

[CERTIFIED TRANSLATION]

**GOVERNMENT OF PUERTO RICO
AUTONOMOUS MUNICIPALITY OF BAYAMÓN**

[Puerto Rico
coat of arms]

[Bayamón
coat of arms]

**AGREEMENT FOR THE TRANSFER OF CERTAIN POWERS OF THE PLANNING
BOARD AND THE PERMITS MANAGEMENT OFFICE BY THE GOVERNMENT OF
PUERTO RICO TO THE AUTONOMOUS MUNICIPALITY OF BAYAMÓN**

Revised as of 2012

The revision herein adjusts the Powers Transfer Agreement in force to the provisions of Public Law No. 161-2012 and Public Law No. 106-2012

[Planning Board logo: PB;
Vision; Future; Community]

[logo: Permits Management
Office; OGPe (Spanish
acronym); Expeditiousness *
Transparency * Integrity]

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I. APPEARANCE

AS PARTY OF THE FIRST PART: THE GOVERNMENT OF PUERTO RICO, hereinafter referred to as “THE CENTRAL GOVERNMENT,” represented by the GOVERNOR of Puerto Rico, Honorable LUIS G. FORTUÑO BURSET, the PLANNING BOARD and the PERMITS MANAGEMENT OFFICE, represented, respectively, by its president, Rubén Flores Marzán, planner, and by its executive director, Edwin Irizarry Lugo, Esq.

AS PARTY OF THE SECOND PART: THE AUTONOMOUS MUNICIPALITY OF BAYAMÓN, hereinafter referred to as “THE MUNICIPALITY,” represented by its mayor, Honorable Ramón Luis Rivera Cruz.

The parties assure that they have the necessary capacity and legal authority to executive this revision to the Bayamón Land Management Powers Transfer Agreement in force (hereinafter, the Agreement) originally executed by the parties on July 28, 1999. Said authority arises from Chapters XIII and XIV of Public Law No. 81 of August 30, 1991, as amended, known as the Commonwealth of Puerto Rico Autonomous Municipalities Act (hereinafter, Autonomous Municipalities Act). Said chapters establish and regulate the relationship between THE PARTIES and provide for the transfer, by the CENTRAL GOVERNMENT to the municipalities, of certain powers of the PLANNING BOARD and the PERMITS MANAGEMENT OFFICE (OGPe [Spanish acronym]), formerly the REGULATIONS AND PERMITS ADMINISTRATION (ARPE [Spanish acronym]) regarding land management, subject to the applicable legislation.

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II. INTRODUCTION

- A. The Agreement executed by THE PARTIES articulated the public policy of the CENTRAL GOVERNMENT established in the Autonomous Municipalities Act consisting in granting municipalities the maximum possible autonomy and giving them the necessary powers and authorities to assume a central and fundamental role in their urban, social and economic development.
- B. In recognition of this public policy and in compliance with the goals and objectives expressed in the Autonomous Municipalities Act, the MUNICIPALITY and the CENTRAL GOVERNMENT agree and formulate the revision herein of the Agreement in force with the purpose of transferring to the MUNICIPALITY new powers of the PLANNING BOARD and the PERMITS MANAGEMENT OFFICE related to land management granted by Public Law No. 106 of June 5, 2012 (which amended the Autonomous Municipalities Act) and adjusting the Agreement to the relevant provisions of Public Law No. 161 of December 1, 2009, as amended, known as the Puerto Rico Permits Process Reform Act.
- C. By virtue of Public Law Number 75 of June 24, 1975, as amended, the PLANNING BOARD has the responsibility of guiding the comprehensive development of Puerto Rico in a coordinated, appropriate and economical manner and in a way that, in keeping with current and future social needs and human, environmental, physical and economic resources, will promote health, safety, order, coexistence, prosperity, defense of culture, economic soundness and the general wellbeing of the current and future residents of Puerto Rico. When developing the public policy of Puerto Rico, the PLANNING BOARD aspires to achieve the economic efficiency and social wellbeing in the process of development, population distribution, the use of land and other natural

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- resources, and public improvements that will tend to create favorable conditions for the comprehensive development of society.
- D. By virtue of Public Law Number 161, *supra*, the PERMITS MANAGEMENT OFFICE has the following duties, among others: receiving, addressing and issuing final decisions about permits, licenses, inspections, certifications and any other authorization or procedure needed to develop and use land throughout the island.
- E. The Autonomous Municipalities Act establishes an orderly process for the transfer of powers of the PLANNING BOARD and the REGULATIONS AND PERMITS ADMINISTRATION, currently PERMITS MANAGEMENT OFFICE, to the MUNICIPALITY once it has adopted a Land Management Plan.
- F. The MUNICIPALITY drafted and adopted a Land Plan pursuant to the provisions of Chapter XIII of the Autonomous Municipalities Act which includes the information, strategies and provisions for the organization of its urban land and a functional, aesthetic and compact plan for the new land to be developed and for the conservation and protection of rural land. Said Land Plan shall be completely revised every eight (8) years, as established in Public Law No. 81, *supra*.
- G. The Land Plan adopted by the MUNICIPALITY encourages the judicious use and optimal exploitation of the land to ensure the wellbeing of current and future generations, promoting an orderly, rational and comprehensive development process of said land.
- H. On December 28, 1992, the Bayamón Municipal Legislature unanimously approved Resolution No. 59, adopting the Municipality of Bayamón Land Plan.

