

**SETTLEMENT AGREEMENT AND RELEASE**

THIS SETTLEMENT AGREEMENT AND RELEASE (the "Agreement") is entered into as of this 22<sup>nd</sup> day of December, 2014, among BAYONNE RESIDENTIAL LIMITED PARTNERSHIP, a Delaware limited partnership ("BRLP JV") and BAYONNE RESIDENTIAL URBAN RENEWAL, LLC, a New Jersey limited liability company qualified to do business under the New Jersey Long Term Tax Exemption Law of 1992 ("BRUR") (BRLP JV and BRUR are collectively referred to herein as the "BRLP"); and the CITY OF BAYONNE, a municipal corporation of the State of New Jersey on behalf of itself and as successor to the Bayonne Local Redevelopment Authority (the "City"); and THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, a body corporate and politic created by Compact between the States of New York and New Jersey with the consent of Congress of the United States ("Port Authority"). The foregoing parties are each separately referred to herein as a "Party" and collectively as the "Parties."

**RECITALS**

WHEREAS, on or about August 24, 2001, pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, *et seq.* (the "Redevelopment Law"), the City adopted a redevelopment plan for the former Bayonne Military Ocean Terminal at Bayonne, known as the Peninsula at Bayonne Harbor (formerly Block 404 Lot 1 on the tax maps of the City) (the "Peninsula"), as generally depicted on the Master Plan map attached hereto as Exhibit "A", which plan was subsequently amended from time to time (as amended, the "Redevelopment Plan");

WHEREAS, pursuant to the Redevelopment Plan, the Peninsula was divided into multiple districts, including the Harbor Station, Bayonne Bay, Maritime, Landing, Loft, and Point districts;

WHEREAS, on or about March 6, 2006, BRLP, through its predecessor TCR NJ/PA Acquisition Limited Partnership (sometimes referred to herein as "Trammell Crow Residential"), was designated as the redeveloper for a portion of Bayonne Bay district;

WHEREAS, on or about November 28, 2006, BRLP entered into a redevelopment agreement (the "Redevelopment Agreement") with the Bayonne Local Redevelopment Authority (the "BLRA") for the purchase and development of Lot 1 in Block 803 and Lot 1 in Block 815 on the tax map of the City, formerly known as Block 404.15, Lots B3 and B9, consisting of approximately 7.4 acres in the aggregate, as more particularly described in Exhibit "B" annexed hereto (the "BRLP Property");

WHEREAS, BRLP developed and constructed the Alexan CityView apartment complex on the BRLP Property, consisting of 544 residential units, approximately 821 onsite parking spaces, a 9,000 square foot clubhouse/leasing center, a swimming pool, and other

amenities (together with the BRLP Property, referred to herein as the "Project" or "Alexan CityView");

WHEREAS, pursuant to the Long Term Tax Exemption Law, on or about May 29, 2008, BRUR and the City entered into a certain Financial Agreement, amended by an Amended and Restated Financial Agreement, dated as of December 8, 2009, providing for payments by BRUR to the City in lieu of real estate taxes on the Project (the "PILOT Agreement");

WHEREAS, on or about July 30, 2010, the BLRA, as seller, and the Port Authority, as purchaser, entered into a contract of purchase and sale for the sale of the Landing, Loft and Point districts by the BLRA to the Port Authority (the "Port Authority Contract");

WHEREAS, on or about August 5, 2010, the BLRA conveyed the Landing, Loft and Point districts to the Port Authority pursuant to the Port Authority Contract;

WHEREAS, BRLP and BRUR instituted litigation against the BLRA, the City and the Port Authority in the Superior Court of New Jersey, Chancery Division, Hudson County (the "Court"), under Docket No. HUD-C-109-10 (the "Litigation"), which asserted, *inter alia*, that a sale of the Landing, Loft and Point districts by the BLRA to the Port Authority violated the Redevelopment Law and breached the Redevelopment Agreement (collectively, the "Claims");

WHEREAS, the City and the Port Authority filed Answers in the Litigation which, *inter alia*, denied any allegations of wrongdoing or any actionable conduct by the City and/or the Port Authority, as well as any liability to BRLP, and asserted affirmative defenses to the Claims;

WHEREAS, on August 14, 2013, the Bayonne City Council adopted Ordinance O-13-22 dissolving the BLRA pursuant to the Local Fiscal Control Law, N.J.S.A. 40A:5A-20 and the City thereby became, as a matter of law, the successor-in-interest to BLRA;

WHEREAS, as an originally named party and as the successor-in-interest to the BLRA, the City remained a defendant in the Litigation;

WHEREAS, recognizing the time, expense and risks associated with Litigation, the Parties have agreed by way of compromise and settlement to amicably resolve the Litigation and any and all disputes between them, without any Party admitting any liability whatsoever, on the terms and conditions set forth in this Agreement;

WHEREAS, on or about August 13, 2014, the Parties entered into that certain "Tolling Agreement and Stipulation Regarding Pending Litigation" (the "Tolling Agreement") which set forth the terms and conditions for the settlement of the Litigation;

WHEREAS, on or about August 13, 2014, the City adopted a Resolution which, *inter alia*, authorized the Mayor to execute the Tolling Agreement on behalf of the City, as well as any ancillary documents thereto, which would be contemplated to include this Agreement;

WHEREAS, on or about September 10, 2014, the City introduced Ordinance numbered O-5 authorizing an amendment to the PILOT Agreement consistent with the terms hereof;

WHEREAS, on or about December 10, 2014, the City adopted Resolution numbered 14-12-10-052 approving this Agreement and adopted Ordinance numbered O-14-35 approving the amendment to the PILOT Agreement; and

WHEREAS, the Parties are desirous of entering into this Agreement in order to memorialize the terms and conditions of the Tolling Agreement, to effectuate the settlement of the Litigation, and to release all claims that each has against each other in the Litigation, or otherwise as to the subject matter hereof.

NOW, THEREFORE, the Parties, in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, intending to be legally bound hereby, covenant and agree as follows:

**ARTICLE I  
INCORPORATION OF RECITALS; DEFINITIONS**

1.1 Incorporation by Reference. The recitals set forth above and the exhibits attached hereto are hereby incorporated herein by reference as if set forth in full in the body of this Agreement.

1.2 Definitions. As used in this Agreement, the following terms shall have the meanings set forth below.

- (a) "30 Year PA Restriction" is defined in Section 3.1 of this Agreement.
- (b) "Agreement" is defined in the preamble hereto.
- (c) "AAA" shall mean the American Arbitration Association.
- (d) "Alexan CityView" is defined in the recitals to this Agreement.
- (e) "Amended PILOT Agreement" is defined in Section 4.6 of this Agreement.
- (f) "Appraiser" shall mean a duly qualified appraiser who holds the designation of "MAI" from the Appraisal Institute.
- (g) "Barrier" is defined in Section 3.8 of this Agreement.
- (h) "Bayonne Bay District" means the Bayonne Bay District as described in the Redevelopment Plan.

- "C." (i) "Bayonne Bay District (East)" is the area designated as such on Exhibit
- "C." (j) "Bayonne Bay District (West)" is the area designated as such on Exhibit
- (k) "BLRA" is defined in the recitals to this Agreement.
- (l) "BRLP" is defined in the preamble to this Agreement.
- (m) "BRLP JV" is defined in the preamble to this Agreement.
- (n) "BRLP Property" is defined in the recitals to this Agreement.
- (o) "BRLP Property Owner" is defined in Section 4.4 of this Agreement.
- (p) "BRLP Releasees" is defined in Section 9.1 of this Agreement.
- (q) "BRUR" is defined in the preamble to this Agreement.
- (r) "Buffer" is defined in Section 3.8 of this Agreement.
- (s) "Business Day" shall mean any calendar day, except for Saturday, Sunday or a New York state, New Jersey state or federally recognized legal holiday.
- (t) "Certificate of Completion" is defined in Section 7.1 of this Agreement.
- (u) "City" is defined in the preamble to this Agreement.
- (v) "Claims" is defined in the recitals to this Agreement.
- (w) "Container Facility" is defined in Section 3.1 of this Agreement.
- (x) "Container Port" is defined in Section 3.1 of this Agreement.
- (y) "Court" is defined in the recitals to this Agreement.
- (z) "Discharge of the Declaration" is defined in Section 7.2 of this Agreement.
- Agreement. (aa) "Easement Agreement" is defined in Section 3.6 of this Agreement.
- (bb) "Effective Date" is defined in Section 2.1 of this Agreement.
- (cc) "EPA" shall mean the United States Environmental Protection Agency.
- (dd) "Eviction Act" is defined in Section 4.7 of this Agreement.

