

## **SETTLEMENT AGREEMENT, MUTUAL RELEASE AND WAIVER**

This SETTLEMENT AGREEMENT, MUTUAL RELEASE AND WAIVER (the “Agreement”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2023 (the “Effective Date”) by and between: Cleveland-Cuyahoga County Port Authority, a body corporate and politic and political subdivision of the State of Ohio (the “Port”), Mortgage Investment Group, LLC, an Ohio limited liability Company (“MIG”), William Friedman (“Individual Defendant”), Riverbed West, LLC, Riverbed 007, LLC, , the Board of Park Commissioners of the Cleveland Metropolitan Park District, Ohio City Incorporated, L.A.N.D. Studio, Inc., the City of Cleveland (the “Other Defendants”), and CF Bank, National Association (the “Nominal Defendant”). The Port, MIG, and the Other Defendants are collectively hereinafter referred to as the “Parties” to this Agreement and individually as a “Party.”

### **RECITALS**

WHEREAS, the Port contends that the Irishtown Bend Hillside (the “Hillside”) is in an active state of failure necessitating the undertaking of the Irishtown Bend Hillside Rehabilitation and Stabilization Project (the “Project”) which will include the regrading of the Hillside and installing new bulkheads at the bank of the Cuyahoga River;

WHEREAS, MIG owns the real property located at 1433-1435 W 25<sup>th</sup> St., Cleveland, Ohio, also known as Parcel Nos. 003-21-002, 003-21-008 & 003-21-009, measuring approximately 0.427 acres, (the “Property”) which is located on the Hillside;

WHEREAS, the Port contends that the Project requires that all structures on the Hillside, exclusive of part of the building located on the Property, be removed in order to stabilize and regrade the Hillside and install the bulkheading safely and effectively;

WHEREAS, in cooperation with numerous public and non-profit partners, the Port has been working to acquire the parcels on the Hillside that are needed to complete the Project and the Port’s Project partners have acquired all parcels necessary with the exception of the Property;

WHEREAS, on September 9, 2021, the Port passed Resolution 2021-22 authorizing appropriation proceedings to be commenced in order to acquire the Property for the Project after the Port and other Project partners were unable to otherwise acquire the Property;

WHEREAS, on October 26, 2021, MIG filed a complaint in the Cuyahoga County Court of Common Pleas – General Division, Case No. CV-21-954893 (the “Declaratory Judgment Action”) against the Port, Riverbed West, LLC, Riverbed 007, LLC, William Friedman, the Board of Park Commissioners of the Cleveland Metropolitan Park District (named in the lawsuit as “Cleveland Metroparks Board of Park Commissioners”), Ohio City Incorporated, L.A.N.D. Studio, Inc., and the City of Cleveland, seeking a declaratory judgment that the Project must

proceed without utilizing the Property and alleging fraud and civil conspiracy, among other claims, against the Port and its partners as it relates to the Project;

WHEREAS, on January 22, 2022, the Port passed Resolution No. 2022-01, declaring the necessity and intention to appropriate the Property for the Project and authorizing the Port to provide a written Notice of Intent to Acquire and Good Faith Offer, including a copy of a formal appraisal and a copy of Resolution No. 2022-01, to be served on MIG;

WHEREAS, on January 13, 2022, the Port provided a written Notice of Intent to Acquire and Good Faith Offer of \$360,000 for the Property based on a formal appraisal to MIG and indicating that the billboard located on the Property would be relocated or replaced on the Property and MIG would be compensated in accordance with the applicable relocation requirements;

WHEREAS, MIG did not agree that the Port's offer constituted a Good Faith Offer, and did not accept the Port's Good Faith Offer. Thereafter the Port filed a Petition for Appropriation on February 22, 2022, in the Cuyahoga County Court of Common Pleas - Probate Division, Case No. 22 ADV 267918 (the "Appropriation Action") in order to acquire the Property by "quick take" and deposited the Good Faith Offer of \$360,000 with the Probate Court Clerk;

WHEREAS, on March 2, 2022, MIG filed a second complaint in the Cuyahoga County Court of Common Pleas – General Division, Case No. CV-22-960323 (the "Injunction Action") against the Port seeking a Preliminary and Permanent Injunction to prevent the Port from appropriating the Property by "quick take"; and

WHEREAS, the Port, MIG and the Other Defendants now wish to fully settle and resolve all issues, matters, claims and disputes relating to the Appropriation Action, the Declaratory Judgment Action, the Injunction Action and any appeals related thereto (collectively, the "Litigation") and all related matters on and subject to the terms and conditions set forth in this Agreement.

### **TERMS AND CONDITIONS**

**NOW, THEREFORE**, for and in consideration of the foregoing and the promises, mutual covenants, and agreements hereinafter set forth, including the foregoing recitals that are incorporated into this Agreement, the Parties intending to be legally bound do hereby fully and finally resolve the Litigation and agree as follows:

**1. Representations.**

Each Party makes the following representations as applicable based on the nature of the Party's particular organizational structure:

- a. As to political subdivisions:

- i. It is a political subdivision, duly organized, and validly existing under the laws of Ohio and its Charter, if applicable.
  - ii. It has performed all acts required of it as a condition to signing and delivering this Agreement.
  - iii. It is not in violation of any laws of Ohio or its Charter or other governing documents to an extent that would impair its ability to carry out its obligations under this Agreement.
  - iv. It has the power to enter into and perform its obligations under this Agreement.
  - v. Its City Council, governing Board or other Commission has duly authorized the signing, delivery, and performance of this Agreement.
- b. As to corporate, non-profit, or private entities:
- i. It is a limited liability company or corporation duly organized, validly existing, and in good standing under the laws of the State of Ohio.
  - ii. It has performed all acts required of it as a condition to signing and delivering this Agreement.
  - iii. It is not in violation of any laws of Ohio to an extent that would impair its ability to carry out its obligations under this Agreement.
  - iv. It has the power to enter into and perform its obligations under this Agreement.
  - v. Its Officers and/or Directors, governing Board or other Commission has duly authorized the signing, delivery, and performance of this Agreement.

**2. Right of Entry and Temporary Construction Easement.**

MIG shall execute and grant a right of entry and temporary construction easement (“Construction Easement”), attached hereto and incorporated herein as Exhibit A, simultaneously with the execution of this Agreement effective as of the Effective Date, permitting the Port access to and permission to enter into and upon the Property for the purpose of completing the Project, which will include the demolition of the back portion of the existing building as set forth in Exhibit B-1 and the grading and excavation of the Property. Pursuant to the Construction Easement, the Port may only demolish the back portion of the existing building on the Property, exclusive of the front portion of the existing building and rooftop billboard, both of which MIG shall retain the right to access for the purpose of necessary maintenance or repairs. To the

extent MIG shall undertake any maintenance or repairs pending donation of the Property, it does so at its own risk. Other than in a case of emergency, MIG shall provide the Port's general contractor forty-eight (48) hours advance written notice before it accesses its Property. If an interruption of the existing electricity to the billboard is required, the Port will, within 48 hours, select, at its discretion, an alternate power source to keep the billboard illuminated as previously at its sole cost. The grading and excavation on the Property, excluding the remaining building portion, will be undertaken pursuant to the plans completed by Osborn Engineering and their subconsultants and as designed by Mueser Rutledge Consulting Engineers PLLC (MRCE), copies of which are attached hereto and incorporated herein as Exhibit B-2 and Exhibit B-3, respectively, and the grading shall be completed to a factor of safety of no less than 1.3. Any necessary modifications to Exhibit B-2 or Exhibit B-3 made after the Effective Date but before MIG's donation of the Property to Riverbed West, LLC and affecting the Property shall be subject to the approval of MIG, but only to the extent the modification would change the grading of the Property. MIG's approval shall not be unreasonably conditioned, delayed and/or withheld. The Port makes no representation as to the factor of safety on the front portion of the Property, where the remaining portion of the building (the "Remaining Building") with the rooftop billboard are located, except that it will not be less than its current condition.