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- I. On December 30, 1992, the GOVERNOR OF PUERTO RICO at the time signed Administrative Bulletin No. OE-1992-81 approving the Municipality of Bayamón Land Plan.
- J. Later on, the Bayamón Municipal Legislature approved Resolution 152 of May 8, 2009, adopting its comprehensive revision.
- K. The Comprehensive Revision of the Land Management Plan was adopted by the PLANNING BOARD by means of Resolution No. JP-PT-15-14 of December 30, 2009, and approved by the governor of Puerto Rico on March 5, 2010, by means of Executive Order No. OE-2010-009.
- L. On June 22, 2010, the governor of Puerto Rico signed the Agreement for the Delegation of Responsibilities and Powers of the PLANNING BOARD and the REGULATIONS AND PERMITS ADMINISTRATION to the Autonomous MUNICIPALITY of Bayamón, granting the MUNICIPALITY Categories I to V and granting it additional powers under Category V.
- M. Public Law No. 106, *supra*, was enacted on June 5, 2012, to grant additional powers to Autonomous Municipalities in matters related to the management of their land.
- N. By means of Resolution No. 167 of October 18, 2012, the Bayamón Municipal Legislature authorized the mayor to request before the governor of Puerto Rico the new powers granted under Categories IV and V by Public Law No. 106, *supra*.
- O. By means of Resolution No. 259 of December 24, 2012, the Municipal Legislature ratified this Categories Transfer Agreement, as revised.

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- P. The Planning Office of the MUNICIPALITY, which has existed since 1977, will act as the Land Management Office discharging the responsibilities set forth in Chapter XIII of the Autonomous Municipalities Act. The MUNICIPALITY created the Permits Office by means of Ordinance No. 70, Series 1992-93. These two offices will exercise the powers related to land management that have been transferred from the PLANNING BOARD and the PERMITS MANAGEMENT OFFICE, respectively.
- Q. The MUNICIPALITY has efficiently exercised the powers under Categories I to V for the past twelve (12) years, showing the necessary human and financial resource capacity with the highest degree of compliance with the requirements established by the PARTIES.
- R. The MUNICIPALITY has also demonstrated that it has the fiscal and technical capacity, as well as the systems, procedures and infrastructure, needed to exercise or implement the land management powers that are in effect plus the new powers granted under this Agreement.
- S. The transfer of powers to be carried out by means of this Agreement shall result in a benefit for the residents of the Municipality since it will expedite the processing of applications for permits, endorsements, authorizations or activities permitted under the powers subject-matter of this Agreement.
- T. The MUNICIPALITY agrees that its efforts in implementing the powers transferred by means of this Agreement shall be in keeping with public policy and the rules established by the PARTY OF THE FIRST PART.

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III. CLAUSES AND CONDITIONS

A. CATEGORIES

In accordance with the foregoing, the GOVERNOR OF PUERTO RICO, on behalf of the CENTRAL GOVERNMENT, transferred to the MUNICIPALITY the powers to receive, evaluate and decide on applications of the PLANNING BOARD and the PERMITS MANAGEMENT OFFICE regarding land management as established in Article 13.012 of the Autonomous Municipalities Act. This Revision to the Agreement transfers new powers under Categories IV and V and revises the powers included under Categories I, II, III, IV and V that had been previously transferred by means of the Agreement in force and which are detailed hereunder:

(a) Categories I and II

- (1) Use permits for existing structures or lots of land conforming to the regulations in force that do not require exceptions or variances in construction. It does not include permits requiring a variance in use or intensity in which power has been reserved by the public agencies. “Use permit for existing structures or lots of land” shall be understood to mean a permit granted for structures or lots of land that had been previously occupied and is not the use permit that is granted immediately after construction or partitioning. If it is the first time the use permit is granted, it shall be granted by the entity responsible for evaluating the preliminary plan or construction or partitioning project, thus preventing two (2) different entities, one from the CENTRAL GOVERNMENT and another one from the MUNICIPALITY, from analyzing the same project in different phases of its permit evaluation.

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- (2) Authorizations of preliminary plans, construction permits (conventional or under Certifications Act¹) and use permits, in all cases on urban or developable land. Consideration of projects with a construction area under one thousand (1,000) square meters, not exceeding four (4) stories high and conforming to the regulations in force regarding use and intensity. In addition, consideration of urbanization works that are incidental to and inherent in the construction that is authorized. To be considered by the municipality in this category, these projects shall be located on lots with an area under one thousand five hundred (1,500) square meters.
- (3) Authorization to partition up to ten (10) lots, including the remnant, as long as they are conforming to Land Management Plans.

(b) Categories III and IV

- (1) Authorizations of preliminary plans, construction permits (conventional or under Certifications Act), use permits and permits for the installation, placement and display of signs and advertisements, except for those related to roadways made with federal funds, in accordance with the regulations in force. Consideration of projects with a construction area under five thousand (5,000) square meters, not exceeding four (4) stories high and conforming to the regulations in force regarding use and intensity. In addition, consideration of urbanization works that are incidental to and inherent in the construction that is authorized. To be considered by municipalities in this category, these

¹ Public Law No. 135 of June 15, 1967, as amended, known as “Certifications Act.”

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projects shall be located on lots with an area under four thousand (4,000) square meters.

- (2) Authorizations of preliminary developments, construction permits for urbanization works and authorization of registration plans. Consideration of urbanization projects with up to fifty (50) lots, conforming to the regulations in effect.
- (3) Amendments to Land Management Plans. Consideration of lots with an area under two thousand (2,000) square meters.
- (4) Use variances and construction, use and density variances in urban or developable lots measuring up to a maximum of four thousand (4,000) square meters.

(c) Category V

- (1) Consideration of use variances and construction or use intensity variances, of industrialized construction systems with a sub-regional impact and of all permits for the installation, placement and display of signs and advertisements, except for those related to roadways made with federal funds.
- (2) Environmental compliance by categorical exclusion.
- (3) Site and construction consults.
- (4) Authorizations of preliminary developments, construction permits for urbanization works (conventional or under Certifications Act) and authorization of registration plans.

