# SETTLEMENT AGREEMENT AND RELEASE

This **SETTLEMENT AGREEMENT AND RELEASE** is made this 4th day of August 2021 (the "Agreement") by and between **KBG EXPRESS NB LLC**, a New Jersey limited liability company (hereinafter referred to as ("KBG" or "Tenant"), and the **NEW BRUNSWICK PARKING AUTHORITY** on behalf of individuals known and unknown (hereinafter referred to as the "Landlord" or the "Authority").

## WITNESSETH

**WHEREAS**, the New Brunswick Parking Authority is a public body corporation operating under the laws of the State of the New Jersey, with offices located at 106 Somerset Street, 6th Floor, New Brunswick, NJ 08901.

**WHEREAS**, John Park, an individual with a principal place in New Jersey ("Park"), is the owner of KBG Express NB LLC, a New Jersey limited liability company with address of 5 Market Street, Plainsboro, New Jersey 08536, and currently leases 6 Easton Avenue, New Brunswick, New Jersey 08901 from the Landlord pursuant to that certain Lease Amendment executed on May 30, 2018;

**WHEREAS**, the Tenant currently owes the Landlord past due rent in the amount of $63,164.00 resulting from failure to pay rent between the dates of February 20, 2020 and May 27, 2021 (the "Past Due Rent");

**WHEREAS**, Park, Tenant and Landlord have agreed to settle accounts in connection with the Past Due Rent, pursuant to which Tenant shall pay Landlord the sum of FORTY-SEVEN THOUSAND THREE HUNDRED SEVENTY-THREE DOLLARS AND ZERO CENTS ($47,373.00) (the "Settlement Amount") in full payment for all actual and potential claims that have been or may be raised by the Landlord with respect to the Past Due Rent; and

**WHEREAS**, the parties wish to amicably resolve all potential disputes, claims, issues, controversies, and liabilities between and among them that have been or could be asserted in relation to the Past Due Rent in a legal proceeding pursuant to the terms and conditions of this Agreement, and wish to memorialize that agreement in this final, binding Agreement.

**NOW THEREFORE**, in consideration of mutual covenants and obligations of this Agreement, and for such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement, intending to be legally bound, do hereby agree to settle the Past Due Rent and all actual and potential claims in connection therewith as follows:

1. **Release.** Upon receipt of a fully executed copy of this Agreement and payment of the Settlement Amount, Landlord shall hereby release Tenant and Park, as applicable, and give up any and all claims, causes of action, demands, damages, liabilities, and rights in regards to the Past Due Rent for the invoice dates of February 20, 2020 to May 27, 2021, which Landlord or anyone acting on Landlord's behalf, may have against Park, Tenant, and/or any employees, agents, directors, or officers of the Tenant. This release only applies to claims in connection with the Past Due Rent resulting from failure to pay rent for the invoice dates of February 20, 2020, to May 27, 2021, of which the Landlord is currently aware and does not release any and all claims not mentioned in this Agreement.

With regard to the Past Due Rent, Landlord and its current and/or former employees, partners, agents, directors, officers, attorneys, representatives, successors, insurers, and assigns do hereby fully and forever release, remiss, and discharge Tenant, on behalf of himself, any of his respective attorneys, representatives, heirs, personal representatives, executors, administrators, insurers, subrogees, successors, and assigns from any claims, demands, damages, liabilities, actions, obligations, accounts, covenants, agreements, judgments, reckonings, losses, and undertakings of any nature and kind, both in law and in equity in connection with the Past Due Rent.

2. **Tax Consequences.** The Authority makes no representation regarding the federal and state tax consequences of the Settlement Amount and shall not be responsible for any tax liability, interest or penalty, liens, or claims incurred by Tenant, which in any way arise out of or in relation to said Settlement Amount. Tenant shall be responsible for the payment of any federal or state taxes or claims or liens thereunder required by law to be paid with respect to the settlement payment made to the Landlord under this Settlement Agreement and Release.

3. **Consideration.** Upon the return of an executed original copy of this Agreement signed by the Tenant, this agreement will be presented to the Authority's Board of Commissioners. Tenant understands that the settlement is contingent upon approval of the Board of Commissioners, as full and complete satisfaction of past due rent invoiced between February 20, 2020, and May 27, 2021, that Tenant owes Landlord. If the Board of Commissioners approves this agreement, Tenant's payment will be due within 5 calendar days of the Tenant's notice of approval. If payment of the full Settlement Amount is not made within 5 calendar days, this agreement will be null and void.