Upon the Port's commencement of the Project on the Property, the back portion of the existing building shall be demolished and the Port shall, at the Port's sole discretion, cost and expense, cause any necessary repairs to be made to reinforce the remaining front portion of the building so that the Remaining Building and the rooftop billboard are maintained in at least as good a condition as existed before commencement of the Project, including reconstruction of the rear wall of the building utilizing similar brick and materials as consistent as possible with the remaining portion of the building. During the construction of the Project, the Port agrees to have its contractors carry sufficient insurance as provided and specified in Exhibit A. The Port, with MIG's cooperation, shall obtain all permits and authorizations from all local governments, agencies, or jurisdictions as the same are necessary or required for the Project and or the Port's demolition, grading, construction, and related activities on the Property.

### **3. Settlement Payment.**

As further consideration for the Right of Entry and Construction Easement as set forth in paragraph 2 of this Agreement, the Port and Other Defendants shall collectively pay to MIG the total sum of \$1,250,000.00 (the "Settlement Payment"). The Settlement Payment shall be fully paid to MIG no later than thirty (30) days of the Effective Date of this Agreement.

In the event the Port and/or the Other Defendants fail to timely pay the Settlement Payment, the Construction Easement shall automatically terminate and become void and of no further force or effect.

### **4. Billboard Relocation.**

- (a) MIG is the owner of the billboard located on the rooftop of the building on the Property (the "Existing Billboard") and is the holder and owner of all permits and registrations, as applicable, required to maintain and operate the Existing Billboard.

As part of this Agreement, the Port and the Other Defendants desire to remove the Existing Billboard at their sole cost and expense. In consideration for the future removal of the Existing Billboard, the Parties agree to support, in good faith, MIG's construction of three (3) new billboards (the "Replacement Billboards"), with permanent easements and access rights, as necessary. With respect to the locations for the Replacement Billboards, one of Replacement Billboards will be located at Permanent Parcel Number 101-28-017. The remaining two Replacement Billboards will be constructed, with permanent easements and access rights, at mutually agreed upon locations, which will be on the City or other Defendants' property.

- (b) The Parties agree to support the permitting and construction of a "V" shaped double-sided digital billboard approximately 10'6" by 36' in size on the rooftop of the building located at Permanent Parcel Number 101-28-017, which is shown on Exhibit C, and which is owned by East 4<sup>th</sup> Street, LLC. The remaining two Replacement Billboards will be permitted to allow "V" shaped double-sided billboards approximately 14' by 48' in size.
- (c) MIG shall be responsible for the costs of construction of the Replacement Billboards including, without limitation, any permit application fees. However, to assist with the cost of construction of the Replacement Billboards, the Other Defendants agree to pay MIG a \$200,000.00 payment for each of the first two of MIG's replacement billboards, representing MIG's estimated costs associated with erecting the metal stanchions and the infrastructure needed to support the Replacement Billboards at the replacement locations (the "Relocation Payment"). Each of the Relocation Payments will be paid by the Other Defendants to MIG upon issuance of the sign permit for the two Replacement Billboards.
- (d) MIG shall submit sign permit applications for the Replacement Billboards to the City of Cleveland's Planning Department for the development and location of the Replacement Billboards. MIG's ability to construct and install the Replacement Billboards is expressly conditioned upon the approval of the sign permits. The Parties agree to support, in good faith, MIG's sign permit applications with the City of Cleveland's Planning Commission and any other approval authority, provided they are in locations mutually agreed to by MIG and the City and are in accordance with the size and style referenced above and, subject to Planning Commission approval of the sign permits, the City agrees to issuance of the sign permits for the Replacement Billboards without unreasonable delay. Once all three Replacement Billboards are permitted, constructed and operational, the Port and/or the Other Defendants may remove the Existing Billboard at its or their sole cost.
- (e) If, despite the Parties' best efforts, the Replacement Billboard proposed for Permanent Parcel Number 101-28-017 is not approved, the Parties will use their best efforts to find an alternative location for this Replacement Billboard, which may include the permitting of a "V" shaped double-sided billboard approximately 14' by 48' in size. Regardless, the Existing Billboard will remain until all three Replacement

Billboards are agreed upon and the Replacement Billboards are permitted, constructed and operational.

