

STATE OF SOUTH CAROLINA) **SETTLEMENT AGREEMENT AND**
) **GLOBAL MUTUAL RELEASE**
COUNTY OF CHARLESTON)

**THIS IS A FULL, FINAL AND COMPLETE RELEASE
READ CAREFULLY**

This Settlement Agreement and Global Mutual Release (the "Agreement") is made and entered into by, between, and on behalf of the City of Charleston (hereinafter "the City"), John J. Tecklenburg and Joseph P. Riley, Jr., (hereinafter jointly "the Plaintiffs") and Charleston LDC d/b/a LDC and formally known as Charleston Citywide Local Development Corporation (hereinafter "LDC"), and Sharon Brennan, Richard K. Yonce, Carol S. Hubbard, Chris Fisher, and Bryan McNeal, Jr. (hereafter Brennan, Yonce, Hubbard, Fisher and McNeal are jointly referenced as "Individual Defendants" and hereinafter together with LDC jointly as "the Defendants").

WHEREAS, the City filed a lawsuit against the Defendants on March 28, 2019 in the Court of Common Pleas, County of Charleston, State of South Carolina, Civil Action Number: 2019-CP-10-1621;

WHEREAS, the Plaintiff's lawsuit against the Defendants arises out of a dispute over \$22,818,607.00 repaid to the LDC in June of 2016 by the developer of the Charleston Place development project in downtown Charleston for the repayment of certain loans (hereafter "Disputed Funds").

WHEREAS, in their capacity as members of the LDC, Tecklenburg and Riley sued the Defendants over a dispute regarding the management of the corporation;

WHEREAS, the Defendants accepted service of the Complaint on April 8, 2019;

WHEREAS, the Parties filed a Consent Order whereby Plaintiff consented to providing the Defendants a 30-day extension of time, or until June 7, 2019, to answer or otherwise respond to Plaintiffs' Verified Complaint, and Defendant LDC agreed to preserve the Disputed Funds as

they exist on the date of entry of this Order, and not to spend or otherwise use or loan the funds until June 8, 2019 or until a different date upon which the City of Charleston and the LDC may agree in writing;

WHEREAS, twenty-five percent of the membership of the LDC called for a special meeting of the members scheduled to be held on April 30, 2019 for the purpose of electing directors for the board of the corporation and to discuss potential resolution of the dispute between the LDC and the City;

WHEREAS, in advance of the special meeting of the members of the LDC scheduled for April 30, 2019, the Parties reached a settlement of their dispute as detailed herein;

WHEREAS, as part of their settlement, the Parties agreed to postpone the special meeting of the members of the LDC until June 4, 2019 at 9:30 a.m.;

NOW, THEREFORE, for and in consideration of the Parties agreement to release all claims asserted and each party paying its own attorneys' fees and costs, the sufficiency of which are hereby acknowledged, the parties agree as follows:

Global release of all claims:

City of Charleston, Tecklenburg and Riley do hereby release, forever discharge and promise never to sue Defendants, their subsidiaries, agents, attorneys, employees, officers, directors, servants, insurance carriers, successors, administrators and assigns, and any and all other people or corporations, who might be claimed to be liable at some point, but all of whom expressly disclaim any liability whatsoever from any and all claims (known or unknown), actions, causes of action, demands, damages, suits at law or in equity, of whatsoever kind or nature, or because of any matter or thing done, omitted or suffered to be done, by anyone prior to and including the date hereof, to include specifically those claims made in reference to and more particularly described

in an action pending in the Charleston County Court of Common Pleas entitled *City of Charleston, South Carolina, John Tecklenburg and Joseph P. Riley, Jr. individually and derivatively on behalf of the Charleston LDC d/b/a LDC and formerly known as, Charleston Citywide Local Development Corporation v. Charleston LDC d/b/a LDC and formerly known as, Charleston Citywide LDC, Sharon Brennan, Richard K. Yonce, Carol S. Hubbard, Chris Fisher, and Bryan McNeal, Jr. Civil Action Number.: 2019-CP-10-1621.*