(ee) "Harbor Station District" shall mean Harbor Station North and Harbor Station South collectively, as described in the Redevelopment Plan.

(ff) "Hazardous Substances" are any substance, material or waste, whether liquid, gaseous or solid, and any pollutant or contaminant, that is toxic, hazardous, explosive, corrosive or radioactive, or that is defined, listed or regulated under any environmental law, including without limitation, solid waste, petroleum, polychlorinated biphenyls and urea formaldehyde including, but not limited, to the "environmental hazardous substances" on the environmental hazardous substance list adopted by NJDEP pursuant to Section 4 of P.L. 1983, c.315 (C.34:5A-4); such elements and compounds, including petroleum products, which are defined as such by NJDEP and which shall be consistent to the maximum extent possible with, and which shall include, the list of hazardous substances adopted by the EPA pursuant to Section 311 of the Federal Water Pollution Control Act Amendments of 1972, Pub.L.92-500, as amended by the Clean Water Act of 1977, Pub.L.95-217 (33 U.S.C. §1251 *et seq.*); the list of toxic pollutants designated by Congress or the EPA pursuant to Section 307 of that act; and the list of hazardous substances adopted by the EPA pursuant to Section 101 of CERCLA, 42 U.S.C. § 9601-9675; provided that sewage and sewage sludge shall not be considered as hazardous substances for the purposes of P.L.1976, c.141 (C.58:10-23.11 *et seq.*).

(gg) "Hudson River Walkway" shall mean the Hudson River Walkway as described in the Redevelopment Plan.

(hh) "Initial 30-day Period" is defined in Section 4.4 of this Agreement.

(ii) "Interim Truck Route" is defined in Section 3.6 of this Agreement.

(jj) "Litigation" is defined in the recitals to this Agreement.

(kk) "LNG" means liquefied natural gas.

(ll) "Long Term Tax Exemption Law" shall mean N.J.S.A. 40A:20-1, *et seq.*

(mm) "Marine Bunkering Facility" shall have the meaning set forth in Section 1(d) of Exhibit "D."

(nn) "Maritime Deed Changes" is defined in Section 4.4 of this Agreement.

(oo) "Maritime Deed Restriction" is defined in Section 3.9 of this Agreement.

(pp) "Maritime District" means the Maritime District as described in the Redevelopment Plan.

(qq) "Maritime District Access Easement" is defined in Section 3.10 of this Agreement.

(rr) "Maritime District Change Notice" is defined in Section 4.4 of this Agreement.

- "D."
- (ss) "Maritime District Property" shall have the meaning set forth in Exhibit
- (tt) "Maritime Owner" is defined in Section 3.9 of this Agreement.
- Agreement. (uu) "Minimum Annual Service Charge" is defined in Section 4.6 of this
- Protection. (vv) "NJDEP" shall mean the New Jersey Department of Environmental
- (ww) "Parties" and "Party" are defined in the preamble to this Agreement.
- (xx) "Peninsula" is defined in the recitals to this Agreement.
- (yy) "Person" shall mean any individual, corporation, partnership, trust, association or any other entity.
- (zz) "PILOT Agreement" is defined in the recitals to this Agreement.
- (aaa) "PILOT Amendment Ordinance" means the Ordinance adopted by the City approving the Amended PILOT Agreement.
- (bbb) "Port Authority" is defined in the preamble to this Agreement.
- (ccc) "Port Authority Property" shall mean the Points District, Block 404, Lot 2.10; Block 404, Lot 2.11; Block 1100, Lot 1; Block 1130, Lot 1; Block 1131, Lot 1; Block 1132, Lot 1; Block 1150, Lot 1; Block 1160, Lot 1; Block 1161, Lot 1 and Lot 3; Block 1170, Lot 1; Block 1171, Lot 1; and Block 404, part of Lot 2.05; the Loft District, Block 1000, Lot 1; Block 1030, Lot 1; Block 1060, Lot 1, and Block 404, part of Lot 2.05; and the Landing District, Block 900, Lot 1; Block 930, Lot 1; Block 970, Lot 1 and Block 404, part of Lot 2.05, in the City of Bayonne, Hudson County, New Jersey, as described in more detail on Exhibit "E" attached hereto and such other property on the Peninsula as may be acquired by the Port Authority at any time.
- (ddd) "Port Authority Contract" is defined in the recitals to this Agreement.
- Agreement. (eee) "Pre-Change Fair Market Value" is defined in Section 4.4 of this
- (fff) "Project" is defined in the recitals to this Agreement.
- (ggg) "PSA" is defined in Section 4.4 of this Agreement.
- (hhh) "Purchase Amount" is defined in Section 4.4 of this Agreement.
- (iii) "Rail" is defined in Section 3.1 of this Agreement.
- (jjj) "Redevelopment Agreement" is defined in the recitals to this Agreement.

(kkk) "Redevelopment Law" is defined in the recitals to this Agreement.

(lll) "Redevelopment Plan" is defined in the recitals to this Agreement.

(mmm) "Revenues" is defined in Section 4.6 of this Agreement.

(nnn) "Surplus Area" is defined in Section 4.1 of this Agreement.

(ooo) "Third Appraiser" is defined in Section 4.4 of this Agreement.

(ppp) "Truck Route" is defined in Section 3.5 of this Agreement.

## ARTICLE II CONDITIONS TO BINDING AGREEMENT

2.1 Conditions to Effectiveness. This Agreement shall become effective and binding upon the Parties upon the expiration of all appeal periods with respect to the PILOT Amendment Ordinance without an appeal pending (the "Effective Date").

## ARTICLE III PORT AUTHORITY PROPERTY RESTRICTIVE COVENANTS/PERMITTED USES

3.1 Restriction on Port Authority Property. Prior to January 1, 2044, the Port Authority shall not at any time operate or permit, suffer or allow (by sublease, license or otherwise) any other Person to operate, directly or indirectly, the following anywhere on Port Authority Property: (a) a facility for the loading and unloading of containerized cargo at the dock from vessels, including the operation of rail mounted gantry cranes and other land based heavy equipment for the principal purpose of loading and unloading containerized cargo ("Container Facility"); (b) rail ("Rail" and together with a Container Facility, a "Container Port") for the principal purpose of transporting containerized cargo to/from such Container Facility; (c) Rail for any other purpose it being the intention that Rail may only be constructed as part of a Container Port; (d) a waste transfer or waste storage facility, except as may be necessary to support Port Authority operations on the Peninsula, it being the intention that waste generated on-site by Port Authority marine terminal operations shall be permitted; (e) a landfill; (f) a facility for the production, transfer, refining or storage of bulk oil, gas, chemicals, explosives, nuclear materials (including in connection with a nuclear power plant, which is prohibited), or recyclables (except that this restriction shall not apply to such uses as are reasonably necessary to support the Port Authority marine terminal operations involving such materials used or generated on-site in connection with Port Authority operations on the Peninsula); (g) a heavy manufacturing facility, except that this restriction shall not apply to light manufacturing or assembly operations; (h) a facility for the storage or processing of live or dead animals; (i) a military use (except as may be necessary if requested or directed by the U.S. Government because of war, an act of terrorism, the threat of an act of terrorism, or some other national security threat and, further, except that this restriction shall not apply to munitions handled in a dry dock in the ordinary course of dry dock operations); (j) a penal facility; (k) an electric power plant (except that this restriction shall not apply to (1) any wind generated power facility or (2) any package power facility utilized to supply power exclusively to Port Authority operations on

the Peninsula); (l) a fireworks manufacturing or storage facility; (m) a sewage plant; (n) an LNG plant (except that this restriction shall not apply to (1) LNG infrastructure necessary to support any future Marine Bunkering Facility or (2) a Marine Bunkering Facility); or (o) a facility that would permit the mooring of ships transporting LNG (collectively, (a) through (o) being referred to as the "30 Year PA Restriction").