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- (5) Construction permits and use permits (conventional or under Certifications Act).
- (6) Permits for urbanization works.
- (7) Authorization to partition up to ten (10) lots, including the remnant.
- (8) Amendments to Land Management Plans (changes in land classification) pursuant to the applicable regulations.
- (9) Municipal projects exempted by means of a Resolution of the Planning Board, municipal works for conservation and maintenance and community-based projects set forth in the loan agreements financed by the Government Development Bank or by means of an issue of income bonds.
- (10) Consideration of municipal projects in any classification district, including but not limited to:
 - a. animal shelters;
 - b. libraries;
 - c. indoor courts;
 - d. community centers;
 - e. childcare centers;
 - f. municipal diagnostic and treatment centers;
 - g. recycling centers;

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- h. solid waste collection centers;
- i. tutoring centers;
- j. multi-purpose and convention centers, as long as they are not regional in nature;
- k. buildings for public services and clubs;
- l. specialized municipal schools;
- m. parking lots;
- n. municipal police and/or fire stations;
- o. improvements to existing municipal facilities;
- p. retaining walls;
- q. municipal theme or eco-tourism parks;
- r. walking or running tracks;
- s. water pumping plants for local service;
- t. water treatment plants for local service;
- u. community-based infrastructure projects;
- v. municipal projects included in Land Management Plan;
- w. municipal recreational projects;
- x. noise-reduction fences.

(11) Power to authorize social interest housing projects in accordance with the Joint Permit Regulations for Construction Works and Use of Land.

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- (12) Consideration of specialized lodging, including nursing homes, in accordance with the Joint Permit Regulations for Construction Works and Use of Land.
- (13) The PLANNING BOARD and the PERMITS MANAGEMENT OFFICE may transfer other powers by means of amendments to the Agreement or through a Joint Resolution between the president of the Planning Board, the executive director of the PERMITS MANAGEMENT OFFICE and the mayor of the MUNICIPALITY, EXCEPT FOR:
- a. projects of public agencies not included in the Land Management Plan.
 - b. municipal projects not expressly delegated in this Agreement or not included in the Land Management Plan.
 - c. site consults for industrialized system projects that are regional in nature, including specific industrial projects, and the creation of lots for said purposes.
 - d. private projects that are regional in nature or impact and are not included in the Land Management Plan and are important for the health, safety and wellbeing of the region, including but not limited to:
 - i. shopping centers exceeding 249,999 square feet in net sales area;

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- ii. tourism projects, including but not limited to hotels with over 200 rooms, tourist villas with over 100 rooms, inns [*paradores*] with over 50 rooms, marine projects and mobile homes;
- iii. extensive commercial recreation projects in lots measuring over 12,000 square meters, such as fine arts and convention centers, racetracks, cycling tracks, cockpits, open-air cinemas, etc.;
- iv. agricultural projects, such as chicken or poultry farms measuring over 30,000 square feet, animal farms, etc.;
- v. university- and/or graduate-level teaching institutions or business or vocational schools exceeding two thousand (2,000) students in buildings measuring over 100,000 square feet;
- vi. hospitals with over 250 beds, area and/or regional hospitals, health clinics, infirmaries and mental hospitals;
- vii. ports, airports, railroads and heliports.

B. EFFECTS OF THE CATEGORY TRANSFER

- (1) The MUNICIPALITY shall apply and oversee the compliance with its own regulations and the applicable regulations of other agencies in the evaluation and decision-making process regarding the delegated categories. The Municipality shall apply and oversee the compliance with the regulations it has adopted from

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the PLANNING BOARD, the PERMITS MANAGEMENT OFFICE and other regulatory agencies for the development, subdivision and use of land and for the construction and use of buildings. It shall also oversee the compliance with any state legislation, ordinance or regulations of any government entity regulating construction in Puerto Rico. The PLANNING BOARD, the PERMITS MANAGEMENT OFFICE and other regulatory agencies must give notice to the MUNICIPALITY of any amendments to regulations, regulatory letters and guidelines in force and those that may be adopted in the future. To such effects, the regulations of the MUNICIPALITY may fill in specific areas that are not regulated by the state and are of concern to the MUNICIPALITY, as long as they are not against the interest of the State.

- (2) Once the category is transferred, the corresponding incidental procedures shall also be transferred, such as conformity consults, authorizations for demolitions, transfers of structures, earthwork, submissions to the P.R. Condominiums Act, and surface area corrections, among others. Once the MUNICIPALITY grants a construction authorization or permit under a category, it shall also grant the use permit for said construction. Likewise, if a public agency grants a construction authorization or permit, said agency shall grant the use permit. Furthermore, the PLANNING BOARD or the PERMITS MANAGEMENT OFFICE shall directly address any amendments submitted to the Agency and duly notified to the MUNICIPALITY regarding a construction authorization or permit that had been issued previously. Likewise, all complaints for actions prior to the signing of the Revision of this Agreement pending before the OFFICE OF THE INSPECTOR GENERAL OF PERMITS shall be addressed by said office until the completion thereof. Complaints filed after the signing of this Revised Agreement shall be

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addressed by the MUNICIPALITY, except for those related to the powers reserved by the PERMITS MANAGEMENT OFFICE.

- (3) Amendments (partial revisions) to Land Management Plans shall require a notice of the amendment to the PLANNING BOARD once it is approved by the MUNICIPALITY. Said amendments shall become effective twenty (20) business days after the notice to the PLANNING BOARD, as shown in the corresponding acknowledgment of receipt. Said period may be extended by just cause for an additional final period of fifteen (15) business days by means of a resolution of the PLANNING BOARD indicating the reasons for extending the same. If, during said period, the PLANNING BOARD determines that the amendment goes against the policies of the Plan or has an impact beyond municipal limits, the PLANNING BOARD may reject the partial revision (amendment). In this case, the PLANNING BOARD shall issue said decision through a Resolution and give notice thereof to the MUNICIPALITY. The PLANNING BOARD may determine by means of a Resolution that the partial revision (amendment) requested by the MUNICIPALITY requires a comprehensive revision of the Land Management Plan in its entirety. Said determination must be well-founded.
- (4) Just as the PLANNING BOARD and the PERMITS MANAGEMENT OFFICE, the MUNICIPALITY, by virtue of this transfer of powers, shall have the power that these agencies now have under the law to evaluate the grounds of the comments issued by state departments, agencies or public corporations in the planning and permit processes and make the corresponding decisions in accordance with their agreement or disagreement with the grounds of the corresponding agencies.

