

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement ("Agreement") is dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 2016, and is by and among **APPLIED MONROE LENDER, LLC**, a limited liability company with offices at 50 Washington Street, Hoboken, New Jersey 07030 ("Applied"), **SHIPYARD ASSOCIATES, L.P.**, a limited partnership with offices at 50 Washington Street, Hoboken, New Jersey 07030 ("Shipyard") (Applied and Shipyard collectively referred to herein as the "Applied Parties"), and the **CITY OF HOBOKEN**, a municipal corporation of the State of New Jersey, with offices at 94 Washington Street, Hoboken, New Jersey, 07030 ("Hoboken"), and the **HOBOKEN PLANNING BOARD**, an agency of the municipal government of the City of Hoboken (Hoboken and the Hoboken Planning Board collectively referred to herein as the "Hoboken Parties") (Applied, Shipyard, Hoboken and the Hoboken Planning Board collectively referred to herein as the "Parties").

### RECITALS:

**WHEREAS**, the Parties are involved in the following civil actions which are now pending in the Superior Court of New Jersey:

- (i) Shipyard Associates, L.P. v. City of Hoboken, Docket No. HUD-L-1308-16;
- (ii) Shipyard Associates, L.P. v. Hoboken Planning Board, Docket No. A-004504-14T3;
- (iii) City of Hoboken v. Shipyard Associates, L.P., Docket No. A-004637-14T3;
- (iv) Shipyard Associates, L.P. v. Hudson County Planning Board and Hudson County Board of Chosen Freeholders, Docket No. A-004763-14T3;
- (v) I/M/O Shipyard Associates LP Waterfront Development Permit, Water Quality Certificate No. 0905-07-0001.2 WFD 110001, Docket Nos. A-004873-13T4 and A-005004-13T4; and
- (vi) Applied Monroe Lender, LLC v. City of Hoboken Planning Board and City of Hoboken, Docket No. A-003048-15T3

(these civil actions identified in (i) through (vi) above are collectively referred to herein as the "Litigation"); and

**WHEREAS**, the Parties have conferred and desire to fully and finally resolve the claims and counterclaims between and among them, including all claims and counterclaims which have been, or which could have been brought in the Litigation, on the terms and subject to the conditions set forth herein;

**NOW, THEREFORE**, in consideration of their mutual promises and covenants set forth herein, and for additional valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the undersigned Parties represent, warrant, covenant and agree as follows:

1. **Recitals.** The above recitals clauses are incorporated herein by reference.
2. **No Admission.** By entering into this Agreement, none of the Parties intends to acknowledge, or shall be deemed to have acknowledged, any fault, liability or responsibility for any wrongful acts, injury or damages or the amount thereof. Rather, the Parties merely wish to compromise and settle all claims between and among them. It is expressly agreed and understood by the Parties that this Agreement shall not be construed as an admission of liability, or an admission as to any of the factual allegations made in the Litigation, by the Parties to this Agreement, or by anyone else, and each of the Parties expressly denies that it bears any liability or has engaged in any illegal or improper act or omission or wrongdoing of any type or nature.
3. **Mutual Representations, Warranties and Covenants of the Applied Parties.** The Applied Parties mutually represent, warrant and covenant that:
  - a. They possess the legal capacity, power and authority to enter into this Agreement and to perform the transactions contemplated hereby.
  - b. The execution, delivery and performance of this Agreement will not violate any agreement or contract to which they are a party, or to which they are subject, nor to the best of their knowledge any provision of law to which the Applied Parties are subject.
  - c. They have knowingly and freely entered into this Agreement and have been advised by legal counsel of their choosing in so doing.
  - d. All claims asserted by the Applied Parties in the Litigation are owned and held legally and beneficially by the Applied Parties and there is no person or entity other than the Applied Parties who has any interest in such claims.
  - e. The Applied Parties' decision to sign this Agreement is their own free and voluntary act without compulsion of any kind.
  - f. Other than the Litigation and the litigation captioned County of Hudson v. PMK Group, Inc., Birdsall Services Group, CME Associates Consulting and Municipal Engineers, Union Paving and Construction Co., Inc., Applied Development Co., Shipyard Associates, Inc., TAMS Consultants, Inc., et al and bearing Docket No. HUD-L-2728-12, the Applied Parties have no actual knowledge of any pending or

anticipated legal action or proceeding by any Federal, State or local governmental entity, or by any other person or entity, to:

- A. Require any of the Applied Parties, or any other person or entity, to perform any maintenance, repair, alteration or removal of any improvement, material or structure, including without limitation, any pier, platform, bulkhead or pile, or any part thereof, which is located at, on or under the Shipyard Properties (as defined hereinafter); or
- B. Require any of the Applied Parties, or any other person or entity, to reimburse, pay any fine or assessment, or otherwise contribute any monetary sums to any person or entity for any maintenance, repair, alteration or removal of any improvement, material or structure, including without limitation any pier, platform, bulkhead or pile or any part thereof, which is located at, on or under the Shipyard Properties.
- C. In the event that any such pending or anticipated legal action or proceeding becomes known to the Applied Parties prior to the Closing (as defined herein), the Applied Parties shall immediately notify Hoboken, and Hoboken shall have the right to terminate this Agreement.