**3.2 Permitted Uses of Port Authority Property.** Except for the restrictions imposed by the 30 Year PA Restriction or as otherwise specifically provided as to the Port Authority herein, nothing contained herein shall limit or restrict the Port Authority's use of the Port Authority Property, for any lawful purpose, including any "Marine terminal purposes," in accordance with N.J.S.A. 32:1-35.28 and as defined at N.J.S.A. 32:1-35.30. Notwithstanding anything in the preceding to the contrary, the Port Authority Property shall never be used for a landfill, a penal facility, an LNG plant (except that this restriction shall not apply to (1) LNG infrastructure necessary to support any future Marine Bunkering Facility or (2) a Marine Bunkering Facility), or a facility engaged in the storage, transport or treatment of Hazardous Substances (except that this restriction shall not apply to Hazardous Substances reasonably necessary to support Port Authority operations on the Peninsula).

**3.3 Container Port Permits and Approvals: Construction.** Prior to January 1, 2034, the Port Authority shall not commence construction of a Container Port on the Peninsula; provided, however, that nothing contained herein shall: (i) limit or restrict the Port Authority's right to plan, design and obtain permits and approvals for the construction of a Container Port or Container Facility on the Peninsula at any time the Port Authority determines that the operation and use of Container Port or Container Facility, becomes, or is determined to become, feasible; or (ii) limit or restrict the Port Authority's right to demolish existing structures or limit construction of any infrastructure or improvements or utilities needed for permitted Port Authority future operations and uses; provided that such demolition or construction does not have a materially adverse effect on the physical structure of the BRLP Property and, provided, further, that such demolition shall not include the Hudson River Walkway in the Harbor Station District and Bayonne Bay District. Notwithstanding the foregoing, BRLP shall have the right to assert any claims that may arise as a result of any physical damage to the BRLP Property sustained as a result of any demolition or construction activities undertaken by the Port Authority.

**3.4 Limitations on Rail.** If the Port Authority constructs Rail on the Peninsula, the Port Authority shall use best efforts to locate the Rail as close as reasonably possible to the Rail route identified as the "Proposed Tracks" on the map attached hereto at Exhibit "F", but in no event shall such Rail route deviate to the south by more than 50 feet from the alignment shown on Exhibit "F" without BRLP's prior written consent. Construction of Rail on the Peninsula shall be accompanied by construction by the Port Authority of a sound/visual barrier as depicted and described on Exhibit "F". The construction of such sound/visual barrier shall be substantially complete prior to the commencement of any Rail operations on the Peninsula.

**3.5 Relocation of Pulaski Street Access.** If the Port Authority constructs Rail on the Peninsula, the Port Authority shall relocate the Pulaski Street access road (currently located in part on Block 1190, Lot 3, as shown on Exhibit "F") to the north of the Rail route as depicted on the map attached hereto at Exhibit "F" identified as the "Proposed Truck Route" (the "Truck



Route"). In such event, (i) the Interim Truck Route, as defined in Section 3.6, below, shall no longer be used for access to the Port Authority Property but shall remain available for truck access to and from the Bayonne Bay District; and/or (ii) the Port Authority shall work with the City to ensure alternate truck access to and from the Bayonne Bay District, but in no event shall such alternate truck access be south of the Interim Truck Route or located in any portion of the Bayonne Bay District (West).

3.6 Interim Truck Route. The City and the Port Authority agree that the "Maritime Access Road/Memorial Boulevard Access Route of the Roadway Access Easement," defined in the August 3, 2010 Roadway Access Easement Agreement executed by the Port Authority and the BLRA (hereinafter "Easement Agreement") (attached hereto as Exhibit "G") and depicted on Exhibit "B" thereof, does not currently exist and, to the extent such road is ever constructed in the future, it shall only be constructed as described below. Until the Truck Route is constructed, truck access to the Port Authority Property and Bayonne Bay District (East) shall be via either the Port Terminal Boulevard Access Route as shown on Exhibit "B" of the Easement Agreement, or, upon the completion thereof, the Maritime Access Road/Memorial Boulevard Access Route as shown on Exhibit "B" of the Easement Agreement (the "Interim Truck Route"); provided, however, that the Interim Truck Route shall be constructed as far to the north as possible in Block 800, Lot 1, adjacent to the property line of the Maritime District. The Port Authority shall construct the Interim Truck Route prior to any new use of the Port Authority Property differing from the uses in operation on the Port Authority Property as of June 30, 2014 that results in an appreciable increase in truck traffic on the Peninsula.

3.7 Truck Access for Bayonne Bay. If the Port Authority constructs the Interim Truck Route, trucks (other than trucks in support of residential or retail uses) coming to the Bayonne Bay District (East) shall be required to use the Interim Truck Route for access to Bayonne Bay District (East), and the Port Authority shall permit such access and grant any necessary easements at no cost. If the Interim Truck Route has not been constructed by the Port Authority, and Bayonne Bay District (East) is developed for other than residential and/or retail uses, the City and/or the owner(s) of the Bayonne Bay District (East), or their designees, shall be required to construct the Interim Truck Route, at their sole cost and expense, prior to commencing any non-residential/retail uses in Bayonne Bay District (East), and to use the Interim Truck Route for truck (other than trucks in support of residential or retail uses) access to Bayonne Bay District (East). Even if not required to do so by the preceding sentence, the City and/or the owner(s) of the Bayonne Bay District (East), or their designees, shall have the option of constructing the Interim Truck Route at any time. If the City and/or the owner(s) of the Bayonne Bay District (East), or their designees, construct the Interim Truck Route, the Port Authority shall be permitted and required to use the Interim Truck Route for truck access to the Port Authority Property and will be granted any necessary easements for such access at no cost to the Port Authority.

3.8 Use of Interim Truck Route; Barrier; Buffer. Upon the construction of the Interim Truck Route, truck traffic (other than trucks in support of residential or retail uses), including vehicles and equipment being utilized for construction, shall only ingress or egress to and from the Port Authority Property (and if applicable pursuant to Section 3.10, the Maritime District) to and from Pulaski Street on the Interim Truck Route. If the Interim Truck Route is constructed by the Port Authority, the Port Authority shall construct and maintain a visual and sound barrier

between the BRLP Property and the Interim Truck Route, substantially similar to that depicted and described on Exhibit "F" (the "Barrier"), for the distance indicated on the map attached on Exhibit "F". BRLP may also construct, at BRLP's sole cost and expense, a landscaped buffer with berming south of such barrier, substantially similar to that depicted and described on Exhibit "F" (the "Buffer"), for a distance indicated on the map attached on Exhibit "F." If the City, the owner(s) of the Bayonne Bay District (East), or their designees, construct the Interim Truck Route, then the City and/or the owner(s) of the Bayonne Bay District (East), or their designees, shall construct and maintain the Barrier and shall construct the Buffer without cost to BRLP. Notwithstanding the foregoing, BRLP may construct the Buffer at any time at its sole cost and in such event the parties shall cooperate with BRLP and take such actions as may be reasonably necessary or appropriate to enable BRLP to construct the Buffer.