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- (5) The transfer to the MUNICIPALITY of the responsibilities or powers of the PLANNING BOARD and the PERMITS MANAGEMENT OFFICE entails the transfer of all the legal powers of said agencies to promote the compliance and implementation of the regulations in force regarding the use of land. The MUNICIPALITY, represented by the mayor or any official the mayor may designate, is authorized to file the corresponding legal actions to address, report, process and settle complaints about use and construction violations related to the transferred powers or responsibilities.

- (6) All authorization or permit applications, including environmental compliance by categorical exclusion (according to the regulations of the Environmental Quality Board) and applications reserved by the PLANNING BOARD shall be submitted to the Permits Office of the MUNICIPALITY in the format required by each agency, except for public projects and transactions, which shall be submitted to the Office of the Secretary of the PLANNING BOARD, and the powers reserved by the PERMITS MANAGEMENT OFFICE, such as recommendations, felling and pruning permits, among other powers transferred by concerned government entities, as defined in Public Law No. 161, *supra*, which shall be submitted to the PERMITS MANAGEMENT OFFICE. In the case of applications for environmental compliance by categorical exclusion, the MUNICIPALITY shall require from the applicant evidence of the corresponding payment to the PERMITS MANAGEMENT OFFICE before processing the application. After processing the application, the MUNICIPALITY shall send it to the PERMITS MANAGEMENT OFFICE so that said agency will include it in its electronic register or database. In the case of projects in which the central agencies have the power of consideration, after examining the file, the Permits Office of the

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MUNICIPALITY shall transfer the file to the corresponding agency, within a period that shall not exceed ten (10) business days following the filing date of the application, and give notice to the parties, so that the agency will act in accordance with the law.

- (7) When the file is transferred to the PLANNING BOARD or the PERMITS MANAGEMENT OFFICE, the evaluation thereof shall be governed by the provisions and documents included in the Land Management Plan, which includes, among others, the land classification regulations of the municipality. The adjudicative procedures related to said files shall be governed and/or carried out in accordance with the regulations for said procedures at the corresponding central agency. The MUNICIPALITY may retain the power to act as a proponent agency and carry out the environmental analysis of the case, as established in Article 4(b)(c) of Public Law No. 416 of September 22, 2004, as amended, known as the Environmental Public Policy Act and the regulations adopted by the Environmental Quality Board by virtue of the same, including in cases in which jurisdiction has been retained by the CENTRAL GOVERNMENT. In these cases, the MUNICIPALITY shall give notice to the agency with jurisdiction when transferring the file.
- (8) The MUNICIPALITY may request from the PLANNING BOARD or the PERMITS MANAGEMENT OFFICE a certified copy of the files, plans and other documents related to the prior history of the cases and matters regarding the land management powers that have been transferred to it by virtue of this Revised Agreement. In said cases, the public agencies shall be under the obligation to provide a certified copy of the abovementioned documents within a reasonable period of time after the corresponding payment has been made.

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- (9) Any procedures pending before the PLANNING BOARD, the PERMITS MANAGEMENT OFFICE, the LAND USE AND PERMITS REVIEW BOARD or any court as of the effective date of this Agreement shall continue to be processed before said agencies or court until a final decision is made with regards to the procedure under consideration. Furthermore, the substitution of parties shall not be necessary with regard to the cases pending before the LAND USE AND PERMITS REVIEW BOARD or review courts, but the MUNICIPALITY shall comply with the decisions of said forums.
- (10) In projects in which the power of consideration has been retained by the PLANNING BOARD or the PERMITS MANAGEMENT OFFICE, the MUNICIPALITY may not refuse to approve the works associated with the project (over which the MUNICIPALITY has exclusive competence) if they conform to the decisions made by the public agencies nor may modify the conditions they have imposed.
- (11) In the exercise of the transferred powers, the MUNICIPALITY, when issuing an authorization or permit, shall make sure that the necessary infrastructure to serve the project is available or that an effective and feasible way of mitigating the effects of the project on the existing infrastructure has been identified before the project is ready to receive a use permit. The MUNICIPALITY may not grant a use permit if there is no available infrastructure.

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C. PROGRAM FOR THE TRANSFER OF NEW POWERS

The MUNICIPALITY shall retain all responsibility in relation to Categories I, II, III, IV and V delegated before this Revision of the Agreement. By means of this Agreement, the CENTRAL GOVERNMENT hereby delegates to the MUNICIPALITY new powers of the PLANNING BOARD and the PERMITS MANAGEMENT OFFICE related to land management granted by Public Law No. 106, *supra*. Furthermore, the Agreement is hereby adjusted to the relevant provisions of Public Law No. 161, *supra*. The MUNICIPALITY shall assume responsibility for the responsible application and management of all the new powers delegated herein.

IV. GENERAL CONDITIONS

- (1) The powers to be transferred shall be exercised or applied exclusively within the territorial boundaries of the MUNICIPALITY, and the effects thereof shall not transcend the territorial area of the jurisdiction of the MUNICIPALITY.
- (2) The MUNICIPALITY shall exercise the transferred powers with the sole purpose of promoting the social and economic wellbeing of the population and achieving the land management goals and objectives, as established in Article 13.002 of the Autonomous Municipalities Act.
- (3) The MUNICIPALITY shall not approve any development that could limit or prevent free access by the public to its rivers, lakes, beaches and other bodies of water pursuant to the provisions of the Waters Act of March 12, 1903, as amended; Public Law No. 48 of June 27, 1986, as amended; Public Law No. 136 of June 3, 1976, as amended, known as the Act for the Conservation, Development and Use of the Water Resources

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of Puerto Rico; the Joint Permit Regulations for Construction Works and Use of Land (Planning Regulations Number 31), in any matters relevant hereto; and any other applicable state or federal legislation.