- g. Except as expressly set forth in this Agreement, no promise, representation, agreement or inducement has been made to any of the Applied Parties by the Hoboken Parties in order to cause the Applied Parties to enter into and perform this Agreement.
- h. Each of the Applied Parties has adequate information to determine whether or not to enter into and perform this Agreement.

**4. Representations, Warranties and Covenants of Hoboken Parties.** The Hoboken parties represent, warrant and covenant that:

- a. They possess the legal capacity, power and authority to enter into this Agreement and to perform the transactions contemplated hereby.
- b. The execution, delivery and performance of this Agreement will not violate any Agreement to which they are a party, or to which they are subject, nor to the best of their knowledge any provision of law to which the Hoboken Parties are subject.
- c. They have knowingly and freely entered into this Agreement and have been advised by legal counsel of their choosing in so doing.

- d. All claims asserted by the Hoboken Parties in the Litigation are owned and held legally and beneficially by the Hoboken Parties and there is no person or entity other than the Hoboken Parties who has any interest in such claims.
  - e. The Hoboken Parties' decision to sign this Agreement is their own free and voluntary act without compulsion of any kind.
  - f. Except as expressly set forth in this Agreement, no promise, representation, agreement or inducement has been made to any of the Hoboken Parties by the Applied Parties in order to cause the Hoboken Parties to enter into and perform this Agreement.
  - g. Each of the Hoboken Parties has adequate information to determine whether or not to enter into and perform this Agreement.
- 5. Effective Date.** The Effective Date of this Agreement shall be the second business day after the date on which the last to occur of the following actions or events has occurred (it being understood by the Parties that if one or more of the following events have not occurred by the Outside Date (as defined below), then this Agreement shall be subject to termination pursuant to Section (o) below:
- a. This Agreement has been duly executed by all of the Parties;
  - b. The governing body of the City of Hoboken and the Hoboken Planning Board each have duly adopted resolutions (collectively, the "Resolutions"), authorizing each body to execute, deliver and perform this Agreement and this Agreement is fully executed on or before December 10, 2016;
  - c. Within one hundred fifty (150) days after the full execution of this Agreement, the governing body of the City of Hoboken has duly enacted an ordinance (the "Ordinance") amending the Northwest Redevelopment Plan so as to provide for a redevelopment project as set forth in the description attached hereto as **Exhibit A** to be constructed on the property known as 800-822 Monroe Street in the City of Hoboken and designated as Block 87, Lot 1.01 on the Hoboken Tax Assessment Map ("800-822 Monroe Street"). If the Ordinance has not been enacted within one hundred fifty (150) days after the full execution of this Agreement, the Applied Parties may terminate this Agreement;
  - d. Within ninety (90) days after the full execution of this Agreement, the governing body of the City of Hoboken has duly designated Applied as the redeveloper of 800-822 Monroe Street under the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. ("LRHL"). If the governing body of the City of Hoboken has not

designated Applied as the redeveloper of 800-822 Monroe Street within ninety (90) days after the full execution of this Agreement, the Applied Parties may terminate this Agreement;

- e. Within ninety (90) days after the full execution of this Agreement: (i) Hoboken and Applied have negotiated; (ii) the City Council has, by resolution, duly approved; and (iii) Hoboken and Applied have duly executed, a redevelopment agreement pursuant to the LRHL which provides for redevelopment of 800-822 Monroe Street as described in Exhibit A hereof and which is contingent upon enactment of the Ordinance (the "Redevelopment Agreement"). If Hoboken and Applied have not executed the Redevelopment Agreement within ninety (90) days after full execution of this Agreement, the Applied Parties may terminate this Agreement.
- f. The time periods to appeal from or otherwise challenge the enactments of the Resolutions and the Ordinance, respectively, have each expired without any appeal or other challenge of the Resolutions or the Ordinance having occurred;
- g. The time period to appeal from or otherwise challenge the City of Hoboken's Resolution authorizing the execution of the Redevelopment Agreement has expired without any appeal or other challenge thereof having occurred;
- h. The Hoboken Planning Board has duly issued final site plan approval for the proposed redevelopment of 800-822 Monroe Street as described in Exhibit A hereof, and the time to appeal from or otherwise challenge such final site plan approval has expired without any such appeal or other challenge having occurred. Applied shall file a complete application for such site plan approval as soon reasonably practicable, and shall fully cooperate with all reasonable requests of the Hoboken Planning Board and its staff and consultants for information related to said application. After Applied has submitted a complete application for site plan approval for the proposed redevelopment of 800-822 Monroe Street as described in Exhibit A hereof, the Hoboken Planning Board shall exercise its best efforts to hold at least one special meeting per month, as necessary and as requested by Applied, until the Planning Board has issued a final decision on Applied's application for site plan approval;
- i. Applied has duly obtained all final approvals, authorizations or permits required under Hoboken's flood hazard prevention ordinances, as applicable, for the proposed redevelopment of 800-822 Monroe Street as described in Exhibit A hereof, and the time to appeal from or otherwise challenge such final approvals, authorizations or permits has expired without any such appeal or other challenge having occurred;

j. Shipyard has:

- (1) Delivered to Hoboken for recording a deed restriction, in a form acceptable to both Shipyard and Hoboken, that limits, in perpetuity, the use of the properties designated on the Tax Assessment Map of the City of Hoboken as Block 264.2, Lot 1 and that portion of Block 264.1, Lot 1 shown on the drawing attached hereto as Exhibit B (collectively, the "Shipyard Properties") to only:
  - (i) environmental assessment and remediation;
  - (ii) public open space;
  - (iii) public outdoor passive and/or active recreational use, except ball fields;
  - (iv) public docking facilities for recreational watercraft only;
  - (v) removal of any pier or platform on the Shipyard Properties for public safety reasons; and/or
  - (vi) any repair, rehabilitation, alteration, modification, improvement, reconstruction or replacement of any existing pier or platform, and any adjacent upland area that is part of the Shipyard Properties which may be necessary and appropriate for any of the uses set forth in paragraph 5.j.(1)(i) through (v) of this Agreement (the uses set forth in paragraph 5.j.(1)(i) through (vi) of this Agreement collectively referred to as the "Permitted Uses");
- (2) Conveyed to the City of Hoboken fee simple title to the Shipyard Properties together with a deed restriction(s), in a form acceptable to both Shipyard and Hoboken, limiting, in perpetuity, the use of the Shipyard Properties to only the Permitted Uses. Said title shall be free and clear of any liens that secure monetary obligations, and free and clear of any tenancies or rights of occupancy held by other persons, except that said title shall be subject to any existing rights of utility easements. It shall be solely the responsibility of the City to record the deed for the Shipyard Properties; or
- (3) Conveyed to the City of Hoboken easements, in a form acceptable to both Shipyard and Hoboken, in perpetuity over the Shipyard Properties, in favor of Hoboken, for the limited purpose of Hoboken conducting the Permitted Uses on the Shipyard Properties, at Hoboken's sole cost and expense except as set forth in paragraph 14 hereof; and

- k. Shipyard has assigned, without recourse, to the City of Hoboken any and all governmental approvals or permits which are in effect on the date of this Agreement and which purport to authorize any rehabilitation, repair, removal, replacement, installation, construction, development, improvement or other such work at or on the Shipyard Properties. Upon said assignment, Shipyard shall not retain any rights or interests under said governmental approvals or permits.
- l. Hoboken shall have the sole discretion as to which of the actions set forth under paragraph 5.j.(1) through (3) hereof shall be taken by Shipyard, including but not limited to the sole discretion to determine whether Shipyard shall deliver a deed restriction, convey fee simple title or convey an easement with respect to any existing pier or platform on the Shipyard Properties. Hoboken shall notify Shipyard within one hundred twenty (120) days after the full execution of this Agreement as to which of said actions shall be taken by Shipyard. If Hoboken provides notice that Shipyard shall take the action set forth at paragraph 5.j.(3) hereof, then Hoboken shall have the additional option, by written notice given to Shipyard at any time over the period beginning on the Effective Date and ending ninety-nine (99) years thereafter, to acquire fee simple title to the Shipyard Properties in accordance with paragraph 5.j.(2) hereof, for a total sum of one dollar (\$1.00).
- m. The Hoboken Parties covenant and agree that, except as set forth in paragraph 14 of this Agreement, the Applied Parties shall not be responsible for any costs or expenses associated with the development, construction or operation of any open space or recreational areas or facilities on the Shipyard Properties in connection with this Agreement, including but not limited to, parks, paths, public open space areas or facilities or any public docking facilities for recreational watercraft.
- n. Once the deeds, deed restrictions or easements set forth under paragraph 5.j.(1) through (3) hereof are recorded, Hoboken shall immediately become responsible for payment of all real property taxes owed for the Shipyard Properties after the Shipyard Properties are conveyed to Hoboken in fee title or by easement, or deed restricted to the Permitted Uses pursuant to this Agreement. Once the deeds, deed restrictions or easements set forth under paragraph 5.j.(1) through (3) hereof are conveyed to Hoboken, the Applied Parties shall abandon any and all rights to the Shipyard Properties that they hold under the Developer's Agreement (as defined herein).
- o. If the Effective Date of this Agreement has not occurred by November 1, 2017 (the "Outside Date"), then either the Applied Parties or Hoboken may terminate this Agreement on written notice to the other Parties, no settlement of the Litigation shall be deemed to have occurred, and the Parties shall hold all of the rights, and be subject to all of the liabilities and obligations, that they held or were subject to as of

the date immediately preceding the date on the first page of this Agreement. The Applied Parties or the Hoboken Parties may be entitled to one ninety (90) day extension of the Outside Date.

