

CONFIDENTIAL SETTLEMENT NEGOTIATIONS  
PURSUANT TO CPLR 4547 & FRE 408

LETTER OF INTENT

This Letter of Intent, when signed by the attorneys for the respective parties, will evidence their and their clients' mutual good faith intent to use reasonable efforts, within 90 days (the "Negotiation Period") after the mutual execution and delivery of copies hereof each by and to the other, to execute a Formal Agreement upon which the monetary provisions of a judgment of the Supreme Court, Nassau County, dated May 13, 2021, and entered May 17, 2021, in the case of *Matter of Haberman, et al. v Zoning Board of Appeals of the City of Long Beach, et al.*, under Nassau County Index No. 001138-2004 (the "Judgment"), be settled and compromised, generally upon the terms set forth herein.

It is the intention of the parties that the terms set forth herein will be further clarified or amplified in the Formal Agreement, that the language used in this letter is not necessarily to be incorporated verbatim in the Formal Agreement, and that terms not set forth herein may be added as mutually agreed upon by the parties to the Formal Agreement and as our respective counsel shall deem appropriate under the circumstances.

**Definitions**

The petitioner-plaintiffs in the case are Sinclair Haberman and his wholly owned company Belair Building, LLC (collectively "Haberman"), and are represented by the firms of Jaspan Schlesinger, LLP (Garden City, NY [settlement purposes only]); Sullivan Papain Block McGrath Coffinas & Cannavo, P.C. (Garden City, NY); and DelBello Donnellan Weingarten Wise & Wiederkehr LLP (White Plains, NY).

CONFIDENTIAL SETTLEMENT NEGOTIATIONS  
PURSUANT TO CPLR 4547 & FRE 408

The remaining respondents-defendants in the case are the City of Long Beach (the “City”); Scott A. Kemins, as the Commissioner of Buildings of the City (“Kemins”); and the City’s Zoning Board of Appeals (the “ZBA” and collectively with the City and Kemins, the “City Parties”). The City is represented by its Corporation Counsel. It is the intent of Haberman and the City that the ZBA and Kemins will be party to the Formal Agreement.

Haberman owns certain properties between Monroe and Lincoln Boulevards in the City, described as follows (collectively, the “Properties”):

Site A – Section 59, Block 146, Lot Nos. 8 to 19, Lot Nos. 21 to 35, Lot Nos. 41 and 46 as shown on the Nassau County Land and Tax Map;

Site B – Section 59, Block 145, Lot Nos. 174 through 177 as shown on the Nassau County Land and Tax Map; and

Site C – Section 59, Block 145, Lot Nos. 30 and 129 as shown on the Nassau County Land and Tax Map; and

The case relates to Haberman’s plans to build four Buildings consisting of and known as the Sea Pointe Towers Project (the “Project”) as follows:

Building 1 – the easterly building on Site A;

Building 2 – the center building on Site A;

Building 3 – the westerly building on Site A; and

Building 4 – the building on Sites B and C; and

Xander Corporation (“Xander”) is the owner of Building 1 of the Project. The remaining buildings have yet to be constructed.

## The Facts

The parties acknowledge, for settlement purposes only, the following facts underlying the proposed settlement and compromise of the monetary provisions of the Judgment:

1. In 1985, Haberman's father, Jacob Haberman, sought and was granted a variance by the ZBA to build a four-tower residential apartment complex on the Property (the "Project").
2. In 1986, Jacob transferred his interest in the Property to his son Sinclair. Sinclair transferred title to Belair Building, LLC.
3. With regard to the Properties, Haberman planned to complete the Project, sell the condominium units at a profit and reinvest the proceeds in other real estate ventures.
4. The Project commenced with the construction of the first of the four towers ("Building 1"). In 1987, as Building 1 was under construction and the Belair Gardens Apartments were demolished as required by the 1985 variance, Haberman sought permits to build the remaining three towers ("Buildings 2, 3, & 4").
5. The City denied Haberman's building permit applications, based on changes to the City's zoning laws that post-dated the variance.
6. Haberman then brought a lawsuit against the City, the ZBA, its members, and the City's Building Commissioner seeking, *inter alia*, to annul the denial of his applications for building permits.
7. In the meantime, in 1988, the construction of Building 1 was completed and Haberman transferred ownership to Xander, a cooperative corporation.