- (4) The following shall be taken into account when considering projects in which the power of evaluation is reserved for the agencies of the CENTRAL GOVERNMENT:
 - a. The corresponding public agency shall consider the provisions of the Land Management Plan of the MUNICIPALITY when evaluating the application and shall take the necessary measures to make the application conform to the Plan insofar as possible.
 - b. The corresponding public agency shall ask the MUNICIPALITY for comments when evaluating the application.
 - c. In the case of projects or matters that are regional or supra-regional in nature or impact or which respond to an urgent public interest, the PLANNING BOARD or the PERMITS MANAGEMENT OFFICE may make agreements that are not necessarily compatible with the Land Management Plan of the MUNICIPALITY, as long as doing this is justified under their non-delegable clerical duties.
 - d. The MUNICIPALITY shall not have the power to make any decision with regard to cases in which the power of evaluation has remained with the corresponding public agency.
- (5) The MUNICIPALITY agrees to maintain in its organizational structure a Permits Office and a Land Management Office that will perform the duties established in

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Article 13.013 of the Autonomous Municipalities Act. The MUNICIPALITY agrees to include in its annual budget the necessary allocations for the operation of the Land Management Office and the Permits Office.

- (6) The Municipality may choose to appoint two (2) members to the Adjudicative Board, as established in Art. 6.2 of Public Law No. 161, *supra*. If it decides to do so, it must give notice of said request to the Planning Board and the PERMITS MANAGEMENT OFFICE thirty (30) days in advance.
- (7) The terms, procedures and conditions related to requests for the administrative or judicial review of decisions made by the MUNICIPALITY when enforcing the powers transferred by means of this Agreement shall be those applicable in accordance with Public Law No. 161, *supra*.
- (8) Once the PLANNING BOARD or the PERMITS MANAGEMENT OFFICE approves a project in which it has retained jurisdiction, the subsequent operational stages may be evaluated by the Permits Office of the MUNICIPALITY of BAYAMÓN. When the PLANNING BOARD or the PERMITS MANAGEMENT OFFICE determine that the project must be considered by the central agency, said agency shall maintain exclusive jurisdiction over the following procedures: reconsiderations, re-openings, amendments and extensions. Said subsequent stages must be submitted to the Office of the Clerk of the corresponding central agency with a copy to the Permits Office of the MUNICIPALITY.
- (9) The MUNICIPALITY agrees to provide the technical, economic and human resources needed to perform the powers transferred to it by means of this Agreement and shall

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allocate the necessary economic resources to pay for the expenses related to the transferred powers.

(10) The MUNICIPALITY shall assume all liability arising from the actions taken in the exercise of the powers transferred to it by means of this Revised Agreement and expressly holds the PARTY OF THE FIRST PART harmless from any liability for the actions it has taken.

(11) The MUNICIPALITY shall take measures so that the exercise of the powers delegated by the CENTRAL GOVERNMENT will not affect or interrupt municipal duties, activities, efforts, programs, services and operations.

V. RULES APPLICABLE TO THE AGREEMENT

A. ORDINANCES AND RESOLUTIONS

Resolution No. 167, Series 2012-2013, of October 18, 2012, by means of which the Bayamón Municipal Legislature authorizes the MAYOR to request from the GOVERNOR the transfer of the new land management powers granted by means of Public Law No. 106, *supra*, and to adjust the Agreement to the relevant provisions of Public Law No. 161, *supra*.

B. SUBSTANTIVE REGULATIONS APPLICABLE TO THE AGREEMENT

To exercise the powers transferred by means of this Agreement, the MUNICIPALITY hereby adopts the following regulations in force and as they are amended in the future by the PLANNING BOARD, the PERMITS MANAGEMENT OFFICE or other agencies, as applicable.

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- (1) Joint Permit Regulations for Construction Works and Use of Land (Planning Regulations No. 31);
- (2) Regulations on Special Flood-Risk Areas (Planning Regulations No. 13);
- (3) Regulations on the New Responsibilities to Make Urban Development Feasible (Planning Regulations No. 21);
- (4) Public Space Infrastructure Management Regulations (Planning Regulations Number 22);
- (5) Regulations on Municipal Land Management Plans and the Transfer and Management of Powers (Planning Regulations No. 24);
- (6) any other special regulations that have been adopted by the PLANNING BOARD or are adopted in the future. Special regulations arising from statutes or central and regional public policies shall be ranked above the approved Land Plan;
- (7) Puerto Rico Building Code (2011 Puerto Rico Building Code) in force with its subsequent amendments or supersessions adopted by the PERMITS MANAGEMENT OFFICE;
- (8) Adjudicative Procedures Regulations of the LAND USE AND PERMITS REVIEW BOARD;
- (9) regulations that in whole or in part supersede or amend any of the abovementioned regulations and are adopted by virtue of Public Law No. 161, *supra*.

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C. PROCEDURAL REGULATIONS APPLICABLE TO THE AGREEMENT

- (1) The procedures, rules and processes related to any application, request or any other procedure or remedy required or allowed under the powers transferred to the MUNICIPALITY by this Agreement and the procedure for the review of the decisions made by the MUNICIPALITY in the exercise of the transferred powers shall be governed by the Land Management Regulations
- (2) If the power in question was transferred from the PLANNING BOARD or the PERMITS MANAGEMENT OFFICE to the MUNICIPALITY, the MUNICIPALITY may adopt other regulatory provisions to establish procedures for the exercise of the powers transferred by means of this Agreement.
- (3) The final adoption of any regulatory provision by the MUNICIPALITY shall be carried out in accordance with the provisions of Article 13.013 of the Autonomous Municipalities Act.