**6. Engineering and Environmental Due Diligence.** If Hoboken provides Shipyard with written notice, pursuant to paragraph 5.i. of this Agreement, that Shipyard shall convey fee simple title to the Shipyard Properties to Hoboken in accordance with paragraph 5.j.(2) hereof (the "Notice"), then unless waived in writing by Hoboken, Hoboken shall have a one hundred twenty (120) day period (the "Due Diligence Period") commencing on the date of the Notice within which to conduct any due diligence investigations regarding or related to the Shipyard Properties that Hoboken deems necessary, including, a title examination and an engineering and environmental assessment or investigation, all at Hoboken's sole cost and expense ("Due Diligence"). At any time up to ten (10) business days following the expiration of the Due Diligence Period, Hoboken may, by written notice to Shipyard, rescind the Notice for any reason whatsoever in accordance with the notice provisions herein. Within thirty (30) days after such written notice, Hoboken shall provide Shipyard with a revised notice as to which of the actions set forth in paragraph 5.j.(1) through (3) shall be taken by Shipyard. In furtherance of the above and in order to effectuate the Due Diligence Period without the necessity for any additional agreement(s) or documents, Shipyard hereby grants to Hoboken a license, allowing Hoboken access to the Shipyard Properties during the Due Diligence Period for the sole purpose of conducting Due Diligence, subject to the following terms and conditions:

- a. Insurance: Hoboken shall, at its sole cost and expense, obtain and maintain during the Due Diligence Period insurance liability coverage of ten million dollars (\$10,000,000.00) per occurrence and in aggregate, and Hoboken shall provide Shipyard with a valid Certificate of Insurance, listing Shipyard as additional insured, as proof of same prior to entering the Shipyard Properties.
- b. Restoration of the Shipyard Properties: Hoboken shall, at its sole cost and expense, remove and properly dispose of all materials resulting from its Due Diligence on the Shipyard Properties during the Due Diligence Period and, if directed to do so by Shipyard, Hoboken shall, at its sole cost and expense, restore or repair any portion of the Shipyard Properties that was damaged or impacted as a result of Hoboken's Due Diligence activities.
- c. Indemnification, Defense and Hold Harmless: Hoboken agrees to indemnify, defend and hold harmless Shipyard and Shipyard's officers, agents, employees, contractors, and consultants and Hoboken shall pay and be responsible for any and all liability, loss, cost, damage, claim or judgment of any kind directly related to or arising out of Hoboken's Due Diligence, including, but not limited to, entry upon the Shipyard Properties by Hoboken's officers, agents, employees, contractors and consultants.

This Indemnification, Defense and Hold Harmless provision shall survive the termination of this Agreement. For purposes of this survival provision, the failure of the Effective Date of the Agreement to occur because of non-satisfaction of one or more of the conditions in Section 5(a) through 5(l) shall be treated as a termination of this Agreement.

- d. Title Report: As soon as possible following the Notice, Hoboken shall order a title report and provide a true and correct copy of same to Shipyard prior to the closing of the fee simple title to the Shipyard Properties.

**7. Enactment of Contrary Development Regulations Pending Effective Date.**

- a. It is expressly acknowledged and agreed by the Hoboken Parties that adoption of any ordinance or amendment to the Northwest Redevelopment Plan to require Applied to provide more than 27 affordable housing units at, or in connection with, the proposed redevelopment of 800-822 Monroe Street would be inconsistent with and would frustrate the purpose of this Agreement. In the event of the adoption by Hoboken of such an ordinance or amendment prior to the Effective Date of this Agreement, the Applied Parties shall have the right to terminate this Agreement.
- b. It is expressly acknowledged and agreed by the Hoboken Parties that adoption of any ordinance or amendment to the Northwest Redevelopment Plan to require Applied to pay more than Applied's fair, pro-rata share of the cost of providing only those reasonable and necessary street improvements and water, sewerage and drainage facilities, and easements therefor, which are located off-tract but necessitated or required by construction or improvements within the proposed redevelopment at 800-822 Monroe Street, would be inconsistent with and would frustrate the purpose of this Agreement. In the event of the adoption by Hoboken of such an ordinance or amendment prior to the Effective Date of this Agreement, the Applied Parties shall have the right to terminate this Agreement.

**8. Cooperation with Approvals.** After the execution of this Agreement and while this Agreement remains in effect, the Hoboken Parties shall fully cooperate with the Applied Parties with respect to any application submitted by the Applied Parties for governmental approvals or permits for the proposed redevelopment of 800-822 Monroe Street as described in Exhibit A hereof.

**9. Engineering and Environmental Reports Relating to Shipyard Properties.** Within thirty (30) days after full execution of this Agreement, Shipyard shall provide Hoboken with a copy of any and all engineering or environmental reports or studies, within Shipyard's possession or control, concerning geophysical, environmental and structural conditions at or on the

Shipyard Properties, including, but not limited to, the structural condition of any pier or platform on the Shipyard Properties.

**10. Disposition of the Litigation Pending the Effective Date.** As soon after full execution of this Agreement as reasonably practicable, the Parties shall jointly apply to, move, or otherwise contact the Superior Court as necessary and appropriate to stay the Litigation pending the Effective Date of this Agreement. This Agreement shall be expressly contingent upon the Superior Court granting a stay of the Litigation within ninety (90) days of execution of the Agreement and the Superior Court maintaining such stay through the Outside Date or the extended Outside Date. This Agreement shall also be expressly contingent upon the Superior Court granting a stay of the matter captioned I/M/O Shipyard Associates LP Waterfront Development Permit, Water Quality Certificate No. 0905-07-0001.2 WFD 110001, Docket Nos. A-004873-13T4 and A-005004-13T4 on or before December 1, 2016.

