

## SETTLEMENT AGREEMENT

**AND NOW**, this 14<sup>th</sup> day of December, 2021, comes East Brandywine Township with its principal office located at 1214 Horseshoe Pike, Downingtown, Pennsylvania (hereinafter referred to as “EBT”), L&R Partnership LLC and John R Cropper, with offices located at 16 Industrial Blvd., Paoli, Chester County, Pennsylvania (hereinafter collectively referred to as “L&R”), and Brandywine Village Associates, LLP, with offices located at 16 Industrial Blvd., Paoli, Chester County, Pennsylvania (hereinafter referred to as “BVA”);

**WHEREAS** the parties hereto have been engaged in litigation before multiple courts in multiple jurisdictions with regard to multiple matters in an endeavor by L&R and BVA to protect their property and constitutional rights, as more fully detailed hereinafter; and

**WHEREAS** it is the desire of all the parties hereto to settle all of their outstanding differences, terminate the outstanding litigation, settle the matter of damages, provide for the completion of a road between Horseshoe Pike and North Guthriesville Road free of contention for the inclusive benefit of all of the citizenry of East Brandywine Township;

**NOW THEREFORE**, intending to be legally bound hereby, the parties hereto do agree as follows:

1. BVA agrees to advise the jury of view panel to mark the matter of *Brandywine Village Associates v. East Brandywine Township* – CCCCPC Docket 2019-10531- MJ settled upon the terms and conditions set forth hereinafter.
2. L&R agrees to advise the jury of view panel to mark the matter of *L&R Partnership vs. East Brandywine Township* – CCCCPC Docket 2019-10532-MJ settled upon the terms and conditions set forth hereinafter.
3. In *Brandywine Village Associates and L&R Partnership vs. East Brandywine Township* – CCCCPC Docket 2019-05052-MJ, EBT will file a motion with the court to have the matter dismissed on the basis: (1) of mootness by virtue of EBT’s return of property heretofore, pursuant to section 310 of the Pennsylvania Eminent Domain Code.
4. In *Brandywine Village Associates and L&R Partnership vs. East Brandywine Township* – CCCCPC Docket 2019-03219-MJ, EBT will file a motion with the court seeking leave to amend its Answer to join in the prayer of Plaintiff’s complaint acknowledging that the executed developer’s agreements between EBT and Carlino East Brandywine, LP failed to comply with state statutes regarding public bidding and compliance with the Prevailing Wage Act, consistent with the states awarded RACP grant contract requirements that the Township supported back around 2014.

5. With regard to *Brandywine Village Associates and L&R Partnership vs. Carlino and East Brandywine Township* - PennDOT administrative appeal – Docket 024 AD 2020 in which EBT is no longer a party, EBT shall notify the Pennsylvania Department of Transportation within one week after the full and complete execution of this agreement that the development plan submitted to the Township by Carlino East Brandywine LP and approved by the Township on June 6, 2018 is no longer in accordance with Township ordinances, is in violation of Township ordinances and will not receive a building permit to proceed to construction.

6. L&R Partnership LLC and Brandywine Village Associates LP v. East Brandywine Township Board of Supervisors Docket 2019- 07233 MJ will be marked settled, discontinued and ended by free of cost to EBT. Any entitlement to statutory damages is hereby waived by L&R and BVA.

7. As regards *Brandywine Village Associates & L&R Partnership vs. Carlino, Giant and East Brandywine Township* – Anti-Trust action – E.D. Pa. No. 5-16-cv-05209, plaintiffs L&R and BVA grant a full release to EBT, as to all matters within the scope of the claims asserted in the federal action, and as to all times up to the execution of this settlement agreement, to the Township itself and to its Supervisors, agents and employees under subject and upon the following terms and conditions:

- a. The Township and its current supervisors will grant a full reciprocal release to BVA, L&R and its respective partners, agents, and counsel.
- b. The Township will cooperate fully with BVA in the voluntary production of all documents responsive to requests for production already propounded to the Township by BVA in this action, as well as any further document requests that BVA may issue in this federal action, whether formally by subpoena or informally by other written request. Wherever possible, the Township's voluntary production of documents would be made in electronic format for the sake of efficiency.
- c. BVA would reimburse the Township for any reasonable costs incurred by the Township in producing documents to BVA pursuant to this settlement agreement. The Township will cap reimbursable attorney fees at \$5,000.00.
- d. The Township will cooperate fully with BVA in investigating and documenting any spoliation of relevant evidence by former Township supervisors or by current or former Township employees.
- e. The Township will cooperate in making available for interview and deposition, at BVA's election, any Township supervisor who is in office when the request is made by BVA or any Township employee who is employed when the request is made by BVA. Any deposition would take place pursuant to a properly issued subpoena, and BVA would pay any normally required witness fees for attendance as well as the transcript cost.

- f. For purposes of the document productions and witness interviews or depositions referenced above, the Township would waive its attorney-client privilege and, to the extent it is within the Township's power to do so, work-product protection with respect to the subject matters of BVA's complaint in this federal action, up until the time that the Township appointed its current solicitor, Eastburn and Gray, PC and special counsel, Rudolf Clarke, LLC. These waivers would include within their scope all responsive communications with Stacey Fuller, Esq., John Larkin, Esq., and any other relevant attorneys at the firm of Gawthrop Greenwood, PC; and all responsive communications with Kristin Camp, Esq., Thomas Oeste, Esq., and any other relevant attorneys at the firm of Buckley Brion McGuire & Morris, LLP.
- g. In light of the Township's voluntary production or re-production of documents to BVA without redactions for privilege and permitting witnesses under its control to answer interview or deposition questions without asserting privilege objections, BVA agrees to a stipulated protective order with the Township, along the lines of protective orders previously approved by the district judge in this action with respect to other third parties, that would enable the Township to designate particular documents, portions of documents, or deposition testimony "confidential" so as to restrict the dissemination or use of such information outside the context of this federal action except as otherwise agreed. The Township would also agree to permit BVA or its partners or related entities to use such privileged material to defend themselves against any claims brought by Carlino East Brandywine, Giant Food Stores, the Kaplin Stewart law firm, or related entities or individuals. Any such use in another case would be subject to a stipulated protective order similar to the one used in the federal antitrust case, to the extent the presiding judge in such other case is willing to enter such an order.

8. With regard to *Carlino v. BVA, Blair, Cropper, Prince and Orlando – Breach of Contract action* - CCCP Docket No. 2015-02938-TT and *Giant vs. BVA, Cropper and L&R – Interference in Contract*- CCCP Docket 2020-07118-TT, EBT will comply with production and discovery parameters identical to the production and discovery requirements set forth in paragraph 7(b)-(f) hereof.

9. EBT, in settlement of its disputes with L&R and its obligations to pay L&R damages for the condemnation EBT undertook on or about November 17, 2014 (Docket #14-11237), agrees that L&R or any successor, nominee or designee may develop its approximately 8-acre residential property in accordance with the multi-unit two-family high-density zoning that existed for the property as of November 16, 2014. The said TND-1 Township Zoning Ordinance overlay in place at the time allowed twelve units to the acre per Section 399-41A. Township will permit development of property at 12 units per gross acre provided remaining standards of SALDO are satisfied. Such a plan submitted by L&R will be required to be submitted to the Township as a Preliminary Land Development Plan and follow Section 350 of Township's SALDO. Additionally, EBT agrees to negotiate with the East Brandywine Township Municipal Authority on behalf of L&R and assume and satisfy any and all connection fees imposed by the East Brandywine Township Municipal Authority with regard to a proposed development authorized by the Township in accordance with this provision. The Township additionally agrees it will impose no transportation impact fee on the said development when the said development plan is before the

Township for review and approval and will, additionally split the cost for all review fees for this said development. EBT will allow the developer to install sewer and water lines under and through the new Connector Road to connect to water and sewer lines in North Guthriesville Road and will further allow the developer, if it so chooses or is required by the review process, to install a sidewalk abutting the connector road from the development to the existing BVA shopping center. L&R shall be allowed to employ the approximately one acre of land heretofore condemned by the Township but returned to L&R by the Township, for open space and/or stormwater detention for any proposed development and satisfaction of any such requirements that the Township SALDO may have and L&R, for its part, agrees that if the Township determines that it needs to expand the proposed detention basin on heretofore condemned L&R property for purposes of stormwater detention exclusively from the road, L&R will agree that the said expansion may include a portion or all of the existing pond on the returned L&R condemned property as the Township may determine it needs with the said expansion solely for and at the Township's expense. L&R has heretofore submitted appraisals of its damage and loss arising from the condemnation in amounts in excess of \$2 million. Additionally, L&R was required to forward EBT a check in the amount of \$45,678.76 as consideration for the quantity of land returned to L&R despite never having received the initial just compensation from the Township. Therefore, the Township shall return to L&R its payment in the amount of \$45,678.76 and L&R shall, in consideration of the terms hereof, waive, give up, and forgo any and all damage claims for EBT's condemnation of L&R's property for the proposed Connector Road and detention basin and will so notify the Jury of View Panel.

10. The Township intended the construction of a Connector Road connecting Horseshoe Pike and North Guthriesville Road as a result of which in 2014 it condemned a roadway through the property of L&R but not continuing the said road through the then property of the Watters family, which property is now owned by Carlino East Brandywine, LP. The Township hereby agrees that the final approved design of this entire future road shall be designed and constructed from Route 322 to North Guthriesville Road in such a way as to not adversely affect BVA's existing shopping center's access and internal circulation. Further, the Township agrees this future section of roadway shall require safe truck turning from the new Connector Road into BVA's existing shopping center such that no vehicle entering the shopping center via any Connector Road entrance need cross over onto the outgoing lane and no exiting vehicle need cross over onto the incoming lane. EBT also agrees that any plan approved for development of the Carlino East Brandywine, LP property, will be required to connect any Connector Road to BVA at its current property boundary line entrance and an additional entrance designated by BVA and will not require any internal BVA alteration or expense.

11. BVA presented to the Township an appraisal of the damages it suffered as a result of the EBT's condemnation of BVA's various easements together with the taking in fee of frontage on Horseshoe Pike. The easements taken included BVA's stormwater basin and BVA's easement to discharge storm water across the land of Carlino to the said basin effectively eliminating BVA's ability to confront excessive stormwater that the Township approved subsurface storage system is now, as a result of climate change and degradation, experiencing difficulty handling. The appraised damages to BVA exceed \$6.6 million, not including interest. In exchange for BVA's waiver and forgiveness of those damages, EBT agrees to the following: (a) EBT will approve BVA's application for extension and enlargement of Crop's Marketplace should the same be re-presented to the Township and provided only that the plan satisfies

Township SALDO requirements; (b) EBT will approve an application for the erection of a drive through addition to BVA's on-site pharmacy should BVA submit such an application; (c) EBT will approve an application for a new pad site in the southeast corner of the BVA shopping center property for the erection of a freestanding store, bank, restaurant, car wash, or filling station conditioned only that the plan satisfies interior circulation and building code requirements; (d) EBT will waive any and all impact fees related to any of the aforesaid new construction; and (e) EBT hereby allows the current erection of a second BVA lighted master sign on EBT's right of way and visible to traffic entering the Connector Road at a location to be mutually agreed upon by EBT and BVA upon design submission by BVA and consent from EBT will not be unreasonably withheld. EBT shall permit, during the construction of the new Connector Road, BVA to install a storm water discharge line of no less than six inches in diameter running from such entrance to BVA's property as BVA insists and terminating at the proposed drainage basin on the condemned L&R property, so as to allow BVA to erect a pump station on BVA's property to pump excess storm water to the drainage basin to alleviate BVA's future flooding issues and in replacement for the condemned storm water basin. In consideration of these commitments by EBT, BVA waives, forgives and foregoes its right to the condemnation damages aforementioned and will so notify the Jury of View Panel.

12. If Carlino East Brandywine, LP elects to join in and execute in writing a universal settlement agreement incorporating the terms hereof and additionally providing for the termination of all its litigation against L&R, BVA, and their agents, employees, and attorneys detailed in *Carlino vs BVA, Blair, Cropper, Prince and Orlando* – CCCP Docket No. 2015-02938-TT, and withdraws and/or terminates with prejudice all opposition heretofore filed in any of the actions previously outlined in this agreement, and Carlino East Brandywine, LP agrees to execute general releases of L&R, BVA, and their agents, employees, and attorneys and EBT and its representatives, employees, agents, and attorneys, then EBT, BVA, and L&R agree to contemporaneously terminate any litigation against the said Carlino East Brandywine, LP and execute similar releases thereof terminating litigation between the parties including known and unknown matters through and until the date of the releases. In further consideration thereof, BVA and L&R agree that they will not file any objection to, appear against, challenge or appeal any application by Carlino East Brandywine, LP to EBT for development plan approval for any commercial development in written compliance with the terms hereof and satisfying the residual square footage of Carlino commercial property abutting the properties of L&R and BVA. BVA and L&R agree they will not file any additional suits against the Township regarding events to date or in the future, in the absence of new Township violations of BVA and L&R's rights or EBT's violation of any term of this Agreement. Additionally, any violation of the terms, commitments and obligations of EBT as set forth in this agreement shall entitle BVA and L&R to seek immediate injunctive relief and all the parties hereto acknowledge the jurisdiction of the United States Eastern District court to hear such actions for injunctive relief and/or damages stemming from any EBT breach hereof.

13. It is understood and agreed that L&R and BVA are represented by counsel, who have explained the terms and consequences of this Agreement and Release to them, and that they fully comprehend the contents of this Agreement and Release and voluntarily accept its terms.

14. It is warranted that releasor has not made any settlement with or given any release to any other person, corporation or entity for damages arising out of the same cause of action for which this release is being given, unless specifically acknowledged. It is further agreed that releasor will indemnify and hold harmless the releasee of and from any loss, cost or expenses growing out of any breach of this

warranty.

15. EBT, L&R and BVA agree that they neither admit nor deny liability of any sort with respect to the claims, counterclaims, and cross-claims contained in any portion of the litigation. This settlement agreement and the releases it contains are made as a compromise of the disputed claims, counterclaims and cross-claims between EBT, L&R and BVA, in order to avoid expense and terminate all controversy among the parties.

16. EBT, L&R and BVA declare that they have read and fully understand the terms of this agreement, and that they voluntarily accept the same for the purpose of making a full and final compromise, adjustment, and settlement of any and all claims by BVA and L&R against EBT and counterclaims by EBT against BVA and L&R and for the express purpose of precluding forever any further or additional suits arising out of the subject matter of the litigation.

17. In the event of any litigation alleging breach by any party to this settlement agreement, the prevailing party shall be entitled to receive reimbursement for attorneys fees, expenses and court costs incurred in enforcing this agreement.

18. This agreement may be executed in any number of counterparts, and each such counterpart thereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

19. This agreement supersedes all prior negotiations and agreements between the parties and contains the entire understanding between the parties hereto.


20. This agreement shall be construed and enforced in accordance with the domestic internal law (but not the law of conflicts of laws) of the Commonwealth of Pennsylvania.

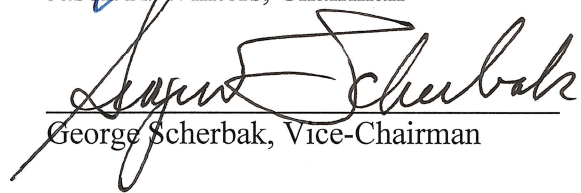
21. This agreement shall not be assignable.

22. This agreement shall be performed timely as time is of the essence of this agreement.

**IN WITNESS WHEREOF**, the parties hereto have hereunder set their hands and seals, intending to be bounds thereby, the day and year first above written.

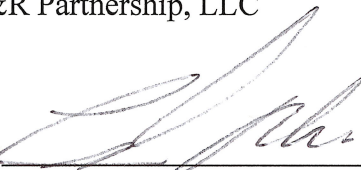
East Brandywine Township, Bd. Of Supervisors

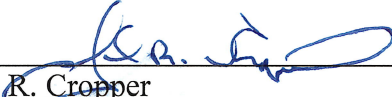
  
\_\_\_\_\_  
Jason R. Winters, Chairman


  
\_\_\_\_\_  
George Scherbak, Vice-Chairman

\_\_\_\_\_  
Kyle Scribner – Member

\_\_\_\_\_  
L &R Partnership, LLC

By:   
\_\_\_\_\_  
Leonard Blair, Mgr.

John R. Cropper  
  
\_\_\_\_\_  
John R. Cropper

BVA, LLP  
By:   
\_\_\_\_\_  
Leonard Blair – General partner

COMMONWEALTH OF PENNSYLVANIA

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: SS :

COUNTY OF CHESTER

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On this, the \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me \_\_\_\_\_, the undersigned officer, personally appeared Jason Winters who acknowledged himself to be the Chairman of the Board of Supervisors of East Brandywine Township, and that he as such Chairman, being authorized to do so, executed the foregoing Settlement Agreement for purposes therein contained by signing the name of the Township by himself as said Chairman.

IN WITNESS HEREOF, I have hereunto set my hand and official seal.

Commonwealth of Pennsylvania - Notary Seal  
Lisa Ann Taraschi, Notary Public  
Chester County  
My commission expires February 15, 2025  
Commission number 1305637  
Member, Pennsylvania Association of Notaries

Lisa Ann Taraschi

Signature of Notarial Officer

Lisa Ann Taraschi

Printed or typed name of Notarial Officer

My commission expires:

2/15/25

COMMONWEALTH OF PENNSYLVANIA

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: SS :

COUNTY OF CHESTER

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On this, the \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me \_\_\_\_\_, the undersigned officer, personally appeared George Scherbak, who acknowledged himself to be the Vice-Chairman of the Board of Supervisors of East Brandywine Township, and that he as such Vice-Chairman, being authorized to do so, executed the foregoing Settlement Agreement for purposes therein contained by signing the name of the Township by himself as said Chairman.

IN WITNESS HEREOF, I have hereunto set my hand and official seal.

Commonwealth of Pennsylvania - Notary Seal  
Lisa Ann Taraschi, Notary Public  
Chester County  
My commission expires February 15, 2025  
Commission number 1305637  
Member, Pennsylvania Association of Notaries

Lisa Ann Taraschi

Signature of Notarial Officer

Lisa Ann Taraschi

Printed or typed name of Notarial Officer

My commission expires:

2/15/25



COMMONWEALTH OF PENNSYLVANIA

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: SS :

COUNTY OF CHESTER

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On this, the 14 day of December, 2021, before me, the undersigned officer, personally appeared Kyle Scribner who acknowledged himself to be a member of the Board of Supervisors of East Brandywine Township, and that he as such member, being authorized to do so, executed the foregoing Settlement Agreement for purposes therein contained by signing the name of the Township by himself as said Chairman.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Commonwealth of Pennsylvania - Notary Seal  
Lisa Ann Taraschi, Notary Public  
Chester County  
My commission expires February 15, 2025  
Commission number 1305637  
Member, Pennsylvania Association of Notaries

Lisa Ann Taraschi  
Signature of Notarial Officer

Lisa Ann Taraschi  
Printed or typed name of Notarial Officer

My commission expires:  
2/15/25

COMMONWEALTH OF PENNSYLVANIA

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: SS :

COUNTY OF ~~MONTGOMERY~~

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Chester

This record was acknowledged before me on 12/14, 2021 by Paul A. Prince, Esq., Supreme Court identification number 16056, as a member of the bar of the Pennsylvania Supreme Court certified that he was personally present when Leonard Blair executed the Settlement Agreement on behalf of L&R Partnership LLC and BVA, LLP and that Leonard Blair, being authorized to do so, executed the Settlement Agreement for the purposes contained therein.

Commonwealth of Pennsylvania - Notary Seal  
Lisa Ann Taraschi, Notary Public  
Chester County  
My commission expires February 15, 2025  
Commission number 1305637  
Member, Pennsylvania Association of Notaries

Lisa Ann Taraschi  
Signature of Notarial Officer

Lisa Ann Taraschi  
Printed or typed name of Notarial Officer

My commission expires:  
2/15/25

COMMONWEALTH OF PENNSYLVANIA

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: SS :

COUNTY OF CHESTER

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This record was acknowledged before me on 12/14, 2021 by John R. Cropper who attested that he executed the foregoing Settlement Agreement for purposes therein contained by signing his name thereto.

Commonwealth of Pennsylvania - Notary Seal  
Lisa Ann Taraschi, Notary Public  
Chester County  
My commission expires February 15, 2025  
Commission number 1305637  
Member, Pennsylvania Association of Notaries

Lisa Ann Taraschi  
Signature of Notarial Officer

Lisa Ann Taraschi  
Printed or typed name of Notarial Officer

My commission expires:

2/15/25