Defendants do hereby release, forever discharge and promise never to sue City of Charleston, John Tecklenburg and Joseph P. Riley, Jr., their subsidiaries, agents, attorneys, employees, officers, directors, servants, insurance carriers, successors, administrators and assigns, and any and all other people or corporations, who might be claimed to be liable at some point, but all of whom expressly disclaim any liability whatsoever from any and all claims (known or unknown), actions, causes of action, demands, damages, suits at law or in equity, of whatsoever kind or nature, or because of any matter or thing done, omitted or offered to be done, by anyone prior to and including the date hereof, to include any claims that could have been asserted in the action pending in the Charleston County Court of Common Pleas entitled *City of Charleston, South Carolina, John Tecklenburg and Joseph P. Riley, Jr. individually and derivatively on behalf of the Charleston LDC d/b/a LDC and formerly known as, Charleston Citywide Local Development Corporation v. Charleston LDC d/b/a LDC and formerly known as, Charleston Citywide LDC, Sharon Brennan, Richard K. Yonce, Carol S. Hubbard, Chris Fisher, and Bryan McNeal, Jr. Civil Action Number.: 2019-CP-10-1621.*

Dismissal with prejudice:

The Parties agree to dismissal, with prejudice, of the action presently pending in the Charleston County Court of Common Pleas entitled *City of Charleston, South Carolina, John*

Tecklenburg and Joseph P. Riley, Jr. individually and derivatively on behalf of the Charleston LDC d/b/a LDC and formerly known as, Charleston Citywide Local Development Corporation v. Charleston LDC d/b/a LDC and formerly known as, Charleston Citywide LDC, Sharon Brennan, Richard K. Yonce, Carol S. Hubbard, Chris Fisher, and Bryan McNeal, Jr. Civil Action Number.: 2019-CP-10-1621. The dismissal will not be filed until after the LDC transfers the settlement funds to the City, and establishes the Revolving Fund as set forth in this agreement.

Direct transfer of settlement funds to the City:

Within fourteen (14) days of the execution of this Agreement, the LDC agrees to transfer, with no fees or charges, ten million dollars (\$10,000,000.00) of the Disputed Funds via wire transfer to the City of Charleston. The City agrees it will use these funds to further the development of affordable housing¹ within the City of Charleston through the Charleston Redevelopment Corporation (hereafter “CRC”). To the extent the transfer of these settlement funds causes the relevant authorities to challenge the LDC’s status as a nonprofit entity under section 501(c)(3) of the Internal Revenue Code or as a certified Community Development Financial Institution, the City agrees to provide in a timely manner to the LDC all reasonably requested information regarding the City’s use of these funds that is necessary for the LDC to defend its status as a nonprofit entity under section 501(c)(3) of the Internal Revenue Code or as a certified Community Development Financial Institution.

Establish a revolving fund for affordable housing within the City of Charleston:

Within fourteen (14) days of the execution of this Agreement, the LDC agrees to deposit nine million two hundred thousand dollars (\$9,200,000.00) of the Disputed Funds into an account to establish a perpetual revolving fund that is restricted to loans for the development of affordable

¹ Affordable housing includes workforce housing.

housing within the City of Charleston or, if directed by the City of Charleston's Director of Housing and Community Development, then for other purposes within the City of Charleston consistent with Title I of the Housing and Community Development Act of 1974, as amended (hereafter "Revolving Fund").

If the Revolving Fund ever becomes fully depleted with no remaining Disputed Funds and/or other funds to lend and any outstanding loans made from this fund are in default with no remedy to retrieve any unpaid balance to replenish the fund, then the LDC shall notify the City in writing that the Revolving Fund is depleted and that it plans to within thirty days of the written notice to dissolve the Revolving Fund, remove it from its restricted accounts, and be relieved of any obligations to the Revolving Fund in any manner whatsoever thereafter. The City shall have thirty days from receipt of written notice from the LDC to cause additional funds to be deposited back into the Revolving Fund. If after the expiration of thirty days after the City's receipt of written notice from the LDC, the City has not caused the Revolving Fund to be replenished with additional funds, the LDC may proceed to dissolve the Revolving Fund, remove it from its restricted accounts, and be relieved of any obligations to the Revolving Fund in any manner whatsoever thereafter

The LDC agrees that the City of Charleston through the CRC will accept and review for approval applications for funding for affordable housing projects from the Revolving Fund. The LDC agrees the Revolving Fund will be available for the City and the CRC to lend for affordable housing, without further approval from the LDC, so long as the terms of the loan are consistent with the agreed upon menu of credit and mission criteria attached to this Agreement as Exhibit A, and the LDC receives all necessary materials from the borrower as provided in Exhibit B.