**11. Closing.** Within thirty (30) business days after the Effective Date, a Closing will occur under this Agreement ("Closing"). At the Closing, each of the Parties will execute and deliver stipulations dismissing each civil action comprising the Litigation with prejudice and without costs as against any Party. The Parties shall duly file said executed stipulations of dismissal with the Superior Court of New Jersey within three (3) business days after the Closing.

**12. Mutual General Release and Waiver; Covenants Not to Sue; Judgment Reduction.**

a. **"Released/Waived Claims"** means all claims, rights, damages, causes of action, notes, debts, accounts payable, monies due, rights of reimbursement or contribution, demands, judgments, suits, matters and issues, whether individual, class, derivative, representative, legal, equitable, or any other type, or in any other capacity, of the Releasor related to the Litigation, whether known or unknown, including but not limited to:

A. Any claims for breach of the Developer's Agreement, dated on or about December 7, 1997, by and between Hoboken, the Hoboken Planning Board and Shipyard regarding the Shipyard Planned Unit Development in the City of Hoboken ("Developer's Agreement");

B. Any claims for declaratory judgment regarding the effect of the Developer's Agreement;

C. Any claims of promissory estoppel arising from any effort by Shipyard to develop the project known as the "Monarch at Shipyard" on the property designated as Block 264.2, Lot 1 on the Hoboken Tax Assessment Map;

- D. Any claims for breach of any covenant or duty of good faith or fair dealing arising from the Developer's Agreement;
- E. Any claims arising from any act or omission by the Hoboken Planning Board with respect to Shipyard's application, filed with the Hoboken Planning Board on or about August 25, 2011, in its initial form or as amended, for approval to develop the project known as the "Monarch at Shipyard" on the property designated as Block 264.2, Lot 1 on the Hoboken Tax Assessment Map;
- F. Any claims arising from any act or omission by the Hudson County Planning Board or by the Hudson County Board of Chosen Freeholders with respect to Shipyard's application, filed with the Hudson County Planning Board on or about August 25, 2011, in its initial form or as amended, for approval to develop the project known as the "Monarch at Shipyard" on the property designated as Block 264.2, Lot 1 on the Hoboken Tax Assessment Map;
- G. Any claims challenging the New Jersey Department of Environmental Protection's ("NJDEP") decision to issue Waterfront Development Permit and Water Quality Certificate No. 0905-07-0001.2 WFD 110001, dated December 2, 2011 (the "Permit");
- H. Any claims challenging the NJDEP's order, dated May 13, 2014, denying requests for an adjudicatory hearing on the Permit;
- I. Any claims arising from the adoption by the Hoboken City Council, on or about December 18, 2013, of Ordinance No. Z-263, entitled "an Ordinance Amending Chapter §104 (Flood Damage Prevention) to Reflect Updates Recommended by the New Jersey Department of Environmental Protection's Latest Revised Model Ordinance," or Ordinance No. Z-264, entitled "an Ordinance Amending Chapter §196 (Zoning) Addressing Community Health, Safety and General Welfare Through Flood Hazard Mitigation Measures and Development Limitations";
- J. Any claims arising from any act or omission by the Hoboken Planning Board with respect to the application submitted by Applied on or about October 3, 2014, to the Hoboken Planning Board, for approval to develop 800-822 Monroe Street;
- K. Any claims for injunctive, declaratory or other equitable relief of any kind;
- L. Any claims for damages or losses of any kind;

- M. Any claims for interest, costs or attorneys' fees;
  - N. Any claims for reimbursement of expenses of any kind;
  - O. Any claims under the United States Constitution, New Jersey Constitution or any statute, law, ordinance or regulation;
  - P. Any other constitutional, statutory, regulatory, common law or other claims of any kind, which are or which could have been asserted in the Litigation.
- b. The Released/Waived Claims shall not include any Party's covenants, obligations, representations, commitments and duties under this Agreement.
  - c. **"Releasor"** means any entity granting a release or waiver to any other entity under this Agreement. **"Releasee"** means any entity receiving a release or waiver hereunder. The terms **"Hoboken Releasor"** and **"Hoboken Releasee"** shall include each of the Hoboken Parties and any elected or appointed official, employee or representative, of the Hoboken Parties. The terms **"Applied Releasor"** and **"Applied Releasee"** shall include each of the Applied Parties and their past and present members, employees, shareholders, officers, directors, affiliates and assigns.
  - d. **Assignment.** Shipyard may assign its ownership in the Shipyard Properties and its obligations and rights under this Agreement to a LLC formed by Shipyard prior to the actions set forth under paragraphs 5.j.(1), (2) or (3) hereof.
  - e. On the completion of the Closing, and without the need for any further act by any Party, and without a separate release being executed:
    - A. The Hoboken Releasors shall have, and shall be deemed to have fully, finally and forever released, waived, relinquished and discharged each and all of the Applied Releasees from all Released/Waived Claims that they individually or collectively, whether directly, representatively, derivatively or in any other capacity, ever had, now have, or hereafter can, shall or may have against any Applied Releasee related to the Litigation; and
    - B. The Applied Releasors shall have, and shall be deemed to have fully, finally and forever released, waived, relinquished and discharged each and all of the Hoboken Releasees from all Released/Waived Claims that they individually or collectively, whether directly, representatively, derivatively or in any other capacity, ever had, now have, or hereinafter can, shall or may have against any Hoboken Releasee related to the Litigation.