3.9 Change in Maritime Deed Restriction. The City may, in its sole and absolute discretion, enter into an agreement with the owner of the Maritime District as described in Exhibit "D" (the "Maritime Owner") to change the terms of the existing Maritime Deed Restriction recorded in Hudson County Register at Book 8656, Page 912, a copy of which is attached hereto as Exhibit "H" (the "Maritime Deed Restriction") to read as set forth on Exhibit "D" attached hereto, provided that the Maritime Owner grants the Maritime District Access Easement, defined in Section 3.10, below.

3.10 Maritime District Access Easement. In lieu of locating the Interim Truck Route as described above, the City and/or Port Authority shall endeavor to obtain an easement from the Maritime Owner to enable the construction of a portion of the Interim Truck Route through the Maritime District as set forth in Exhibit "I" attached hereto or further north thereof (the "Maritime District Access Easement"). If the Maritime District Access Easement is obtained from the Maritime Owner, which easement must be obtained prior to the City agreeing to any amendments to the Maritime Deed Restriction, construction of the applicable portions of the Interim Truck Route shall instead occur within the Maritime District Access Easement, together with the construction of applicable portions of the Barrier and Buffer, as described above, correspondingly relocated to the north within the Surplus Area. Neither the City nor the Port Authority shall consent to any amendments to the Maritime Deed Restriction unless the Maritime District Access Easement has been obtained in a form legally binding on the Maritime Owner.

#### ARTICLE IV CITY COVENANTS

4.1 Easement to BRLP and Modification of Easement Area. The area identified in Exhibit "J" (the "Surplus Area") shall not be used by the BRLP, the City or the Port Authority for any purpose other than for open space, recreational athletic fields (without lights), buffering and/or the Interim Truck Route. As part of the consideration for this Agreement, the City shall grant a non-exclusive easement to BRLP and its successors, to construct a buffer, in such party's sole discretion and at such party's sole cost, on the Surplus Area to the south of the Interim Truck Route; provided, however, such right shall not impair the Port Authority's obligation to construct the Barrier as otherwise may be required by the terms of this Agreement. The form of such easement from the City to BRLP for the Surplus Area is attached hereto as Exhibit "K". On the Effective Date, the Easement Agreement shall be amended as to the Surplus Area to

reserve the right for the Port Authority, or their designee(s), to construct the applicable portion of the Interim Truck Route in the Surplus Area and to use same for truck access to Port Authority Property. On the Effective Date, the City shall record a deed restriction restricting the use of the Surplus Area to open space, recreational athletic fields (without lights), buffering and/or the Interim Truck Route. If the Maritime Deed Restriction is amended in accordance with Section 3.10, construction of the applicable portions of the Interim Truck Route shall instead occur within the Maritime District Access Easement, and the construction of the Barrier as applicable to the Port Authority and Barrier and Buffer, as applicable to the City, the owner(s) of the Bayonne Bay District (east), or their designees, all as described above, correspondingly relocated to the north within the applicable portions of the Surplus Area (i.e., to the south of the Interim Truck Route).

**4.2 Permitted Uses in Harbor Station District and Bayonne Bay District.** The City shall not permit an industrial use in the Harbor Station District and shall only permit residential, retail, hospitality and commercial uses in the Harbor Station District that are compatible with residential and retail uses. The City shall not permit any industrial uses in the Bayonne Bay District other than light manufacturing, high tech or warehouse/distribution uses; provided, however, only residential, retail and/or hospitality uses shall be permitted in Bayonne Bay (West). BRLP specifically acknowledges that the City may amend the Redevelopment Plan in its sole and absolute discretion as and when the City determines amendments to be necessary and appropriate, without the consent or approval of BRLP, provided that any such amendments to the Redevelopment Plan shall not contravene the foregoing and shall be subject to the continuing restrictions and limitations regarding the Peninsula as set forth in this Agreement.

**4.3 Maritime District.** As set forth in Section b. (Maritime District Deed Restriction) of the "Grant of Conservation Restriction Easement" attached hereto as Exhibit "L," the Parties acknowledge that the Maritime District may only be developed for "Port Uses" as defined in N.J.A.C. 7:7B-7.9, subject to the restrictions set forth on Exhibit "D." Nevertheless, if permitted by NJDEP, the City may, in its sole and absolute discretion, amend the Redevelopment Plan and/or the Maritime Deed Restriction (with the consent of the Maritime Owner) to allow residential, retail and/or commercial uses in the Maritime District subject to the restrictions and limitations set forth in this Agreement, Exhibit "D" or any other applicable agreement between the City and the Port Authority.

**4.4 Modification of Restrictions on Peninsula.** Except as otherwise provided in this Agreement or any other agreement between the City and the Port Authority, the City may, in its sole and absolute discretion, modify the restrictions, other than on the Port Authority Property, on any property on the Peninsula (including modifications to the Maritime Deed Restriction). In addition to the changes to the Maritime Deed Restriction permitted by Section 3.9, the City may, in its sole discretion, permit further changes to the Maritime Deed Restriction (the "Maritime Deed Changes") with the express written consent of the Port Authority provided that prior to permitting any Maritime Deed Changes, the BRLP Property is either purchased by a third party as described herein for the Purchase Amount, as hereinafter defined, or the then owner of the BRLP Property (the "BRLP Property Owner") declines to sell same. As used herein, the "Purchase Amount" means the fair market value of the BRLP Property, valued before the introduction of any of the Maritime Deed Changes and assuming none of the Maritime District Deed Changes will be made (hereinafter the "Pre-Change Fair Market Value") in accordance

with the following paragraph of this Section 4.4. If the Maritime Owner requests any of the Maritime Deed Changes, the City shall notify the BRLP Property Owner of such proposed Maritime Deed Changes (such notice referred to herein as the "Maritime District Change Notice"). After receipt of a Maritime District Change Notice, the BRLP Property Owner shall determine whether it will either (a) sell the BRLP Property to the Maritime Owner, or its designee (which shall be evidenced by the execution of a purchase and sale agreement reasonably acceptable to the parties thereto (the "PSA"), for the Purchase Amount (determined in accordance with the procedure set forth in the following paragraph); or (b) decline to sell the BRLP Property, thereby permitting the City and Maritime Owner to change the Maritime Deed Restriction to permit the Maritime Deed Changes. Upon issuance of a Maritime District Change Notice by the City, the parties shall thereafter undertake an appraisal process to determine the Purchase Amount (unless the BRLP Property Owner declines to sell the BRLP Property as provided in this Section 4.4, and to thereby accept the proposed Maritime Deed Changes):

Within thirty (30) days after the delivery of the Maritime District Change Notice, the City and the BRLP Property Owner shall each appoint an "Appraiser" for the purpose of determining the Pre-Change Fair Market Value. If either party fails to appoint an Appraiser within said thirty (30) day period, the Appraiser who has been timely appointed shall determine the Pre-Change Fair Market Value and such determination shall be final and binding. If the two (2) Appraisers so appointed fail to agree as to the Pre-Change Fair Market Value within a period of thirty (30) days after the appointment of the second Appraiser (the "Initial 30-day Period"), the two (2) Appraisers shall, upon the expiration of the Initial 30-day Period, promptly appoint a third Appraiser (the "Third Appraiser") who shall make a determination in the manner hereinafter described. If the two (2) Appraisers fail to agree on a Third Appraiser within seven (7) days following the expiration of the Initial 30-day Period, application shall be made to the Hudson County Chancery Judge of the New Jersey Superior Court for the appointment of the Third Appraiser and the Court's appointment of such Third Appraiser shall be deemed conclusive and binding upon the City and the BRLP Property Owner. Within seven (7) days following the appointment of the Third Appraiser, each of the first two (2) Appraisers shall submit to the Third Appraiser a written report setting forth and explaining their respective determinations of the Pre-Change Fair Market Value, together with such information on comparable properties, and such other evidence as such Third Appraiser shall deem relevant. The Third Appraiser shall, within thirty (30) days following the submission of such written reports, render its decision by selecting the determination of Pre-Change Fair Market Value submitted by either the Appraiser selected by the City or the BRLP Property Owner which, in the judgment of the Third Appraiser, most nearly reflects the Pre-Change Fair Market Value. Such Third Appraiser shall have no power or authority to select any Pre-Change Fair Market Value other than a Pre-Change Fair Market Value submitted by the Appraiser selected by the City or the BRLP Property Owner. The final determination of the Pre-Change Fair Market Value shall be in writing and a copy shall be delivered simultaneously to the City and the BRLP Property Owner and such decision shall be final and binding. The City shall be responsible for and shall pay the fees of the Appraisers.

