

MEMORANDUM OF UNDERSTANDING

WHEREAS, The Hudson River Waterfront Conservancy, Inc. (hereinafter "HRWC") is an organization incorporated to pursue what its members believe to be in the public interest, including, among other things, promoting the Hudson River Walkway (hereinafter "Walkway"); and,

WHEREAS, Admiral's Walk Condominium Association, Inc. (the "Association") is a condominium created pursuant to the New Jersey Condominium Act and the New Jersey Nonprofit Corporations Act. The Association is managed by and through its Board of Directors (the "Board"), which, pursuant to the aforementioned laws and the Association's governing documents, has the authority to do everything that, in its business judgment, is necessary for the management of the Association's affairs, except as otherwise expressly limited by the Association's governing documents and law; and,

WHEREAS, one of the express limitations on the Association's authority is N.J.S.A. 46:8b-18, which provides that the Association cannot make any material alteration of or substantial addition to the common elements except as authorized by the Master Deed; and,

WHEREAS, HRWC has initiated a suit captioned Hudson River Waterfront of New Jersey, Inc. v. The Admiral's Walk Condominium Association, Docket No. BER C-52-20 (the "Action") in the Superior Court of New Jersey, Chancery Division, Bergen County alleging that that the Association has violated the Public Trust Doctrine; and,

WHEREAS, the Association has denied that it has violated the Public Trust Doctrine; and,

WHEREAS, individuals and entities affiliated with River-Lookout Associates, LLC (hereinafter "River-Lookout") are obligated to pay certain funds to satisfy a Settlement Agreement with the New Jersey Department of Environmental Protection (hereinafter "DEP") and seeks to do

so as efficiently as possible while maximizing the benefit to residents of Edgewater Borough ("Offset Proposal"); and,

WHEREAS, the Parties (HRWC, the Association, and River-Lookout) believe that an opportunity exists to resolve these disputes if River-Lookout, subject to DEP approval, funded the construction of the Hudson River Walkway (hereinafter "Walkway") from the municipal park to the north of the Association to the Marina located to the south of the Association instead of paying a fine or a portion of a fine to the DEP; and,

WHEREAS, this Memorandum of Understanding ("MOU") is intended to set forth the aforementioned Parties' understanding which may form the basis of a settlement of the Action; and,

WHEREAS, the proposed Walkway would utilize a portion of the Association's waterfront property; and,

WHEREAS, the proposed construction will include improvements to the Association's waterfront areas; and,

WHEREAS, the Board has the authority to enter into this MOU with the understanding amongst the parties that it must seek the approval of the Association's Unit Owners before entering into a binding agreement to have the Walkway constructed on its property; and,

WHEREAS, the Parties have an understanding that while there is an intention to attempt to settle this matter in good faith, there are several contingencies that must be met prior to the construction of the Walkway, including obtaining the aforementioned approval of the Association's Unit Owners and various governmental approvals; and,

WHEREAS, the parties anticipate that upon the satisfaction of the necessary contingencies, the Association and River-Lookout will execute a construction contract for construction of the

walkway, and, upon completion of the Walkway, the Association and the HRWC will enter mutual releases (both documents hereinafter referred to as "Binding Agreements");

THEREFORE, THE PARTIES AGREE THAT:

1. IMMEDIATE STEPS.

- a. River-Lookout shall prepare site plans and specifications that it reasonably believes DEP will approve for Walkway construction at River-Lookout's cost and expense, with the Walkway construction being funded in whole or in part by using a portion of monies otherwise payable to DEP. In connection with the foregoing, River-Lookout has prepared a conceptual site plan that has been submitted to the Parties, which is annexed hereto as Exhibit A.
- b. The site plans and specifications shall, at a minimum, strive to contain the following design elements:
 - i. The Walkway shall extend from Veteran's Park to the Marina.
 - ii. The Walkway shall be designed to preserve all or most of the Association's jogging path.
 - iii. The Walkway shall preserve the Association's exclusive access to the structure known as the Pavilion and shall become a boardwalk at that location.
 - iv. The Walkway shall be designed to preserve the Association's parking as much as possible.
 - v. The site plan shall make appropriate provisions for restoration of landscaping, fencing separating it from the Association, and secured gates providing the Association's residents with access to the Walkway.

- vi. The plans and specifications shall require the improvement, repair, and restoration of the Association's waterfront bulkhead/riprap, and same shall, among other things, resolve the Association's high tide flooding issue in the South Eastern area of the parking lot, and resolve any subsidence or other issues detected by the parties.
- vii. The site plan may provide for moving the Association's trash collection area.
- viii. There shall be private (but not public) and secure access from the Association's property to the Walkway.

2. **CONTINGENCIES.** The parties agree that the following contingencies must be met prior to entering into binding agreements described in Section 3 of this Memorandum:

- a. Each party hereto has agreed to and approves of the conceptual site plan prepared by River-Lookout pursuant to paragraph 1(a). The Parties agree that they will advocate for the 8-foot-wide walkway in the conceptual site plan to the DEP, although no party is bound to advocate for any specific reason in favor of same. In the event that the parties cannot agree on any further plans and specifications that may be required by the DEP, other governmental authorities, or for construction, and after good faith negotiations, then any Party may terminate this MOU.
- b. Each party shall pay the reasonable costs and expenses of their respective selected engineer and/or other design professionals in reviewing the plans and specifications referred to in paragraph 1(a).