- f. Each Releasor hereby covenants and agrees not to bring, commence, continue or institute any action, proceeding or claim in any court, arbitration panel, agency or other tribunal against any Releasee seeking to adjudicate or recover on any of the Released/Waived Claims.
- g. For the avoidance of doubt, this Section 12 is intended to effect a mutual general release and waiver.

**13. Applied Parties Indemnification of Hoboken Relating to Shipyard Properties.** The Applied Parties agree to indemnify, defend and hold harmless Hoboken and Hoboken's officers, agents, employees, contractors, and consultants and the Applied Parties shall pay and be responsible for any and all liability, loss, cost, damage, claim or judgment of any kind related to the Shipyard Properties that occurred prior to the date of Closing. This indemnification, defense and hold harmless provision shall survive the termination of this Agreement. For purposes of this survival provision, the failure of the Effective Date of the Agreement to occur because of non-satisfaction of one or more of the conditions in Section 5.a. through 5.i. shall be treated as a termination of this Agreement.

**14. Shipyard Contribution for Permitted Uses.** Upon Shipyard's delivery to Hoboken of the deed restriction or conveyance to Hoboken of fee simple title or easements for the Shipyard Properties, as set forth in paragraphs 5.j.(1), (2) or (3) hereof, as applicable, Shipyard shall pay to Hoboken a total sum of five hundred thousand dollars (\$500,000.00). Said payment shall be deposited in a municipal fund for the limited purposes of: (i) removing materials and debris from the surface of the Shipyard Properties; (ii) any improvements at the Shipyard Properties which may be necessary and appropriate for protecting public safety at the Shipyard Properties; and/or (iii) defraying the hard and soft costs of planning, designing and improving a public walkway and community park on the Shipyard Properties, including but not limited to, such costs associated with public outreach and community engagement.

**15. No Development of Shipyard Properties by Applied Parties Pending Settlement.** Upon the execution of this Agreement and while this Agreement remains in effect, the Applied Parties shall not undertake any construction or development on the Shipyard Properties.

**16. Breach, Remedies.** In the event any Party breaches this Agreement, and unless such failure or breach is cured within five (5) days after issuance of notice of default, then the non-breaching Party may, at its election, terminate this Agreement on written notice to the breaching Party and/or pursue all available legal and equitable remedies, including specific performance and recovery of any damages. A default by an Applied Entity shall not entitle any other Applied Entity to declare a default under this Agreement, and a default by a Hoboken Party shall not entitle any other Hoboken Party to declare a default under this

Agreement. The Hoboken Planning Board shall not terminate this Agreement without the prior written consent of the governing body of Hoboken.

**17. Notices.** Any notices, requests or other communications required or permitted to be given hereunder shall be in writing and shall be given by (i) personal delivery; or (ii) a widely recognized national overnight courier service for next business day priority delivery that provides written confirmation of delivery (e.g., FedEx):

**a. If to the Applied Parties:**

Michael Barry  
David Barry  
c/o Ironstate Development  
50 Washington Street  
Hoboken, New Jersey 07030

With a concurrent copy to:  
Kevin J. Coakley, Esq.  
Connell Foley, LLP  
85 Livingston Ave.  
Roseland, New Jersey 07068

**b. If to the Hoboken Parties:**

Attn: Brian Aloia, Esq., Corporation Counsel  
City of Hoboken  
94 Washington St.  
Hoboken, New Jersey 07030

Attn: City Clerk  
City of Hoboken  
94 Washington St.  
Hoboken, New Jersey 07030

With a concurrent copy to:  
Joseph J. Maraziti, Jr., Esq.  
Maraziti Falcon, LLP  
150 John F. Kennedy Parkway  
Short Hills, New Jersey 07078

and

Attn: Secretary, Hoboken Planning Board  
City of Hoboken  
94 Washington St.  
Hoboken, New Jersey 07030

With a concurrent copy to:  
Dennis Galvin, Esq.  
The Galvin Law Firm  
730 Brewers Bridge Road  
Jackson, New Jersey 08527

- 18. No Waiver Unless In Writing.** The waiver of any term or condition of this Agreement by any party shall not be effective unless in writing and shall not be construed as a waiver of any subsequent breach or failure of the same term or condition or a waiver of any other term or condition of this Agreement.
- 19. Titles Irrelevant.** The titles given to the enumerated paragraphs of this Agreement are for convenience only, and are not intended to be used in construing or interpreting the terms of the provisions of this Agreement.
- 20. Parties Bound.** This Agreement expressly binds and inures to the benefit of all Parties hereto as well as to all of their heirs, successors and assigns.
- 21. Entire Agreement.** This Agreement constitutes the entire understanding and agreement between the Parties with respect to the subject matter hereof and supersedes any and all prior and contemporaneous agreements, negotiations, correspondence, undertakings and communications of the Parties or their representatives, oral or written, respecting such subject matter. No amendment, modification, or cancellation of any term or condition of this Agreement shall be effective unless executed in writing by the parties hereto.
- 22. Review by Counsel.** This Agreement shall be construed and enforced without regard to any presumption or other rule requiring construction against the party drafting or causing this Agreement to be drafted since counsel for all Parties have reviewed and approved this Agreement.
- 23. Execution in Counterparts.** This Agreement may be executed in counterparts, or by facsimile, all of which shall constitute a single, entire agreement.
- 24. Governing Law.** This Agreement shall be construed in accordance with the law of the State of New Jersey, without regard to conflict of law principles.

