237-15
(AT)

Staff Summary
FOR EXECUTIVE SESSION ONLY

Subject Resolution – Lighthouse Development
Department County Attorney
Department Head Name Carnell T. Foskey, County Attorney
Department Head Signature for Lisa LoCurto, Chief Deputy County Attorney
Date June 5, 2015

Internal Approvals			
Date & Init.	**Approval**	**Date & Init.**	**Approval**
6/5/15	County Executive or Deputy		Director of Legislative Affairs
	Budget	6/5/15	Counsel to County Executive

Narrative

Purpose:

A resolution to approve the County Attorney's settlement of a dispute between the County of Nassau and Lighthouse Development Group, LLC.

Discussion/Procedure:

The parties desire to resolve the controversy without the need for litigation or further negotiation and have reached a settlement of all issues between them in the dispute. Lighthouse agrees to settle the dispute and release any claim to the Four Million Five Hundred Thousand Dollars ($4,500,000) and the County agrees to utilize such amount towards the construction of a building on a portion of County-owned parkland adjacent to an existing ice rink in Cantiague Park located in Hicksville, New York.

Recommendation:

Approve as submitted.

2015 JUN -5 P 5:48
RECEIVED
NASSAU COUNTY
CLERK OF THE LEGISLATURE

RESOLUTION NO. - 2015

A RESOLUTION AUTHORIZING THE COUNTY ATTORNEY TO COMPROMISE AND SETTLE ANY AND ALL CLAIMS BETWEEN LIGHTHOUSE DEVELOPMENT GROUP, LLC AND THE COUNTY OF NASSAU PURSUANT TO THE COUNTY LAW, THE COUNTY GOVERNMENT LAW OF NASSAU COUNTY AND THE NASSAU COUNTY ADMINISTRATIVE CODE.

APPROVED AS TO FORM

Deputy County Attorney

RECEIVED
NASSAU COUNTY
CLERK OF THE LEGISLATURE
2015 JUN -5 P 5:48

WHEREAS, Lighthouse Development Group, LLC ("Lighthouse") has certain claims arising out of a dispute between Lighthouse and the County of Nassau, et al. (the "County") alleging Lighthouse's right to seek Reimbursement from the County for expenses incurred pursuant to a certain Development Plan Agreement, and

WHEREAS; Upon (i) due execution and exchange of a Release by Lighthouse and the County, and (ii) County's delivery of a fully functional ice rink and facilities for the New York Islanders Hockey Club, L.P., Lighthouse agrees to settle the Dispute and release any claim to its Reimbursement Right and the County agrees to utilize the full amount of the Option Payments towards the construction of a building on a portion of County-owned parkland adjacent to an existing ice rink in Cantiague Park located in Hicksville, New York, which Option Payments shall be deemed released for the purposes of paying for such construction as outlined above upon the execution of the Release; and

WHEREAS, The County hereby further agrees to simultaneously enter into a Permit for Use and Occupancy of County-Owned Property with the Islanders for the non-exclusive use of the building for its hockey operations, including as a training and practice facility (together with the construction of the building, the "County Consideration"); and

WHEREAS, the partnership between the Islanders and the County will improve and enhance the recreational offerings at Cantiague Park, will maintain a Nassau County connection with the Islanders and will continue to offer the residents of the County the ability to interact with a professional sports franchise.

WHEREAS, the County Attorney has caused an investigation and analysis to be made of the said claims and as a result thereof recommends that it be settled in the amount set forth above; now therefore, be it

RESOLVED, that the County Attorney be and is hereby authorized and directed to settle the said claims in the amount as indicated above, and be it further

RESOLVED, that the County Treasurer be and is hereby authorized to pay a maximum of $400,000.00 by check or checks payable as directed by the County Attorney, said check or checks to be delivered to the County Attorney and thereupon delivered to the attorneys for New York Lighthouse Development Group, LLC upon receipt of a Settlement Agreement and General Release; and be it further

RESOLVED, that it is hereby determined, pursuant to the provisions of the State Environmental Quality Review Act, 8 N.Y.E.C.L. Section 0101 *et seq.* and its implementing regulations, Part 617 of 6 N.Y.C.R.R., and Section 1611 of the County Government Law of Nassau County, that this settlement is a "Type II" Action within the meaning of Section 617.5(c)(29) of 6 N.Y.C.R.R. and, accordingly, is of a class of actions which do not have a significant effect on the environment; and no further review is required.

EDWARD P. MANGANO
County Executive

CARNELL T. FOSKEY
County Attorney

Inter-Departmental Memo
FOR EXECUTIVE SESSION ONLY

To: **Clerk of the Legislature**

From: **Office of the County Attorney**

Date: **June 5, 2015**

Re: **RESOLUTION – ORIG. DEPT. – Office of the County Executive**

A RESOLUTION authorizing the County Attorney to compromise and settle any and all claims between Lighthouse Development Group, LLC and the County of Nassau pursuant to the County Law, the County Government Law of Nassau County and the Nassau County Administrative Code.