Following the determination of the Pre-Change Fair Market Value in accordance with the procedure set forth above, the BRLP Property Owner shall have thirty (30) days to either (x) elect to enter into the PSA for the Purchase Amount so determined subject to resolution of any disputes concerning the terms and conditions of the PSA in accordance with the following paragraph of this Section 4.4; or (y) decline to sell for the Purchase Amount thereby agreeing

that the City and the Maritime Owner may change the Maritime Deed Restriction to permit the Maritime Deed Changes.

Any disputes concerning the terms and conditions of the PSA shall be resolved in an AAA arbitration by a single arbitrator in accordance with the AAA commercial arbitration rules. The arbitrator shall be a lawyer practicing in New Jersey experienced with similar transactions and his/her determination shall be final and binding on the parties. In the event both parties determine to proceed with the purchase and sale of the BRLP Property, the closing of title on such sale shall occur on such date as may be agreed to by the Maritime Owner and the BRLP Property Owner in the PSA, but not later than the earlier of (i) one hundred and eighty (180) days after the Pre-Change Fair Market Value has been determined in accordance with the foregoing procedure or (ii) the date that vertical construction begins as to any improvements on the Maritime District not otherwise permitted without the Maritime Deed Changes. The Maritime Owner may assign its right to purchase the BRLP Property to any entity it deems appropriate, provided that the Maritime Owner shall guaranty such entity's performance under the PSA for the BRLP Property.

4.5 Changes of Permitted Uses in Bayonne Bay. The parties acknowledge that any changes in the permitted uses of the Bayonne Bay District under the Redevelopment Plan may be subject to the resolution of the litigation captioned Bayonne Bay Developers, LLC v. The City of Bayonne Redevelopment Agency, et al., Docket No. HUD-C-45-12/46-12.

4.6 Modifications to PILOT Payment Structure. Simultaneously with the execution hereof, the City shall enter into an amended Financial Agreement which shall become effective on the Effective Date (the "Amended PILOT Agreement") to amend the PILOT Agreement, to (a) effective January 1, 2015, replace the definition of "Annual Gross Revenue" to read as follows: "Pursuant to N.J.S.A. 40A:20-3(a), the annual gross revenues shall be calculated as (A) eighty percent (80%) of the rental charges generated from the residential units of the Project and the application fees, pet fees, parking fees, floor or view premiums, health club fees and any other charges that may be collected from tenants of the Project (the "Revenues") through December 31, 2025 and (B) one hundred percent of the Revenues from January 1, 2026 and thereafter."; (b) amend Section 4.03 to change the phrase "14.867% of the annual Gross Revenue" to read "10% of the annual Gross Revenue"; (c) as of January 1, 2015, replace the second paragraph in Section 4.03 to read as follows: "From the date of the Annual Service Charge Start Date to the date the Project is deemed complete, the Annual Service Charge shall not be less than the Land Taxes for the last full year the Land was subject to taxation (the "Minimum Annual Service Charge")"; (d) add the following to the end of the first paragraph of Section 4.04: "provided, however, that the reference therein to "14.867% of adjusted Annual Gross Income" shall be amended to read "10% of adjusted Annual Gross Revenue," all references to a minimum tax payment of \$3,750 per unit per year shall be deleted, and the alternative calculation shall be recalculated accordingly."; (e) delete all references to a minimum tax payment of \$3,750 per unit per year in Section 4.04 and provide for the alternative calculation to be recalculated accordingly; (f) add the following to the end of Section 4.06: "In the event that any provision of this Agreement is determined to be invalid or unenforceable, the parties hereby agree to renegotiate this Agreement in good faith with the goal of reestablishing the economic terms of this Agreement as written."; (g) add the following as a new Section 4.12:

**“Annual Service Charge Credit.** In the event that the Entity or Bayonne Residential Limited Partnership completes the top coating work on the streets identified on Exhibit A attached hereto, in lieu of the City, the Entity shall receive a credit for the actual amount expended therefor, in an amount not to exceed \$375,000, against installments of the Annual Service Charge due after June 30, 2015.”; and (h) attach as Exhibit A thereto the depiction shown on Exhibit “M” of this Agreement. In the event any provision of the Amended PILOT Agreement is found to be invalid or unenforceable and the parties are unable to agree on terms in accordance with the foregoing, such terms shall be established by a single arbitrator in an AAA arbitration, under the commercial arbitration rules with the goal of establishing the same economic benefits as if such provision had not been found to be invalid or unenforceable. The arbitrator shall be a lawyer practicing in New Jersey, experienced with the Long Term Tax Exemption Law and financial agreements entered into pursuant to that law, and his/her determination shall be final and binding on the parties. The City acknowledges that the Amended PILOT Agreement and the terms of this Section 4.6 are a material inducement to BRLP entering into this Agreement. Once executed and effective, the terms of the Amended PILOT Agreement shall supersede the provisions of this Section 4.6 with respect to the terms of the Amended PILOT Agreement.

**4.7 Affordable Housing Restrictions.** The City acknowledges and agrees that after the Effective Date, as the existing income restricted units (commonly referred to as “affordable units”) in the Project become available, such units shall no longer be required to be maintained as “affordable units,” without the necessity of any further consents or approvals from the City or any other governmental authority. Tenants currently residing in affordable units shall be permitted to remain in such units, provided such tenants are not otherwise subject to eviction pursuant to the Fair Eviction Act, N.J.S.A. 2A:18-61.1 *et seq.* (the “Eviction Act”) or otherwise in accordance with applicable law, and such tenants shall be entitled to renew their leases at their applicable affordable rents, provided such tenants continue to qualify for an affordable unit under applicable law. In the event any tenant no longer qualifies for an affordable unit, such tenant shall be offered a lease renewal when their current lease expires at market rents without objection by the City. Notwithstanding the preceding sentence, the City makes no representation or warranty that the magnitude of any rent increases sought by BRLP from tenants whose units are no longer affordable will be deemed acceptable in accordance with the standards set forth in the Fair Eviction Act.

**4.8 Top Coating, Road Maintenance.** The City, or its designee, shall complete the top coat on the public roads servicing Alexan CityView as depicted on Exhibit “M” by June 30, 2015. After notice to the City, BRLP may, in its sole discretion, complete the top coating at any time and receive a credit for the actual amount expended therefor up to \$375,000 against the Annual Service Charge due after June 30, 2015.

**4.9 Road Maintenance.** The City shall routinely maintain and repair such public roads and those in the Bayonne Bay and Harbor Station Districts as reasonably necessary and appropriate.

**4.10 Maintenance of Parks.** The City shall routinely maintain parks and open spaces in Bayonne Bay and Harbor Station North, which maintenance shall include cutting of grass, landscaping and removal of garbage and debris, as necessary and appropriate. BRLP

acknowledges that the City is not obligated to construct a public park in the Bayonne Bay District.