CONFIDENTIAL SETTLEMENT NEGOTIATIONS  
PURSUANT TO CPLR 4547 & FRE 408

8. In 1989, Haberman's suit to annul the denial of his building permits was resolved by the execution of a settlement stipulation that was so-ordered by the court (the "1989 Settlement Stipulation").

9. The 1989 Settlement Stipulation provided, in relevant part, that Haberman would apply for new variances to permit construction of Buildings 2 and 3 to 10 stories, and Building 4 to 7 stories, and that he would subsequently apply for building permits within certain time periods. Haberman further agreed to pay \$200,000 to the City to fund public improvements for the benefit of the Project, beginning with the installation of underground utility lines, and the City agreed to begin construction of those improvements not later than two years after Haberman's payment.

10. In accordance with the 1989 Settlement Stipulation, Haberman applied for the new variances for Buildings 2, 3, and 4 and the ZBA granted them on August 4, 1989 (the "1989 Variances").

11. Haberman then paid the \$200,000 to the City in December 1989, thereby triggering the City's obligation to install the underground utility lines no later than December 1991.

12. The City did not meet this deadline and Haberman and the City agreed that the City's time to install the underground utility lines was extended, provided that Haberman's deadlines to apply for permits to construct Buildings 2, 3, and 4 would be tolled until the City completed the improvements.

13. These terms were ultimately memorialized in a letter from Haberman to the City's Corporation Counsel, dated April 7, 1992, which was incorporated into a new document (the "Extension Letter") and so-ordered by a Justice of the Supreme Court, Nassau County (the "Extension Order").

CONFIDENTIAL SETTLEMENT NEGOTIATIONS  
PURSUANT TO CPLR 4547 & FRE 408

14. In May 2003, Haberman's contractor, D. Domenico, Ltd. ("Domenico"), submitted an application for a permit to drive piles and install footings for Building 2 as a 10-story apartment building.

15. On August 12, 2003, the City's Commissioner of Buildings issued a permit to Domenico to "Drive Piles and Install Footings for Ten (10) Story Apartment Building" that was to be Building 2 of the Project.

16. Xander opposed the completion of the construction of Building 2 and, on September 4, 2003, appealed to the ZBA seeking to have Haberman's building permit revoked.

17. On December 29, 2003, following a public hearing on Xander's appeal, the ZBA revoked: (i) the permit previously issued to Domenico to drive piles and install footings for Building 2; and (ii) the variances previously granted to Haberman to build Buildings 2, 3, and 4.

18. On January 27, 2004, Haberman commenced a hybrid proceeding and action in which he sought, *inter alia*, a judgment annulling the ZBA's determination and reinstating his building permit for Building 2 and the 1989 Variances, and damages for breach of the 1989 Settlement Stipulation and violation of his vested rights to complete the Project.

19. By order dated March 27, 2015, the court granted Haberman's motion for a default judgment against the City Parties. That order was subsequently affirmed by the Appellate Division, Second Department. (*Matter of Haberman v Zoning Bd. of Appeals of City of Long Beach*, 152 AD3d 683, 683 [2d Dept 2017]).

20. An inquest of the damages to be awarded to Haberman based on the judgment on default under the fifth and sixth causes of action came on to be heard before Justice Jack L. Libert,

CONFIDENTIAL SETTLEMENT NEGOTIATIONS  
PURSUANT TO CPLR 4547 & FRE 408

without a jury, on nine days in November 2020 and the Court, on January 11, 2021, made and filed its decision.

21. On May 17, 2021, a judgment was entered, *inter alia*, making certain declarations, directing judgment in favor of Haberman and against the City and ZBA in the principal amount of \$140,834,594.51, together with statutory interest thereon at the rate of 9% per annum, and denying Haberman's request for an award of counsel fees (the "Judgment").

22. The City Parties served and filed a notice of appeal from the Judgment dated May 24, 2021, and Haberman served and filed a notice of cross appeal dated June 14, 2021.

### **Consideration**

The monetary provisions set forth in decretal paragraphs six and seven of the judgment shall be settled as follows: (i) the sum of \$75,000,000 shall be due and payable by the City within 5 business days following the effective date of the Formal Agreement (the "Principal Payment"), (ii) an additional sum of \$2,000,000 (the "Deferred Payment"), shall be deferred until the end of the Guarantee Period and forgiven if Haberman or any assignee or transferee of Haberman's rights does not build the Project during the Guarantee Period, and (iii) a "Guarantee Payment" (defined below), shall be payable only if, during the Guarantee Period as defined herein, (1) the City Council shall materially amend the Zoning Legislation described herein following its adoption in a manner that would prevent the construction of the Project under Option B as of right, or (2) the City Parties or any other agency, department, board, commission, or employee of any of the City Parties acting in such capacity, enact or enforce any zoning regulations or amendments thereto that would prevent the construction of the Project under Option B as of right; or (3) there is a successful legal challenge to the Zoning Legislation that prevents the construction of the Project under Option B

CONFIDENTIAL SETTLEMENT NEGOTIATIONS  
PURSUANT TO CPLR 4547 & FRE 408

as of right. Notwithstanding the foregoing, the City Parties shall be permitted to enforce relevant state, county, and federal laws and regulations with regard to the construction of the structures and local laws in existence as of the date of this Letter of Intent, to the extent not otherwise modified by the Judgment or Formal Agreement.

The City shall defend any legal challenge to the Zoning Legislation and shall bear the cost of such defense. Neither Haberman nor any assignee or transferee of Haberman's rights shall support or finance any challenge to such Zoning Legislation.

**Options to Complete Sea Pointe Towers Project**

Haberman shall have the following two alternative options to complete the Sea Pointe Towers Project:

Under Option A, by exercising his vested rights under the 1989 Settlement Stipulation, the Stipulation and Judgment, the ZBA's 1989 resolution and variances, the 1992 Extension Letter and 1992 Extension Order, and the third, fourth, and fifth decretal paragraphs of the Judgment.

Under Option B, by completing the Project under the Zoning Plan.

If Haberman chooses to develop in accordance with the Zoning Plan, Haberman shall be deemed to have modified, not abandoned, the Sea Pointe Towers Project.

**Zoning Plan.**

(a) The settlement set forth in the Formal Agreement shall be contingent upon the City Council approving legislation (the "Zoning Legislation") altering the zoning restrictions applicable to Sites A, B and C to permit the construction of two buildings on the south side of Shore

CONFIDENTIAL SETTLEMENT NEGOTIATIONS  
PURSUANT TO CPLR 4547 & FRE 408

Road, and also permit the construction of a parking structure on Sites B and C on the north side of Shore Road sufficient, when combined with parking spaces beneath Buildings 1, 2 and 3, to provide 1 parking space for each of the 126 units in Xander's Building 1 and additional parking spaces at the ratio of 1.75 spaces for each unit constructed in Buildings 2 and 3, not less than one of which shall be allocated to each unit in accordance with the provisions of subsection (c) below. The Formal Agreement may include in the Zoning Plan properties in Section 59, Block 145 of the Nassau County Land and Tax Map that are adjacent to Sites B and C.

(b) The Zoning Legislation shall provide, in exchange for meaningful community benefits to residents, incentives for adjustments to building height, building area, density, lot area, front-yard setbacks, side-yard setbacks, rear-yard setbacks, parking requirements as to number, size, and design of off-street parking spaces, required recreational areas, and such other provisions of the zoning ordinance, other than the permitted uses, as may be authorized by resolution of the City Council from time to time. Community benefits may include, among other things, enhanced parking in the immediate area, workforce housing, contributions to a benefit fund, public green space or other incentives that the City deems beneficial to the City's residents. The Zoning Legislation will provide that property owners shall be permitted to make a payment in cash to the City as a community benefit.