The LDC agrees that it will disburse funds from the Revolving Fund within thirty (30) days of the date the City through the CRC notifies the LDC in writing of the CRC's approval of a loan application for an affordable housing project that is consistent with the menu of credit and mission parameters attached to this Agreement as Exhibit A, and the LDC receives all necessary materials from the borrower as provided in Exhibit B.

The Parties agree that the repayments of any loan from the Revolving Fund will be disbursed as follows: The full principal will be paid back directly into the Revolving Fund. The interest will be split with twenty-five percent of interest being paid back into the Revolving Fund, and the remainder of interest payments deposited into the LDC's general accounts to support the LDC's expenses for administration of the loans from the Revolving Fund, and in furtherance of its mission consistent with Title I purposes.

The LDC agrees to provide annually to the City a report summarizing the accounting of the Revolving Fund on or before the first Wednesday in June each year starting in June of 2020. The annual report will show the financial status of the Revolving Fund, and will include a list of the current outstanding loans made from the revolving fund, the terms of those loans, the amount of interest and principal repaid from those loans and the amount deposited from those loan repayments back into the Revolving Fund during the reporting period, and the amount deposited back in to the LDC's general accounts from fees and repayments for those loans during the reporting period.

Pre-approved loans from the Revolving Fund with special terms:

The LDC agrees that within thirty (30) days of execution of this Agreement and after receipt of all necessary materials needed for due diligence, underwriting and loan disbursement, five million dollars (\$5,000,000.00) from the Revolving Fund will be pre-approved for affordable

housing projects within the City of Charleston under special terms which are not required to be consistent with the menu of credit and mission criteria attached to this Agreement as Exhibit A. Once the LDC receives all necessary materials from the borrower as provided in Exhibit B, the pre-approved projects will include three million dollars (\$3,000,000.00) for the One Eighty Place development project on Meeting Street and eight hundred thousand dollars (\$800,000.00) for the Bulls Creek Development project in West Ashley. The loan terms for the One Eighty Place project will be as follows: zero percent interest with a onetime charge of one percent (1%) origination fee and a charge for the LDC's reasonable closing and attorneys' fees to close the loan, until global debt service coverage exceeds 1.4 at which time the borrower can either pay off the loan or refinance with the LDC at an interest rate that brings global debt service back to 1.1. The origination fee income will be deposited into the LDC's general accounts for the purposes of supporting the LDC's expenses for administration of the Revolving Fund. The loan for One Eighty Place will not include an annual service fee for repayment of the principal. The loan terms for the Bulls Creek Development project in West Ashley will be reasonably set by the City's Director of Housing and Community Development based on the borrower's financial circumstances.

The remaining portion of the pre-approved five million dollars referenced in this section may consist of loans at the same terms (zero percent interest with a one-time charge of one percent (1%) origination fee and a charge for the LDC's reasonable closing and attorneys' fees to close the loan, until global debt service coverage exceeds 1.4 at which time the borrower can either pay off the loan or refinance with the LDC at an interest rate that brings global debt service back to 1.1) provided the City's Director of Housing and Community Development makes a good faith determination that such favorable terms are justified in a particular borrower's

circumstance, that is, the particular borrower presents financial circumstances that reasonably warrant the special terms, and such borrower is necessary for the affordable housing projects' success.

As to any borrower eligible for a loan on the same or similar terms as the One Eighty Project, and including the One Eighty Place development project on Meeting Street, at the City's discretion, the LDC will provide the three million dollars (\$3,000,000.00) in funding from the Revolving Fund as an equity position in the development rather than as a loan. In addition, the loans will become due in the event of any sale or change in ownership as to any borrower eligible for a loan on the same or similar terms as the One Eighty Project, and including the One Eighty Place development project on Meeting Street.

Remaining portion of Disputed Funds:

The LDC agrees to restrict three million six hundred thousand dollars (\$3,600,000.00) of the Disputed Funds to use within the City of Charleston consistent with the LDC's mission and consistent with the requirements under Title I of the Housing and Community Development Act of 1974, as amended.

