

ORIGINAL Village copy 10/29/2013

LAND ACQUISITION AGREEMENT

This **AGREEMENT**, is made by and between the **Village of Loch Arbour**, a municipal corporation of the State of New Jersey, situate in the County of Monmouth (the "Village"), having principal offices located at 550 Main Street, Loch Arbour, New Jersey and **Jack A. Kassin** and **Joyce Kassin**, his wife, (the "Kassins") whose address is 29 Morgan Avenue, Deal, New Jersey.

WHEREAS, the Kassins are the owners of a certain tract of land located in the Village of Loch Arbour, County of Monmouth, State of New Jersey, and identified as Block 7, Lot 1 ("Block 7") and Block 8, Lots 1 and 2 ("Block 8"), as shown on the Official Tax Map of the Village of Loch Arbour (collectively the "Property"); and

WHEREAS, the Village desires to participate with the United States Army Corps of Engineers to construct the Atlantic Coast of New Jersey, Sandy Hook to Barnegat Inlet, Section 1 Sea Bright to Ocean Township, Beach Erosion Control Project, as defined in the July 30, 1992 Local Cooperation Agreement between the Department of the Army and the State of New Jersey, (the "Beach Replenishment Project"); and

WHEREAS, in order for the Village to participate in the Beach Replenishment Project, the Kassins have executed a Deed of Dedication and Perpetual Storm Damage Reduction Easement in favor of the Village and the State of New Jersey; and

WHEREAS, the original of the Perpetual Storm Damage Reduction Easement is being held in escrow by legal counsel for the Kassins subject to a final metes and bounds



description to be coordinated between Kassin and the Army Corps of Engineers and the State of New Jersey on the precise location of the easement area that will be depicted on the legal description attached to the Perpetual Storm Damage Reduction Easement; and

WHEREAS, the Village introduced, on first reading, Ordinance 2013-391 on August 2, 2013 seeking to acquire all right, title and interest in the Property for public use; and

WHEREAS, the purposes of Ordinance 2013-391 include the desire of the Village to expand the public beach, to preserve open space and to protect the public health, safety and welfare by constructing storm hazard mitigation features on the Property; and

WHEREAS, the Kassins have objected to an acquisition of the entire Property by purchase or condemnation and have offered alternatives to the Village to avoid a complete taking of the Property; and

WHEREAS, the Kassins own a cabana type structure on Block 8 which was damaged in Hurricane Sandy; and

WHEREAS, the Kassins are desirous of reconstructing a cabana on Block 8 and elevating the same to comply with the Village's flood control ordinance and Advisory Base Flood Elevation (ABFE) requirements promulgated by the Federal Emergency Management Administration (FEMA); and

WHEREAS, the parties have reached a potential settlement of their differences and agreement for the Village to acquire additional land and to enable the Kassins to



rebuild a cabana and related improvements on Block 8 and remove the specter of the condemnation of their property

NOW, THEREFORE, BE IT AGREED as follows:

1. The foregoing recitals are confirmed as true and accurate in all respects.

2. The Kassins shall undertake and complete, and shall promptly execute any and all documents necessary to undertake and complete, the following items, actions or conveyances in favor of the Village:

A. The Kassins will convey, as a gift, to the Village, at no cost or expense to the Village, the northernmost portion of existing Block 7, Lot 1 consisting of 162 feet of Block 7, Lot 1 (referred to as Lot 1.01 herein below) beginning at the Northwest corner of Block 7, Lot 1 adjacent to the existing but unimproved public Right of Way known as Euclid Avenue and running south a distance of 162 feet along Ocean Place and continuing to the easterly property line of Block 7, Lot 1 for the entire distance of this 162 feet.

B. The Kassins hereby consent to and will cooperate with the Village in executing and recording any and all documents necessary to create a subdivision of Block 7, Lot 1 into new Lots 1.01 and 1.02, either by application to the Loch Arbour Planning Board or through a subdivision by deed.. New Lot 1.01 shall become the property of the Village and shall immediately become available for public use,

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subject to the reverter clause set forth below and satisfaction of all contingencies set forth in Paragraphs 3(a), (b) and (c) of this Agreement. New Lot 1.02 shall remain the property of the Kassins. A legal description of new Lot 1.01, as prepared by the Village Engineer, is attached hereto as Exhibit "A" and incorporated as if set forth at length herein. This Deed shall be held in escrow by Lawrence H. Shapiro, Esq. until the conditions in paragraphs 3(a), (b) and (c), but not paragraph 3(d), have been met.

