

# Resolution of the City of Jersey City, N.J.

City Clerk File No. Res. 17-630

Agenda No. 10-Z-21

Approved: JUL 19 2017

TITLE:



**RESOLUTION AUTHORIZING SETTLEMENT IN THE AMOUNT OF \$461,172.24 CREDIT OR REFUND TO SETTLE ASSESSMENT APPEALS ON PENDING LITIGATION FILED BY CAVEN POINT URBAN RENEWAL, LLC BEFORE THE TAX COURT OF NEW JERSEY**

**COUNCIL OFFERED AND MOVED ADOPTION OF THE FOLLOWING RESOLUTION:**

**WHEREAS**, complaints were filed before the Tax Court of New Jersey challenging real estate assessments on Block 27401 (now Block 27402) for tax years 2012, 2013, 2014, and 2016, and tax years 2012, 2013, and 2014 were thereafter transferred to the Superior Court of New Jersey, Chancery Division, Hudson County; and

**WHEREAS**, a global settlement agreement was reached, as set forth in the attached SETTLEMENT AGREEMENT under docket numbers HUD-C-198-16, HUD-C-199-16, and HUD-c-200-16, and STIPULATION OF SETTLEMENT under docket number 003478-2016, thereby resolving all pending litigation; and

**WHEREAS**, the Office of the Tax Collector has reviewed this settlement and computed the refund and total payment that will result from the implementation of this settlement; and

**WHEREAS**, both the taxpayer and the City agree that all interest payments on any such payment shall be waived by the taxpayer if such payment shall be made by the City within thirty (30) days of entry of judgment by the Superior Court, Chancery Division, and the Tax Court of New Jersey, pursuant to N.J.S.A. 54:3-27.2; and

**WHEREAS**, after consulting with the City's expert and the Office of the Tax Assessor; the Tax Assessor and Tax Counsel have recommended that the Tax Court Complaint for tax year 2016 be settled at the assessment specified below;

Original Assessment		Adjusted Assessment
Land	1,159,000	1,159,000
Improvement	<u>7,000,000</u>	<u>3,283,900</u>
Total	8,159,000	4,442,960 and

**WHEREAS**, this settlement will reduce the assessment to reflect the actual fair assessable value of the property consistent with assessing practices generally applicable in the City of Jersey City, as required by law; and

City Clerk File No. Res. 17-630Agenda No. 10.7.21 JUL 19 2017

TITLE:

**NOW, THEREFORE, BE IT RESOLVED**, by the Municipal Council of the City of Jersey City that the all pending litigation be settled as set forth in the attached settlement documents.

**Settlement of tax years 2012, 2013, and 2014 before the Superior Court, Chancery Division, will result in a credit or refund of \$175,000.**

**Settlement of tax year 2016 before the Tax Court of New Jersey will result in a credit or refund in the amount of \$286,172.24.**

**Settlement of all pending litigation will result in a total credit or refund of \$461,172.24.**

APPROVED: \_\_\_\_\_

APPROVED AS TO LEGAL FORM

APPROVED: \_\_\_\_\_

Business Administrator

Corporation Counsel

Certification Required ☐Not Required ☐

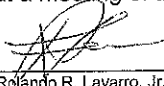
APPROVED 8-0-1

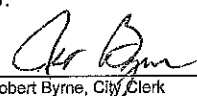
RECORD OF COUNCIL VOTE ON FINAL PASSAGE 7-19-17											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
GAJEWSKI	✓			YUN	✓			RIVERA	✓		
GADSDEN		ABSTAIN		OSBORNE	✓			WATTERMANN	✓		
BOGGIANO	✓			ROBINSON	✓			LAVARRO, PRES	✓		

✓ Indicates Vote

N.V.-Not Voting (Abstain)

Adopted at a meeting of the Municipal Council of the City of Jersey City N.J.

  
 Rolando R. Lavarro, Jr., President of Council

  
 Robert Byrne, City Clerk

1030  
**RESOLUTION FACT SHEET – NON-CONTRACTUAL**

This summary sheet is to be attached to the front of any resolution that is submitted for Council consideration. Incomplete or vague fact sheets will be returned with the resolution.

**Full Title of Ordinance/Resolution**

RESOLUTION AUTHORIZING SETTLEMENT IN THE AMOUNT OF \$461,172.24 CREDIT OR REFUND TO SETTLE ASSESSMENT APPEALS ON PENDING LITIGATION FILED BY CAVEN POINT URBAN RENEWAL, LLC BEFORE THE TAX COURT OF NEW JERSEY

**Initiator**

Department/Division	Office of the City Assessor	Office of the City Assessor
Name/Title	Ed Toloza	Assessor
Phone/email	Ext. 4707	Edward@jcnj.org

Note: Initiator must be available by phone during agenda meeting (Wednesday prior to council meeting @ 4:00 p.m.)

**Resolution Purpose**

The attached resolution requests the Municipal Council to authorize to settlement assessment appeals which were negotiated between the City of Jersey City and the owner of the subject property. The credits or refunds are a results from agreements that the assessments on the property fell outside the range permitted for the tax years in question. The total tax dollar credit/refund for these appeals is at \$461,172.24.

I certify that all the facts presented herein are accurate.

  
Signature of Department Director

7/17/17  
Date

## SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is made as of May \_\_\_\_, 2017 by and between Caven Point Urban Renewal Associates, L.L.C., a New Jersey limited liability company, having an address at 400 Plaza Drive, Secaucus, New Jersey 07096 ("Caven Point") and the City of Jersey City, a New Jersey municipal corporation, having an address at 280 Grove Street, Jersey City, New Jersey 07302 ("Jersey City"). (Caven Point and Jersey City shall each individually be referred to herein as a "Party" and collectively as the "Parties").

WHEREAS, Caven Point is the owner of real property, with an address of 95 Caven Point Road, Jersey City, New Jersey, that was formerly listed on the tax maps of the City of Jersey City, County of Hudson, and State of New Jersey, as Block 1494, Lot 14, and Block 1494, Lot 14 Qualifier X, and is currently listed as Block 27401, Lot 8 (the "Property"), and upon which are located an approximately 180,308 square foot building and certain improvements, which are currently operated as commercial warehouse with cold storage (the "Building"); and

WHEREAS, on June 25, 2001, Caven Point and Jersey City entered into an agreement entitled, "Financial Agreement," pursuant to the Long Term Tax Exemption Act (the "Financial Agreement"), under which the Building and Improvements (the "Project") would be exempt from real property taxes; however, in lieu of such taxes, Caven Point agreed to pay Jersey City, an Annual Service Charge as set forth by the terms of the Financial Agreement; and

WHEREAS, Caven Point filed appeals with the Tax Court of New Jersey under Docket Nos. 18887-2012, 01861-2013 and 04929-2014 (the "Tax Court Cases"), challenging the subject property assessment; and

WHEREAS, Jersey City filed a motion that resulted in the Tax Court Cases being transferred to the Superior Court of New Jersey, Chancery Division, Hudson County entitled, Caven Point Urban Renewal Associates, LLC v. City of Jersey City, Docket Nos. HUD-C-198-16, HUD-C-199-16 and HUD-C-200-16 (the "Litigation"); and

WHEREAS, the Financial Agreement expired on May 25, 2014; and

WHEREAS, Caven Point and Jersey City have reached a settlement of the Litigation; and

WHEREAS, Caven Point and Jersey City wish to reduce the settlement agreement to writing.

NOW THEREFORE, in consideration of the mutual promises and agreements herein, and subject to each party's performance of its obligations herein, Caven Point and Jersey City hereby agree as follows:

1. Jersey City hereby agrees to make payment of \$175,000.00 (the "Settlement Payment") by check to Caven Point in consideration of full settlement of the Litigation. Jersey City shall make the Settlement Payment to Caven Point within thirty (30) days of the date hereof; Caven Point's counsel shall not negotiate the check for the Settlement Payment until i) Caven Point's counsel files the Stipulation of Dismissal of the Litigation, with prejudice, pursuant to paragraph 2 of this Agreement; and ii) Caven Point's counsel serves a "filed" copy of the Stipulation of Dismissal of the Litigation, with prejudice upon Jersey City's counsel, via e-mail or upon the Parties' counsel's receipt of same from the Court via E-File.

2. The Parties agree that, upon receipt of a fully executed copy of this Agreement, their respective counsel shall execute the Stipulation of Dismissal with Prejudice in the form attached as Exhibit A (the "Stipulation"). Caven Point's counsel shall hold the Stipulation in escrow until its receipt of the check for Settlement Payment from Jersey City. Upon Caven Point's receipt of the check, Caven Point's counsel shall E-file the Stipulation with the Court and await receipt of the filed copy of same via E-file. Upon receipt of a copy of the stamped, filed Stipulation by Jersey City's counsel, Caven Point shall be authorized to negotiate Jersey City's check for the Settlement Payment.

3. The Parties hereby rescind any claims each Party asserted against the other Party in the Litigation alleging violations of the Agreement.

4. Caven Point, on behalf of itself and its respective parents, subsidiaries, affiliates, partners, officers, directors, members, employees, agents, attorneys, legal representatives,

predecessors, successors, administrators and assigns, hereby agrees to waive, relinquish, release, give up and discharge any and all claims, rights, demands, actions, suits, liabilities, responsibilities or cause(s) of action that were or could have been asserted in the Litigation against Jersey City, and its respective parents, subsidiaries, affiliates, partners, officers, directors, members, employees, agents, attorneys, legal representatives, predecessors, successors, administrators and assigns, in connection with the facts alleged in the Litigation.

6. Jersey City, on behalf of itself and its respective parents, subsidiaries, affiliates, partners, officers, directors, members, employees, agents, attorneys, legal representatives, predecessors, successors, administrators and assigns, hereby agrees to waive, relinquish, release, give up and discharge any and all claims, rights, demands, actions, suits, liabilities, responsibilities or cause(s) of action that were or could have been asserted in the Litigation against Caven Point, and its respective parents, subsidiaries, affiliates, partners, officers, directors, members, employees, agents, attorneys, legal representatives, predecessors, successors, administrators and assigns, in connection with the facts alleged in the Litigation.

7. The Parties hereto each acknowledge that the terms of this Agreement are for the purpose of resolving disputed claims and avoiding the time, expense and inconvenience of continued litigation and do not constitute an admission of wrongdoing by any Party hereto.

8. In connection with the pending city-wide revaluation of all its real property, Jersey City agrees to advocate in good faith with the City's assessor for a revaluation assessment of the Property in the amount of \$17,250,000.00.

9. This constitutes the entire agreement between Caven Point and Jersey City with respect to settlement of the Litigation. This Agreement replaces and cancels any previous agreements, oral or written, between Caven Point and Jersey City with respect to the settlement of the Litigation. This Agreement can only be modified, changed or amended by a written agreement signed by both Caven Point and Jersey City.

10. The Parties acknowledge and agree that this Agreement resolves and settles all

claims that were asserted, or could have been asserted, in the Litigation, in connection with the facts alleged in the Litigation.

11. This Agreement is binding upon, and shall benefit, Caven Point and Jersey City and their respective successors and assigns.

12. The Parties agree that they are each solely responsible for their own attorneys' fees and costs payable to their respective attorneys.

13. Caven Point and Jersey City each agree to fully perform their respective obligations under this Agreement as set forth herein. The Agreement shall be dated as of the date that (a) it has been executed by the duly authorized representatives of both Caven Point and Jersey City, and (b) fully executed copies (or counterparts) of the Agreement have been delivered to counsel for Caven Point and Jersey City.

14. The Parties hereto agree that the terms of this Agreement shall remain confidential and shall not be divulged under any circumstances to any third parties, with the exception of the Building's tenant, legal counsel and tax advisors, unless authorized by all Parties hereto in writing, or as ordered by a court of competent jurisdiction or as may be required by law.

15. This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as the original instrument and as if all the Parties to the counterparts had signed the same instrument. Further, the signature pages of this Agreement may be transmitted by facsimile and/or pdf, and signatures transmitted by facsimile and/or pdf shall have the same force and effect as the original signatures.

16. This Agreement shall be governed by and construed in accordance with the substantive and procedural laws of the State of New Jersey. Any litigation arising out of this Agreement shall be brought in the Superior Court of New Jersey, Hudson County vicinage, and the Parties agree to submit to the jurisdiction thereof, and hereby agree to waive the right to a jury in any such litigation.

17. In interpreting any provision of this Agreement, no weight shall be given to, nor

shall any construction or interpretation be influenced by, the fact that counsel for one of the parties drafted this Agreement, each party recognizing that it and its counsel have had an opportunity to review this Agreement and have contributed to the final form of same.

18. If any provision hereof shall be declared invalid by any court or in any administrative proceedings, then the provisions of this Agreement shall be construed in such manner so as to preserve the validity and the substance hereof to the extent possible.

19. The duly authorized representatives of Caven Point and Jersey City have signed this Agreement to evidence their agreement to its terms.

