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Filed
March 6, 2023
Jeffrey R. Jablonski, A.J.S.C.

CITY OF HOBOKEN, a municipal
corporation of the State of New
Jersey,

Plaintiff,

v.
PORT IMPERIAL MARINE
FACILITIES, LLC, and STATE OF
NEW JERSEY,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY
DOCKET NO. HUD-L-3967-22

Civil Action
(In Condemnation)

**CONSENT ORDER FOR STIPULATION OF
SETTLEMENT AND STAY AND ORDER
APPROVING SAME**

THIS MATTER having been opened to the Court upon joint motion of Plaintiff, City of Hoboken ("Plaintiff" or the "City") and Defendant, Port Imperial Marine Facilities, LLC ("Port Imperial" and collectively with the City the "Parties"), on notice to the Office of the Attorney General, as counsel for Defendant, State of New Jersey, for entry of a Stipulation and Consent Order of Settlement and Stay ("Order of Settlement and Stay") in the above-referenced action; and it appearing that the City and Port Imperial have reached an amicable resolution of the claims and defenses raised herein on the terms set forth below that requires a stay of this action to effectuate settlement; and it further appearing that the City and Port Imperial have, as set forth below, entered

their written consent hereto; and whereas the parties represent and agree as follows:

WHEREAS, the City filed a Complaint in Condemnation on December 1, 2022 in this matter seeking to condemn the property located at 901 Sinatra Drive, Hoboken, New Jersey 07030 and designated as Block 259, Lot 1 on the Tax Map of the City of Hoboken, County of Hudson, State of New Jersey and associated riparian rights ("Subject Property") and Thirteen Million Three Hundred Sixty Thousand Dollars and 00/100 (\$13,360,000), the amount of the estimated Just Compensation, was deposited into court on December 2, 2022; and

WHEREAS, the City filed a Declaration of Taking in the Hudson County Register's office on December 2, 2022; and

WHEREAS, Port Imperial filed an Answer in this matter on December 5, 2022, denying the Plaintiff's right to take the Subject Property and asserting defenses and other related matters; and

WHEREAS, in connection with settlement of this action, the City and Port Imperial have agreed to a form of lease attached hereto as **Exhibit A** ("Lease Agreement") to allow Port Imperial's affiliate, Port Imperial Ferry Corp. ("PIFC"), to temporarily occupy and vacate the Subject Property in accordance with and subject to the terms of the Lease Agreement to be executed by and between the City and PIFC in accordance with the terms of this Order of Settlement and Stay and the Lease Agreement; and

WHEREAS, in connection with settlement of this action, the City and Port Imperial have agreed to a form of Consent Order of Judgment attached hereto as **Exhibit B** ("Consent Order of Judgment") to settle and resolve this action in accordance with and subject to the terms of this Order of Settlement and Stay and the Lease Agreement; and

WHEREAS, in connection with settlement of this action, the City and Port Imperial have agreed to stay this action for one (1) year and ten (10) days to effectuate the terms of settlement as set forth in this Order of Settlement and Stay, the Lease Agreement and the Consent Order of Judgment; and

WHEREAS, the City and Port Imperial having agreed to settle and resolve this action and all claims and counter-claims, actual or potential, asserted therein or that could have been asserted therein in accordance with and subject to the terms of this Order of Settlement and Stay and the Lease Agreement.

NOW, THEREFORE, INTENDING TO BE LEGALLY BOUND, THE PARTIES HEREBY STIPULATE AND AGREE, AND IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. In consideration of the mutual promises and covenants contained herein and for other valuable consideration, the receipt and sufficiency of which each of the parties hereby acknowledge, the City and Port Imperial agree to settle this matter and the claims herein in accordance with the terms of this Order of

Settlement and Stay, the Lease Agreement and the Consent Order of Judgment.

2. This Order of Settlement and Stay shall not become effective until it has been approved by the Court.

3. The City and Port Imperial shall execute the Consent Order of Judgment and the City and PIFC shall execute the Lease Agreement within ten (10) days of the Court's entry of this Order of Settlement and Stay and Plaintiff's counsel shall hold the executed Consent Order of Judgment and the executed Lease Agreement in escrow pursuant to the terms of this Order of Settlement and Stay.

4. a. PIFC shall apply for all necessary Permits diligently after the date of entry of this Order, but in no event later than March 15, 2023, provided that PIFC may extend such deadline in the event it is in the process of preparing the application for such permit(s), or an application may not be submitted until another application is approved, and PIFC shall provide Landlord a copy of such applications simultaneously with submission of same.

b. PIFC shall have one (1) year and ten (10) days from the date of entry of this Order to obtain all necessary, final and unappealable Permits for PIFC to install the Leasehold Improvements and occupy and use the Operations on the Subject

Property, all as more particularly set forth and as defined in the Lease Agreement.

5. If within one (1) year and ten (10) days after the date of entry of this Order all such Permits have been obtained, then Port Imperial shall notify the City and the Court and (i) authorize Plaintiff's counsel to release the Consent Order of Judgment from escrow and file the Consent Order of Judgment with the Court to enter judgment to fully resolve this litigation, and (ii) authorize Plaintiff's counsel to release the Lease Agreement from Escrow to Port Imperial and PIFC; and the City shall make any payment due and owing to Port Imperial pursuant to the Consent Order of Judgment.