The City shall have the right, with advance review and comment or approval of the LDC, to be provided within ten days of any request, to promote and publicize the availability of these funds to encourage qualified applicants within the City to apply to the LDC for funding. The LDC agrees that it will apply the same criteria to determine whether to approve applicants for approval for the use of these funds as it applies to applicants from other locations in its service area.

If during any consecutive twelve-month time period, more than one-third of these funds remain undeployed, there being no applications from qualified applicants within the City of Charleston, the LDC shall notify the City of Charleston that it has determined that there are

insufficient qualified applicants to loan these funds consistent with the LDC's mission and requirements under Title I of the housing and Community Development Act of 1974, as amended, within the City of Charleston, and that the LDC plans to loan those funds to qualified applicants within the Charleston Metropolitan Statistical Area thereafter, giving preference to those qualified applicants from the City of Charleston applying for available funds at any given time. After receipt of written notice from the LDC, the City shall have thirty days to review all applications the LDC has received from applicants within the City of Charleston over the twelve-month time period at issue to verify that no applicants were qualified for funding. If after expiration of the thirty-day period after receipt of written notice the City does not challenge the LDC's determination that it has received no applications from qualified applicants, the LDC may proceed to loan those funds to qualified applicants consistent with the LDC's mission and requirements under Title I of the housing and Community Development Act of 1974, as amended within the Charleston Metropolitan Statistical Area thereafter, giving preference to those qualified applicants from the City of Charleston applying for available funds at any given time.

Title I compliance:

Except for as otherwise specifically provided above with respect to the direct transfer of \$10,000,000.00 to the City, the City and the LDC agree to provide to the other within a reasonable time after such a request the documentation to validate that any project funded in whole or in part from the Disputed Funds satisfies the requirements under Title I of the Housing and Community Development Act of 1974, as amended.

June 4, 2019 special meeting of the members of the LDC:

The Parties agree that the Special Meeting of the members of the LDC previously scheduled for April 30, 2019 will be held on June 4, 2019 at 9:00 a.m. at the LDC's office

located at 2 Race Street, Charleston, South Carolina. The Parties agree that at the June 4, 2019 Special Meeting of the members, the Defendants will support and elect, as eligible, three individuals nominated by the Plaintiffs to serve as directors on the board of the LDC. The Parties further agree that at the June 4, 2019 Special Meeting of the members Plaintiffs will support and elect, as eligible, the remaining slate of individuals nominated by the Defendants to serve as directors on the board of the LDC. The Parties agree that current LDC director, Richard T. Jerue, will not be among the directors nominated or elected at the June 4, 2019 Special Meeting of the members.

Charleston Redevelopment Corporation:

With the exception of the One Eighty Place project, before any loans from the Revolving Fund are issued from the LDC through the CRC, the Parties agree that the Plaintiffs will support the election of two nominations presented by the Defendants to serve as directors of the board of the Charleston Redevelopment Corporation.

Additional Settlement Terms:

The provisions of this Agreement are contractual and not merely a recital and may be enforced and/ or used as a defense in any action or proceeding instituted or undertaken by the Parties. Moreover, the Parties state affirmatively that they have read carefully this Agreement, that they have consulted with their attorneys concerning the provisions, conditions and effect thereof, that they know and understand the contents thereof and that there is no agreement other than that expressed herein. The parties reserve all rights to enforce this Agreement in the Court of common pleas for Charleston County.

The Parties further agree that this Agreement is to be governed and interpreted in accordance with the laws of the State of South Carolina.

It is further understood and agreed that the execution of this Agreement is a settlement of disputed claims, and any liability on the part of any party is expressly denied and not to be considered an admission of liability on the part of any of the Parties herein released. The Parties understand that their respective missions both aim to serve the public good and welfare and that they share in a desire to address affordable housing needs in the City of Charleston rather than expend precious resources on litigation.

It is further understood the Parties agree to issue a joint public statement regarding this Settlement Agreement and Global Mutual Release, and any statements made by Mayors Tecklenburg and Riley and the Executive Director of the LDC shall be consistent with the Settlement Agreement and Global Mutual Release.

The persons signing this Agreement on behalf of a corporate or legal entity (including any d/b/a, municipality or corporation) represent and warrant that they have full authority to execute this Agreement and make it fully binding upon the party for whom they have signed.