**ARTICLE V  
BUFFERING STANDARDS FOR BAYONNE BAY DISTRICT**

5.1 **Buffering.** If Bayonne Bay District (West) is developed for residential, retail and/or hospitality uses, no buffering shall be required between Bayonne Bay District (West) and the BRLP Property; however, if the Port Authority builds a Container Facility, Container Port or Rail on the Peninsula, buffering shall be required along the northern boundary of the Bayonne Bay District. Such buffer shall be constructed and paid for by the Port Authority and shall be a visual and sound barrier substantially similar to that depicted on the map and photographs and as described in Exhibit "F" attached hereto. The buffer referred to in this Section 5.1 shall be constructed during construction of the Container Facility, Container Port or Rail, to be substantially complete prior to the time that the Port Authority commences operation of a Container Facility, Container Port or Rail.

5.2 **Non-Residential Development of Bayonne Bay (East).** If Bayonne Bay District (East) is developed for any non-residential or non-retail use prior to the development of Bayonne Bay District (West) the City shall build, or cause to be built, a buffer between Bayonne Bay District (East) and Bayonne Bay District (West) consistent with the Minimum Buffering Standards set forth in Exhibit "N" attached hereto during initial construction on Bayonne Bay District (East). Such buffer shall be substantially completed prior to the time any such non-residential or non-retail use within Bayonne Bay (East) commences occupancy or operations. Nothing herein shall limit the buffering requirements associated with the Buffer.

**ARTICLE VI  
REPRESENTATIONS**

6.1 **Port Authority's Representations and Warranties.** The Port Authority represents and warrants to BRLP on the date hereof and on the Effective Date as follows:

(a) **Power and Authorization.** The Port Authority has all requisite capacity, power and authority to enter into and perform its obligations under this Agreement. This Agreement and all ancillary documents executed in connection herewith have been duly and validly executed and delivered by the Port Authority and each constitute the legal, valid and binding obligation of the Port Authority, enforceable against the Port Authority in accordance with their terms.

(b) **No Conflicts.**

(i) The execution, delivery and performance of this Agreement and all ancillary documents executed in connection herewith by the Port Authority, does not (with or without the giving of notice) violate or conflict with any law, rule, regulation, judgment, order or decree of any governmental authority or court binding upon the Port Authority, or violate or conflict with, result in a breach of, or constitute a default under any agreement or other

obligation to which the Port Authority is a party or by which the Port Authority is bound. No consent, authorization, waiver by or filing with any governmental agency, administrative body or other third party is required in connection with the execution, delivery or performance of this Agreement by the Port Authority or the consummation by the Port Authority of the transactions contemplated hereby, except as specifically provided herein.

(ii) To the Port Authority's knowledge, other than the Litigation, there are no third party claims or proceedings (whether in litigation, arbitration or otherwise) against the Port Authority, or judicial, administrative or other governmental actions or proceedings, pending or threatened that question any of the transactions contemplated by, or the validity of, this Agreement or which, if adversely determined, would have an adverse effect upon the ability of the Port Authority to enter into or perform its obligations under this Agreement. Notwithstanding the foregoing to the contrary, the Port Authority makes no representation regarding what effect, if any, an adverse determination in the matter of Bayonne Bay Developers, LLC v. The City of Bayonne, et al., Docket Nos. HUD-C-45-12 and C-46-12 may have on the Port Authority's ability to perform its obligations with respect to the location of or construction of the Interim Truck Route, the Barrier or with respect to any buffering in or use of any portion of the Bayonne Bay District.

6.2 City's Representations and Warranties. The City represents and warrants to BRLP on the date hereof and on the Effective Date as follows:

(a) Power and Authorization. The City has all requisite capacity, power and authority to enter into and perform its obligations under this Agreement. This Agreement and all ancillary documents executed in connection herewith have been duly and validly executed and delivered by the City and each constitute the legal, valid and binding obligation of the City, enforceable against the City in accordance with their terms.

(b) No Conflicts.

(i) The execution, delivery and performance of this Agreement and all ancillary documents executed in connection herewith by the City, does not and will not (with or without the passage of time or the giving of notice) violate or conflict with any law, rule, regulation, judgment, order or decree of any governmental authority or court binding upon the City, or violate or conflict with, result in a breach of, or constitute a default under any agreement or other obligation to which the City is a party or by which the City is bound. No consent, authorization, waiver by or filing with any governmental agency, administrative body or other third party is required in connection with the execution, delivery or performance of this Agreement by the City or the consummation by the City of the transactions contemplated hereby, except as specifically provided herein.

(ii) To the City's knowledge, other than the Litigation, there are no third party claims or proceedings (whether in litigation, arbitration or otherwise) against the City, or judicial, administrative or other governmental actions or proceedings, pending or threatened that question any of the transactions contemplated by, or the validity of, this Agreement or which, if adversely determined, would have an adverse effect upon the ability of the City to enter into or perform its obligations under this Agreement.



6.3 **BRLP's Representations and Warranties.** BRLP represents and warrants to the City and the Port Authority on the date hereof and on the Effective Date as follows:

(a) **Power and Authorization.** BRLP has all requisite capacity, power and authority to enter into and perform its obligations under this Agreement. This Agreement and all ancillary documents executed by BRLP in connection herewith have been duly and validly executed and delivered by BRLP and constitute the legal, valid and binding obligations of BRLP, enforceable against BRLP in accordance with their terms.

(b) **No Conflicts.**

(i) The execution, delivery and performance of this Agreement and all ancillary documents executed herewith by BRLP, does not and will not (with or without the passage of time or the giving of notice) violate or conflict with any law, rule, regulation, judgment, order or decree of any governmental authority or court binding upon BRLP, or violate or conflict with, result in a breach of, or constitute a default under any agreement or other obligation to which BRLP is a party or by which BRLP is bound. No consent, authorization, waiver by or filing with any governmental agency, administrative body or other third party is required in connection with the execution, delivery or performance of this Agreement by BRLP or the consummation by BRLP of the transactions contemplated hereby, except as specifically provided herein.

(ii) To BRLP's knowledge, other than the Litigation, there are no third party claims or proceedings (whether in litigation, arbitration or otherwise) against BRLP, or judicial, administrative or other governmental actions or proceedings, pending or threatened that question any of the transactions contemplated by, or the validity of, this Agreement or which, if adversely determined, would have an adverse effect upon the ability of BRLP to enter into or perform its obligations under this Agreement.

(c) **No Other Claims.** Other than as asserted in the Litigation and claims for return of all escrows and performance security posted by BRLP and claims related to maintenance of the Peninsula, which are being resolved in accordance with the terms hereof, BRLP has no Claims against the City and/or the Port Authority and has no knowledge of any circumstances or state of fact that would, with the passage of time, give rise to any such Claim.

## ARTICLE VII

### CERTIFICATION OF COMPLETION; DECLARATIONS; BONDS

7.1 **Certificate of Completion.** Simultaneously with the execution of this Agreement, the BLRA shall deliver to BRLP's counsel in escrow a Certificate of Completion as defined in the Redevelopment Agreement in the form of Exhibit "O" attached hereto ("Certificate of Completion").

7.2 **Discharge of Declaration.** Simultaneously with the execution of this Agreement, the City shall execute and deliver to BRLP's counsel a discharge, in the recordable form of Exhibit "P" attached hereto (the "Discharge of the Declaration"), in order to discharge of

record the declaration dated as of November 29, 2007 and recorded in the records of the Hudson County Register of Deeds, at Book 08397, Page 00284.

7.3 Performance Bonds. On the Effective Date, the City shall release to BRLP (or as directed by BRLP) all performance security and escrows posted in connection with the development and construction of Alexan CityView, whether in cash, bonds or other form of security.

#### ARTICLE VIII DISMISSAL OF LITIGATION

8.1 Dismissal of the Litigation. As of the Effective Date, the Parties hereby direct and authorize their respective counsel to jointly execute and file with the Court any and all papers necessary to effectuate the dismissal of the Litigation, with prejudice and without costs which shall be filed in the Superior Court of New Jersey, Chancery Division, Hudson County promptly thereafter.

#### ARTICLE IX RELEASES

9.1 Port Authority Release to BRLP. Except for and subject to the Port Authority's right to enforce this Agreement and all ancillary documents executed in connection herewith, as of the Effective Date, the Port Authority, on behalf of itself, its agents, successors and assigns, does hereby absolutely and unconditionally forever release, discharge and acquit BRLP and their respective parents, subsidiaries and affiliates and their respective agents, officers, directors, members, partners, employees, attorneys, as well as the successors and assigns of each of them (collectively, the "BRLP Releasees"), of and from any and all claims, demands, obligations, liabilities, indebtedness, breaches of contract, breaches of duty or any relationship, acts, omissions, misfeasance, malfeasance, cause or causes of action, debts, sums of money, accounts, compensation, contracts, controversies, promises, damages, costs, losses and expenses, of every type, kind, nature, description or character, and irrespective of how, why, or by reason of what facts, whether heretofore or now existing, of whatever kind or name, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, from the beginning of the world to the date hereof, that the Port Authority held against the BRLP Releasees, with respect to, arising from or related to the BRLP Property, the Project and the Port Authority Contract, including but not limited to any claims that were asserted or could have been asserted in the Litigation.

9.2 City Release to BRLP. Except for and subject to the City's right to enforce this Agreement and all ancillary documents executed in connection herewith, as of the Effective Date, the City, on behalf of itself, its agents, successors and assigns, does hereby absolutely and unconditionally forever release, discharge and acquit the BRLP Releasees of and from any and all claims, demands, obligations, liabilities, indebtedness, breaches of contract, breaches of duty or any relationship, acts, omissions, misfeasance, malfeasance, cause or causes of action, debts, sums of money, accounts, compensation, contracts, controversies, promises, damages, costs,

losses and expenses, of every type, kind, nature, description or character, and irrespective of how, why, or by reason of what facts, whether heretofore or now existing, of whatever kind or name, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, from the beginning of the world to the date hereof, that the City held against the BRLP Releasees, with respect to, arising from or related to the BRLP Property, the Project and the Port Authority Contract, including but not limited to any claims that were asserted or could have been asserted in the Litigation.

**9.3 BRLP Release to the Port Authority.** Except for and subject to BRLP's right to enforce this Agreement and all ancillary documents executed in connection herewith, as of the Effective Date, BRLP, on behalf of itself, its successors and assigns, does hereby absolutely and unconditionally forever release, discharge and acquit the Port Authority and its respective affiliates, agents, officers, directors, employees, attorneys, successors and assigns, of and from any and all claims, demands, obligations, liabilities, indebtedness, breaches of contract, breaches of duty or any relationship, acts, omissions, misfeasance, malfeasance, cause or causes of action, debts, sums of money, accounts, compensation, contracts, controversies, promises, damages, costs, losses and expenses, of every type, kind, nature, description or character, and irrespective of how, why, or by reason of what facts, whether heretofore or now existing, of whatever kind or name, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, from the beginning of the world to the date hereof, that BRLP held against the Port Authority, with respect to, arising from or related to the BRLP Property, the Project and the Port Authority Contract, including but not limited to any claims that were asserted or could have been asserted in the Litigation.

**9.4 BRLP Release to the City.** Except for and subject to BRLP's right to enforce this Agreement and all ancillary documents executed in connection herewith, as of the Effective Date, BRLP, on behalf of itself, its successors and assigns, does hereby absolutely and unconditionally forever release, discharge and acquit the City and its respective affiliates, agents, officers, directors, employees, attorneys, successors and assigns, of and from any and all claims, demands, obligations, liabilities, indebtedness, breaches of contract, breaches of duty or any relationship, acts, omissions, misfeasance, malfeasance, cause or causes of action, debts, sums of money, accounts, compensation, contracts, controversies, promises, damages, costs, losses and expenses, of every type, kind, nature, description or character, and irrespective of how, why, or by reason of what facts, whether heretofore or now existing, of whatever kind or name, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, from the beginning of the world to the date hereof, that BRLP held against the City, with respect to, arising from or related to the BRLP Property, the Project and the Port Authority Contract, including but not limited to any claims that were asserted or could have been asserted in the Litigation.

#### ARTICLE X NO ADMISSION OF LIABILITY

**10.1 No Admission of Liability; Use.** By entering into this Agreement or complying with any of the terms set forth herein, no Party is admitting to liability to any other Party in the Litigation, or otherwise. Neither this Agreement or the exhibits hereto, nor the fact of the existence of this Agreement or the exhibits hereto, nor any of the terms of this Agreement or the

exhibits hereto nor any other statement or report by the parties or by others concerning this Agreement or any exhibits hereto, their existence or terms, nor any negotiations hereof shall be used in any proceeding between the Parties, except to enforce this Agreement or as a defense by a Party to a proceeding instituted by another Party to negate or challenge the releases set forth in Article VIII, nor shall they be deemed to constitute any evidence or admission of liability or wrongdoing on the part of any of the Parties, which are expressly and unequivocally denied. All communications (whether oral or in writing) between or among the Parties, their counsel or their respective representatives relating to, concerning or in connection with the settlement or this Agreement or the exhibits hereto, or the matters covered hereby and thereby, shall be governed and protected in accordance with New Jersey and Federal Rule of Evidence 408 to the fullest extent permitted by law.

#### ARTICLE XI MISCELLANEOUS

11.1 Restrictions Run with Land. All restrictions/use limitations and rights hereunder apply to operators and successors and run with the land. Simultaneously with the execution of this Agreement, the Port Authority and the City shall execute and deliver to BRLP's counsel in escrow the following instruments in recordable form:

(a) Deed Restrictions encumbering the Port Authority Property (pertaining to Sections 3.1-3.5, 3.7, 3.8, 5.1) for the benefit of BRLP in the form of Exhibit "Q" attached hereto;

(b) Deed Restrictions encumbering City Property (pertaining to Sections 4.1 and 4.2) for the benefit of BRLP in the form of Exhibits "R" and "S" attached hereto.

The foregoing deed restrictions shall be held in escrow by BRLP's counsel and not released for recording until the Effective Date. After the Effective Date, the deed restrictions may be duly recorded with the Hudson County Clerk.

11.2 Cooperation with Purchasers. The Port Authority and the City shall reasonably cooperate with prospective purchasers of the BRLP Property and provide information regarding the City's and the Port Authority's respective development plans to the extent permitted by law or confidentiality strictures to which either Port Authority or the City may be subject.

11.3 Port Authority Acquisition of Bayonne Bay. The Port Authority agrees to abide by the use and buffering requirements set forth herein pertaining to the Bayonne Bay District if the Port Authority acquires the Bayonne Bay District, in whole or in part.

11.4 Non-Liability of Individuals. No Commissioner, Councilperson, Mayor, director, officer, agent or employee of the Port Authority or the City shall be charged personally or held contractually liable by or to any party under any term or provision of this Settlement Agreement and Release, or of any other previous agreement, document or instrument executed in connection therewith, or of any supplement, modification or amendment to this Settlement Agreement and

Release or to such other agreement, document or instrument, or because of any breach or alleged breach thereof, or because of its or their execution or attempted execution.

11.5 Expenses. Except as otherwise expressly provided herein, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such costs and expenses.