**5. Development Agreement and Donation of MIG's Property to Riverbed West, LLC**

After receiving all required permits for the Replacement Billboards and MIG's construction of the Replacement Billboards, MIG and the Other Defendants, as necessary, shall work in good faith to execute a development agreement (the "Development Agreement") that provides, *inter alia*, that: (1) MIG shall donate the Property to Riverbed West, LLC, which is a 501(c)(3) organization; (2) the remaining building located on the Property will be demolished; (3) upon donation of the Property to Riverbed West, LLC, Riverbed West, LLC shall seek to effectuate a consolidation and lot split of current permanent parcel numbers ("PPNs") 003-21-005, 003-21-003, 003-21-002, 003-21-008 and 003-21-009 to create a new parcel similar in size to the current Property as approximated on Exhibit D attached hereto (the "New Parcel"); (4) Riverbed West, LLC will work to ensure that the New Parcel is unencumbered of Clean Ohio restrictions by swapping land with the Ohio Department of Natural Resources and the Ohio Public Works Commission, as necessary; (5) MIG, Riverbed West, LLC and the Other Defendants, as necessary, will work with MIG, in good faith, on the design and construction of a new approximately 3,000 SF restaurant and approximately 17,000 SF outdoor patio area located within the New Parcel, the design of the restaurant and patio area to be mutually agreed to by the parties to the Development Agreement; (6) ownership of the New Parcel will be transferred to an entity to be created by Riverbed West, LLC or one or more of the Other Defendants which will construct and own the restaurant and patio area; and (7) the new entity will lease (the "Lease") the restaurant to MIG or its designee (the "Tenant") pursuant to a market rate triple-net lease with the Tenant to be provided with a \$500,000 lease credit towards future rent, with the lease term to be 60 months with a 60-month Tenant option and with the Tenant responsible for furniture, fixture and equipment as well as the procurement of a liquor license for the New Parcel. The Port and the Other Defendants agree to support liquor license application and as well as any other necessary application to operate a restaurant and lounge. The New Parcel will be zoned as General Retail Business.

Until such time as the Development Agreement is finalized, the Property is donated and the Lease is executed, the Property shall remain zoned as General Retail Business. Once the Development Agreement is finalized, the Property is donated and the Lease is executed, the Port and/or the Other Defendants may, at its or their cost, demolish the Remaining Building.

**6. Settlement of the Litigation.**

Within three (3) days of the Effective Date of this Agreement, the Parties shall settle the Declaratory Judgment Action and Injunction Action pending in the General Division of the Cuyahoga County Common Pleas Court, commonly styled as Case No. CV-21-954893 (the "Declaratory Judgment Action") and Case No. CV-22-960323 (the "Preliminary Injunction Action"), consistent with this Agreement, and the Construction Easement, and shall file a Judgment Entry on Settlement (the "Judgment Entry on Settlement") in the Declaratory Judgment Action and Injunction Action. The Port and MIG shall settle the Appropriation

Action, commonly styled as Case No. ADV-22-267918, consistent with this Agreement, and the Construction Easement, and shall file a Judgment Entry on Settlement in the Appropriation Action. The Parties agree to release of the funds on deposit with the Probate Court back to the Port upon the filing of the Judgment Entry on Settlement. The General Division of the Cuyahoga County Common Pleas Court and the Probate Division of the Cuyahoga County Common Pleas Court shall each retain concurrent jurisdiction over the enforcement of the Judgment Entry on Settlement and the underlying Settlement Agreement and related documents. The General Division Dismissal Entry and the Judgment Entry on Settlement are attached hereto as Exhibits E-1, E-2 and E-3, respectively.

**7. Settlement of Claims.**

The Parties agree that all claims that were known or reasonably could have been known and that have or could have been asserted up to and including the Effective Date of this Agreement involving the subject matter of and/or relating in any way to the Litigation, are fully and finally settled in consideration of the terms and conditions and mutual releases described in this Agreement.

**8. Mutual Release and Waiver of Claims.**

Upon the performance of the actions set forth in this Agreement and in consideration of the same, each Party, intending to fully and finally resolve any and all claims between them, and intending to completely and forever release each other from any and all liability, hereby agree as follows:

Each of the Parties, for themselves and their heirs, beneficiaries, relatives, executors and administrators, employees, agents, servants, representatives, attorneys, trustees, successors, transferees and assigns hereby covenant not to sue, and otherwise acquits, releases and forever discharges each of the other Parties from, and waives any and all claims, actions, causes of action, demands, rights, damages, costs, interest, punitive damages, exemplary damages, equitable relief, attorney fees, expenses and compensation, that the Parties have, may have had or may have, both known and unknown, foreseen and unforeseen, including but not limited to the claims in the Litigation, and any and all claims relating to the Litigation for economic damage, negligence, intentional tort, condemnation and any other suits or claims for damages, injuries or loss of any kind whatsoever, physical, mental, emotional or otherwise, absolute or contingent, liquidated or unliquidated, known or unknown, at law or in equity, that the Parties had, have, or possibly could have with respect to any claims in the Litigation or relating to the claims asserted in the Litigation, from the beginning of time through the Effective Date, in any way, without regard to any subsequent discovery or existence of additional or different facts, except for any claims arising after the Effective Date as a result of a breach of this Agreement, or for the work that is performed on the Property by the Port's contractors, subcontractors, or others in performing the Project contemplated by the grant of the Construction Easement. Notwithstanding the foregoing, nothing set forth herein shall in any way abrogate, impair or relate to the enforcement of this Agreement and its associated documents.

**9. Claims Have Not Been Assigned.**

The Parties represent, warrant and covenant that no other person or entity has, or has had, any interest in the claims, demands, obligations or causes of action referred to in the Litigation above, that the Parties have the sole right and exclusive authority to execute this Agreement, and that the Parties have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of actions referred to herein.

**10. Attorney Fees and Costs.**

The Parties shall be responsible for their own legal fees and expenses involving the matters addressed in this Agreement, except that each of the Parties shall pay their own respective court costs incurred during the Litigation, and the payments set out herein shall not be reduced in any way to pay the Parties' fees, taxes, and/or costs involving the matters addressed in this Agreement unless specifically stated otherwise.

**11. No Admissions.**

No action taken by the Parties hereto, either previously or in connection with the compromise reflected in this Agreement, shall be deemed or construed to be an admission of the truth or falsity of any matter pertaining to any right, claim, counterclaim, demand or cause of action referred to herein or relating to the subject matter of this Agreement, or any acknowledgment by them of any fault or liability to any Party hereto or to any other person or entity in connection with any matter or thing.

**12. Ohio Law Governs.**

This Agreement shall be governed under the laws of the State of Ohio, without reference to any conflict of laws provision contained in the statutory or common law. The Parties agree to bring any action and/or lawsuit to construe the provisions of this Agreement or to enforce the rights and obligations contained herein, including but not limited to any dispute that may arise under any provision of this Agreement, in the Cuyahoga County Common Pleas Court – General Division and the Cuyahoga County Common Pleas Court – Probate Division which shall have concurrent and continuing jurisdiction to enforce this Agreement and its associated documents.

**13. Entire Agreement.**

This Agreement, and the exhibits attached hereto, embodies the entire Agreement between the Parties with respect to the subject matter hereof and supersedes any and all prior Agreements and understandings, oral or written, with respect thereof. This Agreement may not be changed orally, but may be amended, superseded, cancelled, renewed or extended, and the terms hereof may be waived, only by an instrument in writing signed by each of the undersigned Parties or, in the case of a waiver, signed by the undersigned Party against whom enforcement of such waiver is being sought. The Parties declare and represent that no promises, inducements or Agreements not herein expressed have been made and that the terms of this Agreement are contractual and not a mere recital.