This Agreement can be executed in counterparts by all Parties signing this Agreement and, when taken together, the signed counterparts shall constitute one complete and fully executed and binding document. Any party may rely on a copy of the signed original received from another party by facsimile or email and may consider the copy as a legal, binding, and enforceable document.

Whenever possible, each provision of this Agreement shall be interpreted so as to be valid under existing law. A finding of invalidity as to any provision of this Agreement or any portion thereof shall void only that provision or portion and no other, and this Agreement shall be interpreted as if it did not contain the invalid provision or portion.

IN WITNESS WHEREOF, this Agreement of all claims has been executed on this _____
day of _____, 2019.

WITNESSETH:

**CAUTION: READ BEFORE SIGNING: THIS IS A
FILL, FINAL AND COMPLETE RELEASE**

CITY OF CHARLESTON

By:
Its:

JOHN J. TECKLENBURG

JOSEPH P. RILEY, JR.

CHARLESTON LDC d/b/a LDC AND FORMERLY
KNOWN AS CHARLESTON CITYWIDE LOCAL
DEVELOPMENT CORPORATION

Richard K. Yonce  05/02/2019
04:12 AM EDT

By:
Its:

SHARON BRENNAN

RICHARD K. YONCE

Richard K. Yonce  05/30/2019
04:12 AM EDT

CAROL S. HUBBARD

Vicki Yonce

CHRIS FISHER
C. Fisher

BRYAN MCNEAL, JR

SHARON BRENNAN

RICHARD K. YONCE

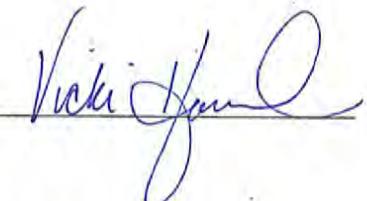
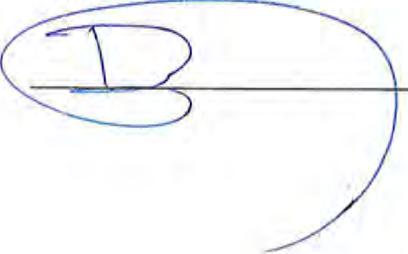
CAROL S. HUBBARD

David L. Hubbard

Carol S. Hubbard

CHRIS FISHER

BRYAN MCNEAL, JR


SHARON BRENNAN

Sharon E. Brennan

Sharon A. Brennan

RICHARD K. YONCE

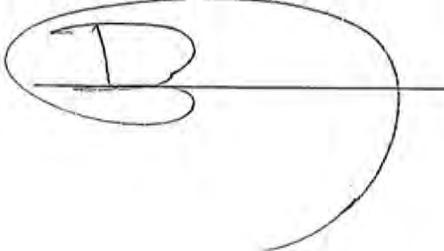
CAROL S. HUBBARD

David L. Hubbard

Carol S. Hubbard

CHRIS FISHER

BRYAN MCNEAL, JR



IN WITNESS WHEREOF, this Agreement of all claims has been executed on this _____
day of _____, 2019.

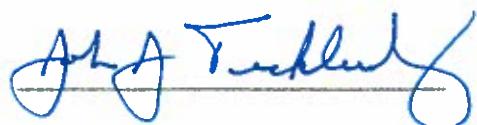
WITNESSETH:

**CAUTION: READ BEFORE SIGNING: THIS IS A
FILL, FINAL AND COMPLETE RELEASE**

CITY OF CHARLESTON


By: John J. Tecklenburg
Its: Mayor

JOHN J. TECKLENBURG



JOSEPH P. RILEY, JR.

CHARLESTON LDC d/b/a LDC AND FORMERLY
KNOWN AS CHARLESTON CITYWIDE LOCAL
DEVELOPMENT CORPORATION

By:
Its:

IN WITNESS WHEREOF, this Agreement of all claims has been executed on this _____
day of _____, 2019.

WITNESSETH:

**CAUTION: READ BEFORE SIGNING: THIS IS A
FILL, FINAL AND COMPLETE RELEASE**

CITY OF CHARLESTON

By:
Its:

JOHN J. TECKLENBURG

JOSEPH P. RILEY, JR.

Christina M. Sizemore

Joe P. Riley Jr.

CHARLESTON LDC d/b/a LDC AND FORMERLY
KNOWN AS CHARLESTON CITYWIDE LOCAL
DEVELOPMENT CORPORATION

By:
Its: