

RESOLUTION NO. 151 of 2014

RESOLUTION AUTHORIZING EXECUTION OF
LICENSE AND HOLD HARMLESS AGREEMENT
8500 VENTNOR AVENUE,
BLOCK 113.01, LOT 6.01

WHEREAS, 8500 Ventnor Avenue, LLC, owner of property located at 8500 Ventnor Avenue, Block 113.01, Lot 6.01, in the City of Margate City has requested the City to enter into a License and Hold Harmless Agreement with it so as to allow the existing encroachment along Kenyon Avenue and to allow an encroachment of façade material as a result of the construction of a second floor to the building which encroaches into the Kenyon Avenue and Ventnor Avenue Right-of-Way, all as more fully indicated on a License Area Plan and Metes & Bounds Description prepared by Arthur J. Ponzio Co. & Associates dated 4/16/2014. This License and Hold Harmless Agreement pertains solely to those improvements along the Kenyon Avenue right-of-way; and

WHEREAS, 8500 Ventnor Avenue, LLC has received approval from the Margate Planning Board to construct a second floor apartment over the existing office building and desires to enter into an Agreement with the City of Margate to allow the existing and proposed encroachments.

NOW, THEREFORE, BE IT RESOLVED by the BOARD OF COMMISSIONERS OF THE CITY OF MARGATE CITY, ATLANTIC COUNTY, NEW JERSEY, does hereby authorize the Mayor and City Clerk to execute a Agreement so as to allow an encroachment of façade materials in the front of the building which constitute an encroachment into the Kenyon Avenue Right-of-Way with 8500 Ventnor Avenue, LLC, which property is identified as 8500 Ventnor Avenue, Block 113.01, Lot 6.01, City of Margate City, County of Atlantic and State of New Jersey.

Date: July 3, 2014

I, **THOMAS HILTNER, City Clerk** of the **CITY OF MARGATE CITY**, do hereby certify that the foregoing Resolution was duly adopted at a regular meeting of the **Margate City Board of Commissioners** held this 3rd day of July, 2014 and in witness whereof I have hereunder set my hand and official seal on this date of above written.

THOMAS HILTNER, CITY CLERK

**CITY OF MARGATE TO 8500 VENTNOR AVENUE, LLC
LICENSE AND HOLD HARMLESS AGREEMENT**

This License and Hold Harmless Agreement ("Agreement") is made and entered into this _____ day of _____, 2014, by and between **8500 VENTNOR AVENUE, LLC** ("Licensee") with a mailing address of 8500 Ventnor Avenue, Margate, New Jersey 08402, and the **CITY OF MARGATE** ("City") with a mailing address of 9001 Winchester Avenue, Margate City, New Jersey 08402.

BACKGROUND

A. Licensee is the owner of Lot 6.01 in Block 113.01, known as 8500 Ventnor Avenue ("Licensee's Property").

B. Licensee has requested permission to use and maintain an area of City owned property (the "License Area") adjacent to Licensee's Property which area is not currently utilized by the City. Licensee's Property and the License Area are depicted on the License Area Plan and Metes & Bounds Description prepared by Arthur W. Ponzio Co. & Associates, Inc. dated April 16, 2014, attached hereto as Exhibit A. Exhibit A depicts areas of encroachment along both Kenyon Avenue and Ventnor Avenue; this Agreement pertains solely to those improvements along Kenyon Avenue.

C. The City has evaluated Licensee's request and determined that the License Area is not currently utilized and that the request by Licensee for use of the License Area is a reasonable request and will not in any manner impact the City's use of any of its other property or negatively impact the public at large, and will help to promote new commercial activity in the City.

NOW, THEREFORE, with the foregoing background paragraphs incorporated herein, the parties intending to be legally bound, do hereby agree as follows:

1. The City hereby grants to Licensee a License (the "License") to maintain the License Area subject to the terms and conditions contained in this Agreement. The fee shall be the sum of One (\$1.00) Dollar, payable on the execution of this Agreement and each anniversary thereafter and the Licensee agrees to maintain the air space as depicted on Exhibit A.

2. The Licensee may utilize the License Area for an existing encroachment, as well as certain architectural façade treatments to be constructed on Licensee's Property pursuant to plans submitted and approved by the Margate Planning Board in order to allow Licensee to construct a second floor and renovate the existing building on Licensee's Property. Specifically, the License Area is to be used for an existing building encroachment and new architectural façade treatments.

3. The License hereby granted is revocable by the City with reasonable notice at any time for any reason or no reason at the City's sole and absolute discretion regardless of whether or not Licensee should breach any term or condition contained herein whereupon the Licensee shall have no claims or demands against the City for any reason whatsoever. The City's failure to enforce any term or condition contained herein shall not be deemed a waiver of its rights to enforce any and all terms herein and to revoke the License in the event of Licensee's initial or subsequent breach.

4. The Licensee shall not cause any interference with or impose any limitation upon the movement and safety of others and the maintenance, repair and replacement of utility service and any other needs of the public and the City.

5. The City for itself and all those authorized by it reserves the right to enter upon the License Area with reasonable notice and if necessary, Licensee's Property to gain access to the License Area for (i) inspection of the License Area, (ii) for inspection, repair, maintenance, reconstruction and/or extension of any City facility, and (iii) in the interest of public welfare or safety (collectively or individually referred to as "Entrance").

6. Licensee shall maintain the License Area in a clean, safe and properly functioning manner and shall routinely inspect the same for damage, decay, subsistence or other matters which may indicate that repairs or replacement may be required. Licensee shall ensure that no improvement shall have any adverse impact upon the stability, safety, and structural integrity of any adjacent property including but not limited to, any City owned adjacent property.

7. The License hereby granted shall not create or permit to be created or to remain, and Licensee shall discharge, or cause to be discharged, any lien, encumbrance or charge or any mechanic's lien, title retention agreement, security interest or chattel mortgage, or otherwise which might be or become a lien, encumbrance or charge upon the License Area or right-of-way. Licensee shall not have any ownership interest or estate in the License Area or any right or title adverse to the City. The Licensee hereby acknowledges that the execution of this Agreement and granting of the License herein created does not create any landlord-tenant, agency or partnership relationship between the parties.

8. Indemnity. Licensee shall indemnify, defend and hold harmless the City, its agents, servants and employees, and the Atlantic County Municipal Joint Insurance Fund, their agents and employees, to the fullest extent provided by law in New Jersey against any and all claims, damages, losses, and expenses, including reasonable attorney's fees, damages to person or property arising out of or in any way related to Licensee's actions arising out of this

Agreement or Licensee's maintenance of the License Area or the design, material acquisition and subsequent construction and maintenance of any improvement or any action or inaction taken or failure to take by Licensee caused in whole or in part by the negligent act or omission of Licensee, or of a subcontractor, or of anyone employed by Licensee or for those acts contractor or subcontractor may be liable. This indemnification and agreement shall apply in all instances whether the City and/or the Atlantic County Municipal Joint Insurance Fund is made a direct party to the initial action or claim or is subsequently made a party to the action by third-party in-pleading or is made a party to a collateral action arising, in whole or in part, from any of the issues emanating from the original cause of action or claim.

9. Insurance. In order to comply with the indemnity and defense requirements set forth above, Licensee shall deliver to the City certificate(s) evidencing general liability insurance naming the City as an additional insured in amounts not less than One Million (\$1,000,000) Dollars. All policies of insurance maintained by Licensee in accordance herewith shall be written as primary policies not contributing with coverage that the City may carry. Further all policies of insurance maintained by Licensee shall contain endorsements providing that such policies may not be materially changed, amended or canceled with respect to the Buyer except after thirty (30) days prior written notice from the insurance company to the Buyer, sent by registered mail.

