

**RESOLUTION CONDITIONALLY-AUTHORIZING THE ASSIGNMENT  
OF REDEVELOPMENT AGREEMENT AND ASSOCIATED PROPERTY  
CONVEYANCES OF THE PIER VILLAGE DISTRICT OF THE  
OCEANFRONT-BROADWAY REDEVELOPMENT AREA**

**WHEREAS**, the New Jersey Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* (the "Act") authorizes municipalities to determine whether certain parcels of land in the municipality constitute areas in need of redevelopment; and

**WHEREAS**, the Act confers certain contract, planning and financial powers upon a redevelopment entity, as defined at Section 3 of the Act, in order to implement redevelopment plans adopted pursuant thereto; and

**WHEREAS**, the City has elected to exercise these redevelopment entity powers directly, as permitted by Section 4 of the Act; and

**WHEREAS**, the City designated that certain area bordered by Ocean Avenue, Ocean Boulevard, Laird Avenue and Morris Avenue, known as the "Pier Village District" of the Oceanfront-Broadway Redevelopment Area, as an area in need of redevelopment pursuant to the Act (the "Redevelopment Area"); and

**WHEREAS**, on May 14, 1996, the City adopted a redevelopment plan for the Redevelopment Area (the "Redevelopment Plan"); and

**WHEREAS**, on February 22, 2000, the City and Pier Village, L.L.C. (the "Original Redeveloper") entered into that certain agreement entitled "An Agreement between the City of Long Branch and Pier Village L.L.C. for the Development of the Pier Village Area" (the "Original Redevelopment Agreement") designating the Original Redeveloper as redeveloper for the first phase of Pier Village, a site bordered by Ocean Avenue, Ocean Boulevard, Laird Avenue and Melrose Terrace, consisting of 420 residential units and approximately 104,000 square feet of retail space (the "Project") and

**WHEREAS**, on October 9, 2003, the City amended the Original Redevelopment Agreement by that certain First Amendment to Amended and Restated Agreement between the City of Long Branch and Pier Village, L.L.C. for the Redevelopment Area Designated as Pier Village (the "First Amendment"), to permit the development of the Project in two phases, including 320 residential units and 104,000 square feet of retail space ("Phase I") and 100 residential units ("Phase II"), and to consent to (i) the assignment of the rights of the Original Redeveloper with respect to Phase I to two wholly-owned subsidiaries, Pier Village Development I, L.L.C. ("Pier Village I") and Pier Village Development II, L.L.C. ("Pier Village II"), each of which developed portions of Phase I, and (ii) assignment of its right to develop Phase II, then consisting of property within Blocks 225 and 290 on the Tax Maps of the City of Long Branch to an affiliate, Pier Village West, L.L.C. ("Pier Village West"); and

**WHEREAS**, on June 8, 2005, the City further amended the Original Redevelopment Agreement by that certain Second Amendment to Amended and Restated Agreement between

the City of Long Branch and Pier Village Development I, L.L.C., Pier Village Development II, L.L.C. and Pier Village West, L.L.C. for the Redevelopment Area Designated as Pier Village (the “Second Amendment”), to expand Phase II to include additional land in Blocks 224 and 225 on said tax maps and to develop an additional 130 residential units, approximately 12,500 gross square feet of retail space and additional parking, in addition to the originally approved 100 residential units; and

**WHEREAS**, on or about March 5, 2007, the City further amended the Original Redevelopment Agreement by that certain Third Amendment to Amended and Restated Agreement between the City of Long Branch and Pier Village Development I, L.L.C., Pier Village Development II, L.L.C. and Pier Village Applied LWAG, L.L.C. for the Redevelopment Area Designated as Pier Village (the “Third Amendment”), to provide for additional parking spaces for Phase II, to designate Pier Village Applied LWAG LLC (the “Phase II Redeveloper”), as the Redeveloper of Phase II and to convey Lot 1 in Block 222 to the Phase II Redeveloper for the additional parking; and

**WHEREAS**, while Phase I and Phase II have largely been constructed and made available for use, Phase I and Phase II remain incomplete as there remains an outstanding obligation for the construction of public parking spaces and, accordingly, no Certificate of Completion has been issued for Phase I or Phase II; and

**WHEREAS**, in the Third Amendment, the City also conditionally designated the Phase II Redeveloper as the redeveloper for a third phase of the Project (with the right to assign its redevelopment rights in and to such third phase to a new entity with common ownership), consisting of approximately 60 hotel rooms, 220 residential units and 12,000 square feet of retail space, subject to the City Council’s approval of the Full Site Plan (as defined in the Third Amendment), at which time the Phase II Redeveloper’s designation as redeveloper of the third phase was to become fully vested; and

**WHEREAS**, the City Council approved the concept plan for the Full Site Plan by Resolution 99-10 adopted on April 27, 2010, subject to conditions set forth in said resolution, designated Fountains Applied LWAG LLC (“Phase III Redeveloper”) as the designated redeveloper of the third phase of the Project, with the rights to assign its rights to develop each individual component of such third phase to a newly formed urban renewal entity; (the Phase III Redeveloper together with Pier Village I, Pier Village II, Pier Village West and the Pier Village II Redeveloper are collectively referred to herein as the “Assignors”); and

**WHEREAS**, the Phase III Redeveloper desired to modify the description of the third phase of the Project, which phase would consist of a mixed use development including residential units, a hotel, retail space, recreational space and off-street parking, and infrastructure improvements related thereto, including without limitation, boardwalk, restroom, roadway and sidewalk improvements, in two sub-phases (as hereinafter defined, Phase IIIA and Phase IIIB and collectively, the “Phase III Project”); and

**WHEREAS**, the Phase III Project was to be undertaken on a portion of the Redevelopment Area designated, or to be designated as Block 222, Lots 1.01, 1.02 and 1.03,