- C. The fence presently located on the northern border of Block 7, Lot 1 shall be removed at the Kassins' sole cost and expense and relocated on the property line between new Lots 1.01 and 1.02 at a height not to exceed 6 feet from the existing grade. The installation for the same shall be at the Kassins' sole cost and expense.
- D. The conveyance of new Lot 1.01 by the Kassins to the Village shall contain the reverter clause within the Deed such that the conveyance of new Lot 1.01 will revert and reconvey all right, title and interest in new Lot 1.01 back to the Kassins or their successors in title if and in the event the Village attempts to condemn any other portion of Block 7 or Block 8 in the future. However, this reverter clause shall extinguish and terminate in the event there is a change in or abandonment of the cabana use of the building. The fact that the

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Kassins conveyed new Lot 1.01 to the Village by gift shall not be admissible for the purposes of valuation in any future condemnation proceeding, should such a proceeding be instituted by the Village.

- E. The Kassins will cause a deed restriction against development to be executed and recorded on new Lot 1.02 in Block 7 and Lots 1 and 2 in Block 8 prohibiting all residential, multi-family, hospitality and commercial development on those lots, with the exception of the construction and maintenance of a single beach cabana and accessory structure and related site improvements on Block 8, as may be permitted by the Land Use Ordinance of the Village. That deed restriction shall be submitted to the Village and the Village Attorney for review and approval prior to execution. The Deed shall contain the following paragraph, "The restrictions imposed in this Deed are for the benefit of the Village of Loch Arbour and its residents. These restrictions are intended to continue in perpetuity and may not be vacated or modified without the express written consent of the Village of Loch Arbour." The Deed creating these restrictions shall contain a signature line for the Village Mayor and Village Clerk. The Kassins shall cause this deed restriction to be duly recorded in the Monmouth County Clerk's Office and shall supply a recorded copy of the Deed to the Village upon the

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conditions in paragraphs 3(a), (b) and (c) being met. In the interim, the executed Deed shall be held in escrow by Lawrence H. Shapiro, Esq. Should the provision of the reverter in paragraph 2D hereof become applicable, then in such circumstance this deed restriction shall extinguish.

- F. The Kassins acknowledge that an integral part of the Village's decision to originally seek to acquire the Property was the Village's desire to protect the public health, safety and welfare from storm hazards along the entire oceanfront in the Village and to have the ability to engage in and construct shore protection measures or initiatives to promote that purpose. Accordingly, the Kassins agree that should the Village determine to construct any shore protection initiatives on Village beach property, including new Lot 1.01 in Block 7, in the future, the Kassins will construct the same shore protection initiative, or another type of shore protection initiative that is agreeable to the Village, on the remaining portion of the Property, other than gross building area footprint of the cabana identified in paragraph 3(c)(i) of this Agreement, at the Kassins' sole cost and expense. The Kassins shall initiate their work not later than thirty (30) days following the commencement by the Village of its shore protection measures and both the Village and the Kassins will

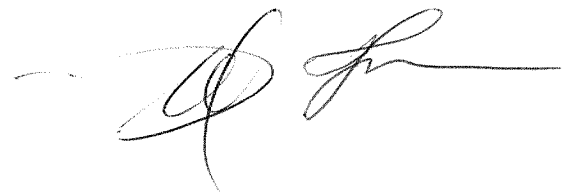
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diligently continue their work through completion. For the purpose of this paragraph, shore protection initiative shall include, but not be limited to, dune systems, dune grass plantings and other measures designed to promote sand dune growth, as reasonably directed by the Village including location and design of the same, or any other type of shore protection initiative..

G. The Kassins will remove all existing gabion-basket (rip-rap) blocks and walls from the entire Property and shall not place or install any new gabion-basket (rip-rap) blocks and walls on the Property in the future. The Kassins may replace any existing rip-rap walls with natural plantings and vegetation similar to that already existing along the parking lot perimeter.

H. The Kassins shall comply with the Village fence ordinance and shall insure that all fences erected or maintained upon the remaining property shall not exceed six feet in height.

3. The Kassins' obligations to undertake and complete those actions referred to in paragraph 2 above shall be contingent upon certain legal action by the Village. The Kassins understand and acknowledge that any legal action by the Village requires consideration at a duly noticed open public meeting of the Board of Commissioners of the Village. The Kassins further acknowledge that the Board of Commissioners can only decide to take such official action, including the adoption of any ordinances or

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resolutions, after considering the same at an open public meeting and, if required or appropriate, after considering public comment. Accordingly, the Kassins' actions set forth in paragraph 2 above are contingent upon the following:

- (a) Second reading and a vote to reject adoption of Ordinance 2013-391.
- (b) Introduction, and subsequent adoption of a new ordinance, to be numbered Ordinance 2013-392 authorizing the acquisition of real property known as a portion of Block 7, Lot 1, to be known as new Lot 1.01 on the Official Tax Map of the Village of Loch Arbour, by gift pursuant to N.J.S.A. 40A:12-5.
- (c) Introduction and subsequent adoption of an appropriate ordinance or ordinances amending the permitted uses and accessory structures in the Village's Beach Zone so as to allow the Kassins to:
 - (i) Construct a cabana with a gross building area footprint of no greater than 1,873 square feet. For the purposes of this Agreement, a cabana shall be defined as a permitted use in that portion of the Beach Zone occupied by Block 8, and to be utilized as a public or private bathhouse with bath and shower facilities, cooking and full kitchen facilities, changing rooms, one or more multi-purpose rooms, storage areas and office with associated decks customarily used incident to a beach, but not for residential or other overnight accommodations.



(ii) Construct the height of the cabana at no greater than 23.7 feet from the top of the foundation and sill. The top of the foundation and sill of the cabana shall be elevated so as to comply with ABFE and FEMA guidelines, as well as the Village's flood control ordinance, provided that the height of the cabana shall be no greater than (a) 30 feet from existing grade

(iii) Construction of an additional 300 square feet of fully enclosed finished floor area for a total of not more than 2,173 square feet within a two-story cabana structure, provided however that the height of the cabana shall not exceed the height set forth above and provided the footprint of the replacement cabana is equal to or less than the footprint of the existing cabana.

(iv) Construction of one accessory structure on Block 8 not to exceed 800 square feet of gross floor area and not to exceed 10 feet in height. However, in the event the Kassins are unable to obtain approval under CAFRA regulations for a single accessory structure of 800 square feet, then the placement and construction of multiple temporary adjacent structures, totaling not more than 800 square feet in the aggregate shall be permitted by the Village if said multiple structures are permitted under CAFRA regulations. Said accessory structure or structures shall be located to the south and east of the

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front building line of the proposed new cabana referred to above and shall not be located in the front yard setback. (v) Continuation of plantings, shrubbery, trees, natural vegetation and fencing in the areas which they existed on Lots 1 and 2 in Block 8, as depicted on the aerial photograph attached hereto as Exhibit "B", subject to the requirement that, for ecological reasons, the height of trees and other plantings existing at the date of execution of this agreement be maintained at a height not to exceed six and one-half feet measured from existing grade. The Kassins agree to remove all trees which cannot be trimmed to and maintained at a height of six and one-half feet, including the one existing nine foot tree on the Property. Any trees, shrubbery or other plantings installed after the date of this agreement shall be less than six feet in height and shall be thereafter maintained and trimmed so as to not exceed six feet in height from existing grade.

(vi) Installation of plantings and breakaway non-structural walls to be constructed from existing grade to the bottom of finished space around the new cabana so as to permit the same to be screened from the ground to the level of the deck and to permit the area below ABFE to be utilized as secure storage.

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(vii) Lawfully continue to maintain and utilize the long standing partitions between the sand beach and the parking lot which are depicted in yellow on the aerial photograph attached hereto as Exhibit "B", and which may remain on the remaining Property for the purpose of retaining sand, provided any such partition shall be no higher than 4 feet, as measured from existing grade.

(viii) Authorization by the Village for the Kassins to maintain the use of privacy slats in the fence running along the public access on the southern border of Block 8. Furthermore, in accordance with conditions which existed prior to Hurricane Sandy, the Kassins may maintain plantings along the perimeter of the parking lot and throughout Block 8, so long as plantings are not placed in front of the homes on Ocean Place, as depicted in the historical aerial attached as "Exhibit B. The Kassins shall ensure that all plantings, natural vegetation and other plantings and the existing plantings and vegetation along the parking lot perimeter shall not exceed 6 feet in height as measured from the existing grade.

(d) The Parties agree that they will act with reasonable diligence to apply for, review, if appropriate issue, and obtain the approvals and permits necessary to effectuate the purposes of this Agreement.,



4. In consideration for the mutual promises and representations contained herein, the Village agrees that it shall not place any of the following within the area described on the legal description contained in the Perpetual Storm Damage Reduction Easement (the "Easement Area"): any volleyball courts, children's playgrounds, bathrooms, showers, or food concessions. The Village agrees that neither it nor its employees shall place chairs, umbrellas, towels or other items which could or might attract beach goers within the Easement Area. The Village shall maintain the Easement Area, raking the same on a regular basis as it maintains and rakes other beach areas within the Village. However, nothing contained herein shall limit public use or access to either the Easement Area or to the area east of the Easement Area towards the Atlantic Ocean.

5. The foregoing promises of the Village shall not prevent the Village from taking any temporary actions necessary to protect the public health, safety and welfare within the Easement Area or to the east of the Easement Area towards the Atlantic Ocean.

6. The Kassins hereby stipulate and agree that their ability to construct and/or reconstruct any improvements in Lots 1 and 2 in Block 8 shall be subject to application to and receipt of approvals from any and all federal, state, county and municipal regulatory bodies having jurisdiction over the Property. In particular, nothing in this Land Acquisition Agreement shall obviate the requirements that the Kassins obtain minor site plan or other land use approval, if required, from the Loch Arbour Planning Board, nor

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shall any provisions of this Land Acquisition Agreement obviate or reduce the Kassins' obligations to obtain appropriate building permits and to undergo required inspections by the appropriate Construction Official(s) with jurisdiction to issue said building permits within the Village.

7. The parties to this Agreement agree that the same has been mutually drafted by both sides together with the advice and assistance of counsel of their choosing. Accordingly, no provision of this Agreement shall be construed in favor or against one party. The parties to this Agreement hereby certify that each has had sufficient time to consult with their respective legal advisors before executing this Agreement and that each has done so as his or its own voluntary act, intended to be bound thereby.

8. The parties agree that in the event of any conflict between the terms of this Land Acquisition Agreement and the language of the Perpetual Storm Damage Reduction Easement, that the language of the Perpetual Storm Damage Reduction Easement shall prevail in order to effectuate the purposes of the beach replenishment project.

9. Notices. Any notice to a party to this Agreement permitted or required hereunder shall be given in writing, and shall be deemed to have been duly delivered (i) when delivered by personal delivery, (ii) three (3) days after being deposited in a United States postal service letter box for mailing by first class mail, postage prepaid, certified mail, with return receipt requested (regardless of whether the return receipt is subsequently received), or (iii) one business day after being deposited with a nationally recognized courier service for overnight delivery; and addressed as follows:



If to the Village:

Village of Loch Arbour
550 Main Street
Loch Arbour, NJ 07711

With a copy to:

Guy P. Ryan, Esq.
Secare, Ryan & Hensel
16 Madison Avenue, Suite 1A
Toms River, NJ 08753


If to the Kassins:

Mr. and Mrs. Jack A. Kassin
29 Morgan Avenue
Deal, NJ 07723

With a copy to:

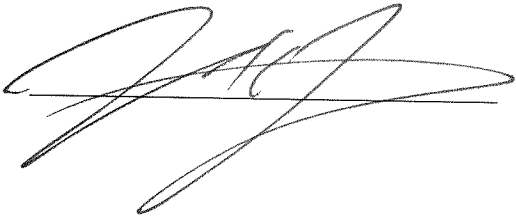
Jerold L. Zaro, Esq.
Sills Cummis & Gross, P.C.
One Riverfront Plaza
Newark, NJ 07102

10. The Agreement shall be governed by the laws of the State of New Jersey.

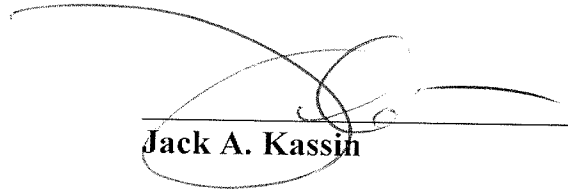
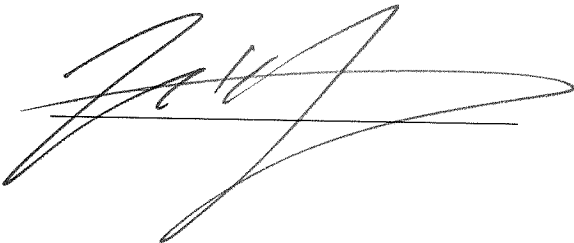
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11. The parties have executed this Agreement, by their own hands, on date set forth below.

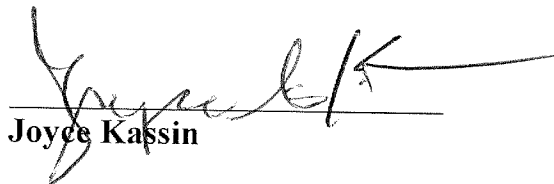
WITNESS:



WITNESS:


Jack A. Kassin

Dated:

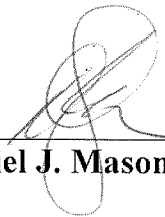

Joyce Kassin

Dated:

ATTEST:

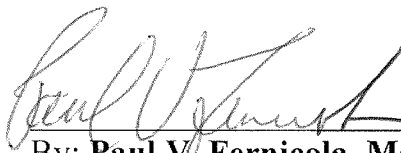
VILLAGE OF LOCH ARBOUR





By: **Daniel J. Mason, Acting Clerk**

Dated:



By: **Paul V. Fericola, Mayor**

Dated:



J