- c. Upon the execution of this agreement, HRWC and the Association will enter into a consent order dismissing the aforementioned Action.
- i. Dismissal shall be without prejudice, costs, or disbursements.
 - ii. Any and all claims between the parties shall be tolled and shall relate back to the initial filing of the Action.
 - iii. HRWC and the Association shall reserve all rights, claims, and defenses that they may have, and the entering into this Memorandum is without prejudice to same.
 - iv. HRWC and the Association shall stipulate that upon any re-initiation of the Action, all pleadings and discovery in the Action shall be carried over from the initial litigation and deemed complete, unless the court orders that further discovery be conducted upon good cause shown.
 - v. Except with respect to the enforcement of its terms, this Memorandum and the settlement talks between the Association and HRWC shall be deemed subject to NJRE 408.
 - vi. If any Party to this agreement exercises its right to terminate the agreement, or if this agreement terminates by its own terms, HRWC may reinitiate the aforementioned lawsuit.
- d. Upon the approval by the Association, HRWC, and River-Lookout of the Walkway site plan and specifications referred to paragraph 1 (a) and the dismissal of the lawsuit without prejudice, the Association will seek the approval of its Unit Owners to approve a Master Deed amendment or other approval regarding the proposed Walkway construction.

- i. In the event that said unit owner approval cannot be obtained, then the Association may terminate this MOU.
 - ii. In the event that individual unit owner mortgage holder approval is required and cannot be obtained, the Association may terminate this MOU.
 - iii. In the event the agreement is terminated pursuant to this paragraph, the Association shall reimburse River-Lookout for all out-of-pocket expenses incurred pursuant to this Agreement up until the date of termination, not to exceed \$10,000.
- c. River-Lookout shall, at its own cost and expense, obtain all required NJDEP, municipal, federal, and other approvals, even if same must be obtained in the name of the Association.
- f. In the event that River-Lookout and/or the parties cannot obtain required governmental approvals to construct the Walkway, then this MOU may be terminated by any party.
- g. To the extent that the New Jersey Department of Environmental Protection approval is required, the parties shall endeavor to have the approval state that the Association has satisfied any statutory or regulatory obligations with respect to the Walkway.
- h. This MOU is contingent on the Association (or an entity to be created by the Association to own the Walkway) confirming that it can obtain appropriate liability, casualty, and flood insurance for the walkway.

- i. The MOU is contingent on the Association's evaluation and acceptance of the anticipated long-term maintenance, repair, and replacement costs of the Walkway.
- j. Any party may terminate this MOU in its sole discretion prior to the execution of Binding Agreements.
- k. While this MOU is in effect, the Association will supply the HRWC with monthly updates concerning the progress made satisfying the conditions set forth herein, and will continue to do so during the "Binding Agreements" phase and course of construction.

3. BINDING AGREEMENTS.

- a. After the Parties have satisfied their contingent concerns, and prior to commencing construction, River-Lookout and the Association shall enter into a legally binding construction contract. Said contract shall require, among other things:
 - i. River-Lookout shall obtain payment, performance, and maintenance bonds for the full project cost in the name of the Association.
 - ii. River-Lookout will pay all costs of construction of the Walkway and other site improvements, including riprap/bulkhead improvements.
 - iii. River-Lookout will pay the Association's costs in retaining a professional engineer as owner's representative.
 - iv. The contract will contain industry standard indemnification and insurance requirements. River-Lookout will maintain an appropriate "builder's risk" insurance policy.

- v. The construction contract shall name HRWC as a third-party beneficiary with the power to enforce the terms of the contract.
- b. River-Lookout shall warranty the work for a period of 5 years from the date of substantial completion. During said 5-year period, River-Lookout shall also be responsible for all regular maintenance, repairs, replacements, landscaping, and security for the Walkway, including the cost of insurance. In the event that the maintenance bond will not cover the regular maintenance, repairs, replacements, landscaping, insurance, and security for the Walkway for a period of five (5) years, then River-Lookout shall place an adequate sum of money in escrow to cover the anticipated costs of same.
- c. At the time the Association and River-Lookout execute the aforementioned construction contract, the Association and the HRWC shall exchange general releases which will be held in escrow until substantial completion of the Walkway construction. The releases shall specifically acknowledge that the HRWC takes the position that completion of the walkway satisfies the Association's obligations under the Public Trust Doctrine.

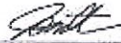
Hudson River Waterfront Conservancy



Don Stitzenberg, President

Dated: 1/5/21

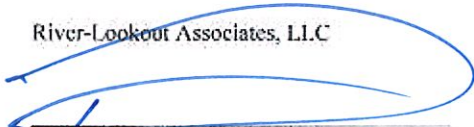
Admiral's Walk Condominium Association, Inc.



Jonathan Chu, President

Dated: 12/15/2020

River-Lookout Associates, LLC



Fred Daibes, Managing Member

Dated:

EXHIBIT A