VI. COORDINATION AND OVERSIGHT MEASURES

A. PRINCIPLES

In order to achieve an effective coordination, the PLANNING BOARD, the PERMITS MANAGEMENT OFFICE and the MUNICIPALITY must do the following in their reciprocal relationships:

- (1) Respect the legitimate exercise by the Agency and the MUNICIPALITY of the duties and responsibilities under their competence or jurisdiction and the consequences resulting from the same.

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- (2) Consider the totality of the public interests involved in their determinations and decisions.
- (3) Facilitate information to one another regarding the efforts and determinations that are pertinent or relevant to the appropriate development of their respective duties and tasks. The MUNICIPALITY shall implement an information system related to its authorizations that is compatible with the systems established by the PLANNING BOARD and the PERMITS MANAGEMENT OFFICE.
- (4) Offer, insofar as their organic statutes allow, any cooperation and assistance needed for the efficient performance of their respective duties.
- (5) Favor any other procedures that will promote sound public administration and the orderly exercise of the powers, obligations and duties of the corresponding agencies that have been transferred to the MUNICIPALITY.

B. PROCEDURES

In addition to any other coordination or oversight measure to be established by the parties, the following procedures shall be put into effect:

1. Appointment of Coordination Committee

The PLANNING BOARD, the PERMITS MANAGEMENT OFFICE and the MUNICIPALITY shall each appoint two (2) permanent representatives and one (1) alternate member who shall constitute the Coordination Committee. The alternate member shall exercise his or her duties in the absence of the permanent representatives of the entity he or she represents. The Committee shall meet at the request of any of its members to consider matters of mutual interest. All the

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members who are serving on a permanent basis shall have a voice in Committee deliberations. Nonetheless, only the entities affected by the controversy in question may vote on a particular matter and shall submit to their respective entities the recommendations of the Committee for the ratification thereof. The Coordination Committee shall draw up minutes of its meetings and may adopt regulations to govern its procedures. A request for a meeting shall be made at least five (5) business days before the date of the meeting and the matters to be considered shall be included with the agenda.

2. Payment of Fees for Services Provided

The MUNICIPALITY, by means of an ordinance, shall adopt the taxes imposed by the PLANNING BOARD and the PERMITS MANAGEMENT OFFICE on the fees to be charged for the services to be provided at the municipal level as adopted by means of an administrative order. Nonetheless, the MUNICIPALITY may establish, by means of an ordinance, the taxes to be imposed on the fees to be charged for the services to be provided at the municipal level for the transferred powers.

3. Transfer of Files

- a. The Land Management Office and the Permits Office of the MUNICIPALITY shall submit to the PLANNING BOARD or the PERMITS MANAGEMENT OFFICE the complete file of any project submitted to the MUNICIPALITY in which the power of evaluation has not been transferred to the MUNICIPALITY or which power has been reserved by the public agencies.
- b. The MUNICIPALITY shall keep fifteen percent (15%) of the filing fees that have been paid as file management costs. Eighty-five percent (85%) of the total

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filing fees paid to the MUNICIPALITY shall be transferred to the PLANNING BOARD or the PERMITS MANAGEMENT OFFICE, as applicable, no later than 30 natural days after the date [the application] was filed with the MUNICIPALITY. The collection regulations of the corresponding agencies shall be used to make said calculations. Failing to transfer eighty-five percent (85%) of the total payment of the filing fees constitutes negligence in the compliance with this Agreement

- c. In the case of projects in which the central agencies have the power of evaluation, the Permits Office of the MUNICIPALITY, after examining the file, shall transfer the file to the corresponding agency, within a period not exceeding ten (10) business days following the filing date of the application, and give notice to the parties, so that the agency will act in accordance with the law.
- d. The MUNICIPALITY shall submit a monthly report to the PLANNING BOARD and the PERMITS MANAGEMENT OFFICE on the cases filed with its Permits Office. Said report shall comply with the provisions of Resolution JP-2010-301 in force and its future amendments, which is made a part of this Agreement.
- e. If either of the agencies determines that it has the power to consider any case being considered by the MUNICIPALITY, it may request a copy of the file and proceed in accordance with the provisions of the law and this Agreement.

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4. Filing Forms and Use of Digital System

- a. The MUNICIPALITY, the PLANNING BOARD and the PERMITS MANAGEMENT OFFICE shall include the Lambert coordinates of each particular case in the filing forms for all types of projects with the purpose of keeping the geographic information systems of each entity up to date. Submitting the geo-referenced polygon of the consult shall also be required.
- b. The MUNICIPALITY, in coordination with the PLANNING BOARD and the PERMITS MANAGEMENT OFFICE shall have to automate, modernize and digitize its processes in the light of the Autonomous Municipalities Act and Public Law No. 161, *supra*.
- c. The MUNICIPALITY shall also adjust its procedures and products to the equivalent procedures and products of the PLANNING BOARD and the PERMITS MANAGEMENT OFFICE.

5. Site Consults

All site consults, except for public consults and/or land transactions, shall be filed with the Permits Office of the MUNICIPALITY in the format required by the agency for the corresponding procedure. Public consults and/or land transactions must be filed directly with the Office of the Clerk of the corresponding public agency.

6. Creation of Municipal Entity for the Evaluation of Discretionary Processes

The MUNICIPALITY may create an entity for the evaluation of discretionary adjudicative processes, such as site consults and use and intensity variances, among

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others, contemplated in the applicable regulations and subject to the compliance with certain regulatory and public policy criteria involving a reasonable subjective valuation to determine compliance with said criteria and a mediation of conflicts between the same.

7. Clerical Authorizations or Permits Notice

Decisions regarding matters evaluated by the Permits Committee in which the power of evaluation has been transferred to the MUNICIPALITY shall be notified by means of a Resolution of the Permits Office of the MUNICIPALITY establishing the reasons for its decision. Clerical permits shall be notified by means of an official permit.

8. Duty to Notify

The Planning Office and the Permits Office shall send the agreements adopted by the MUNICIPALITY to any concerned public agency or interested person or official whose address appears on the file.

9. Approvals, Authorizations, Permits and Amendments under the Reserved Powers

- a. In the evaluation of cases in which power has been reserved by the agencies, the agencies shall be under the obligation to give notice to the MUNICIPALITY within ten (10) business days after the application has been filed. The notice shall be addressed to the MAYOR, with a copy to the Land Management Office. The MUNICIPALITY shall submit its comments to the PLANNING BOARD or the PERMITS MANAGEMENT OFFICE, as applicable, through a letter within no more than fifteen (15) business days after the date of the notice sent by the agency.

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- b. In holding a public hearing on a matter to which the Land Management Plan of the MUNICIPALITY applies, the PLANNING BOARD or the PERMITS MANAGEMENT OFFICE shall invite and facilitate the participation of a representative of the MUNICIPALITY so that said representative will have the opportunity to question the hearing participants.

10. Review of Municipal Decisions or Actions

Once the MUNICIPALITY has made a final decision in relation to any power transferred to the MUNICIPALITY, the PLANNING BOARD or the PERMITS MANAGEMENT OFFICE may appear before the corresponding judicial forum or administrative entity (REVIEW BOARD) to request any legal remedy that may be necessary for the faithful compliance with the provisions of the Autonomous Municipalities Act, Public Law Number 75, *supra*, Public Law No. 161, *supra*, and any other future legislation that may supersede the same.

11. Clarification of Jurisdiction

- a. If, at any time, the PLANNING BOARD or the PERMITS MANAGEMENT OFFICE determines that the MUNICIPALITY is considering projects in which power has not been transferred, it shall give notice of the decision to assume jurisdiction to the MUNICIPALITY, and the MUNICIPALITY shall give notice to the proponent and suspend all actions regarding the evaluation of the project while it is clarified who has the power to consider the project. If, at any time, the MUNICIPALITY determines that any project it has accepted for evaluation is a project reserved by the agencies, it shall transfer the file to the PLANNING BOARD or the PERMITS MANAGEMENT OFFICE, along with

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85% of the total payment of the filing fees, and give notice of the transfer of the file to the proponent.

- b. The MUNICIPALITY shall not have the power to make any decision or take any action with regard to cases in which the power of evaluation has remained with the public agencies even if the case has been filed with the MUNICIPALITY. If the MUNICIPALITY makes any decision or takes any action in said cases, the PLANNING BOARD or the PERMITS MANAGEMENT OFFICE may annul the same by means of a well-founded Resolution after giving notice to the MUNICIPALITY and the proponent, in which case the MUNICIPALITY may challenge the decision of the agency (the annulment) before the Court of Appeals and shall have the burden of demonstrating that the matter is included within its powers in accordance with this Agreement and the law.
- c. These actions shall be carried out pursuant to the provisions of Public Law Number 170, *supra*, and Public Law No. 161, *supra*.

VII. BREACH OF AGREEMENT

A. SUPERVISION OF TRANSFERRED POWERS

The PLANNING BOARD and the PERMITS MANAGEMENT OFFICE may conduct audits at least once (1) per year as of the effective date of this Agreement to evaluate the performance, implementation or operation of the delegated powers.

B. DETERMINATION OF BREACH

If, at any time, the PLANNING BOARD, the PERMITS MANAGEMENT OFFICE or the MUNICIPALITY determines there has been a breach of any of the principal

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obligations assumed herein or that there has been a violation of the applicable legislation, regulations or public policies, the interested party must give written notice to the party that is allegedly in violation. This decision, notified in writing, must include an account of the facts that give rise to the alleged breach and set forth the grounds and criteria on which the decision is based. The notice must be sent by certified mail, return receipt requested.

C. PROCEDURE IN CASES OF A BREACH

- (1) The party that is allegedly in violation must answer the abovementioned decision and set forth any special circumstances justifying its position within fifteen (15) business days as of the date of the notice. Once the answer is received, the interested party must call a meeting of the Coordination Committee to try to reach an agreement between the parties.
- (2) If the parties do not reach an agreement or no response has been obtained from the party that is allegedly in violation and thirty (30) days have passed since the notice of the alleged breach, any of the parties may initiate conciliation proceedings before the OFFICE OF THE COMMISSIONER FOR MUNICIPAL AFFAIRS, as established in Article 14.005 (h) of the Autonomous Municipalities Act.
- (3) The OFFICE OF THE COMMISSIONER FOR MUNICIPAL AFFAIRS shall have thirty (30) days to get the parties to reach an agreement regarding the controversy.

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- (4) If the conciliation proceedings before the OFFICE OF THE COMMISSIONER FOR MUNICIPAL AFFAIRS do not result in an agreement between the parties, both the MUNICIPALITY and the CENTRAL GOVERNMENT may submit any dispute related to the alleged breach to an arbitrator, in compliance with the arbitration proceedings pursuant to the provisions of this Agreement.

D. PENALTIES FOR BREACH OF AGREEMENT

Any of the following sanctions or penalties may be imposed, when reasonable, by means of the procedures established in Articles VI and VII of this Revised Agreement:

1. Economic Penalty

Economic penalty in an amount not exceeding five thousand dollars (\$5,000) for each violation.

2. Recovery of Expenses

The recovery of expenses incurred in operating audits or administrative conciliation, arbitration or judicial proceedings, including professional fees.

3. Corrective Measures

In case of a breach, corrective measures needed to repair past breaches or prevent future breaches may be required.

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E. RESCISSION OF THE AGREEMENT

1. The GOVERNOR may rescind this Agreement in accordance with Article 13.012 of the Autonomous Municipalities Act only if it is determined that the MUNICIPALITY has committed gross negligence, fraud or criminal conduct in the implementation of the Agreement.
2. The GOVERNOR may rescind the transfer of any or all categories for the causes described in the previous paragraph, but may not rescind a lower category without rescinding the higher categories.
3. If the Agreement is rescinded, the transferred powers shall return to the PLANNING BOARD or the PERMITS MANAGEMENT OFFICE, as applicable, after an audit and inventory. The MUNICIPALITY shall submit an inventory of projects in the process of evaluation to said agencies by means of a sworn certification.

VIII. ARBITRATION

- A. Any dispute between the MUNICIPALITY, the PLANNING BOARD or the PERMITS MANAGEMENT OFFICE regarding the implementation of this Agreement shall be submitted to arbitration if it has not been solved through the procedure before the Coordination Committee or the conciliation proceedings before the commissioner for municipal affairs.
- B. The Arbitrator Panel shall consist of three (3) members. The CENTRAL GOVERNMENT and the MUNICIPALITY shall appoint one member each and these members, in turn, shall appoint a third member who shall preside over the Panel. If the two members cannot reach an agreement as to the appointment of the third member of the Panel, they shall proceed as established in the Conciliation and Arbitration Rules

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of the American Arbitration Association. The Arbitration Panel shall meet in Puerto Rico and be governed by the legislation and regulations of the State Government.

- C. The award, resolution or order of the Arbitration Panel shall have findings of fact and conclusions of law and shall be final and binding for both parties. The arbitration proceedings shall be a condition prior to any right to file a legal action. A legal action may not stay the decision of the arbitrator through an injunction. The Panel shall have the power to determine the expenses and costs of the proceedings and impose the same on the losing party if deemed reasonable.
- D. In all matters not expressly established in this Agreement, the arbitration proceedings shall be carried out in accordance with Public Law Number 376 of May 8, 1951, as amended.

IX. GENERAL PROVISIONS

A. SEVERABILITY CLAUSES

If any of the provisions of this Agreement were invalid or impossible to enforce as a result of any legislation or regulation, the parties shall reach a new agreement with regards to it in accordance with the applicable legislation. The invalidity or impossibility of enforcement of any provision of this Agreement or its attachments or any legislation, regulations, ordinance or resolution applicable to the same shall not affect the validity or enforcement of any other provision of the Agreement.

B. AMENDMENTS

The parties shall strictly comply with the terms and conditions indicated in this Agreement and no amendment to the same shall be admitted or recognized except

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through a written agreement between the parties. Any amendment must comply with the procedures established by law.

C. RATIFICATION

This Revised Power Transfer Agreement must be ratified by the Bayamón Municipal Legislature pursuant to Article 14.007 of the Autonomous Municipalities Act.

D. EFFECTIVE PERIOD

- (1) This Agreement, as revised, shall come into effect immediately after its ratification by the Municipal Legislature, after it is signed by the GOVERNOR and the MAYOR of Bayamón. Notice thereof shall be given to the House of Representatives, the Puerto Rico Senate and the Department of State, in compliance with Article 14.007 of the Autonomous Municipalities Act.
- (2) This Power Transfer Agreement, as revised, supersedes the agreement signed by the GOVERNOR or Puerto Rico on June 22, 2010, and shall remain in effect, except if it is rescinded in accordance with the provisions of Article VI, Section E, or renegotiated by THE PARTIES. Nonetheless, it may be revised at the request of the Municipality or when any amendment to the Autonomous Municipalities Act requires it. Once the effective period of this Agreement expires, the MUNICIPALITY may maintain its jurisdiction in relation to the powers until a new Agreement between THE PARTIES comes into effect.
- (3) The MUNICIPALITY shall continue exercising the powers that had been previously delegated. In addition, it shall begin exercising the new powers transferred herein as of the date agreed to by THE PARTIES.

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- (4) If, at any time, the MUNICIPALITY believes that it is no longer convenient for it to continue exercising the powers transferred herein, it shall inform the PARTY OF THE FIRST PART that it wishes to or is interested in modifying or cancelling the Agreement herein by means of a written notice sent by certified mail.

- (5) If the MUNICIPALITY chooses not to continue exercising the delegated powers and gives notice thereof, it shall have six (6) months after the date of cancellation of the Agreement to complete the processes in cases under its consideration filed before the date of cancellation of the Agreement. Cases filed after the date of cancellation of the Agreement must be transferred to the public agency with the corresponding power along with the total payment (100%) of the fees collected for filing said case with the MUNICIPALITY.

E. NOTICES

Any notice or other communication required or allowed under this Agreement shall be made in writing, delivered personally or by certified mail, return receipt requested, and addressed to the GOVERNOR, the MAYOR, the president of the PLANNING BOARD or the executive director of the PERMITS MANAGEMENT OFFICE.

GOVERNOR OF PUERTO RICO
Office of the Governor
La Fortaleza
San Juan, Puerto Rico 00901

AUTONOMOUS MUNICIPALITY OF BAYAMÓN
Office of the Mayor
PO Box 1588
Bayamón, Puerto Rico 00960-1588

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PLANNING BOARD
PO Box 41119
San Juan, Puerto Rico 00940-1119

PERMITS MANAGEMENT OFFICE
PO Box 41179
San Juan, Puerto Rico 00940-1179

X. ACCEPTANCE

The appearing parties hereby accept the document herein, as we find it to our complete satisfaction, and IN WITNESS WHEREOF, we hereby sign and execute the same as it has been drafted.

In San Juan, Puerto Rico, on December [hw: 26], 2012.

[illegible signature]
HON. LUIS G. FORTUÑO BURSET
GOVERNOR
GOVERNMENT OF PUERTO RICO

[illegible signature]
HON. RAMÓN L. RIVERA CRUZ
MAYOR
AUTONOMOUS MUNICIPALITY
OF BAYAMÓN

[illegible signature]
RUBÉN FLORES MARZÁN, PLANNER
PRESIDENT
PLANNING BOARD

[illegible signature]
EDWIN IRIZARRY LUGO, PE, ESQ.
EXECUTIVE DIRECTOR
PERMITS MANAGEMENT OFFICE

[T.N.: Pages 1 to 38 of this document bear four sets of illegible initials on the left margin, and page 39 bears one set of illegible initials on the left margin.]