Block 222.01, Lots 1 and 2, Block 287, Lots 22.03, 23, 24, 25, 26 and 27, Block 287.01, Lot 22.04, and Block 288, Lot 1 (collectively, the "Phase III Property"), and was to include (a) the construction of (1) approximately 60 condominium units on Block 222, Lot 1.01 ("Phase IIIA Residential Component"), (2) an approximately 59,810 square foot hotel (including 11,861 net leasable square feet of retail space) supporting approximately 68 rooms on Block 222.01, Lot 1, (3) approximately 27,905 net leasable square feet of retail space on Block 222, Lot 1.01 and (4) a 42' diameter carousel on Block 222.01, Lot 2 (collectively, "Phase IIIA"), and (b) (1) the construction of (i) approximately 240 condominium units on Block 222, Lot 1.02, (ii) approximately 21,360 net leasable square feet of retail space on Block 222, Lot 1.02 and (iii) a parking structure containing 286 self-park parking spaces with a capacity for at least 600 valet-parked and/or stacker parking spaces and (2) the acquisition and improvement of the property designated as Block 287, Lots 22.03, 23, 24, 25, 26 and 27, Block 287.01, Lot 22.04, and Block 288, Lot 1, and the use thereof for public parking purposes (collectively, "Phase IIIB"); and

**WHEREAS**, the Phase III Redeveloper represented and demonstrated to the City that certain financial assistance was necessary in order for the Phase III Project to be undertaken in its intended scope; and

**WHEREAS**, on November 14, 2012, the City and the Phase III Redeveloper executed an agreement entitled "Fourth Amendment to Redevelopment Agreement and Project Financing Agreement" (the "Fourth Amendment") (the Original Redevelopment Agreement, First Amendment, Second Amendment, Third Amendment and Fourth Amendment referred to collectively herein as the "Redevelopment Rights"); and

**WHEREAS**, the Phase III Project has yet to be constructed; and

**WHEREAS**, Assignors have requested the City's approval of the assignment of the Redevelopment Rights to Pier Village I Urban Renewal Company, LLC, Pier Village II Urban Renewal Company, LLC and Pier Village III Urban Renewal Company, LLC and affiliated entities (the "Assignees"), in connection with the sale of Pier Village (the "Assignment"); and

**WHEREAS**, Assignees wish to make some minor modifications to the Phase III Project, which modifications are not anticipated to substantially alter the Phase III Project as currently approved, diminish the value or quality of the Project as currently approved or in any way alter or diminish the public elements and amenities of the Project as currently approved; and

**WHEREAS**, Assignees are under time constraints in order to realize the benefits of an IRS Section 1031 exchange and to realize such benefits must close on at least the Phase I and Phase II Properties; and

**WHEREAS**, because there are no conditions or contingencies, as between Assignors and Assignees, precluding Assignees from closing on the Phase I and Phase II Properties but there are such conditions and contingencies upon the closing of the Phase III Property, Assignors and Assignees have requested the City's approval for the conveyance of the Phase I and Phase II properties in advance of Assignees acquiring the Phase III Property and the Redevelopment Rights; and

**WHEREAS**, because the Pier Village Project remains incomplete and, specifically, there are outstanding parking obligations from Phase I and Phase II which have not been met by Assignors but which have been deferred to the Phase III Project, the City requires certain assurances and the imposition of certain conditions upon its approval to assure that either the Assignors or Assignees complete the outstanding Phase I and Phase II parking obligations in the event that Assignees do not take assignment of the Redevelopment Rights and acquire the Phase III Property; and

**WHEREAS**, the City has deemed Assignees to be qualified to own and operate and complete construction of the Project; and

**WHEREAS**, the City has made substantial good-faith efforts to accommodate the request of the parties to act expeditiously to meet the parties' time constraints and the City requires certain conditions and contingencies to protect the City's interests while accommodating the parties' request, which conditions and contingencies are reasonable and fair; and

**WHEREAS**, the City wishes to approve the Assignment, subject to the conditions and contingencies set forth herein.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Long Branch as follows:

1. The City hereby conditionally-approves the Assignment, subject to the Assignors and Assignees fulfilling all of the requirements summarized below and set forth in greater detail in the Memorandum of Understanding (the "MOU") attached hereto as Exhibit A and incorporated herein.

2. Assignors may convey title to the Phase I and Phase II Properties in advance of the Assignment of Redevelopment Rights and conveyance of the Phase III Property subject to the following conditions:

(a) Compliance by Assignors and Assignees with all of the terms and conditions set forth in the MOU, attached hereto as Exhibit A and incorporated herein;

(b) Prior to closing on the Phase I and II Properties, Assignors shall execute a Declaration, in the form attached hereto as Exhibit B, and same shall be recorded upon closing of title to the Phase I Property; and

(c) Simultaneous with the closing on the Phase II Property, an escrow of \$3,500,000 shall be posted by Assignors and/or Assignees with the City to assure adequate funds for the completion of the outstanding parking obligations of Phase I and Phase II, which funds shall be returned to the party(ies) that posted such funds upon the occurrence of certain contingencies set forth in the MOU or shall be retained and used by the City to provide the unmet parking needs if certain other contingencies set forth in the MOU are not.

3. Approval of Assignees to be designated as redeveloper for the Phase I and Phase II Properties is hereby granted, which designation shall become effective upon the occurrence of each item in the foregoing paragraph herein and subject to completing closing of title the Phase I and Phase II Properties. Assignees shall be subject to the terms of the Redevelopment Rights and Fourth Amendment. Assignees shall not be entitled to a certificate of completion for the Phase I or Phase II Properties until the completion of Phase III.