**14. Joint Preparation and Advice of Counsel.**

This Agreement is deemed to have been reviewed and prepared jointly by the Parties hereto and any uncertainty or ambiguity herein, if any, shall not be interpreted against any Party, but shall be interpreted according to the application of the rules of interpretation for arm's-length Agreements. The Parties acknowledge that each Party has had the opportunity to be advised by counsel with respect to this Agreement. Each Party to this Agreement has either been represented by counsel or has had the opportunity to retain counsel but has expressly and intentionally chosen not to do so. The Parties agree that no Court shall apply a presumption that a provision or term of this Agreement will be more strictly construed against any Party because of that Party's role in drafting this Agreement. Further, each Party understands and is aware that no attorney involved in their representation can, or has, given advice on the taxable effect of anything under this Agreement and each Party acknowledges that each Party has had the opportunity to be advised by a tax professional with respect to this Agreement.

**15. Severability.**

Except as to Paragraphs 2, 3, 4, 5 or 8 of this Agreement, if any term or provision of this Agreement shall be held by a court of competent jurisdiction to be void, invalid, unenforceable or in conflict with any applicable law, all of the other terms and provisions of this Agreement shall remain valid and fully enforceable.

**16. Cooperation.**

The Parties agree to cooperate and fully execute any and all supplementary documents and to take all reasonable additional actions which may be deemed necessary or reasonable to give full force and effect to the terms and intent of this Agreement.

**17. Opportunity to Review and Authority to Execute.**

By affixing their signatures hereto, the undersigned Parties acknowledge that they have fully read this Agreement; that they understand all of its terms, that they have the authority to execute the document on the principal's behalf; and that they have executed this Agreement voluntarily.

**18. Execution and Delivery.**

This Agreement may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument. Parties need not sign the same counterpart. For evidentiary purposes, faxed or electronically mailed counterparts of this Agreement shall be deemed to be originals for the purpose of enforcing this Settlement Agreement and any of its associated documents.

*(signatures contained on following pages)*

IN WITNESS WHEREOF, the undersigned have executed and delivered this SETTLEMENT AGREEMENT, MUTUAL RELEASE AND WAIVER as of the EFFECTIVE DATE first set forth above.

CLEVELAND-CUYAHOGA COUNTY  
PORT AUTHORITY

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

Title: \_\_\_\_\_

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

MORTGAGE INVESTMENT GROUP, LLC

By: Robert George

Title: Managing Member

Date: 3/22/23

WILLIAM D. FRIEDMAN

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

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

CITY OF CLEVELAND

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

Title: \_\_\_\_\_

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

RIVERBED 007, LLC

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

Title: \_\_\_\_\_

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

BOARD OF PARK COMMISSIONERS OF  
THE CLEVELAND METROPOLITAN  
PARK DISTRICT

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

Title: \_\_\_\_\_

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

L.A.N.D. STUDIO, INC.

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

Title: \_\_\_\_\_

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

OHIO CITY INCORPORATED

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

Title: \_\_\_\_\_

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

WEST CREEK CONSERVANCY

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

Title: \_\_\_\_\_

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

RIVERBED WEST, LLC

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

Title: \_\_\_\_\_

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

CF BANK, NATIONAL ASSOCIATION

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

Title: \_\_\_\_\_

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

**EXHIBIT A**

Right of Entry and Temporary Construction Easement

**EXHIBIT B-1**

Building Depiction

**EXHIBIT B-2**

Osborn Engineering Plans

**EXHIBIT B-3**

Mueser Rutledge Consulting Engineers Plans

**EXHIBIT C**

Aerial Photo of Agreed Billboard Location



**EXHIBIT D**

New Parcel Description