(c) The Zoning Legislation shall allow, after satisfaction of the community benefit requirement described in subsection (b) above:

- i. Buildings 2 and 3 may be used for any purpose authorized in the Zoning Legislation, which may include mixed use, and may be up to 13 stories each plus a Rooftop Penthouse. Each Rooftop Penthouse shall not exceed 5,000 square



CONFIDENTIAL SETTLEMENT NEGOTIATIONS  
PURSUANT TO CPLR 4547 & FRE 408

feet. The 13 stories plus the Rooftop Penthouse shall not exceed a total of 149 feet in height, which shall be measured from the top of the lowest elevated floor permitted under the Long Beach Code, the New York State Building Code, and applicable FEMA Flood Zone Maps and regulations, as amended from time to time, to the highest point of the building, exclusive of such additional height as may be reasonably required for elevator and mechanical systems, vents, parapet, appendages, etc. on the roof;

- ii. The Parking Structure shall be used for parking only and not for habitable purposes. The total height of the Parking Structure shall not exceed 20 feet if unroofed, or 35 feet if roofed, exclusive of parapet, equipment and stairway bulkheads of reasonable height, measured from Grade Level as defined in Long Beach Code § 9-104. The Formal Agreement may provide that spaces in the parking structure that are not needed to meet the parking requirements for Buildings 2 and 3 may, as such a community benefit, be sold or leased to meet the needs of residents of the City of Long Beach.
- iii. The total amount of cash payments in lieu of community benefits for the Project under Option B shall not exceed \$3,000,000. The first \$2,000,000 of such cash payment in lieu of community benefits may be paid by Haberman in the form of a credit against the \$2,000,000 Deferred Payment.
- iv. The total number of units in Buildings 2 and 3 shall not exceed 266.

### **Guarantee Period and Guarantee Payment**

The Formal Agreement shall provide for a “Guarantee Period” of seven years from the Effective Date of the Formal Agreement, which may be extended, at Haberman’s option, for seven successive one-year periods, by means of payment to the City by Haberman for each such one-year extension, payable not later than two months prior to the start of each extension year. The payment to the City shall be \$250,000 for each one-year extension for the first three years’ extension and increase by 5% for each subsequent year’s extension .

In the event that any legal challenge to the Zoning Legislation, including appeals, arises which, if successful, would prevent the construction of the Project under Option B as of right, the Guarantee Period shall be tolled to the extent that such challenge extends beyond four years after the Effective Date of the Formal Agreement.

The Formal Agreement shall further provide that if Haberman files an application for a building permit in furtherance of the Project within the Guarantee Period and commences and completes building with reasonable diligence (as will be further defined in the Formal Agreement) under such permit, the period shall be extended until Haberman’s receipt of final certificates of occupancy for Building 2, Building 3 and the Parking Structure. Any remaining Guarantee Period shall terminate once final Certificates of Occupancy for Buildings 2 and 3 and the Parking Structure have been issued.

During the Guarantee Period the Zoning Legislation shall not be materially amended or revoked, and Haberman shall have the right to complete the Project under Option A notwithstanding installation of underground utility lines as specified in the 1989 Settlement Stipulation and 1992 Extension Letter.

CONFIDENTIAL SETTLEMENT NEGOTIATIONS  
PURSUANT TO CPLR 4547 & FRE 408

The Guarantee Payment during the Guarantee Period shall be (i) \$25,000,000 until seven years after the Effective Date of the Formal Agreement, and (ii) \$20,000,000 through the end of the Guarantee Period, which shall be reduced to \$15,000,000 after the receipt of a certificate of occupancy for Building 2.

**Effective Date of Formal Agreement**

The Effective Date of the Formal Agreement shall be the first business day after all of the following conditions precedent thereto have been satisfied:

(a) The Formal Agreement has been executed by each of the Parties and the City Parties' execution has been authorized by resolutions of the City Council and of the ZBA, certified copies of which resolutions shall be attached to the Formal Agreement upon its execution;

(b) The City shall have been able to raise and has received sufficient funds, in its sole discretion through the issuance of General Obligation Bonds, to fund the Principal Payment;

(c) Haberman has delivered to counsel for the City Parties (i) a duly executed satisfaction of the monetary provisions of the Judgment with accrued interest, and (ii) a stipulation withdrawing the cross appeal, both to be held in escrow by counsel for the City Parties until five business days after the Effective Date of the Formal Agreement; and

(d) The City Parties have delivered to counsel for Haberman a stipulation withdrawing the appeal, to be held in escrow by counsel for Haberman until five business days after the Effective Date of the Formal Agreement; and

CONFIDENTIAL SETTLEMENT NEGOTIATIONS  
PURSUANT TO CPLR 4547 & FRE 408

(e) The City Council has enacted the Zoning Legislation.

The attorneys for the parties may release from escrow and file the documents referred to in paragraphs (c) and (d) above 5 business days after the Effective Date.

In the event that each of the foregoing conditions has not been satisfied or waived by the Parties on or before August 15, 2022, or such later date as agreed to by them in a writing signed by their respective attorneys, the parties shall be restored to all of their rights existing as of the effective date of this Letter of Intent, subject to the following paragraph.

Interest on the principal sum of the judgment shall not accrue during the Negotiation Period and, provided a Formal Agreement is reached, from the date of execution thereof through and including its Effective Date. The accrual of interest shall resume (i) at the end of the Negotiation Period in the event that a Formal Agreement is not reached, or (ii) in the event that the Formal Agreement does not go into effect on or before August 15, 2022, or such latter date as may be agreed to by the parties as above stated, or (iii) in the event the Formal Agreement is repudiated by the City or ZBA.

**Payment of \$200,000 Pursuant to 1989 Settlement Stipulation**

The Final Agreement shall include a provision to the effect that upon Haberman's receipt of final certificates of occupancy for all of the buildings and other construction for which a certificate of occupancy or such other certificate as then may be required indicating that the Project has been completed and may be fully utilized as designed, either under Option A or Option B, and in the event there are any legal challenges to the issuance of such certificates, and they are

CONFIDENTIAL SETTLEMENT NEGOTIATIONS  
PURSUANT TO CPLR 4547 & FRE 408

unsuccessful and there is no further right of appeal or the time to take such appeal has lapsed, then and in that event Haberman agrees that the \$200,000.00 previously paid to the City, to be dedicated for public improvements on Shore Road between Lincoln and Monroe Boulevards, may be used as general operating funds of the City without any conditions upon such use.

**Releases & Non-disparagement**

The Formal Agreement shall include certain releases acceptable to the parties and non-disparagement provisions between and among the parties.

**No Third-Party Beneficiaries**

This Letter of Intent is entered into for the sole benefit of City and Haberman and no other parties are intended to be direct or incidental beneficiaries of this Letter of Intent and no third party shall have any right in under or to this Letter of Intent.

**Non-Admission of Wrongdoing**

Neither this Letter of Intent, including the facts recited herein, nor a Formal Agreement, shall be deemed or construed as an admission by the City Parties of any wrongdoing.

**Motion for Stay of Appeal & Cross Appeal**

Within 10 business days following the execution and delivery of this Letter of Intent by the attorneys for the respective parties, the Parties shall file a joint motion to the Appellate Division, Second Department, to stay the pending appeal and cross appeal through August 15, 2022, and for an enlargement of time to perfect the same following the expiration of the stay.

CONFIDENTIAL SETTLEMENT NEGOTIATIONS  
PURSUANT TO CPLR 4547 & FRE 408

In the event the parties reach a Formal Agreement that goes into effect, the parties shall file a joint stipulation withdrawing the appeal and cross appeal.

**Counterparts**

This Letter of Intent may be executed in identical counterparts, each of which shall constitute an original and all of which shall constitute one and the same document. Facsimile or e-mail transmission signatures on this Letter of Intent shall be deemed originals.

**Authority to Execute Letter of Intent**

The attorneys executing this Letter of Intent warrant and represent that they have the specific authority of their respective clients to enter into and execute the same.

Dated: December \_\_\_\_, 2021

For the City:



DONNA M. GARDEN  
CITY MANAGER 12/28/21



RICHARD BERRIOS  
CORPORATION COUNSEL 12/28/21

City Counsel Authorizing Detail: 200/21



For Haberman:

STEVEN R. Schlesinger  
12/21/21  
COUNSEL to Haberman

December 28, 2021

Item No. 1  
Resolution No. 200/21

The following Resolution was moved by Mr. Delury  
and seconded by Pres. Bendo :

Resolution Approving a Letter of Intent Between the City  
of Long Beach and Sinclair Haberman and Belair Building, LLC.

WHEREAS, the decades long litigation known as *Sinclair Haberman and Belair Building, LLC v. City of Long Beach, et al.* (Nassau County Index No. 001138/04) (“Haberman Litigation”) resulted in a decision and order dated January 11, 2021; and

WHEREAS, the plaintiff in the Haberman Litigation also brought an action against defendant Xander Corp. (Nassau County Index No. 21508/2010), the facts of which are related to the Haberman Litigation (“Xander Litigation”) and which settled for \$23 million on the eve of trial; and

WHEREAS, the decision and order in the Haberman Litigation ordered a separate inquest to determine how much of the \$23 million settlement in the Xander Litigation would serve to offset the judgment against the City parties (“Offset Inquest”); and

WHEREAS, by City Council Resolution #63/21, dated April 13, 2021 and Zoning Board Resolution dated April 23, 2021, the City parties in the Haberman Litigation settled the Offset Inquest for a total of \$20.5 million; and

WHEREAS, judgment in the Haberman Litigation was entered on May 17, 2021 in favor of plaintiffs in the principal amount of \$140,834,594.51, inclusive of the \$20.5 million Offset Inquest settlement; and

WHEREAS, the City parties filed their notice of appeal on May 24, 2021 and the plaintiffs filed their notice of cross appeal on June 14, 2021; and

WHEREAS, the attorneys for both parties, following months of discussion and negotiation, have finalized a Letter of Intent which outlines the key terms of a potential settlement agreement; and

WHEREAS, as of the date of this Resolution, the judgment in the Haberman Litigation is estimated to be \$148.9 million with statutory interest continuing to accrue at an approximate rate of \$1.1 million per month; and

WHEREAS, the Letter of Intent provides, inter alia, for a ninety-day period to negotiate and finalize a formal settlement agreement and during which statutory interest is tolled; and

WHEREAS, the Letter of Intent provides, inter alia, that the parties, through their attorneys, will jointly file a motion to stay the pending appeals in the Haberman Litigation; and

WHEREAS, the key terms of the Letter of Intent include, inter alia, a cash payment of \$75 million and zoning relief in the form of amendment to the City's zoning code which would permit the plaintiffs to build two taller buildings rather than the three shorter buildings to which they are already entitled under the judgment; and

WHEREAS, if the parties do not reach and execute a formal agreement, then the parties' rights with respect to continued litigation remain intact; and

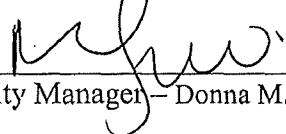
WHEREAS, the City's Corporation Counsel, the City's consultants M3 Partners, LP, and the City's outside counsel O'Melveny & Meyers LLP and Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP recommend the approval of this Letter of Intent and the continued negotiation of this matter to resolution;

NOW, THEREFORE, be it

RESOLVED, that the City Council of the City of Long Beach, New York, approves the attached Letter of Intent and authorizes the City Manager to execute same; and be it further

RESOLVED, by the City Council of the City of Long Beach, New York that the City Manager and the Corporation Counsel are hereby authorized to negotiate the formal agreement and take actions in furtherance of the Letter of Intent.

APPROVED:

  
\_\_\_\_\_  
City Manager - Donna M. Gayden

APPROVED AS TO FORM & LEGALITY:

  
\_\_\_\_\_  
Corporation Counsel - Richard Berrios

VOTING:

- Council Member Delury - AYE
- Council Member Mandel - AYE
- Council Member Treston - AYE
- Vice President McInnis - AYE
- President Bendo - AYE