4. The Assignment of the Redevelopment Rights for the Phase III Project and the conveyance of the Phase III Property shall be contingent upon:

(a) Assignees finalizing their Project plan revisions and the City approving such revised Project plans;

(b) Assignees providing a detailed pro forma and 100% design drawings for the Phase III Project sufficient for the City to evaluate and confirm that the redevelopment area bonds ("RAB") that the City has agreed to issue in connection with the Phase III Project remain necessary and justified based upon Assignees' demonstrated commitment to build the Phase III Project to an equal or higher standard of quality as currently approved, to provide all of the RAB public elements to such high level of quality and for the City to evaluate and confirm that the anticipated revenues from the completed Project remain sufficient to fund the RAB; and

(c) Adequate assurances that Assignees will finance and complete the Phase III Project in an expeditious manner, including an acceptable revised project schedule and Payment Guaranty and Completion Guaranty, as set forth more specifically in the MOU;

(d) Execution of an amended redevelopment agreement, including and incorporating all of the material terms set forth in the MOU, which amended redevelopment agreement shall be subject to approval by separate resolution of the Council; and

(e) Assignees closing title for acquisition of the Phase III Property.

5. This Resolution shall take effect immediately.

OFFERED: Bastelli  
SECOND: Pallone  
AYES: 5  
NAYES: 0  
ABSENT: 0  
ABSTAIN: 0

STATE OF NEW JERSEY  
COUNTY OF MONMOUTH  
CITY OF LONG BRANCH  
I, KATHY L. SCHMELZ, MUNICIPAL CLERK OF THE CITY OF  
LONG BRANCH, DO HEREBY CERTIFY THE FOREGOING  
TO BE A TRUE, COMPLETE AND CORRECT COPY OF  
RESOLUTION ADOPTED BY THE CITY COUNCIL AT A  
~~REGULAR~~ MEETING HELD ON Oct 8 2014  
IN WITNESS WHEREOF, I HAVE HEREUNTO SET  
MY HAND AND AFFIXED THE OFFICIAL SEAL OF THE  
CITY OF LONG BRANCH, MONMOUTH COUNTY, NEW  
JERSEY THIS 8 DAY OF Oct 2014  
MUNICIPAL CLERK, R.M.C.

**MEMORANDUM OF UNDERSTANDING BY AND BETWEEN THE CITY OF LONG  
BRANCH (THE “CITY”), PIER VILLAGE DEVELOPMENT I, LLC, PIER VILLAGE  
DEVELOPMENT II, LLC, PIER VILLAGE APPLIED LWAG LLC, FOUNTAINS  
APPLIED LWAG LLC (COLLECTIVELY REFERRED TO HEREIN AS “APPLIED”)  
AND PIER VILLAGE I URBAN RENEWAL COMPANY, LLC, PIER VILLAGE II  
URBAN RENEWAL COMPANY, LLC PIER VILLAGE III URBAN RENEWAL  
COMPANY, LLC (COLLECTIVELY REFERRED TO HEREIN AS “KUSHNER”) IN  
CONNECTION WITH THE ASSIGNMENT OF REDEVELOPMENT RIGHTS FOR  
PIER VILLAGE AND SALE OF PROPERTIES, SETTING FORTH THE MATERIAL  
TERMS AND CONDITIONS UPON WHICH THE CITY OF LONG BRANCH SHALL  
APPROVE THE SALE AND ASSIGNMENT OF PIER VILLAGE REDEVELOPMENT  
RIGHTS.**

This Memorandum of Understanding (“MOU”) sets forth the terms and conditions upon which the City will provide its approval of the assignment of the redeveloper rights for Pier Village (the “Assignment”) and associated sale of the Pier Village properties from the various entities currently owning the project under the umbrella of the Applied Development Company (“Applied”) to Pier Village I Urban Renewal Company, LLC, Pier Village II Urban Renewal Company, LLC and Pier Village III Urban Renewal Company, LLC (“Kushner”). Applied and Kushner have requested that the City approve the conveyance of the Phase I, II and III separate from each other at such time as the conditions to closing by Kushner for each such phase have been satisfied and the contingent Assignment of the redevelopment rights (subject to the closing of title) for each phase of Pier Village (which includes Phases 1, 2 and 3) (the “Redevelopment Rights”), as set forth in the Fourth Amendment to Redevelopment Agreement and Project Financing Agreement, dated November 14, 2012 (the “Redevelopment Agreement”). The purpose of this MOU is to specify the pre-conditions for the approval of the Assignment and Phase III Property and the contingencies to be provided in the event that the Assignment and conveyance of the Phase III Property does not occur.

The City will adopt a resolution approving the sale and conveyance of the Phase I and II Properties, designating Kushner as redeveloper for the Phase I and Phase II Properties, subject to

the conditions herein and closing title upon the Phase I and Phase II Properties, and conditionally-approving the Assignment of the Redevelopment Rights and Redevelopment Agreement, to be amended, as set forth herein, and executed with Kushner upon the completion of the conditions and contingencies set forth herein (the “Approval Resolution”). The City’s approval of the conveyance of the Phases I and II Properties prior to assignment of the Redevelopment Rights and Redevelopment Agreement along with the Phase III Property is made conditional upon the parties’ compliance with the material terms set forth herein and in the Approval Resolution.

**1. Applied Assurances For Phase I and II Parking Deficiency.**

**A. Escrow**

Applied deferred the construction of a certain number of public parking spaces from Phases I and II into Phase III. The parties disagree as to the exact number of deficient spaces and how such spaces could be provided (e.g., structured or surface parking, stackers and location for such spaces) and, due to the complexity of the project and the shared parking and management schemes, these issues are not easily resolved. It is acknowledged by Applied, however, that the construction of some number of public parking spaces has been deferred to Phase III and, if Phase III is not constructed, there would be a deficiency of public parking spaces in Phases I and II.