ATTEST:

CAVEN POINT URBAN RENEWAL  
ASSOCIATES, L.L.C.,  
a New Jersey Limited Liability Company

BY: HARTZ MOUNTAIN INDUSTRIES, Inc.  
its Sole Member

\_\_\_\_\_, Secretary

By: \_\_\_\_\_  
Phillip R. Patton, Executive Vice President

ATTEST:

CITY OF JERSEY CITY  
a New Jersey Municipal Corporation

By: \_\_\_\_\_  
, Secretary

By: \_\_\_\_\_  
Jeremy Farrell, Esq.  
Corporation Counsel



**EXHIBIT A**

D. Mark Leonard, ID # 037761988  
**HOROWITZ, RUBINO & PATTON**  
400 Plaza Drive  
P.O. Box 2038  
Secaucus, New Jersey 07096  
Office: (201) 863-7988  
Attorneys for Plaintiff, Caven Point Urban Renewal Associates, LLC

CAVEN POINT URBAN RENEWAL  
ASSOCIATES, LLC,

Plaintiff,

v.

CITY OF JERSEY CITY,

Defendant.

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
HUDSON COUNTY

DOCKET NO. HUD-C-198-16  
(Formerly TAX COURT No. 18887-2012)

DOCKET NO. HUD-C-199-16  
(Formerly TAX COURT No. 01861-2013)

DOCKET NO. HUD-C-200-16  
(Formerly TAX COURT No. 04929-2014;  
partial year)

CIVIL ACTION

**STIPULATION OF DISMISSAL WITH  
PREJUDICE AND WITHOUT COSTS**

THE MATTERS in difference in the above-entitled actions having been amicably adjusted by and between Caven Point Urban Renewal Associates, LLC and the City of Jersey City, it is hereby stipulated and agreed that these actions shall be and are hereby dismissed with prejudice and without costs as to either party.

Dated: May \_\_\_\_, 2017

HOROWITZ, RUBINO & PATTON  
Attorneys for Plaintiff  
Caven Point Urban Renewal Associates, LLC

By: /s/ D. Mark Leonard  
D. MARK LEONARD

O'DONNELL McCORD, P.C.  
Attorneys for Defendant  
City of Jersey City

By:

ID# 037761988  
HOROWITZ, RUBINO & PATTON  
400 Plaza Drive  
P.O. Box 2038  
Secaucus, New Jersey 07096  
(201) 863-7988  
Attorneys for Plaintiff

CAVEN POINT URBAN RENEWAL  
ASSOCIATES, LLC

Plaintiff,

vs.

CITY OF JERSEY CITY

Defendant.

TAX COURT OF NEW JERSEY  
DOCKET NO. 003478-2016

CIVIL ACTION  
STIPULATION OF SETTLEMENT  
ASSIGNED JUDGE:  
Hon. Mary Siobhan Brennan, J.T.C.

1. It is hereby stipulated and agreed that the assessment of the following property be adjusted and a Judgment be entered as follows:

Block: 27401

Lot: 8

Street Address: 95 Caven Point Road, Jersey City, New Jersey

2016			
	Original Assessment	County Board Judgment	Adjusted Assessment
Land	\$1,159,000		\$1,159,000
Improvements	\$7,000,000	Direct Appeal	\$3,283,960
TOTAL	\$8,159,000		\$4,442,960

2. The undersigned have made such examination of the value and proper assessment of the property and have obtained such appraisals, analysis and information with respect to the valuation and assessment of the property as they deem necessary and appropriate for the purpose of enabling them to enter into the stipulation. The assessor of the taxing district has been consulted by the attorney for the taxing district with respect to this settlement and has concurred.

3. Based upon the foregoing, the undersigned represent to the Court that the above settlement will result in an assessment at the fair assessable value of the property consistent with assessing practices generally applicable in the taxing district as required by law.

4. Statutory interest, pursuant to *N.J.S.A. 54:3-27.2*, having been waived by taxpayer, shall not be paid provided the tax refund is credited within 30 days of the date of entry of the Tax court judgment.

5. The Parties acknowledge that the tax records for tax year 2017 have been adjusted consistent with the above-referenced settlement figures.

6. The Parties agree that the Freeze Act, N.J.S.A. 54:51A-8, shall NOT apply for tax year 2018.

HOROWITZ, RUBINO & PATTON  
Attorneys for Plaintiff,  
Caven Point Urban Renewal Associates, LLC

Dated:

By:

\_\_\_\_\_  
D. Mark Leonard

O'DONNELL McCORD, P.C.  
Attorneys for Defendant, City of Jersey City

Dated:

By: