

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into as of December __, 2020, between Brixmor GA Seacoast Shopping Center, LLC (“Brixmor”) and the Town of Seabrook, New Hampshire (the “Town”) (collectively, the “Parties”).

Whereas, Brixmor owns taxable property located at 270 Lafayette Road in the Town, identified as Tax Map/Lot # 9-49-20 (“Subject Property”);

Whereas, the Town assessed Brixmor for the net taxable value of the Subject Property of \$4,924,500 for Tax Years 2018 and 2019.

Whereas, Brixmor has appealed the Town’s assessments of the Subject Property for Tax Years 2018 and 2019 with the New Hampshire Superior Court, those cases having Docket Numbers, respectively, of: 218-2019-CV-01204 and 218-2020-CV-00844 (“Tax Appeals”);

Whereas, additional litigation of the Tax Appeals over the assessed value of the Subject Property would involve significant expense, time and risk on the part of both Parties, causing financial uncertainties for both Brixmor and the Town; and

Whereas, in order to avoid the costs, risks and inconvenience of litigation, Brixmor and the Town desire to settle and resolve the Tax Appeals and avoid litigation associated with future tax years through 2022.

NOW, THEREFORE, Brixmor and the Town agree as follows:

1. Waiver of Claims and Adjustment of 2020 Final Tax Bill

A. To settle and resolve the Tax Appeals BTLA Appeals and any future litigation involving Tax Years 2020-2022, the Parties have agreed to set the assessment for the Subject Property to \$3,817,800 for Tax Year 2020, Tax Year 2021, and Tax Year 2022, as described in greater detail in Section 3, below.

B. Brixmor waives any claim to a tax abatement refund for Tax Years 2018 and 2019, including waiving claims to any interest or other costs.

C. For Tax Year 2020, the Parties agree that the assessment of the net taxable value of the Subject Property shall be \$3,817,800.

D. The Town shall adjust the 2020 Final Tax Bill and credit Brixmor as necessary so that the total amount of taxes Brixmor pays for Tax Year 2020 is based on an assessment of \$3,817,800 and the yet-to-be determined final Tax Year 2020 Tax Rate for the Town.

E. With respect to Tax Year 2020, Brixmor agrees that it will not seek any abatement for the Subject Property.

F. No further refunds, abatements, interest, costs, or other sums or expenses shall be due or owed to Brixmor by the Town, or to the Town by Brixmor, regarding property assessment matters for Tax Years 2018 through 2020.

2. Release and Disposition of the Litigation

A. Brixmor hereby waives and releases the Town from any and all claims to a refund for or any additional abatement of any taxes paid to the Town for the Tax Years 2018 and 2019 and further releases and waives any and all claims to any interest, costs, or other sums or expenses which Brixmor alleges, has alleged, or may allege are due to Brixmor by the Town as a result of any alleged over-assessment of the Subject Property for those Tax Years.

B. Within 10 days after full execution of this Agreement, Brixmor shall file the Settlement Agreement with the Superior Court and request that the above-referenced appeals be closed in light of the Settlement Agreement. Brixmor agrees and understands that the closure of the Superior Court appeals as a result of the Settlement Agreement shall be with prejudice, and no further action shall be filed or commenced by the Town or Brixmor with regard to Tax Years 2018 and 2019, except to the extent necessary to enforce the terms of this Agreement.

3. Future Assessments

A. For Tax Years 2021 and 2022, notwithstanding any other statutory or other legal requirements, the Parties agree that the assessment of the Subject Property in the Town shall be \$3,817,800, subject to any material physical change, change in ownership, change in zoning, or change in the Property by subdivision, boundary line adjustment, or merger, which would require an assessment adjustment in accordance with RSA 75:8 for Tax Year 2021 or 2022.

B. The above-listed agreed upon Assessments are the result of good faith settlement negotiations between the Parties to resolve any and all disputes regarding the Tax Appeals and any disputes regarding Tax Years 2020, 2021, and 2022.

C. With respect to Tax Years 2021 and 2022, Brixmor agrees that it will not seek any abatement except for, if Brixmor deems it necessary in its sole discretion, with respect to the Town's assessment adjustments pursuant to RSA 75:8 with regard to any material physical change, change in ownership, change in zoning, or change in the Property by subdivision, boundary line adjustment, or merger.

D. The Town agrees that it will hold the assessment of the Subject Property of \$3,817,800, subject to the conditions set forth in Section 3A, through the Town's upcoming Town-wide revaluation, until the end of Tax Year 2022.

4. No Admissions

A. This Agreement is intended solely to resolve the litigation over Tax Years 2018 and 2019, and to avoid similar litigation of future tax years covered by this Agreement. Nothing in

this Agreement is intended to be or shall constitute an admission by either Party for any purpose whatsoever.

B. Neither Brixmor, nor the Town, nor any other person shall use this Agreement as evidence or reference this Agreement in any other manner in any matter or proceeding of any kind, except that this Agreement may be used as evidence in any suit or proceeding to enforce the terms of this Agreement. The agreed upon assessments, as described in this Agreement, will not be the basis for any future assessment of the subject property beyond the terms of this Agreement.

5. Miscellaneous Provisions

A. Each of the Parties represents and warrants that it has full power and authority to enter into and execute this Agreement, and that all applicable laws ordinances, rules and procedures have been satisfied in the approval and execution of this Agreement.

B. This Agreement may not be changed, altered, modified or waived except by written amendment entered into by the Parties or their successors-in-interest.

C. This Agreement shall not be construed more strictly against one party than the other merely by virtue of the fact that it has been prepared initially by counsel for one of the Parties, it being recognized that both the Town and Brixmor and their respective counsel have had a full and fair opportunity to negotiate and review the terms and provisions of this Agreement and to contribute to its substance and form.

D. This Agreement shall be binding on the Parties' successors and assigns, including future Boards of Selectmen. In the event of a material breach of this Agreement, the non-breaching party may pursue any remedy available to it either in law or in equity, including an action for injunctive relief or to compel specific performance of this Agreement.

E. The Parties acknowledge that this Agreement constitutes a full, final and complete settlement of their differences with regard to the subject matter hereof and supersedes any and all other written or oral communications or understandings between or among them related hereto. The Parties further acknowledge that this Agreement contains the sole and entire agreement between the Parties related to the subject matter of this agreement.

F. This agreement shall be governed by the laws of the State of New Hampshire, without regard to its choice of law principles.

G. This Agreement may be executed in counterparts, which shall then be read together and shall constitute for all purposes a single, binding agreement.

H. No representations or warranties have been made by either party to the other or by anyone else except as expressly set forth in this Agreement, and this Agreement is not being executed in reliance upon any representation or warranty not expressly set forth herein.

I. This Agreement has been approved by the Seabrook Board of Selectmen at a duly called and noticed public meeting held on the ___ day of _____, 2020.

This Agreement is EXECUTED by the undersigned, duly authorized representatives of the Parties.

BRIXMOR GA SEACOAST SHOPPING CENTER, LLC

Dated: _____, 2020 By: _____
Printed Name:
Title:

TOWN OF SEABROOK

Dated: _____, 2020 By: _____
Printed Name: Theresa A. Kyle
Title: Chairman of Board of Selectmen

Dated: _____, 2020 By: _____
Printed Name: Ella M. Brown
Title: Member & Vice Chairman

Dated: _____, 2020 By: _____
Printed Name: Aboul B. Khan
Title: Member & Clerk