**25. Further Assurances.** Subject to the specific terms of this Agreement, each party shall make, execute, acknowledge and deliver such other instruments and documents and take such other actions as may be necessary, reasonable and appropriate to effectuate the purposes of this Agreement and to consummate the transactions contemplated hereby.

Date: 10-28-2016

WITNESS: Barbara Oif Stack  
Barbara Oif Stack

APPLIED MONROE LENDER, LLC

By:

DAVID Barry  
Authorized Representative

Date: 10-28-2016

WITNESS: Barbara Oif Stack  
Barbara Oif Stack

SHIPYARD ASSOCIATES, L.P.

By:

DAVID Barry  
Authorized Representative

**CITY OF HOBOKEN**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Dawn Zimmer, Mayor

ATTEST: \_\_\_\_\_

**HOBOKEN PLANNING BOARD**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Gary Holtzman, Chairman

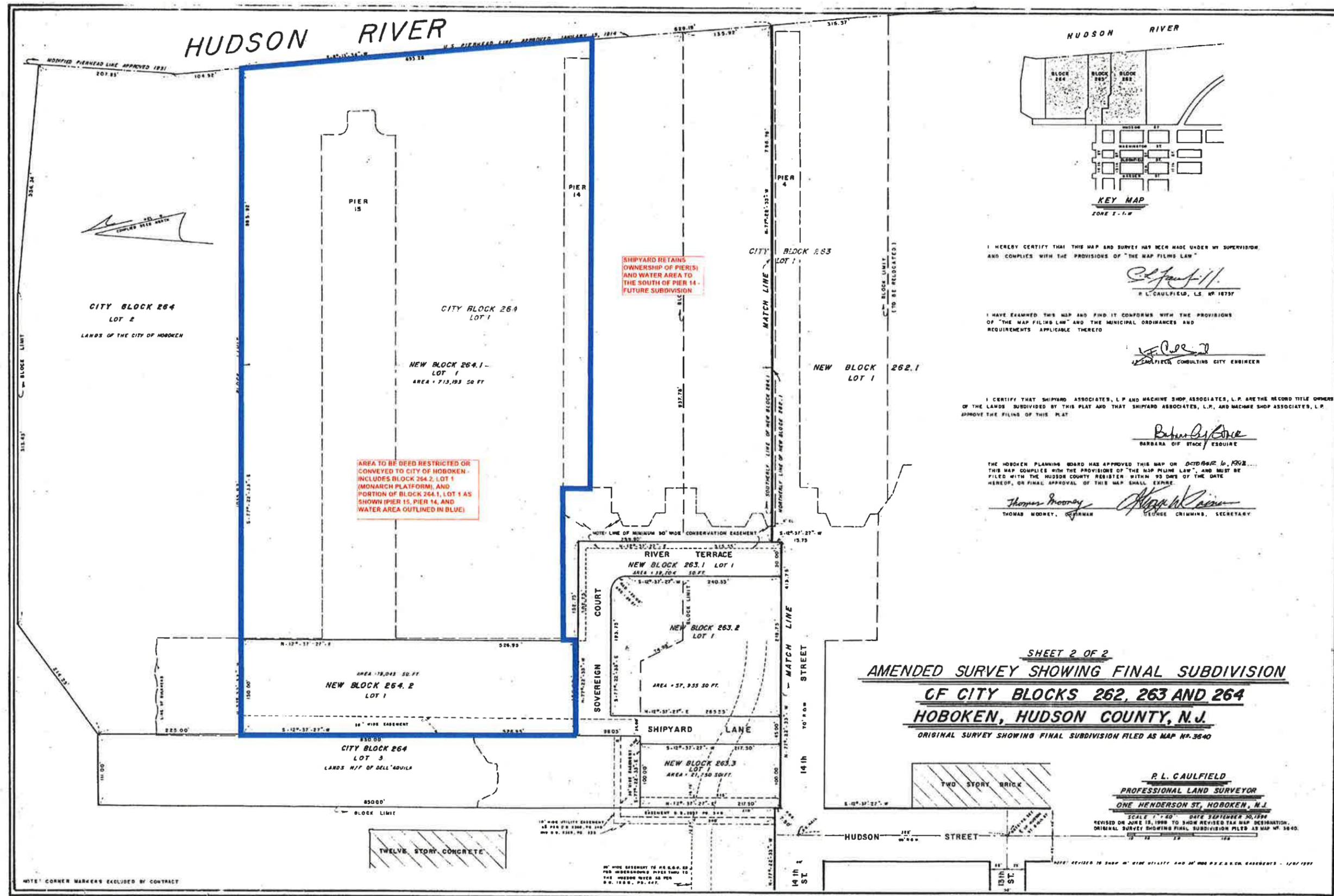
WITNESS: \_\_\_\_\_

Patricia Carcone, Secretary

## **EXHIBIT A**

### **Proposed Redevelopment @ 800-822 Monroe**

- No less and no more than 265 units (Unit mix, minimum size, and average sizes as outlined below)
  - 5% studios – 13 du
  - 50% 1 bedroom units – 132 du
  - 35% 2 bedroom units – 93 du
  - 10% 3 bedroom units – 27 du
  - Minimum Unit Size – 400 s.f.
  - Average Unit Size – 900 s.f.
  - Average 3-Bedrom Unit Size – 1400 s.f.
  - No less and no more than 27 units affordable (20% of which shall be low income units and 80% of which shall be moderate income units). A total of 6 low income units and 21 moderate income units shall be provided.
- Necessary amendments to Redevelopment Plan
  - Parking – Amend RDP to provide for ratio of 0.50 spaces/1 residential unit + retail per RDP requirements. RDP and Site Plan approval to allow an increase in the parking ratio to 1:1 via mechanical means or valet operations (*p. 20.1-20.2 of plan*)
  - Retail – Amend RDP so that none is mandatory, but same is encouraged by Hoboken and permitted at Developer’s election above street level as necessary for dry flood-proofing. (*pp. 11, 24 of plan*)
  - Live-work – Amend RDP so that live-work use is eliminated.
  - Density and FAR – Amend RDP to permit proposed number or residential units. (*p. 20.1 of plan*)
  - Building Height – Amend RDP to allow up to 13 stories and 150 feet maximum height (150 feet being the top of roof slab, not the top of any mechanical equipment or stair/elevator bulkhead) to provide for possible higher floor to floor heights, where maximum heights will be focused at the southern portion of the site. (*p. 20 of plan*)