Accordingly, in order to approve the separate conveyances of the Properties and the Redevelopment Rights, as requested by Applied and Kushner, the City must have adequate assurances that such parking spaces will be provided in the event that Kushner does not proceed to acquire and develop the Phase III Property. The City will accept, from Kushner and/or Applied, simultaneous with the closing of the Phase II Property, the deposit of \$3,500,000 into

an interest bearing escrow account with the law firm of Ansell, Grimm & Aaron, P.C. (the “Escrow”), with James G. Aaron, Esq. to act as escrow agent. Upon the subsequent occurrence of the conveyance of the Phase III Property to Kushner and the execution of an amended Redevelopment Agreement between the City and Kushner, the Escrow funds, along with any accrued interest, shall be returned to the party(ies) that deposited the Escrow.

In the event that Kushner does not proceed to acquire and develop the Phase III Property, the City shall retain the Escrow funds and Applied shall complete and address all outstanding obligations under the Redevelopment Agreement and commence construction of Phase III within twelve (12) months of Kushner’s election not to proceed with the Assignment, subject to extension for up to an additional six (6) months, approval of which the City shall not unreasonably withhold, so long as Applied is diligently pursuing all steps required to commence construction (such as completion of working drawings, bidding the job to potential contractors, procurement of building permits and obtaining financing). Upon completion of Phase IIIA and commencement of Phase IIIB, including the conveyance of the Phase III Parking Parcel to the City, the Escrow funds, along with any accrued interest, shall be returned to the party(ies) that deposited the Escrow.

If Applied shall fail to commence construction within such twelve (12) month period, or any additional time period approved by the City, and to continue such construction without suspension, subject to circumstances beyond Applied’s control, or there shall otherwise be an Event of Default by Applied based upon which the Redevelopment Agreement is terminated, the City shall be entitled to retain the Escrow and use the funds toward the purchase of the Phase III Parking Parcel and/or for the preparation of the Phase III Parking Parcel for use as a public parking. Notwithstanding the foregoing, the obligations of Applied and the City shall continue

to be governed by the Redevelopment Agreement as amended through the Fourth Amendment, so long as such agreement remains in force and effect.

B. Acceleration of Off-Site Parking Parcel

In addition to the Escrow, upon the conveyance of the Phase I and II Properties to Kushner, Applied shall assign to the City the purchase and sale Agreement for the Phase III Parking Parcel (the “Phase III Parking Parcel PSA”), as set forth in Paragraph 2.02(c) of the Redevelopment Agreement. Applied represents and warrants that the Phase III Parking Parcel PSA is in good-standing and Applied had made all option payments thereunder, with the next option payment being due and payable on or before February 14, 2015, and that Applied has the right and authority to assign the Phase III Parking Parcel PSA. Upon Kushner’s acquisition of Phase III, the City may, at its option, retain the Phase III Parking Parcel PSA, proceed to acquire the Phase III Parking Parcel or assign the Phase III Parking Parcel to Kushner and, in any of these cases, the Phase III Parking Parcel shall be utilized consistent with the Redeveloper Agreement and Parking Management Plan.

2. Kushner Assurances Concerning Parking. Kushner represents and warrants that (a) it shall not license any parking spaces for exclusive use by Applied or provide Applied with any specifically designated parking spaces and (b) that it shall not sell or lease assigned parking spaces to residential or commercial tenants or any condominium unit purchasers and, to the extent that any leases that Kushner acquires with the conveyance of the Phase I and Phase II Properties contain provisions for such parking spaces, Kushner shall not renew the right to any such designated parking spaces in the renewal any such leases.

### **3. Phase III Plans and RAB Analysis Contingencies**

Kushner shall provide a detailed pro forma and a 100% design drawing set for the Phase III Project, as proposed to be revised by Kushner, as well as projected revenues from and absorption rates for the sale of residential units supported by marketing data and research (the “RAB Documents”) no later than December 1, 2014. The City shall review the RAB Documents and, based thereon, confirm that the amount of the redevelopment area bonds (the “RAB”) provided for in the Redevelopment Agreement continue to be necessary and justifiable for the Project as revised by Kushner. Specifically, Kushner shall demonstrate to the City’s reasonable satisfaction that Kushner will build the Project to the same or higher level of quality as the Project was originally proposed and based upon which the RAB was initially approved and justified. The City shall further confirm whether the anticipated revenues from the sale of residential units will be sufficient to fund the RAB. The City shall advise Kushner within thirty (30) days of receipt of the RAB Documents of its determination as to the continued need and justification for the RAB and the sufficiency of anticipated revenues from residential sales or may request additional information.

Should the City determine that the RAB is no longer necessary or justifiable, it may reduce the amount of the RAB, as appropriate, or refuse to approve the RAB in the Assignment of the Phase III Property and Redevelopment Rights. In such event, Kushner may elect not to proceed with the Assignment and acquisition of the Phase III Property and Redevelopment Agreement. In the event that the City determines that the projected sales prices for the residential condominium units is insufficient to generate enough revenue to fund the debt service on the RAB, the City may request an additional guaranty from Kushner for an increased amount of the guaranty and/or an increased term for the time period of the guaranty. In this event,

Kushner may also elect not to proceed with the Assignment and acquisition of the Phase III Property and Redevelopment Agreement.

