of the Demolition Project lands, legally known as:

PID 003-511-138

LOT 1 BLOCK 44 PLAN VAP15341 DISTRICT LOT 185 LAND DISTRICT 36

("the Lands").

C. ASNA alleged a contractual liquidated damages claim against JMX in the amount of \$1,652,400.00 (the "**LD Claim**").

D. JMX filed liens on title to the Lands (the "**Liens**") in the amounts of \$6,595,998.52 on August 23, 2019 and \$127,552.21 on October 25, 2019.

On April 20, 2020, JMX filed a Notice of Intention to Make a Proposal pursuant to the *Bankruptcy and Insolvency Act*, and Crowe Soberman Inc. was appointed as proposal trustee (the "**NOI Proceedings**"). On September 29, 2020, the NOI Proceedings were converted to CCAA proceedings and Crowe Soberman Inc. was appointed as CCAA Monitor.

E. On July 23, 2020, JMX commenced action no VLC-S-S-207196 in the Vancouver Registry of the Supreme Court of British Columbia in order to prosecute its Liens and contractual claims against ASNA and 1488 (the "**JMX Claim**").

F. Pursuant to the terms of a security agreement, ASNA and 1488 provided to the CCAA Monitor, Lien Bond No. VM6043019 in the amount of \$3,000,000 (the "**Lien Bond**") dated December 21, 2020 and obtained a discharge of the Liens from title to the Lands.

G. On February 2, 2021, the court approved a restructuring transaction that resulted in, *inter alia*:

a. vesting out of JMX and transferring to Residual Contracting, ASNA's claims against JMX, including the LD Claim ("**ASNA's Claims**"); and

b. vesting in Residual Contracting all the rights of JMX in the Demolition Contract.

H. The parties agree to resolve the LD Claim, the ASNA Claims and the JMX Claim (collectively, the "**Claims**") in accordance with the terms of this Agreement.

NOW THEREFORE in consideration of the promises and covenants contained herein and or good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

1. ASNA shall pay \$75,000.00 (the "**Settlement Funds**") to the CCAA Monitor.

2. The Settlement Funds will be used by the CCAA Monitor to pay the fees and expenses of the CCAA Monitor and its legal counsel in connection with this Settlement in a maximum amount of \$20,000.00, with the balance of the funds to be held by the CCAA Monitor in trust and distributed in accordance with a further order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”).
3. Upon obtaining the Approval Order (as defined below) and upon receipt of the Settlement Funds, the CCAA Monitor shall deliver to counsel for ASNA:
 - i. a Consent Order, dismissing the JMX Claim, in the form attached as Schedule “A” to this Agreement (the “**Consent Order**”); and
 - ii. the Lien Bond.
4. The Parties shall each bear their own legal costs arising from the Claims.

Court Approval of Settlement

5. This Settlement is conditional on Residual Contracting obtaining an order from the Court approving this Settlement (the “**Approval Order**”).
6. The CCAA Monitor and Residual Contracting will use best efforts to bring a motion for the Approval Order by November 23, 2021.

No Renewal of Lien Bond

7. The Parties agree that ASNA and 1488 are not required to renew the Lien Bond, which is set to expire on November 25, 2021.

Release of JMX and Residual Contracting by ASNA and 1488

8. For and in consideration of the mutual covenants herein, ASNA and 1488 do hereby, for themselves and their assigns, release, remise and forever discharge Residual Contracting, and JMX their officers, directors, contractors and employees from and of any and all claims, suits and demands howsoever arising, whether at law or in equity, relating to or in connection with the Claims.
9. ANSA and 1488 agree not to make or claim or take any proceedings against any other person, corporation or entity who might claim contribution or indemnity from JMX or Residual Contracting.

Release of ASNA and 1488 by JMX and Residual Contracting

10. For and in consideration of the mutual covenants herein, JMX and Residual Contracting do hereby, for themselves and their assigns, release, remise and forever discharge ASNA and 1488, their officers, directors, contractors and employees from and of any and all claims, suits and demands howsoever arising, whether at law or in equity relating to or in connection with the Claims.

11. JMX and Residual Contracting agree not to make or claim or take any proceedings against any other person, corporation or entity who might claim contribution or indemnity from ASNA or 1488.

General Provisions

12. It is acknowledged that this Settlement Agreement and Mutual Release evidences the resolution of disputed claims, responsibility for which is denied by each Party.

13. The Parties hereto acknowledge that they have had an opportunity to obtain independent legal advice with respect to this Settlement Agreement and Mutual Release.

14. It is understood and agreed that this Settlement Agreement and Mutual Release is based upon the Parties understanding of the facts existing as of the time of these presents. This Settlement Agreement and Mutual Release shall be of effect notwithstanding the subsequent discovery of other facts relevant to the Claims.

15. This Settlement Agreement and Mutual Release is governed by the laws of Canada and the Province of Ontario.

16. This Settlement Agreement and Mutual Release may be executed in counterparts and may be delivered by way of electronic means.

ASNA Robson Landmark Developments Limited
by its authorized signatory:

Dated this _____ day of _____,
2021.


1488 Robson Street Holdings Ltd.
by its authorized signatory:

Dated this _____ day of _____,
2021.

JMX Contracting Inc.
by its authorized signatory:

Dated this _____ day of _____,
2021.

Crowe Soberman Inc. as CCAA Monitor for 2809588 Ontario Inc.
by its authorized signatory:


Dated this 16th day of November,
2021.

2809588 Ontario Inc.

by its authorized signatory:

Dated this _____ day of _____,
2021.

SCHEDULE "A"