11.6 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (i) when delivered by hand (with written confirmation of receipt); (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) on the date sent by facsimile of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (iv) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the following addresses (or at such other address for a Party, or any successor or assign of such Party, as shall be specified in a notice given in accordance with this Section 11.6):

If to BRLP or BRUR, to:

Mill Creek Residential Trust, LLC  
135 Route 202/206, 3<sup>rd</sup> Floor  
Bedminster, NJ 07921  
Attention: Peter J. Porraro  
Telecopier No.: (908) 234-1718  
E-mail: pporraro@MCRTrust.com

with copies to:

Timothy J. Hogan  
Bayonne Residential Limited Partnership  
3819 Maple Avenue  
Dallas, Texas 75219  
Telecopier No.: (214) 922-8553  
E-mail: THogan@TCResidential.com

Drinker Biddle & Reath LLP  
105 College Road East, Suite 300  
P.O. Box 627  
Princeton, New Jersey 08542  
Attention: Jonathan I. Epstein, Esq.  
Telecopier No.: (609) 799-7000  
E-mail: jonathan.epstein@dbr.com

AIG Global Real Estate Investment Corp.  
32 Old Slip  
New York, NY 10005  
Attention: General Counsel  
Telecopier No.: (646) 857-2257

If to the Port Authority to:

The Port Authority of New York and New Jersey  
225 Park Avenue South, 14<sup>th</sup> Floor  
New York, NY 10003  
Attention: Executive Director  
Telecopier No.: (212) 435-3589

with a copy to:

Dughi & Hewit, P.C.  
340 North Avenue  
Cranford, NJ 07016  
Attention: Craig A. Domalewski, Esq.  
Telecopier No.: (908) 272-0909  
E-mail: cdomalewski@dughihewit.com

If to the BLRA or the City to:

City of Bayonne  
Municipal Building  
630 Avenue C  
Bayonne, NJ 07002-3898  
Attention: City Counsel  
Telecopier No.: (201) 858-6092

with a copy to:

McManimon, Scotland & Baumann, LLC  
75 Livingston Avenue, 2nd Floor  
Roseland, NJ 07068  
Attention: Joseph P. Baumann, Esq.  
Telecopier No.: (973) 622-7333  
E-mail: jbaumann@msbnj.com

11.7 **Severability.** If any term or provision of this Agreement, or any of the ancillary documents executed in connection herewith, is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement, or the applicable ancillary document, or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties shall negotiate in good

faith to modify this Agreement, or the applicable ancillary document, so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**11.8 Entire Agreement.** This Agreement constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

**11.9 Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns. Upon a sale of the BRLP Property, the purchaser shall succeed to all of the rights, benefits and obligations of BRLP hereunder.

**11.10 No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the Parties and their respective successors and assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**11.11 Amendment and Modification; Waiver.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**11.12 Governing Law; Submission to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of New Jersey without giving effect to any choice or conflict of law provision or rule (whether of New Jersey or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of New Jersey. Any legal suit, action or proceeding arising out of or based upon this Agreement shall be instituted in any state or federal court of competent jurisdiction sitting in the State of New Jersey, and each party irrevocably submits and consents to the exclusive jurisdiction of such courts in any such suit, action or proceeding and waives any objections thereto, including any objections to venue.

**11.13 Prevailing Party Attorneys' Fees.** In the event of any litigation between the City and BRLP arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs. For avoidance of doubt, the foregoing shall not be applicable to the Port Authority and shall not be construed to create any liability on the Port Authority to pay any attorneys' fees to any prevailing party in any litigation arising out of this Agreement.

11.14 JURY WAIVER. THE PARTIES HERETO WAIVE THE RIGHT TO TRIAL BY JURY IN ANY LITIGATION CONCERNING, RELATED TO OR ARISING OUT OF THIS AGREEMENT OR ANY PARTIES' RIGHTS, DUTIES OR OBLIGATIONS HEREBUNDER.

11.15 Remedies Cumulative: Specific Performance. The rights and remedies of the Parties are cumulative and not alternative and do not and are not intended to waive or preclude any other claims, right or remedies which may exist at law (whether statutory or otherwise) or in equity with respect to the matters covered by this Agreement.

11.16 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

11.17 Mutual Drafting. This Agreement is the result of the joint efforts of the Parties and each provision hereof has been subject to the mutual consultation, negotiation and agreement of the Parties and there is to be no construction against any Party based on any presumption of that Party's involvement in the drafting thereof.

11.18 Headings. The Article, Section, Caption and Exhibit headings in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

11.19 Construction. Unless the context of this Agreement otherwise requires, (a) words of any gender include the other gender, (b) words using the singular or plural number also include the plural or singular number, respectively, (c) the terms "hereof," "herein," "hereby," and derivative or similar words refer to this entire Agreement as a whole and not to any other particular Article, Section or other subdivision, (d) the words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation," (e) "shall," "will," or "agrees" are mandatory, and "may" is permissive, and (f) "or" is not exclusive.

11.20 Further Assurances. The Parties mutually covenant and agree to execute any additional documents and to do all other acts reasonably required to effect the intent and purpose of this Agreement.

[signatures on following page]

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IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the day and year first above written.

**BAYONNE RESIDENTIAL LIMITED PARTNERSHIP**

Witness:

By: NJ 104 Bayonne Limited Partnership,  
its general partner

By: NJ 103 Apartments GP LLC,  
its general partner

By:   
TIMOTHY J. HOGAN  
Vice President



**BAYONNE RESIDENTIAL URBAN RENEWAL, LLC**

Witness:

By: Bayonne Residential Limited Partnership,  
its sole member

By: NJ 104 Bayonne Limited Partnership,  
its general partner

By: NJ 103 Apartments GP LLC,  
its general partner

By:   
TIMOTHY J. HOGAN  
Vice President



**THE PORT AUTHORITY OF NEW YORK AND  
NEW JERSEY**

Attest:

By: \_\_\_\_\_  
Name: PATRICK J. FOYE  
Title: Executive Director

\_\_\_\_\_

**CITY OF BAYONNE**  
(on behalf of itself and as successor to  
Bayonne Local Redevelopment Authority)

Attest:

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_, Clerk

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the day and year first above written.

**BAYONNE RESIDENTIAL LIMITED PARTNERSHIP**

Witness:

By: NJ 104 Bayonne Limited Partnership,  
its general partner

By: NJ 103 Apartments GP LLC,  
its general partner

By: \_\_\_\_\_  
**TIMOTHY J. HOGAN**  
Vice President

**BAYONNE RESIDENTIAL URBAN RENEWAL, LLC**

Witness:

By: Bayonne Residential Limited Partnership,  
its sole member

By: NJ 104 Bayonne Limited Partnership,  
its general partner

By: NJ 103 Apartments GP LLC,  
its general partner

By: \_\_\_\_\_  
**TIMOTHY J. HOGAN**  
Vice President

**THE PORT AUTHORITY OF NEW YORK AND  
NEW JERSEY**

By: \_\_\_\_\_  
Name: **PATRICK J. FOYE**  
Title: Executive Director

Attest:

\_\_\_\_\_  
Deputy Secretary

**CITY OF BAYONNE**  
(on behalf of itself and as successor to  
Bayonne Local Redevelopment Authority)

Attest:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
, Clerk

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the day and year first above written.

**BAYONNE RESIDENTIAL LIMITED PARTNERSHIP**

Witness:

By: NJ 104 Bayonne Limited Partnership,  
its general partner  
By: NJ 103 Apartments GP LLC,  
its general partner

By: TIMOTHY J. HOGAN  
Vice President

**BAYONNE RESIDENTIAL URBAN RENEWAL, LLC**

Witness:

By: Bayonne Residential Limited Partnership,  
its sole member  
By: NJ 104 Bayonne Limited Partnership,  
its general partner  
By: NJ 103 Apartments GP LLC,  
its general partner

By: TIMOTHY J. HOGAN  
Vice President

**THE PORT AUTHORITY OF NEW YORK AND  
NEW JERSEY**

Attest:

By: PATRICK J. FOYE  
Name: PATRICK J. FOYE  
Title: Executive Director

**CITY OF BAYONNE**  
(on behalf of itself and as successor to  
Bayonne Local Redevelopment Authority)

Attest:

By: James M. Davis  
Name: James M. Davis  
Title: Mayor

Robert F. Sloan  
Robert F. Sloan, Clerk

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