

**RESOLUTION APPROVING SETTLEMENT OF LITIGATION
*POUGHKEEPSIE WATERFRONT DEVELOPMENT, LLC ET AL. V. THE CITY OF
POUGHKEEPSIE, THE CITY OF POUGHKEEPSIE COMMON COUNCIL, AND
THE CITY OF POUGHKEEPSIE INDUSTRIAL DEVELOPMENT AGENCY*
AND AUTHORIZING THE EXECUTION OF A LICENSE AGREEMENT TO
ALLOW THE USE OF THE MARINA AND DOCK STORAGE ON THE
DELAVAL SITE**

WHEREAS, the City of Poughkeepsie is the owner of a parcel of property commonly known as the DeLaval property, located at the end of Rinaldi Boulevard, along the city's southern-most Hudson River waterfront, identified as parcel number 131300-6061-43-752749; and

WHEREAS, in the summer of 2001 the City issued a Request for Proposals (the "RFP") which resulted in the award of "preferred developer" status to Southern Waterfront Development, LLC and which related to three parcels commonly known as: (i) the "STP site" which was the former City Sewer Treatment Plant and is now Shadows-on-the-Hudson and the Grandview; (ii) the "PURA-14 site", which has since been developed as the Water Club Apartments; and (iii) the DeLaval site, a 13.4 acre waterfront site which is the subject this Resolution; and

WHEREAS, the City sought a mixed use development with destination attractions and space for public recreation; and

WHEREAS, the RFP was responded to and awarded to Poughkeepsie Waterfront Development, LLC ("PWD") and JM Development Group ("JM") (collectively referred to herein as the "Developer"); and

WHEREAS, the three parcels were Brownfield sites and have since been remediated with the DeLaval site remediation mostly paid for by New York State's Department of Environmental Conservation ("DEC") and the City, and a portion paid by the Developer; and

WHEREAS, in 2007 the City executed a Site Development Agreement and in 2010 the City executed a License Agreement in which it agreed, among other things, to reimburse the Developer for certain site development costs and engineering expenses on the DeLaval site in the event that a lease was not ultimately delivered; and

WHEREAS, beginning in 2010 the Developer installed underground utilities and graded the site in accordance with prior Planning Board approvals, completed the Brownfield cleanup, and performed certain work at the DeLaval site in accordance with the 2010 License Agreement; and

WHEREAS, the DEC issued a Certificate of completion for the DeLaval site in November 2013; and

WHEREAS, due to changing market conditions over these years, the Developer sought a change which would add a residential component to the development on the DeLaval site so as to provide for approximately fifty residential units on the upper floors, a change that was never presented for consideration by the Common Council; and

WHEREAS, further delays by the Developer in the project led the Common Council to adopt Resolution R 20-79 to rescind a prior approval authorizing the conveyance of the DeLaval parcel to the IDA; and

WHEREAS, on November 4, 2020, the Developer filed a hybrid Article 78/common law Petition/Complaint against the Common Council, the IDA and the City of Poughkeepsie in Dutchess County Supreme Court under Index No. 2020-53607; and

WHEREAS, on January 8, 2021, Developer commenced a separate proceeding in Dutchess County Supreme Court under Index No. 2021-50086 against the Common Council, the IDA and the City containing Developer's common law contract claims; and

WHEREAS, the proceeding under Index No. 2020-53607 continued to assert claims pursuant to CPLR Article 78 to require the City of Poughkeepsie, the Common Council and the IDA to take certain actions; and

WHEREAS, the Common Council and the IDA filed Motions to Dismiss the Article 78 Petition filed pursuant to Index No. 2020-53607 and the Plenary Action Complaint filed pursuant to Index No. 2021-50086; and

WHEREAS, by Decision and Order, dated November 23, 2022, the Hon. Hal B. Greenwald, J.S.C. dismissed the Article 78 Petition filed pursuant to Index No. 2020-53607 by the Developer and denied the motion by the Common Council and the IDA to dismiss the plenary action complaint filed under Index No. 2021-50086; and

WHEREAS, said Decision and Order was entered in the Office of the Clerk of Dutchess County on November 30, 2021; and

WHEREAS, the Developer filed a notice of appeal dated December 29, 2021 from the Decision and Order; and

WHEREAS, discovery has commenced regarding the Developer's contract claims; and

WHEREAS, the parties to this action desire to avoid the further expense and distraction of further discovery, motion practice, hearings or litigation and, therefore, without admission of fault or liability, desire to settle all disputes among them; and

WHEREAS, the parties have agreed as part of the settlement to enter into a long-term License Agreement to allow the Developer to operate and manage a 99 slip public marina located at Rinaldi Boulevard and utilize the DeLaval site for dock storage pursuant to the terms and conditions set forth in the License Agreement; and

WHEREAS, a Stipulation of Settlement and Discontinuance has been prepared to settle the instant litigation pursuant to the terms and conditions set forth therein, which terms and conditions include, but are not limited to, the execution of a License Agreement for the continued use of the marina and dock storage.

NOW, THEREFORE,

BE IT RESOLVED, that the Agency (a majority of the members thereof affirmatively concurring) hereby ratifies and approves the Stipulation of Settlement and Discontinuance; and be it further

RESOLVED, that the Agency hereby authorizes its Chair to execute the Settlement Agreement and related documents on the Agency's behalf and take whatever additional

steps are necessary to ensure the complete execution of the Settlement Agreement; and be it further

RESOLVED, that the Agency authorizes any and all action necessary to effectuate the terms of the Settlement Agreement; and be it further

RESOLVED, that this resolution will immediately take effect.