**4. Further Financial Assurances and Guaranties.**

Within fourteen (14) days of the City Approval of the conveyance of the Phase I and II Properties, Kushner shall provide certified financial information from Charles Kushner's and Jared Kushner's public accountants evidencing, with respect to each, a net worth of \$25,000,000 and liquid net worth of \$5,000,000. In addition to the Payment Guaranty provided for in the Redevelopment Agreement, the amended Redevelopment Agreement to be executed by Kushner shall provide an additional Payment Guaranty by Jared Kushner, extending the Payment Guaranty for an additional twelve (12) months beyond the Capitalized Interest Period, for a total of thirty-six (36) months from the Capitalized Interest Period. The amended Redevelopment Agreement to be executed by Kushner shall further provide a Completion Payment Guaranty by Charles Kushner, guarantying the Completion of the construction of Phase IIIA and Phase IIIB of the Project after receipt of (i) approvals of the amended project; (ii) the City's offer for sale of the RAB Bonds as agreed upon in the Redeveloper's Agreement and Financial Agreement as agreed to between the parties for an amount not less than \$24.9 Million; and (iii) receipt of the full amount of the ERG as agreed upon in the Redeveloper's Agreement and Financial Agreement as agreed to between the parties. Such Completion Guaranty shall provide for an amount sufficient to provide the funds necessary to complete construction of the Project in the event that Kushner abandons the Project or substantially fails to construct the Project pursuant to the Project Schedule, absent an event of force majeure or other agreement between the parties.

**5. Parking Management Plan and Common Area Maintenance**

A. Declaration Immediately upon the City adopting the Approval Resolution conditionally-approving the Assignment of the Redevelopment Agreement, Applied and Kushner shall execute the Declaration of Covenants, Easements and Restrictions (the “Declaration”), in the form attached to the Approval Resolution as Exhibit B, which Declaration shall be effective and recorded with the Monmouth County Clerk at the closing of title for the Phase I Property.

B. Creation of Mutually Acceptable Mechanism to Manage Parking and Fund CAM

The amended Redevelopment Agreement (and amended Parking Management Plan) to be executed by Kushner shall provide for the mechanism by which there shall be centrally-operated management of the Parking Management Plan for purposes of overseeing implementation and operation of the Parking Management Plan in an efficient and comprehensive manner. The parties will continue to discuss the most appropriate means of accomplishing this goal and the amended Redevelopment Agreement shall reflect the parties’ mutually agreeable mechanism for implementation and central management of the Parking Management Plan.

C. Central Operator Parking Management Role and Responsibilities

The Central Operator would be responsible for overseeing the implementation, operation and management of the Parking Management Plan. The direct costs of the Central Operator in connection with its responsibility to oversee the implementation Parking Management Plan would be funded through parking revenues collected in all off-street parking facilities utilized and managed under the Parking Management Plan, including the Phase IIIB Parking Parcel. Other than the direct cost of the Central Operator to operate, no other costs shall be funded

through parking revenue. The Parking Management Plan shall be directly managed as determined by Kushner and, for such time as Phase III is owned by Applied, with Applied's consent as well, subject to the oversight of the Central Operator, as described herein. The Central Operator shall report to the City on a monthly basis concerning the operation and management of the Parking Management Plan and Kushner and/or Applied, if applicable, shall receive comments and consider requested changes from the City with respect to such parking operations, pursuant to the Parking Management Plan. The foregoing notwithstanding, it is agreed and understood that Kushner, and Applied's for its period of ownership of Phase III, shall be entitled to select the parking operator/manager and any other professionals to be employed in connection with operation/management of the Parking Management Plan.

Upon payment of all costs for the Central Operator to operate and manage the parking and implement the Parking Plan, the respective owners of each of the parking facilities shall be paid a pro rata share of proceeds remaining upon a monthly basis generated by parking fees and charges, including the Phase IIIB Parking Parcel to be owned by the City, after payment of all management and operation costs of oversight of the Parking Management Plan.

#### **D. Buffer Area Obligations**

Pursuant to the Declaration, all Owners of any portion of Pier Village will be responsible to maintain, clean, irrigate, repair and, as needed, replant the Public Areas in accordance with the landscaping plan approved by the Planning Board of the City of Long Branch in connection with the site plan approvals for Phases 1, 2 and 3 (the "Buffer Area Obligations"). There shall be established an on-going funding mechanism to fairly apportion the financial responsibility for the Buffer Area Obligations and maintain a fund to meet the Buffer Area Obligations. The parties

shall not object to the adoption of an ordinance pursuant to N.J.S.A. 40:56-65, et seq., as a potential means of creating such funding mechanism.

The specific areas and amenities comprising the “Buffer Areas” that shall be maintained and repaired through such funds shall be negotiated between the parties and shall be reflected in the amended Redevelopment Agreement.

##### **5. Amendments to Redevelopment Agreement and Related Documents**

In addition to the above, the City’s Approval of the Assignment of the Phase III Property and Redevelopment Rights will be conditional and contingent upon the execution of a fifth amendment to Redevelopment Agreement incorporating the all of the terms set forth herein and, further, including the following:

- A. Appropriate amendments to the form of financial agreement;
- B. Appropriate amendments to the Parking Management Plan;
- C. Accelerating the purchase and conveyance of the Phase III parking Parcel to Phase IIIA and, in any event, no later than February 1, 2016, unless the Phase IIIA Parking Parcel PSA is extended beyond such date, with Kushner to advance any payments required for such option extension, which payment would be refunded to Kushner in the RAB;
- E. Amendments to the Payment Guaranty and Completion Guaranty, as set forth herein;
- F. A revised Project Schedule;
- G. Kushner’s cooperation concerning the conveyance of a riparian parcel to the City necessary in connection with the proposed reconstruction of the Pier;
- H. The Parking Management Plan Mechanism; and
- I. The Buffer Area definitions and CAM agreement.

## DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS ("Declaration") is made as of October \_\_\_\_\_, 2014 by PIER VILLAGE DEVELOPMENT I, LLC ("PV1"), PIER VILLAGE DEVELOPMENT II, LLC ("PV2"), PIER VILLAGE APPLIED LWAG LLC ("PVAL"), and FOUNTAINS APPLIED LWAG LLC ("FAL"), each a New Jersey limited liability company and having an office at 50 Washington Street, Hoboken, New Jersey 07030 (PV1, PV2 PVAL and FAL are collectively referred to collectively as the "Declarant").