6. If within one (1) year and ten (10) days after the date of entry of this Order all such Permits have not been obtained and PIFC has not waived in writing the requirement in the Lease Agreement that all Permits be obtained, then Port Imperial shall notify the City and the Court to reinstate this action and Plaintiff's counsel shall immediately return to Port Imperial's counsel the executed Consent Order of Judgment and the executed Lease Agreement, and the parties shall proceed with this litigation and request a status conference with this Court on an expedited basis.

7. This matter shall be stayed for a period of one (1) year and ten (10) days from the date of entry of this Order for the

parties to effectuate the terms of this Order of Settlement and Stay.

8. a. During the one (1) year and ten (10) day stay period, Port Imperial (or an affiliate thereof, as applicable) shall retain responsibility to: (a) engage a Licensed Site Remediation Professional ("LSRP"), (b) install a fence around the entirety of the Subject Property, which Port Imperial's LSRP confirms constitutes an acceptable interim engineering control, and perform such other actions required by its LSRP in connection with such interim engineering control, (c) cause the LSRP to issue a Remedial Action Report and submit same to the New Jersey Department of Environmental Protection (NJDEP), (d) apply to the NJDEP for a Remedial Action Permit (RAP) in connection with the interim engineering control, and (e) if the NJDEP-approved RAP is received during the one (1) year and ten (10) day stay period, cause the LSRP to issue a Response Action Outcome (RAO).

b. Upon the date that the Consent Order of Judgment is released from escrow, the City shall assume responsibility for all remediation obligations with respect to the environmental condition of the Subject Property other than the following, which shall be retained by Port Imperial: (i) obligations pursuant to subsection a. above, (ii) in the event that the RAO has not been issued prior to the entry of the Consent Order of Judgment, causing the LSRP to issue a RAO upon receipt of the NJDEP-approved RAP,

(iii) in the event that the RAO has not been issued prior to the entry of the Consent Order of Judgment, any final requirements of the Industrial Site Recovery Act, *N.J.S.A. 13:1K-1 et seq.* (e.g. any required remediation certification to NJDEP), (iv) responding to and appropriately addressing any inquiries or audits from the NJDEP with respect to the RAO during the three (3) year audit period following issuance of the RAO, and (v) any release of Hazardous Substances that occurs within the area occupied by Port Imperial between the date of entry of the Order of Settlement and Stay and the date the Order for Judgment is released from escrow, and thereafter, within the area leased by Port Imperial pursuant to the provisions of the Lease Agreement during Port Imperial's occupancy of such leased area.

c. Without limiting subsection b. above, the City acknowledges and agrees that, upon receipt of an NJDEP-approved RAP, the City shall assume all obligations to comply with any NJDEP-approved RAP, including: (i) periodic inspections of the engineering controls; (ii) biennial certifications to the NJDEP; (iii) payment of all NJDEP fees associated with the RAP; and (iv) completion of any terminations and/or modifications to the RAP, and any associated deed notice, at the appropriate time following completion of improvements to the Subject Property.

d. For the purpose of determining if any release occurred after the date of entry of this Order of Settlement and

Stay, the parties agree that the Remedial Investigation Report by EcolSciences dated September 16, 2022 in ISRA Case E20170117 shall serve as a benchmark.

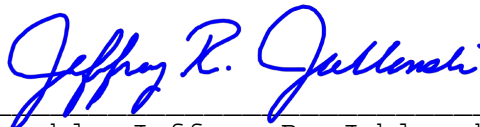
e. Each of the Parties shall indemnify and hold the other and its affiliates, agents, employees and contractors harmless from and against any and all environmental liabilities at the Subject Property arising from the obligations assumed by the respective party pursuant to this Order.

f. In connection with the foregoing, each party shall reasonably cooperate and, to the extent necessary, sign, or otherwise consent to the submission of, all documents or applications related thereto.

9. The Court shall retain jurisdiction to enforce all of the terms and conditions of this Order of Settlement and Stay, including, but not limited to, the retention of jurisdiction to enter and enforce the Consent Order of Judgment upon the terms set forth herein.

10. The uploading of this Order of Settlement and Stay on eCourts shall constitute service on all parties whose counsel have entered appearances or other pleadings on eCourts. The City shall serve a copy of this Consent Order upon all other defendants within seven (7) days of the uploading on eCourts.

IN WITNESS WHEREOF, the City and Port Imperial, have hereunto executed this Stipulation and Consent Order of Settlement and Stay as of the date and year set forth below each respective signature.



Dated: March 6, 2023

Honorable Jeffrey R. Jablonski, A.J.S.C.

We hereby consent to the form and entry of the within Order.

McMANIMON, SCOTLAND
& BAUMANN, LLC
Attorneys for Plaintiff,
City of Hoboken

McKIRDY, RISKIN, OLSON &
DELLAPELLE, P.C.
Attorneys for Defendant,
Port Imperial Marine
Facilities, LLC

By: /s/ Kevin P. McManimon
KEVIN P. MCMANIMON



By: _____
ANTHONY DELLAPELLE

Exhibit A

Form of Lease Agreement

Exhibit B

Form of Consent Order of Judgment