The above-described document attached hereto is forwarded for your review and approval and subsequent transmittal to the County Legislature for inclusion upon their calendar.

CARNELL T. FOSKEY
County Attorney

By: Gerald R. Podlesak
Deputy County Attorney
Appeals and Opinion Bureau

Attachments

RELEASE AND SETTLEMENT AGREEMENT

This General Release and Settlement Agreement ("Release") is made as of the date this Agreement is executed by the County Executive (the "Effective Date"), between the **COUNTY OF NASSAU**, a municipal corporation having its principal office at One West Street, Mineola, New York 11501 (the "County") and **LIGHTHOUSE DEVELOPMENT GROUP, LLC** ("Lighthouse"), a Delaware Limited Liability Company, having an office at 1600 Old Country Road, New York 11803. The County and Lighthouse are collectively referred to as the "Parties" and each may be referred to individually as a "Party."

RECITALS

WHEREAS, pursuant to that certain Development Plan Agreement dated January 5, 2007 between the County and Lighthouse (the "Development Plan Agreement"), Lighthouse paid the County a total of Four Million Five Hundred Thousand Dollars ($4,500,000) in connection with their proposed redevelopment and revitalization of the Nassau Veterans Memorial Coliseum and the surrounding area (the "Option Payments");

WHEREAS, pursuant to the Development Plan Agreement, Lighthouse had the ability to seek reimbursement from the County for expenses incurred in connection with the aforementioned redevelopment process up to the amount of the Option Payments (the "Reimbursement Right");

WHEREAS, a dispute has arisen between the County and Lighthouse regarding the Reimbursement Right at this time (the "Dispute");

WHEREAS, the New York Islanders Hockey Club, L.P. (the "Islanders"), a National Hockey League franchise, is affiliated with Lighthouse; and

WHEREAS, the Parties desire to resolve the controversy without the need for litigation or further negotiation and have reached a settlement of all issues between them in the Dispute based on the terms and conditions of this Release.

NOW THEREFORE, in consideration of these premises and of the covenants contained herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties, with the intent to be legally bound hereby, agree as follows:

1. **Settlement**. Upon (i) due execution and exchange of this Release by Lighthouse and the County, and (ii) County's delivery of a fully functional ice rink and facilities for the Islanders, Lighthouse agrees to settle the Dispute and release any claim to the Reimbursement Right and the County agrees to utilize the full amount of the Option Payments towards the construction of a building on a portion of County-owned parkland adjacent to an existing ice rink in Cantiague Park located in Hicksville, New York, which Option Payments shall be deemed released for the purposes of paying for such construction as outlined above upon the execution of this Release. The County hereby further agrees to simultaneously enter into a Permit for Use and Occupancy of County-Owned Property with the Islanders for the non-exclusive use of the building for its hockey operations, including as a training and practice facility (together with the construction of the building, the "County Consideration"). The Parties further agree that the partnership between the Islanders and the County will improve and enhance the recreational offerings at Cantiague Park, will maintain a Nassau County connection with the Islanders and will continue to offer the residents of the County the ability to interact with a professional sports franchise.

2. **Release**. Lighthouse hereby remises, releases, and forever discharges the County and each and every one of their agents, affiliates, attorneys, successors, assigns, representatives,

owners, insurers, officers and directors of and from all manner of liability, all claims, actions, causes, suits, debts, sums of money, accounts, reckonings, bonds, bills, specialties, whatsoever, whether now known or hereafter made known, in law or in equity which Lighthouse raised, or could have raised, against the County in any litigation or any other proceeding.

3. **Indemnity**. In exchange for the County Consideration, Lighthouse shall indemnify and hold harmless the County from and against any and all claims or liens made against the Option Payments, the Reimbursement Right or the County Consideration, including any claims for expenses, attorneys' fees, or costs. This indemnity and hold harmless agreement includes the attorneys' fees and costs to defend any claim or action that may be brought against the County and for any damages related to any claims or liens made against the Option Payments, the Reimbursement Right or the County Consideration, including any claims for expenses, attorneys' fees or costs.

4. **Settlement of Dispute**. Upon complete execution of this Release and the delivery of the County Consideration, the Parties agree that this shall constitute a final settlement of the Dispute and agree not to pursue litigation in connection with the Option Payments, the Reimbursement Right or the County Consideration in the future.

5. **Entire Release**. All of the agreements, covenants, representations and warranties between the Parties, express or implied, oral and written, concerning the subject matter of this Release, are contained in this Release. All prior and contemporaneous conversations, negotiations, agreements, representations, covenants and warranties covering the subject matter of this Release are merged into this Release.

6. **Modification**. The Parties to this Release agree and understand that no modification or waiver of any terms of this Release shall be valid unless made in writing and executed by the Parties.

7. **Binding on Successors**. All of the terms and conditions of this Release shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, heirs, legatees, beneficiaries, legal representatives and assigns.

8. **Severability**. If any portion of this Release is determined to be void or unenforceable, all remaining valid and enforceable provisions of this Release shall survive any such determination.

9. **Governing Law**. This Release shall be governed, construed and enforced in accordance with the laws of the State of New York. Any action to enforce or interpret this Release shall solely and exclusively be brought in the Supreme Court in Nassau County in New York State and the Parties expressly waive any objections to the same on any grounds, including venue and forum non conveniens.

10. **Representation**. Each Party to this Release is being represented by counsel of their own free choice, and this Release represents the collaborative drafting of the Parties.

11. **Separate Execution and Signatures**. This Release may be signed by each Party separately, in which case attachment of each Party's signature page of this Release shall constitute a fully executed counterpart original Release. PDF or other digitally exchanged signatures shall have the same effect as original signatures.

12. **Enforcement**. Should it be necessary to file an action to enforce the provisions of this Release, the prevailing Party shall be entitled to reasonable attorneys' fees and costs.

13. **County Approval and Execution**. The County shall have no liability under this Release (including any extension or other modification of this Release) to any person unless (i) all requisite approvals have been obtained, including, if required, approval by the County Legislature and any other governmental authorities, and (ii) this Release has been executed by the County Executive.

14. **Lighthouse Approval and Execution**. Lighthouse represents and warrants that Lighthouse has the authority and power to enter into this Release and that this Release constitutes the legal, valid and binding obligation of Lighthouse enforceable against Lighthouse in accordance with its terms, and Lighthouse has no claims or defenses, personal or otherwise, or offsets whatsoever to the enforceability or validity of this Release except as specifically set forth herein. Lighthouse further represents and warrants that the execution and delivery of this Release by Lighthouse has been duly authorized by all necessary corporate actions of Lighthouse, none of which actions have been rescinded or otherwise modified.

15. **Notices**. Notices shall be sent to the following attorneys as counsel for the following parties:

To Counsel for County:

Nassau County Attorney's Office
One West Street
Mineola, New York 11501
Attention: Chief, Transactions Bureau
Telecopy Number: (516) 571-4080

with a copy to:

Pannone Lopes Devereaux & West LLC
81 Main Street, Suite 510
White Plains, New York 10601
Attn: Josh J. Meyer, Esq.
Telecopy Number: (914) 898-2401

To Counsel for Lighthouse: Lighthouse Development Group, LLC
1600 Old Country Road
Plainview, NY 11803
Attn: General Counsel
Telecopy Number: (516) 622-7510

with a copy to:

Lighthouse Development Group, LLC
1600 Old Country Road
Plainview, NY 11803
Attn: President
Telecopy Number: (516) 622-7510

EXECUTION AND ACCEPTANCE

The undersigned, on behalf of the parties named herein, hereto represents and warrants that he has read this Release, and each and every part thereof; that he fully understands the terms thereof; and has consulted with counsel with respect thereto; and that he accepts, agrees to and intends to be bound by terms of this Release.

LIGHTHOUSE DEVELOPMENT GROUP, LLC

By: _____

Print Name: Michael Pickin

Title: Authorized Signer

Date: 6/8/15

COUNTY OF NASSAU

By: _____

Print Name: _____

Title: _____

Date: _____

ACKNOWLEDGED AND AGREED TO BY:

NEW YORK ISLANDERS HOCKEY CLUB, L.P.

By: _____

Print Name: Michael Pickin

Title: SVP

Date: 6/5/15

STATE OF NEW YORK)
)ss.:
COUNTY OF NASSAU)

On the 5th day of June in the year 2015 before me personally came Micheal J. Picker to me personally known, who, being by me duly sworn, did depose and say that he or she resides in the County of Suffolk; that he or she is the Authorized Signatory of Lighthouse Development Group, the corporation described herein and which executed the above instrument; and that he or she signed his or her name thereto by authority of the board of directors of said corporation.

NOTARY PUBLIC

MICHAEL J. MENCHISE
Notary Public, State of New York
No. 01ME6096643
Qualified In Suffolk County
Commission Expires August 4, 2015

STATE OF NEW YORK)
)ss.:
COUNTY OF NASSAU)

On the ____ day of _____ in the year 2015 before me personally came _____ to me personally known, who, being by me duly sworn, did depose and say that he or she resides in the County of _____; that he or she is _____ of the County of Nassau, the municipal corporation described herein and which executed the above instrument; and that he or she signed his or her name thereto pursuant to Section 205 of the County Government Law of Nassau County.

NOTARY PUBLIC

STATE OF NEW YORK)
)ss.:
COUNTY OF NASSAU)

On the 5th day of June in the year 2015 before me personally came Micheal J. Picker to me personally known, who, being by me duly sworn, did depose and say that he or she resides in the County of Suffolk; that he or she is the Senior Vice President of New York Islanders Hockey Club the corporation described herein and which executed the above instrument; and that he or she signed his or her name thereto by authority of the board of directors of said corporation.

NOTARY PUBLIC

MICHAEL J. MENCHISE
Notary Public, State of New York
No. 01ME6096643
Qualified In Suffolk County
Commission Expires August 4, 2015