### RECITALS:

A. Declarant owns a mixed use real estate development commonly known as Pier Village, in the City of Long Branch, Monmouth County, New Jersey. Pier Village is more particularly described by metes and bounds and tax blocks and lots set forth in Exhibit A annexed hereto (collectively, "Property").

B. Title to the Property as of the date hereof is held as follows:

(i) PV1 is the owner of premises now designated on the Long Branch tax map as Block 224.01, Lot 1.01; Block 225.01, Lot 1.01; and Block 292.01, Lot 1.01, also known as Buildings 1 and 4 ("Phase 1A");

(ii) PV2 is the owner of premises now designated on the Long Branch tax map as Block 223, Lot 2 and Block 298, Lot 4.02, also known as Buildings 5 and 6 ("Phase 1B", which together with Phase 1A is known as ("Phase 1"));

(iii) PVAL is the owner of premises now designated on the Long Branch tax map as Block 225.03, Lot 2.06 and Block 290.01, Lot 1.08, also known as Building 3 and 7 ("Phase 2") and

(iv) FAL is the owner of premises now designated on the Long Branch tax map as Block 222, Lots 2-14, 15.01, 15.02, 22 and 23 ("Phase 3").

C. At present, the entities comprising Declarant as defined herein are affiliate companies under common ownership or control.

D. Declarant anticipates that it will convey portions of Pier Village to one or more unrelated third parties, including, without limitation, Pier Village I Urban Renewal Company, LLC, Pier Village II Urban Renewal Company, LLC and Pier Village III Urban Renewal Company, LLC (each, an "Unrelated Owner"). PV1, PV2, PVAL, FAL and each Unrelated Owner, at such time as it acquires title to a portion of Pier Village, shall hereafter be referred to individually as an "Owner" and collectively, as the "Owners").

E. Declarant desires to cause the Property to be subjected to certain covenants, easements and restrictions that will run with the Property and be binding on future Owners, including without limitation, Unrelated Owners, and occupants of the Property, as more particularly set forth herein.

**NOW, THEREFORE**, for good and valuable consideration, Declarant declares that the Property and any improvements thereon shall be held, transferred, sold, conveyed, leased, mortgaged, occupied and used subject to this Declaration, in accordance with the following terms and conditions:

1. Maintenance of Landscaping and Boardwalk. Each Owner covenants and agrees that pursuant to Section 2.07 of the Fourth Amendment to Redevelopment Agreement and Project Financing Agreement dated as November 14, 2012 (the "**Fourth Amendment**"), as modified herein and, with respect to the Phases acquired by any of the Unrelated Owners, to be reflected in a Fifth Amendment to Redevelopment Agreement and Project Financing Agreement to be executed between the City of Long Branch (the "City") and Unrelated Owner (the "**Fifth Amendment**") and, the Unrelated Owners' obligation to maintain the landscaped areas, public amenities and buffer zone owned by the City as shall be set forth in the Fifth Amendment (the "Public Areas") and certain portions of the boardwalk owned by the City shall be governed by the following provisions:

- A. Maintenance and Irrigation of Landscaping Maintenance of Public Areas. All Owners of any portion of Pier Village will be responsible to maintain, clean, irrigate, repair and, as needed, replant the Public Areas in accordance with the landscaping plan approved by the Planning Board of the City of Long Branch in connection with the site plan approvals for Phases 1, 2 and 3 (the "**Buffer Area Obligations**"). There shall be established an ongoing funding mechanism to fairly apportion the financial responsibility for the Buffer Area Obligations and maintain a fund to meet the Buffer Area Obligations. Owners shall not object to the adoption of an ordinance pursuant to N.J.S.A. 40:56-65, et seq., as a potential means of creating such funding mechanism.
- B. Boardwalk Maintenance. Notwithstanding the foregoing, each of the Owners which have a restaurant use adjacent to the boardwalk within Pier Village and each Owner of the portion of the Property nearest to a pushcart shall be responsible, at its own cost and expense, to sweep and power wash such areas no less than once per week on alternating weeks between June 1 and September 1 of each year and no less than once a month during the remainder of the year.

2. Parking Management Plan. A certain Parking Management Plan, attached hereto as Exhibit B, was required pursuant to Section 2.05 of the Fourth Amendment which is to be implemented and honored in order to provide for the orderly parking of vehicles of residents and tenants of Pier Village and visitors to Pier Village ("**Parking Management Plan**"). All properties identified in the Parking Management Plan as "Impacted Properties," are subject to the requirements of the Parking Management Plan. It is acknowledged by Owners that the Parking Management Plan will be amended to provide for operation and management by a Central Operator. Each Owner shall be subject to, abide by and perform all obligations under the Parking Management Plan with regard to those portions of Pier Village owned by such Owner. The Owners and each successor Owner or assignee shall be bound to comply with the Parking Management Plan and shall work cooperatively with and follow the direction of the Central Operator which will oversee coordination of parking management for all of the Impacted Properties, coordination and conversion between self-park and to ensure an efficient implementation of the Parking Management Plan. Owners acknowledge that the obligation to

comply with the Parking Management Plan is a specific condition of the Site Plan approval for the Pier Village site and a condition of the Coastal Facilities Area Review Act, Long Branch Redevelopment Zone Permit, N.J.A.C. 7:7-7.4.

3. Wayfaring Signage. Exhibit C annexed hereto is a plan showing the location of directional and related signs that must be installed within Pier Village (“**Wayfaring Signage Plan**”) in conformity with certain municipal requirements including but not limited to the terms of development approvals. Each Owner shall abide by the Wayfaring Signage Plan, and any modifications thereto reasonably required by the City of Long Branch or any agency thereof.

4. Indemnification. Each Owner agrees to indemnify, defend and hold harmless each other Owner from and against all claims or demands, including any action or proceedings brought thereon, and all costs, losses, expenses and liability of any kind relating thereto, including reasonable attorney’s fees and costs of suit, arising out of or resulting from any breach by such indemnifying party of its covenants and obligations under this Declaration.

5. Nonperformance. Any failure to comply with this Declaration with respect to the Parking Management Plan may be remedied at any time and by whatever means deemed reasonably necessary, by the Central Operator. Where reasonably practical and the failure to comply does not require immediate action to address, the Central Operator shall give prior notice to the Owner of such Impacted Property where the failure occurred and, if appropriate and practical, provide such Owner the opportunity to address such failure to comply. Failure to observe or perform or cause to be observed or performed any other term or covenant of this Declaration by an Owner, and the continuation of such failure for a period of ten (10) days for failure of an Owner to pay its share of the Buffer Area Obligations pursuant to Section 1(A) hereof, or thirty (30) days for any other breach of this Declaration, after written notice from any other Owner specifying the nature thereof, shall constitute nonperformance (“**Nonperformance**”), and all other Owners or the Central Operator, in addition to all other remedies available at law or in equity, shall have the right of self-help to take whatever steps are necessary to effectuate the terms and purpose of this Declaration. The Nonperformance by one Owner shall not relieve the other Owners of their duties and rights. If Nonperformance is curable but cannot with reasonable diligence be remedied within a period of thirty (30) days, then so long as the nonperforming Owner shall diligently commence curing such failure within such thirty (30) day period, and thereafter and so long as the nonperforming Owner with reasonable diligence and in good faith shall proceed to cure the same, such failure shall not constitute Nonperformance. Notwithstanding the foregoing, if an emergency exists or there is a failure to comply with the Parking Management Plan that requires immediate attention and action to remedy, any Owner or the Central Operator shall have the right to take such action as may be necessary to abate the emergency or exigent parking issue, without advance notice if notice cannot reasonably be provided under the emergency or exigent circumstances; in such case, notice shall be given as soon as reasonably practicable. An Owner or the central operator taking action to abate an emergency or exigent parking issue shall be entitled to reimbursement from the other Owners so that all Owners pay an equal share of the costs incurred in abating the emergency.

6. Duration. This Declaration shall be perpetual and run with the land and shall not be terminated or modified without the written consent of the City, in recordable form, and by mutual written agreement of Owner (or their respective successors or assigns in interest). Each Owner shall be liable for the performance of all covenants, obligations and undertakings herein set forth, with respect to the portion of the Property owned or leased by it which accrue during the period of such ownership or tenancy, and such liability shall continue with respect to any portion transferred until the notice of transfer set forth below is given, at which time the transferring Owner shall be released from the obligations of this Declaration arising subsequent to the effective date on the transfer notice. An Owner transferring all or any portion of its interest in the Property shall give notice to the City and the other Owners of such transfer and shall include therein at least the name and address of the new Owner and a description of the portion of the Property being transferred.

7. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property or of any Building or portion thereof to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no right, privileges or immunities of any Owner hereto shall inure to the benefit of any third-party person, nor shall any third-party person be deemed to be a beneficiary of any of the provisions contained herein.

8. Binding Effect. The terms of this Declaration and all easements granted hereunder shall be unsubordinated and constitute covenants running with the land and shall bind the real estate described herein and inure to the benefit of and be binding upon each Owner and its respective successors in interest, lessees, and assigns. Any financing or other lien now or hereafter encumbering the Property must be subordinate to this Declaration.

9. Severability. If any clause, paragraph, sentence or portion of the terms, covenants, conditions, restrictions, obligations, easements, or other provisions of this Declaration become illegal, null or void for any reason whatsoever, or are held by any court of competent jurisdiction to be so, the remaining portion of this Declaration shall remain in full force and effect.

10. Governing Law. This Declaration and its effects are subject to and shall be construed and enforced in accordance with the laws of the State of New Jersey.

[SIGNATURES ON FOLLOWING PAGE]

**INTENDING TO BE LEGALLY BOUND,** Declarant has caused this Declaration to be duly executed as of the day and year first above written.

**DECLARANT:**

**PIER VILLAGE DEVELOPMENT I, LLC**  
**PIER VILLAGE DEVELOPMENT II, LLC**

By: Pier Village, L.L.C., its Manager  
By: Applied Pier Village LLC, its Manager

**WITNESS:**

By: \_\_\_\_\_  
Name: David Barry  
Title: Manager

**PIER VILLAGE APPLIED LWAG LLC**

**WITNESS:**

By: Pier Village West L.L.C., its Manager

By: \_\_\_\_\_  
Name: David Barry  
Title: Manager

**FOUNTAINS APPLIED LWAG LLC**

**WITNESS:**

By: PVF Holdings LLC, its Sole Member  
By: Pier Village West, LLC, its Managing Member

By: \_\_\_\_\_  
Name: David Barry  
Title: Manager

The undersigned consents and agrees to the foregoing terms and conditions of this Declaration as anticipated Unrelated Owners.

**WITNESS:**

**PIER VILLAGE I URBAN RENEWAL COMPANY, LLC**

By: \_\_\_\_\_

Name: Jared Kushner  
Title: Authorized Signatory

**WITNESS:**

**PIER VILLAGE II URBAN RENEWAL COMPANY, LLC**

By: \_\_\_\_\_

Name: Jared Kushner  
Title: Authorized Signatory

[add NJ Acknowledgements]

**EXHIBIT A**

**PROPERTY**

(attached)

**EXHIBIT B**  
**PARKING MANAGEMENT PLAN**  
(attached)

**EXHIBIT C**  
**WAYFARING SIGNAGE PLAN**  
(attached)

**REGULAR MEETING**

**CITY COUNCIL**

**SEPTEMBER 23, 2014**

**7:30 PM**

The Regular Meeting of the Long Branch City Council was held on Tuesday, September 23, 2014 at 7:30 p.m. in the Municipal Building, 344 Broadway, Long Branch, New Jersey.

**Present:** Michael Sirianni, Council President; Mary Jane Celli, Council Vice-President; Joy Bastelli, Councilwoman; Kathleen Billings, Councilwoman; John Pallone, Councilman

**Others Present:** Mayor Adam Schneider; Howard Woolley, Business Administrator; James G. Aaron, City Attorney; Ronald Mehlhorn, Finance Director; Kathy L. Schmelz, City Clerk

The Pledge of Allegiance was recited and certification was read into the record.

**PRESENTATIONS:**

The Mayor presented a Proclamation to Emanuel diPasquale as the official Poet Laureate of the City of Long Branch.

Presentation was made to members of the Long Branch lifeguards for winning the Lifeguard Competition. They beat Los Angeles County who has won for the last 27 years.

**HEARINGS:**

None

**READING AND APPROVAL OF PREVIOUS MINUTES:**

**September 9, 2014** - A motion was made by Councilwoman Celli, seconded by Councilwoman Billings to approve the minutes of September 9, 2014 was carried out upon the following roll call vote: Ayes 5

**CONSIDERATION OF ORDINANCES**

**PUBLIC HEARING AND FINAL CONSIDERATION**

None

**ORDINANCES FOR INTRODUCTION:**

**#21-14 AN ORDINANCE AMENDING AN ORDINANCE ESTABLISHING TITLES AND SETTING SALARIES FOR CERTAIN EMPLOYEES OF THE CITY OF LONG BRANCH FOR THE YEAR 2014**

HOLD INTRODUCTION TO OCTOBER 14, 2014

**PUBLIC PARTICIPATION:**

A motion was made by Councilman Pallone to open the public portion of this meeting, was seconded by Councilwoman Celli and carried out upon the following vote / Ayes 5

**Enis Bengal – 99 Lippincott Avenue**

Complimented the Mayor and Council for the Community Gardens. He stated they were amazing this year.

**Diana Multare – 21 North Bath Avenue**

Spoke regarding the marches in New York City to control the climate change crises. Hopes the Council will pass a resolution requiring all City agencies to work more efficiently with regard to energy use.

**Gerry Scarano – Ocean Boulevard**

Spoke regarding the presentations given tonight and how they should have been televised. Went on to speak about GPS systems in City vehicles. Thinks it would be a good idea.

**Vincent Lapore – 45 Marine Terrace**

Spoke regarding Council meetings being videotaped and sent to the Cable Commission for them to put on the local channel pending audio and the quality of the production. Asked where the City stood on the second tower at the Ocean Place. Mr. Woolley stated that it was not discussed in Executive session this evening. Went on to speak regarding Mr. Woolley's tax payment.

After ample time was given and no one else came forward, a motion was made by Councilwoman Celli, seconded by Councilwoman Bastelli to close the public portion of this meeting / Ayes 5

**RESOLUTIONS:**

On file in the City Clerk's office and posted on the City's website.

**APPLICATIONS:**

None

## **MISCELLANEOUS BUSINESS FOR THE GOOD OF THE ORDER**

**Councilwoman Bastelli** – I'd like to congratulate Emanuel diPasquale. We are very proud of him becoming the Poet Laureate of our town and also congratulations to our Long Branch Lifeguards for their incredible feat of breaking a 27 year record there so we are proud of them and I also just wanted to let Mrs. Multare know that we are a very "Green" community recognized by the State of New Jersey. We have our bronze level with Sustainable Jersey and we are working on our silver with the State of New Jersey right now so I just wanted to let her know that. Thank you and thank you for coming tonight.

**Councilwoman Billings** – Just a reminder to everyone that the Pooch Parade will be held on Saturday from 10 until 4 I believe in the West End area. There will be some food set up, the Pooch Parade and I also want to wish those of you celebrating this week, Happy Holiday. Thank you.

**Councilman Pallone** – I would also like to congratulate Mr. diPasquale, a fine gentleman and with a lot of service to the City and to the Lifeguards for their great achievement. When you think about it for example, Los Angeles had that 27 year record and Los Angeles is a huge City that has Lifeguards year round and for Long Branch to defeat them I think is quite an accomplishment but even more important is the safety that they provide everyday in the summer to our residents and to visitors here in Long Branch so again, congratulations to them. Thank you all for coming this evening and enjoy the week.

**Council Vice President Celli** – I'd like to congratulate all the honorees particularly the Poet Laureate. I think it's kind of cool that Long Branch has its own Poet. I'd like to wish everybody who is going into the holiday a nice holiday and believe it or not, before the next Council meeting, we are going to have the Columbus Day Parade which is October 12<sup>th</sup> so don't forget that. Thank you.

**Council President Sirianni** – I would also like to share with you, on Monday, September 15<sup>th</sup> I attended Monmouth Medical Center where they were having the official noise makers and what this is for Pediatric Cancer Awareness. Making noise, meaning bringing awareness to this. A lot of funding has been cut national, state and the Lt. Governor was there, Council members were there, other Mayors of other City's along the coast were there in this celebration and we received this nice certificate and Mr. Migliaccio, your name was mentioned in your support that you have done for them with their ribbons etc so thank you very much. Again, like everyone else said here, Happy Holidays this coming week, this week and I will ask for a motion to adjourn...

## **ADJOURNMENT**

A motion was made by Councilwoman Celli seconded by Councilwoman Bastelli to adjourn this meeting at 8:25 p.m.