4. **Pro Se Litigant.** Tenant acknowledges that it has represented itself in negotiations for, and in the preparation of, this Settlement Agreement and Release by its own choosing, that it is fully aware of the contents and the legal effect of this Settlement Agreement and Release, and that it is voluntarily entering into this Settlement Agreement and Release of its own volition.

5. **No Representations.** Tenant and Landlord represent and acknowledge that in

executing this Agreement, they are not relying and have not relied upon any representations or statements made by the other party or its agents, representatives, or attorneys with regard to the subject matter, basis, or effect of this Agreement or otherwise beyond the representations and statements, if any, expressly contained herein.

6. **Confidentiality.** Landlord and Tenant agree that the terms of this Agreement shall be confidential and that Tenant or Landlord shall not disclose the terms in whole or in part to anyone other than that Tenant or Landlord may disclose certain terms as required for financial or tax advice or audits, or in response to a valid court order, subpoena, discovery request, or upon written consent of the other party—except that Landlord will place a resolution to approve this Agreement, or other reference to this Agreement, on the agenda of a public meeting of the Authority's Board of Commissioners (and the agenda with the resolution's title, or other reference to this Agreement, will be posted on the Authority's website), and may make mention of the resolution (or agenda item) and its contents during such meeting, and except that Landlord may disclose this Agreement and its terms in response to public questions at any public meeting of the Authority's Board of Commissioners, or in response to written or e-mailed questions from the press or from City of New Brunswick officials, or in response to an Open Public Records Act (OPRA) request.

7. **Inadmissible as Evidence.** This Agreement and the contents hereof shall not be admissible as evidence in any civil litigation except to enforce the terms expressed herein and shall not be deemed to be an admission of liability by any party to this Agreement.

8. **No Claims Permitted/Covenant Not to Sue.** The Landlord represents that this matter is concluded in its entirety and Authority will not file any complaint, charges, or grievances against the Tenant or any of its agents, employees, or insurers, with any local, state,

or federal agency, court, or other regulative entity for the Past Due Rent invoiced between February 20, 2020, and May 27, 2021.

9. **No Publicity, Disparagement, or Disclosure of Confidential Information.** Tenant and the Authority agree that they shall not issue any public communication, written, verbal or otherwise, that disparages, criticizes, or otherwise reflects adversely upon either the Tenant or the Authority or which encourages any adverse action against either the Tenant or the Authority, provided that each is permitted to testify truthfully under oath pursuant to subpoena and except for the Landlord's disclosure exceptions in Section 6 above. Additionally, the Tenant and the Authority agree not to disparage or make or solicit any comments, statements, or the like to the media, future/prospective employers, or to other third parties, that may reasonably be expected to lead to unwanted or unfavorable publicity or may reasonably be considered to be derogatory or detrimental to the good name or business reputation of each other or to each other's heirs, assigns, predecessors, successors, agents, officers, employees, directors, former employees, principals, subsidiaries, insurers, co-insurers, re-insurers, and representatives—except for the Landlord's disclosure exceptions in Section 6 above.

Tenant and Landlord agree that they will not disclose the terms of this Agreement, or the amount to be paid hereunder, to any individuals or entities, including but not limited to, members of the press and media, present and former officers, employees, and agents, and other members of the public, except to the extent required by law and except for the Landlord's disclosure exceptions in Section 6 above. This prohibition does not include disclosure to Tenant's or Landlord's, as applicable, attorneys, accountants, financial advisors, spouses, insurers, or governmental taxing authority.

All parties to this Agreement agree and acknowledge that this section is a material term of this Agreement.

Any breach, by Tenant or Landlord, of the requirements of any aspects of the non-disparagement, no publicity, or non-disclosure of confidential information clauses featured in this section shall subject Tenant or Landlord to damages as set forth in the "Breach of Agreement" section of this Agreement.

10. **Breach of Agreement.** Failure by Tenant or Landlord to comply with any of the material obligations contained in this Agreement shall entitle the non-breaching party to give the breaching party notice specifying the nature of the default and requiring the breaching party to cure such default. If such default is not cured within five (5) calendar days after the receipt of such notice, or if such default cannot be cured, or if the breaching party does not commence and/or diligently continue actions to cure such default, the non-breaching party shall be entitled, without prejudice to any of its other rights conferred by this Agreement, and in addition to any other remedies available to non-breaching party by law or in equity, to immediately recover and/or cease providing the consideration provided under this Agreement and to obtain damages. If any actions are necessitated by the breaching party's breach, breaching party agrees to reimburse the non-breaching party for any and all attorney's fees and/or costs.