10. Should Licensee sell Licensee's property adjacent to the License Area, the License granted herein shall expire upon the transfer of ownership of such property unless the City and the Buyer agree in writing to an assignment and assumption of this Agreement in form and content satisfactory to the City. Nothing herein shall obligate the City to allow any

assignment of the rights conferred hereunder. The City shall have the right to record this Agreement.

IN WITNESS WHEREOF, the parties have executed this License and Hold Harmless Agreement this ____ day of _____, 2014.

WITNESS/ATTEST:

CITY OF MARGATE

BY: _____
THOMAS D. HILTNER
City Clerk

BY: _____
MICHAEL BECKER
Mayor

8500 VENTNOR AVENUE, LLC

BY: _____
JOSEPH BERRETONE
Authorized Member

STATE OF NEW JERSEY :
:ss.
COUNTY OF ATLANTIC :

Be it Remembered, that on this ____ day of _____, 2014, before me the subscriber, a Notary Public, personally appeared **Thomas D. Hiltner, the City Clerk of Margate**, who, I am satisfied, is the person named in and who executed the within instrument and thereupon he acknowledged that he signed, sealed and delivered the same as his act and deed, for the uses and purposes therein expressed.

NOTARY PUBLIC

STATE OF NEW JERSEY :
:SS.
COUNTY OF ATLANTIC :

Be it Remembered, that on this ____ day of _____, 2014, before me the subscriber, a Notary Public, personally appeared **Michael Becker**, who I am satisfied, is the person who signed the within instrument as **Mayor of the City of Margate**, a municipal corporation who acknowledged that he signed, sealed and delivered as his voluntary act and deed of the City of Margate.

NOTARY PUBLIC

STATE OF NEW JERSEY :
:SS.
COUNTY OF ATLANTIC :

Be it Remembered, that on this ____ day of _____, 2014, before me the subscriber, a Notary Public, personally appeared **Joseph Berretone** who, I am satisfied, is the person who signed the within instrument as a member of **8500 VENTNOR AVENUE, LLC**, the limited liability company named therein and he thereupon acknowledged that the said instrument made by the limited liability company, was signed delivered by him as such member and is the voluntary act and deed of the limited liability company made by virtue of authority from its members.

NOTARY PUBLIC

ARTHUR W. PONZIO COMPANY & ASSOCIATES, INC.
400 NORTH DOVER AVENUE
ATLANTIC CITY, N.J. 08401
(609) 3448104 PH / (609) 344-1594 FAX

April 16, 2014
(Revised 5/19/14)

**METES & BOUNDS DESCRIPTION
FOR PROPOSED LICENSE AREA WITHIN THE PUBLIC RIGHT OF WAY
ADJACENT TO LOT 6.01 IN BLOCK 113.01**

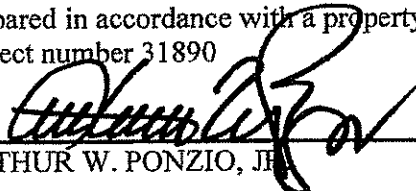
ALL that certain lot, tract, or parcel of land and premises situate, lying, and being in the City of Margate, County of Atlantic, and State of New Jersey, bounded and described as follows:

BEGINNING at the intersection of the south line of Ventnor Avenue (80' wide) with the west line of Kenyon Avenue (50' wide), and extending from said beginning point; thence

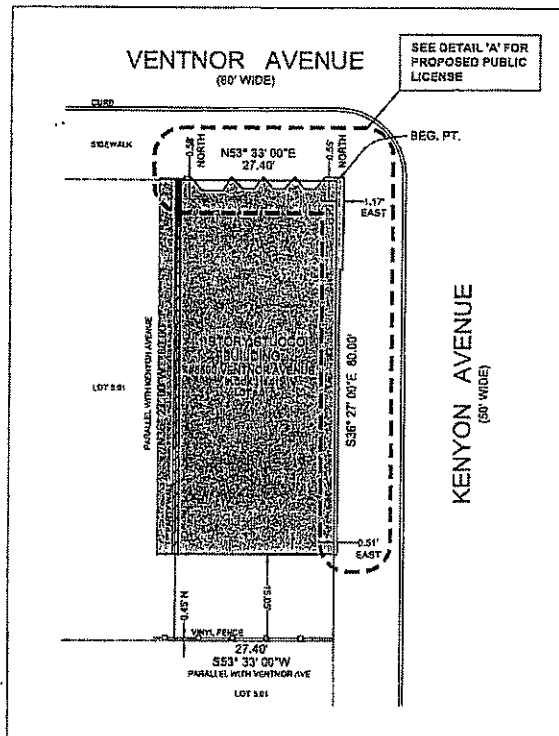
1. South 53 degrees 33 minutes 00 seconds West in and along the south line of Ventnor Avenue 27.40' to the northeast corner of lot 5.01; thence
2. North 36 degrees 27 minutes 00 seconds West within the Ventnor Avenue right of way 1.60' to a point; thence
3. North 53 degrees 33 minutes 00 seconds East continuing within the Ventnor Avenue right of way, parallel with the first course, if reversed 30.00' to a point; thence
4. South 36 degrees 27 minutes 00 seconds East still partly within same and also partly within the Kenyon Avenue right-of-way 67.60' to a point; thence
5. South 53 degrees 33 minutes 00 seconds West continuing within the Kenyon Avenue right-of-way 2.60' to the west line of Kenyon Avenue; thence
6. North 36 degrees 27 minutes 00 seconds West in and along same 66.00' to the point and place of BEGINNING

Containing an area of 219.60 square feet.

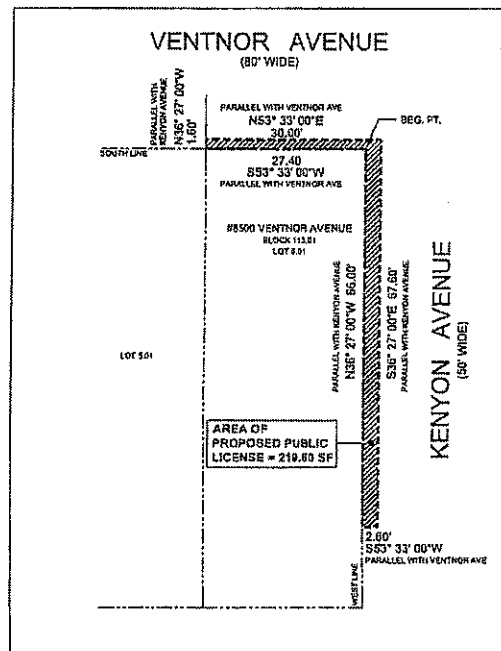
Prepared in accordance with a property survey and Public License Plan dated 4/16/2014, project number 31890


ARTHUR W. PONZIO, JR.

PROFESSIONAL LAND SURVEYOR
N.J. LICENSE NO. GS 28314



KEY MAP / EXISTING CONDITIONS



**DETAIL 'A'
PROPOSED PUBLIC LICENSE**

*REVISED 5/19/14 LICENSE BOUNDARY

PROPOSED PUBLIC LICENSE PLAN
LOCATION: CITY OF MARGATE
FOR BLOCK: 113.01, LOT 6.01
PROJECT ADDRESS: 8500 VENTNOR AVENUE
PREPARED BY: N. ZURINSKAS
SCALE: 1" = 20'
DATE: 4-16-14
PROJECT NO.: 31890

Exhibit A (Page 2 of 2)



ARTHUR W. PONZIO CO. & ASSOCIATES
 SURVEYING-ENGINEERING-PLANNING
 400 N. DOVER AVENUE, ATLANTIC CITY, NEW JERSEY 08401 (609) 344-8194

Arthur W. Ponzio, Jr.
ARTHUR W. PONZIO, JR. DATE
 PROFESSIONAL PLANNER N.J. NO. 2676
 PROFESSIONAL LAND SURVEYOR N.J. NO. GS28314