  - Lot Coverage – Amend RDP as necessary to permit project massing. (*p. 20.1 of plan*)
  - Building Setbacks – Amend RDP as necessary to permit project massing, allowing zero setbacks if required. (*p. 21 of plan*)
  - Façade Calculations – Amend RDP to allow a more modern aesthetic which is to be determined. (*p. 22 of plan*) Also, provide in RDP that relief may be sought from the requirement for 75% masonry and the other strict requirements for building articulation set forth in Section 196-27.3 of City Code.
  - Minimum Unit Size – Amend RDP to provide for unit mix, minimum unit size, and average unit sizes above. (*p. 26 of plan*)



SHIPYARD RETAINS OWNERSHIP OF PIER(S) AND WATER AREA TO THE SOUTH OF PIER 14 - FUTURE SUBDIVISION

AREA TO BE DEED RESTRICTED OR CONVEYED TO CITY OF HOBOKEN - INCLUDES BLOCK 264.2 LOT 1 (MONARCH PLATFORM), AND PORTION OF BLOCK 264.1 LOT 1 AS SHOWN (PIER 15, PIER 14, AND WATER AREA OUTLINED IN BLUE)

I HEREBY CERTIFY THAT THIS MAP AND SURVEY HAS BEEN MADE UNDER MY SUPERVISION AND COMPLIES WITH THE PROVISIONS OF "THE MAP FILING LAW"

*R. L. Caulfield*  
R. L. CAULFIELD, L.S. NO. 10737

I HAVE EXAMINED THIS MAP AND FIND IT CONFORMS WITH THE PROVISIONS OF "THE MAP FILING LAW" AND THE MUNICIPAL ORDINANCES AND REQUIREMENTS APPLICABLE THERETO

*J. P. ...*  
CONSULTING CITY ENGINEER

I CERTIFY THAT SHIPYARD ASSOCIATES, L.P. AND MACHINE SHOP ASSOCIATES, L.P. ARE THE RECORD TITLE OWNERS OF THE LANDS SUBDIVIDED BY THIS PLAT AND THAT SHIPYARD ASSOCIATES, L.P. AND MACHINE SHOP ASSOCIATES, L.P. APPROVE THE FILING OF THIS PLAT

*Barbara Of Stace*  
BARBARA OF STACE, ESQUIRE

THE HOBOKEN PLANNING BOARD HAS APPROVED THIS MAP ON OCTOBER 16, 1998. THIS MAP COMPLEES WITH THE PROVISIONS OF "THE MAP FILING LAW", AND MUST BE FILED WITH THE HUDSON COUNTY REGISTER WITHIN 90 DAYS OF THE DATE HEREOF, OR FINAL APPROVAL OF THIS MAP SHALL EXPIRE.

*Thomas Mooney* THOMAS MOONEY, CLERK  
*George Crimmins* GEORGE CRIMMINS, SECRETARY

**SHEET 2 OF 2**  
**AMENDED SURVEY SHOWING FINAL SUBDIVISION**  
**OF CITY BLOCKS 262, 263 AND 264**  
**HOBOKEN, HUDSON COUNTY, N.J.**  
ORIGINAL SURVEY SHOWING FINAL SUBDIVISION FILED AS MAP NO. 3640

**R. L. CAULFIELD**  
**PROFESSIONAL LAND SURVEYOR**  
**ONE HENDERSON ST., HOBOKEN, N.J.**  
SCALE: 1" = 40' DATE: SEPTEMBER 30, 1998  
REVISED ON JUNE 15, 1999 TO SHOW REVISED TAX MAP DESIGNATION.  
ORIGINAL SURVEY SHOWING FINAL SUBDIVISION FILED AS MAP NO. 3640.