11. **Patriot Act Compliance.** Neither Tenant nor any individual or entity having an interest in Tenant or controlled by Tenant (i) is in violation of any applicable anti-money laundering or anti-bribery laws and regulations, (ii) is a person or entity listed on the Specially Designated Nationals and Blocked Persons ("SDN") lists; (iii) is a person or entity who has been determined by competent authority to be subject to the prohibitions contained in the Executive Order No. 133224, 66 Fed. Regarding. 49079 (September 25, 2001) (the "Executive Order"); or (iv) is owned or controlled by, or acts for or on behalf of, any person or entity on the SDN or any

other person or entity who has been determined by competent authority to be subject to the prohibitions contained in the Executive Order.

Tenant will use its good faith and commercially reasonable efforts to comply with the Patriot Act (as defined below) and all applicable requirements of governmental authorities having jurisdiction over Tenant including those relating to money laundering and terrorism.

For purposes hereof, the term Patriot Act refers to the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism ("USA PATRIOT") Act of 2001, as the same may be amended from time to time, and corresponding provisions of future laws.

12. **Board of Commissioners Vote.** This Agreement is contingent upon the Authority's Board of Commissioners granting approval of this Agreement. If the Board of Commissioners does not approve of this Agreement, this Agreement will be considered null and void and payment will be returned to Tenant.

13. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of New Jersey applicable to contracts wholly performed therein (regardless of where actually performed) without regard to principles of conflicts of laws.

14. **Who Is Bound.** The Tenant and Landlord party hereto, their agents, servants, employees, and assigns are bound by this Agreement. Anyone who succeeds to either of their respective rights and responsibilities, such as heirs or the executor(rix) of an estate, is also bound. This Agreement is made for the benefit of the parties hereto and of all who succeed to their respective rights and responsibilities, including but not limited to heirs or the executor(rix) of an estate.

15. **Entire Agreement and Amendments.** This Agreement constitutes the entire

understanding between the parties hereto, represents the final written expression of the parties with respect to the subject matter hereof, and may not be amended, altered, or modified except by a writing signed by both the Authority and Tenant.

Tenant acknowledges that, in executing this document, he has not relied upon any statement, promise, or representation, oral or written, not set forth herein.

16. **Acknowledgment of Parties.** Each of the parties has carefully read and understands the terms and conditions of this Agreement and acknowledges that Landlord has been advised by counsel. Tenant acknowledges as a pro se litigant a full and complete understanding as to the meaning and legal implications of this Agreement and executes this document and all releases and conditions contained within knowingly and voluntarily.

17. **Miscellaneous Provisions.**

a) The Parties agree to take no action which is intended, or would reasonably be expected, to disparage each other, or to harm each other's reputation, or which would reasonably be expected to lead to unwanted or unfavorable publicity to either Party—except that the Landlord retains the disclosure exceptions described in Section 6 above.

b) If it is determined by any court of competent jurisdiction that any provision hereof is invalid, the remaining provisions shall remain in full force and effect.

18. **Signatures.** Each person signing this Agreement on behalf of a business entity warrants and represents that he/she is fully authorized by that entity to execute this Agreement and to bind the said entity to all of the terms and conditions of this Agreement.

19. **<u>Relationship of the Parties</u>.** Neither party shall have any right or authority, express or implied, to assume or create any obligation of any kind, or to make any representation or warranty, on behalf of the other party or to bind the other party in any respect whatsoever.

20. **<u>Counterparts</u>.** This Agreement may be executed in counterparts, each of which shall be deemed original, and together which shall constitute one in the same instrument. Electronically transmitted counterparts shall be deemed originals for all purposes.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, and intending to be legally bound, the parties hereto have executed this Settlement Agreement and Release as of the date first written above.

TENANT

KBG EXPRESS NB LLC:

By: ______________________
Name: John Park
Title: Authorized Representative

LANDLORD

NEW BRUNSWICK PARKING AUTHORITY

By: ______________________
Name: Matthew Kennedy
Title: Executive Director

[Signature Page to the Settlement Agreement and Release]