



## **IX. ADMINISTRATION REPORTS**

**Mayor Woodruff**

**Township Administrator – John Bussicolo**

## **X. APPROVAL OF MINUTES –**

**Public Meeting –August 9, 2016**

**Executive Session – April 21, 2015**

## **XI. HEARING ON AGENDA ITEMS ONLY – 3 minutes per resident**

Comments are welcome during the public comment period during this meeting on any agenda item. However, if an ordinance is listed for its own public hearing on the agenda, please hold your comments for that particular public hearing. To make your comment, the speaker must come forward to the microphone and state his/her name and address for the record. Each speaker is limited to 3 minutes. The (Mayor/Council President) will keep time. Please promptly yield on the floor when time is called and return to your seat. Your cooperation in adherence to these rules of order will ensure an orderly and respectful meeting.

## **XII. NEW BUSINESS- RESOLUTIONS**

**OFFICIAL ACTION WILL BE TAKEN ON THE FOLLOWING:**

### **A. RESOLUTIONS**

1. Resolution approving Bill List dated August 23, 2016 in the amount of \$809,887.18.
2. Resolution amending and replacing Resolution No. 153-2016 with the instant resolution to authorize the preliminary investigation of the Berkeley Heights Developers Property, the Lockhern Property, and the adjacent properties identified as Block 702, Lot 18, the Sherman Avenue Right-of-Way, the Lone Pine Drive Right-of-Way, the Sherman Avenue Easement/Right-of-Way (located on a portion of Block 702, Lots 13, 14, 15, and 17) (collectively, the “Study Area”) as areas in need of redevelopment.
3. Resolution authorizing the Memorandum of Understanding with Lockhern Associates, 450 Springfield Avenue, Block 702, Lot 13, to memorialize the agreed upon terms of the mixed-use development of the property, with an inclusionary affordable housing component.
4. Resolution authorizing the Township Planner to prepare a redevelopment plan for 100 Locust Avenue, Block 1901, Lot 35.
5. Resolution authorizing a tax settlement with Brookside Partnership, L.P., 261 Springfield Avenue, Block 301, Lot 25.
6. Resolution authorizing the online auction services of EMEX, LLC, for the purchase of energy generation services (electricity).
7. Resolution authorizing the application of the “Greening Union County” grant program in the amount of \$16,500.00.

**8. CONSENT AGENDA** – All matters listed under Consent Agenda are considered routine by the Township Council and will be enacted upon by one motion; there will be no separate discussion of these items. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.

- a. Resolution authorizing the Tax Collector to refund the following 2016 tax overpayment:  
22 Russo Assoc.                      12 Russo Place                      \$22,778.91.
- b. Resolution authorizing a block party on Branko Road/North Road, on September 10, 2016 from 2:00 p.m.–8:00 p.m. with a rain date of September 11, 2016.

**XIII. CITIZENS HEARING** - 3 minutes per resident

Comments are welcome during the public comment period during this meeting on any matter over which the Township has jurisdiction. To make your comment, the speaker must come forward to the microphone and state his/her name and address for the record. Each speaker is limited to 3 minutes. The Mayor and/or Council will keep time. Please promptly yield the floor when time is called and return to your seat. Your cooperation in adherence to these rules of order will ensure an orderly and respectful meeting.

**XIV. EXECUTIVE SESSION** –

- 1. Attorney - Client Privilege / Litigation - Affordable Housing

**XV. ADJOURNMENT**

**Ana Minkoff  
Township Clerk**

Agenda Item # |

**TOWNSHIP OF BERKELEY HEIGHTS  
UNION COUNTY, NEW JERSEY**

**RESOLUTION**

**BE AND IT IS HEREBY RESOLVED** by the Township Council of the Township of Berkeley Heights, County of Union, State of New Jersey, in meeting assembled, authorizes and directs the Township Treasurer to make payment of vouchers listed on the Bill List dated 8/23/16, in the amount of \$809,887.18 such vouchers having been received by the Township Council, having been satisfied that appropriate procedure has been followed in the processing of said vouchers.

**APPROVED** this 23rd day of August, 2016.

**ATTEST:**

\_\_\_\_\_  
Ana Minkoff  
Township Clerk

Agenda Item No.: 2

**TOWNSHIP OF BERKELEY HEIGHTS  
UNION COUNTY, NEW JERSEY**

**RESOLUTION**

**WHEREAS**, in compliance with the New Jersey Supreme Court decision in In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015), on or about July 2, 2015, the Township filed an action with the Superior Court of New Jersey, entitled In the Matter of the Application of the Township of Berkeley Heights, County of Union, Docket No. UNN-L-2405-15, seeking a Judgment of Compliance and Repose approving its Fair Share Plan, in addition to related reliefs (the "Compliance Action"); and

**WHEREAS**, on or about August 24, 2015, Berkeley Heights Developers, LLC ("BH Developers") filed a Motion to Intervene in the Compliance Action seeking to construct a one hundred eighty (180) unit luxury residential rental development, with twenty seven (27) of such units being set aside for low and moderate income housing, on the property identified as Block 702, Lot 17, commonly known as 434 Springfield Avenue (the "BH Developers Property"), which intervention was granted by the Court on October 9, 2015; and

**WHEREAS**, after ongoing discussions, negotiations and mediations between the Township and BH Developers, the parties have agreed upon the general terms of a residential rental development of the Property consisting of one hundred and fifty (150) units, which shall have an inclusionary affordable housing component of 15% of the total units being developed as very low, low and moderate income affordable housing units, subject to the terms and conditions set forth in the Memorandum of Understanding entered by the parties; and

**WHEREAS**, on or about September 8, 2015, Lockhern Associates, LLC ("Lockhern") filed a Motion to Intervene in the Compliance Action seeking to construct a multi-family, mixed-use development, with an inclusionary of fifteen (15%) of such units being set aside for low and moderate income housing, on the property identified as Block 702, Lot 13, commonly known as 450 Springfield Avenue (the "Lockhern Property"), which intervention was granted by the Court on October 15, 2015; and

**WHEREAS**, after ongoing discussions, negotiations and mediations between the Township and Lockhern, the parties have agreed upon the general terms of a mixed-use, residential rental development of the Property, comprising of twenty (20) overall rental units including an inclusionary affordable housing component of 15% of the total units being developed (or three (3) of the twenty (20) total units) as very low, low and moderate income affordable housing units, subject to the terms and conditions as more particularly set forth in the Memorandum of Understanding entered by the parties; and

**WHEREAS**, in connection with the two Memoranda of Understandings, the Township finds it appropriate to commence the process to determine if the Property is in need of redevelopment; and

**WHEREAS**, the Township previously adopted Resolution No.153-2016, authorizing the preliminary investigation of the BH Developers Property, along with the adjacent properties identified as Block 702, Lot 18, the Sherman Avenue Right-of-Way, the Lone Pine Drive Right-of-Way, the Sherman Avenue Easement/Right-of-Way (located on a portion of Block 702, Lots 13, 14, 15, and 17) as areas in need of redevelopment; and

**WHEREAS**, the Township finds it in the best interest of the Township to include the Lockhern Property in the study area to properly evaluate the Township's downtown as an area in need of redevelopment; and

**WHEREAS**, the Township looks to amend and replace Resolution No. 153-2016 with the instant resolution to authorize the preliminary investigation of the BH Developers Property, the Lockhern Property, and the adjacent properties identified as Block 702, Lot 18, the Sherman Avenue Right-of-Way, the Lone Pine Drive Right-of-Way, the Sherman Avenue Easement/Right-of-Way (located on a portion of Block 702, Lots 13, 14, 15, and 17) (collectively, the "Study Area") as areas in need of redevelopment; and

**WHEREAS**, the New Jersey Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, *et seq.* (the "Redevelopment Law"), sets forth the procedures for the Township to declare an area in need of redevelopment, along with the development and effectuation of a redevelopment plan; and

**WHEREAS**, pursuant to the required redevelopment procedures, specifically set forth in N.J.S.A. 40A:12A-6, no area of a municipality shall be determined a redevelopment area unless the governing body of the municipality shall, by resolution, authorize the Planning Board to undertake a preliminary investigation to determine whether a proposed area is a redevelopment area according to the criteria set forth in N.J.S.A. 40A:12A-5; and

**WHEREAS**, pursuant to P.L. 2003, Chapter 159, "[t]he resolution authorizing the planning board to undertake a preliminary investigation shall state whether the redevelopment area determination shall authorize the municipality to use all those powers provided by the Legislature for use in a redevelopment area other than the use of eminent domain (hereinafter referred to as a 'Non-Condernation Redevelopment Area') or whether the redevelopment area determination shall authorize the municipality to use all those powers provided by the Legislature for use in a redevelopment area, including the power of eminent domain (hereinafter referred to as a 'Condernation Redevelopment Area'); and

**WHEREAS**, the Township Council of the Township of Berkeley Heights finds it to be in the best interest of the Township and its residents to authorize the Township Planning Board to undertake such preliminary investigation of the Study Area as a Non-Condernation Redevelopment Area.

**NOW, THEREFORE, BE IT RESOLVED**, by the Township Council of the Township of Berkeley Heights, in the County of Union, and State of New Jersey, that the Planning Board is hereby authorized to undertake a preliminary investigation, utilizing Harbor Consultants, Inc., pursuant to the notice, hearing and other requirements of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, *et seq.*, as amended, in order to recommend to the Township Council whether the properties identified as Block 702, Lot 17, Block 702, Lot 13, Block 702, Lot 18, the

Sherman Avenue Right-of-Way, the Lone Pine Drive Right-of-Way, the Sherman Avenue Easement/Right-of-Way (located on a portion of Block 702, Lots 13, 14, 15, and 17), in the Township of Berkeley Heights, or any portion thereof, as identified on the map prepared by Harbor Consultants, Inc., dated June 21, 2016, revised through August 16, 2016, attached hereto and made a part hereof (collectively, the "Study Area"), are an area in need of redevelopment according to the criteria set forth in N.J.S.A. 40A:12A-5.

**BE IT FURTHER RESOLVED** that, pursuant to New Jersey P.L.2013, c.159, the redevelopment area determination shall authorize the Township to use all those powers provided by the Legislature for use in a redevelopment area other than the use of eminent domain, also know as a "Non-Condensation Redevelopment Area."

**BE IT FURTHER RESOLVED** that a certified copy of this Resolution is to be forwarded to the Township Planning Board.

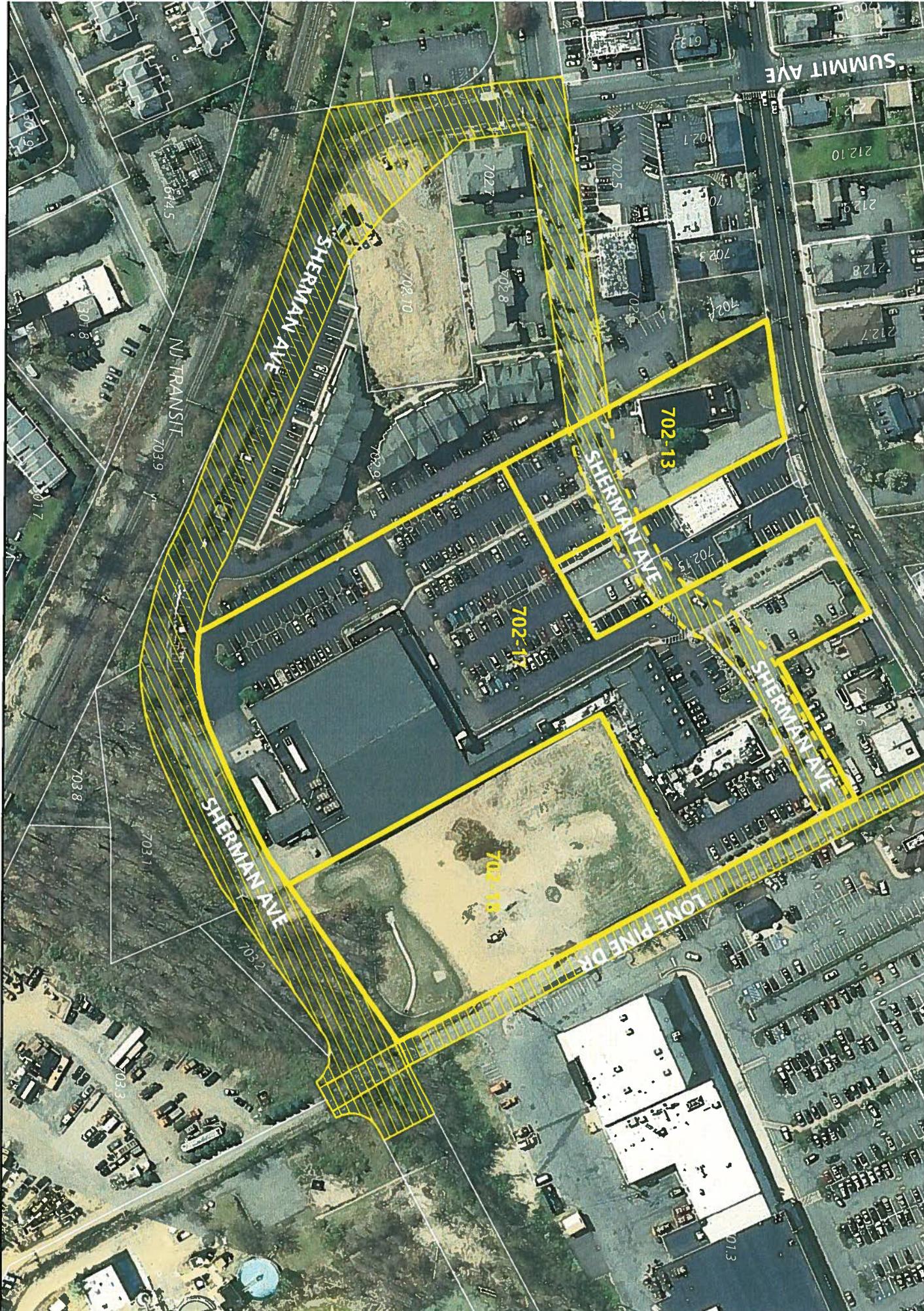
**BE IT FURTHER RESOLVED** that this Resolution shall take effect pursuant to law.

**APPROVED** this 23<sup>rd</sup> day of August, 2016.

**ATTEST:**

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Ana Minkoff  
Township Clerk



Street Address	Block and Lot	Lot Area
450 Springfield Avenue	Block 702, Lot 13	1.03 +/- Acres
428-434 Springfield Avenue	Block 702, Lot 17	4.8 +/- Acres
Lone Pine Drive	Block 702, Lot 18	2.0 +/- Acres

REV	DATE
1	8/16/2
DM	

Agenda Item No.: 3

**TOWNSHIP OF BERKELEY HEIGHTS  
UNION COUNTY, NEW JERSEY**

**RESOLUTION**

**WHEREAS**, on March 24, 2015, the Township Council of the Township of Berkeley Heights adopted a resolution in which the Township reaffirmed its voluntary commitment to satisfy its affordable housing obligations, however they may ultimately be defined by COAH or a court; and

**WHEREAS**, in compliance with the New Jersey Supreme Court decision in In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015), on or about July 2, 2015, the Township filed an action with the Superior Court of New Jersey, entitled In the Matter of the Application of the Township of Berkeley Heights, County of Union, Docket No. UNN-L-2405-15, seeking a Judgment of Compliance and Repose approving its Fair Share Plan, in addition to related reliefs (the "Compliance Action"); and

**WHEREAS**, on or about September 8, 2015, Lockhern Associates, LLC ("Lockhern") filed a Motion to Intervene in the Compliance Action seeking to construct a multi-family, mixed-use development, with an inclusionary component of fifteen (15%) of such units being set aside for affordable housing units pursuant to Section 1(a) below on the property identified as Block 702, Lot 13, commonly known as 450 Springfield Avenue (the "Property"), which intervention was granted by the Court on October 15, 2015; and

**WHEREAS**, after ongoing discussions, negotiations and mediations between the Township and Lockhern, the parties have agreed upon the general terms of a mixed-use, residential rental development of the Property, with an inclusionary affordable housing component; and

**WHEREAS**, the proposed mixed-use development of the Property would be permitted to be developed with a density of twenty (20) residential units, which shall have an inclusionary affordable housing component of 15% of the total units being developed as very low, low and moderate income affordable housing units, with amenities, and up to 4,000 square feet of retail space on the lower level; and

**WHEREAS**, the mixed-use development of the Property would proceed under the New Jersey Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, *et seq.* (the "Redevelopment Law"), provided the Property meets the criteria for the Township to declare it an area in need of redevelopment; and

**WHEREAS**, the Township and Lockhern wish to enter into this Memorandum of Understanding to memorialize the agreed upon terms of the inclusionary, mixed-use, residential rental development of Property, with the additional and more specific terms and conditions of said development to be further negotiated and agreed to in additional agreements, including a

formal settlement agreement to be filed with the Court in connection with the Compliance Action.

**WHEREAS**, the Memorandum of Understanding, in the form attached hereto, has been reviewed and approved by the Township Attorney, along with the attorney for Lockhern; and

**WHEREAS**, the Township Council finds it to be in the best interest of the Township to enter into the Memorandum of Understanding with Lockhern to memorialize the agreed upon terms of the mixed-use development of the Property, with an inclusionary affordable housing component.

**NOW, THEREFORE, BE IT RESOLVED** that the Mayor and Township Council of the Township of Berkeley Heights, County of Union, State of New Jersey, as follows:

1. The Mayor and Township Clerk are hereby authorized and directed to execute the attached Memorandum of Understanding with Lockhern.
2. The appropriate Township officials are hereby authorized to take all actions to continue to work with Lockhern to review and approve the final concept plan, building elevations, architectural floor plans, design standards, building materials, streetscape improvements, passive recreation areas, clubhouse, amenities and like development information, which shall be agreed upon and included in the final settlement agreement to be filed with the Court.
3. Final approval of the proposed mixed-use development is subject to the Township and Lockhern coming to an agreement on the final terms of the development, including that set forth in the Memorandum of Understanding; which shall be set forth in a settlement agreement to be filed with the Court, and be subject to the Court's and the Court Special Master's approval.

**BE IT FURTHER RESOLVED** that this Resolution shall take effect pursuant to law.

**APPROVED** this 23rd day of August, 2016.

**ATTEST:**

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Ana Minkoff, Township Clerk

**MEMORANDUM OF UNDERSTANDING**

BY AND BETWEEN

**TOWNSHIP OF BERKELEY HEIGHTS**

AND

**LOCKHERN ASSOCIATES, LLC**

REGARDING

**DEVELOPMENT OF A MIXED-USE PROJECT INCLUDING A RESIDENTIAL,  
RENTAL DEVELOPMENT COMPONENT  
WITH INCLUSIONARY AFFORDABLE HOUSING  
IN  
THE TOWNSHIP OF BERKELEY HEIGHTS  
COUNTY OF UNION, STATE OF NEW JERSEY**

**WHEREAS**, on March 24, 2015, the Township Council of the Township of Berkeley Heights adopted a resolution in which the Township reaffirmed its voluntary commitment to satisfy its affordable housing obligations, however they may ultimately be defined by COAH or a court; and

**WHEREAS**, in compliance with the New Jersey Supreme Court decision in In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015), on or about July 2, 2015, the Township filed an action with the Superior Court of New Jersey, entitled In the Matter of the Application of the Township of Berkeley Heights, County of Union, Docket No. UNN-L-2405-15, seeking a Judgment of Compliance and Repose approving its Fair Share Plan, in addition to related reliefs (the “Compliance Action”); and

**WHEREAS**, on or about September 8, 2015, Lockhern Associates, LLC (“Lockhern”) filed a Motion to Intervene in the Compliance Action seeking to construct a multi-family, mixed-use development, with an inclusionary component of fifteen (15%) of such units being set aside for affordable housing units pursuant to Section 1(a) below on the property identified as Block 702, Lot 13, commonly known as 450 Springfield Avenue (the “Property”), which intervention was granted by the Court on October 15, 2015; and

**WHEREAS**, after ongoing discussions, negotiations and mediations between the Township and Lockhern, the parties have agreed upon the general terms of a mixed-use, residential rental development of the Property, with an inclusionary affordable housing component; and

**WHEREAS**, the Township and Lockhern wish to enter into this Memorandum of Understanding to memorialize the agreed upon terms of the inclusionary, residential rental, mixed-use development of the Property, with the additional and more specific terms and conditions of said development to be further negotiated and agreed to in additional agreements, including a formal settlement agreement to be filed with the Court in connection with the Compliance Action.

**NOW, THEREFORE**, for and in good and valuable consideration in hand paid, receipt of which is hereby acknowledged, and in consideration of the mutual covenants and obligations hereinafter set forth, the Township and Lockhern hereby set forth in this Memorandum of Understanding that the following general terms shall apply to the future development of the Property:

1. Lockhern agrees to develop, construct, or otherwise build an inclusionary, residential rental, mixed-use development at the Property subject to the following conditions:
  - a. Affordable Housing Component – The mixed-use development shall have an on-site inclusionary affordable housing component of 15% of the total units being developed as very low, low and moderate income affordable housing units to qualify as such pursuant to the terms of the applicable affordable housing regulations, Court Order, Court Special Master requirements, and the Uniform Housing Affordability Controls (“UHAC”) regulations, N.J.A.C. 5:80-26.1, *et seq.* The parties agree that the distribution of the affordable housing units shall be in compliance with the Council on Affordable Housing’s (“COAH”) Round Two substantive regulations, which the parties believe will govern this issue, or as approved by the Court Special Master and the Court. The parties agree that the affordability controls shall expire at the end of thirty (30) years after the date of the initial occupancy of the affordable unit. The Parties agree that the affordable housing units are to be included in the Township’s Fair Share Plan to be approved and credited by the Court in the Compliance Action.
  - b. Density of Development – The mixed-use development of the Property shall be developed with a permitted density of twenty (20) residential housing units, which will include three (3) affordable housing units pursuant to Section 1(a) above.
  - c. Height of Development – The mixed-use development of the Property shall be included in a three (3) story building with a maximum height of thirty-six (36’) feet fronting along Sherman Avenue and a three (3) story building with the appearance of a 2½ story building, at a maximum height of thirty-six (36’) feet fronting along Springfield Avenue, in compliance with the applicable Township Zoning Ordinances, which shall be incorporated into the redevelopment plan for the Property.

- d. Setbacks – The mixed-use development of the Property shall comply with all applicable building setbacks set forth in the Township Zoning Ordinances, which shall be incorporated into the redevelopment plan for the Property.
- e. Retail Space – The mixed-use development of the Property shall include a minimum of 4,000 square feet of retail space on the lower level, which can be divided into two (2) 2,000 square foot retail spaces, all fronting on Sherman Avenue, with an outdoor seating area to be included in the front of said retail space as illustrated on the attached **Exhibit A**.
- f. Amenities – In addition to the retail space on the first floor as set forth in Section 1(e) above, Lockhern shall include various amenities designed to support the apartment uses, including, without limitation, a lobby, gym, and laundry facilities to be located on the second floor, which is the ground level fronting Springfield Avenue. In addition, an outdoor rooftop patio area along that portion of the building fronting on Sherman Avenue may be permitted subject to Township Council approval. Trash and recycling facilities shall be located indoors on the ground floor level.
- g. Streetscape – Lockhern shall provide streetscape improvements along Sherman Avenue, or otherwise contribute to such improvements in conjunction with the other redevelopment projects providing streetscape improvements along Sherman Avenue from Summit Avenue to Lone Pine Drive, including, but not limited to, ornamental street lights, street trees, brick paver sidewalks, brick paver crosswalks, bicycle racks, trash receptacles, and benches per the Township’s Downtown development standards.
- h. Parking – Lockhern hereby agrees to provide at least fifty-three (53) parking spaces to services the mixed-use development, or a minimum of two (2) parking spaces per residential unit plus one parking space per 300 square feet of gross retail space.
- i. Architectural Design – Lockhern shall construct the mixed-use development in substantial compliance with the floor plans and building elevations as shown on the attached **Exhibit A**, with the final architectural plans to be reviewed and approved by the Township. The mixed-use development shall comply with the Township’s Design Standards (Part 19 of the Land Development Ordinance).
- j. Redevelopment – The Township and Lockhern agree that the mixed-use development of the Property will likely proceed under the New Jersey Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, *et seq.* (the “Redevelopment Law”), provided the Property meets the criteria for the Township to declare it an area in need of redevelopment without the right to exercise eminent domain for the Property. If the Property is deemed an area in need of redevelopment, upon final approval of the redevelopment plan and

in connection with the entering of the redevelopment agreement, the residential component of the mixed-use development shall be subject to a Payment in Lieu of Taxes (“PILOT”) agreement between the Township and Lockhern, the specific terms of which shall be further negotiated between the parties. The Township shall not commence the redevelopment process until the final terms of the development have been negotiated and agreed upon, and approved by the Court and the Court Special Master. Should the Property be found to satisfy the requirements of the Redevelopment Law, and the Township enters into a redevelopment agreement with Lockhern, the Township agrees to appoint Lockhern as the redeveloper.

2. The Township must review and approve the final concept plan, building setbacks, lot and impervious coverages, building elevations, architectural floor plans, design standards, building materials, streetscape improvements, amenities, retaining walls and like zoning and development information, which shall be agreed upon and included in the final settlement agreement to be filed with the Court. All such terms shall be included in the redevelopment plan to be adopted by the Township pursuant to the Redevelopment Law assuming said criteria are met.

3. The parties understand and agree that this Memorandum of Understanding sets forth the general agreed upon terms for the development of the inclusionary, residential, rental development of the Property. Nothing herein shall bind or otherwise restrict the parties from negotiating and agreeing to additional and more specific terms of development. Final approval of the proposed mixed-use development is subject to the Township and Lockhern coming to an agreement on the final terms of the development, including that set forth in paragraph 2 herein; which shall be set forth in a settlement agreement to be filed with the Court, and be subject to the Court’s and the Court Special Master’s approval.

4. Upon approval of the final plans included in the settlement agreement filed with the Court, Lockhern agrees to enter into an escrow agreement with the Township for the deposit of monies in escrow with the Township to be utilized to tender payment of reasonable fees for professional services, including legal, engineering and planning services, being provided in conjunction with the review of the mixed-use development of the Property, along with redevelopment process under the Redevelopment Law.

5. The Township and Lockhern hereby agree to act in good faith in the negotiation of the final terms of the development, along with the preparation of a more formal agreement to set forth all of the agreed upon terms of the inclusionary, residential, rental development at the Property, which final agreement shall be filed with the Court, and be subject to the Court’s and the Court Special Master’s approval. The parties further agreed to proceed in good faith in proceeding through the redevelopment process and developing the site in compliance with the agreed upon timeline to be attached to the settlement agreement.

6. Miscellaneous. This Memorandum of Understanding shall be governed by, and construed and enforced in accordance with, the laws of the State of New Jersey. This Memorandum of Understanding may be modified or amended only by a written instrument

signed by both parties. This is a negotiated agreement wherein both parties were represented by legal counsel. This Memorandum of Understanding shall not be construed against any party by virtue of its counsel having prepared same or part thereof. This Memorandum of Understanding may be executed in counterparts, with facsimile signatures shall be deemed original signatures.

IN WITNESS WHEREOF, the Borough and Lockern have executed this Memorandum of Understanding as of the dates set forth below.

TOWNSHIP OF BERKELEY HEIGHTS

LOCKERN PROPERTY, LLC

By: \_\_\_\_\_  
Name: Robert Woodruff  
Title: Mayor

By: \_\_\_\_\_  
Name:  
Title: Managing Member

Dated: \_\_\_\_\_, 2016

Dated: \_\_\_\_\_, 2016

Agenda Item No.: 4

**TOWNSHIP OF BERKELEY HEIGHTS  
UNION COUNTY, NEW JERSEY**

**RESOLUTION**

**WHEREAS**, in compliance with the New Jersey Supreme Court decision in In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015), on or about July 2, 2015, the Township filed an action with the Superior Court of New Jersey, entitled In the Matter of the Application of the Township of Berkeley Heights, County of Union, Docket No. UNN-L-2405-15, seeking a Judgment of Compliance and Repose approving its Fair Share Plan, in addition to related reliefs (the "Compliance Action"); and

**WHEREAS**, on or about August 20, 2015, Berkeley Developers, LLC ("Berkeley Developers") filed a Motion to Intervene in the Compliance Action seeking to construct a three hundred (300) unit luxury residential rental development, with sixty (60) of such units being set aside for low and moderate income housing, on the property identified as Block 1901, Lot 35, located at 100 Locust Avenue; which intervention was granted by the Court on October 9, 2015; and

**WHEREAS**, after ongoing discussions, negotiations and mediations between the Township and Berkeley Developers, the parties have agreed upon the general terms of an one hundred and ninety-six (196) unit age-restricted, residential rental development of the 100 Locust Avenue property, with a fifteen (15%) percent inclusionary affordable housing component, subject to the terms and conditions set forth in the Memorandum of Understanding entered by the parties, which contemplated the development by way of redevelopment; and

**WHEREAS**, the New Jersey Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "Redevelopment Law") authorizes municipalities to determine whether certain parcels of land located within the municipality constitute areas in need of non-condemnation redevelopment; and

**WHEREAS**, the Township Council (the "Council") of the Township of Berkeley Heights (the "Township"), by way of a Resolution No. 103-2016, authorized and directed the Berkeley Heights Planning Board (the "Planning Board") to conduct a preliminary investigation pursuant to the Redevelopment Law to determine whether the property identified as Block 1901, Lot 35, as shown on the Tax Map of the Township, located at 100 Locust Avenue (the "Study Area"), constitute an area in need of non-condemnation redevelopment in accordance with the criteria set forth in N.J.S.A. 40A:12A-5; and

**WHEREAS**, the Planning Board authorized Michael J. Mistretta, P.P., of Harbor Consultants, Inc. (the "Planning Consultant") to conduct an investigation to determine whether the Study Area, or any portion thereof, constitutes an area in need of non-condemnation redevelopment in accordance with the Redevelopment Law, and to prepare a preliminary investigation report of the Study Area (the "Study"); and

**WHEREAS**, the Planning Consultant prepared a Study dated May 2016 (the "Report"), which details the findings and recommendations relevant to whether the Study Area should be designated as an area in need of non-condemnation redevelopment; and

**WHEREAS**, the Planning Board, having provided the requisite notices and all jurisdictional requirements of the Redevelopment Law having been met, conducted public hearing on August 17, 2016, whereat the Planning Consultant, being sworn and qualified as an expert in professional planning, made a presentation of the Study and the Report to the Planning Board; and

**WHEREAS**, in addition to the presentation of the Planning Consultant, at the public hearing the Planning Board heard testimony and evidence from members of the general public, who also were given an opportunity to cross-examine the Planning Consultant and address questions to the Planning Board concerning the potential designation of the Study Area as an area in need of non-condemnation redevelopment; and

**WHEREAS**, the Planning Consultant concluded that the Study Area satisfies the criteria (b), (d), (h) and Section 5 of the Redevelopment Law, N.J.S.A. 40:A:12A-5; and that the Study Area should be deemed an area in need of non-condemnation redevelopment; and

**WHEREAS**, the Planning Board did not receive any written comments or objections to the Study or Report prior to the close of the public hearing on August 17, 2016; and

**WHEREAS**, at the conclusion of the public hearing, the Planning Board found that the Planning Consultant's conclusions in the Report and his testimony provide substantial evidence to support the findings that the Study Area satisfies criteria of the Redevelopment Law, N.J.S.A. 40:A:12A-5, that the public questions and comments did not erode the Planning Consultant's testimony or conclusions, and that the collective designation of the Study Area as an area in need of non-condemnation redevelopment is necessary for the effective redevelopment of the Study Area; and

**WHEREAS**, by a vote of 7 to 0, the Planning Board unanimously voted to recommend that the Township Council of the Township of Berkeley Heights find that the Study Area be designated a an area in need of non-condemnation redevelopment meeting criteria of the Redevelopment Law, N.J.S.A. 40:A:12A-5 as set forth by the Planning Consultant; and

**WHEREAS**, the Planning Board is expected to adopt a Resolution memorializing the public hearing and decision at its September 7, 2016 meeting; and

**WHEREAS**, the Planning Board submitted a summary of the Board's findings, along with a copy of the Report and all exhibits presented at the public hearing to the Township Clerk for distribution to the Mayor and Township Council for consideration thereof; and

**WHEREAS**, after review and consideration of the Planning Board's recommendation, including all documents submitted therewith, the Township Council agrees with the conclusion of the Planning Board that the Study Area meets the aforementioned criteria for redevelopment area designation, and the Township Council finds that such conclusion is supported by

substantial evidence; and

**WHEREAS**, the Township Council further agrees with the recommendation of the Planning Board that the Study Area be designated as an area in need of non-condemnation redevelopment pursuant to the Redevelopment Law, and

**WHEREAS**, the Township Council now desires to designate the Study Area as an area in need of non-condemnation redevelopment, pursuant to N.J.S.A. 40A:12A-6; and

**WHEREAS**, the Township Council further desires to authorize and direct the Township Planner to work with the Township Council to prepare a redevelopment plan for the Study Area and present same to the entire Township Council pursuant to N.J.S.A. 40A:12A-7f.

**NOW, THEREFORE, BE IT RESOLVED**, by the Township Council of the Township of Berkeley Heights, in the County of Union, and State of New Jersey, as follows:

1. The aforementioned recitals, including the Study, Report and exhibits presented at the August 17, 2016 public hearing before the Planning Board are incorporated herein as though fully set forth at length.
2. The Township Council hereby designates the Study Area as an area in need of non-condemnation redevelopment pursuant to N.J.S.A. 40A:12A-6, satisfying criteria (b), (d), (h) and Section 5 of the Redevelopment Law, N.J.S.A. 40:A:12A-5.
3. The Township Planner is hereby directed to work with the Township Council to prepare a redevelopment plan for the Study Area (to be hereinafter referred to as the Redevelopment Area), and present same to the entire Township Council pursuant to N.J.S.A, 40A:12A-7f.
4. The Clerk of the Township shall forward a copy of this Resolution to the Commissioner of the New Jersey Department of Community Affairs for review and approval by regular and certified mail (return receipt requested).

**BE IT FURTHER RESOLVED** that this Resolution shall take effect pursuant to law.

**APPROVED** this 23rd day of August, 2016.

**ATTEST:**

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Ana Minkoff  
Township Clerk

Agenda Item No.: 5

**TOWNSHIP OF BERKELEY HEIGHTS  
UNION COUNTY, NEW JERSEY**

**RESOLUTION**

**WHEREAS**, Brookside Partnership, L.P. ("Taxpayer"), the owner of Block 301, Lot 25 on the Township of Berkeley Heights' Tax Assessment Maps, commonly known as 261 Springfield Avenue ("Property"), filed an appeal of its 2012, 2013, 2014, 2015 and 2016 tax assessments in the Tax Court of New Jersey, Docket Nos. 007183-2012, 004536-2013, 007862-2014, 002922-2015 and 001182-2016.

**WHEREAS**, the Township Council of the Township of Berkeley Heights met and discussed the aforesaid tax appeals and the recommendations of its Township Tax Assessor and its Special Tax Counsel, DiFrancesco, Bateman, Kunzman, Davis, Lehrer & Flaum, P.C.

**WHEREAS**, Block 301, Lot 25 was assessed at \$1,175,400 for the years under appeal; and

**WHEREAS**, an acceptable settlement of the aforesaid tax appeals has been negotiated which reduces the total tax assessment levied upon Block 301, Lot 25; and

**WHEREAS**, the 2012 and 2013 assessments shall be affirmed and remain unchanged; and

**WHEREAS**, the 2014 assessment, based upon said reduction, will be \$850,000 instead of \$1,175,400 for Block 301, Lot 25; and

**WHEREAS**, the 2015 assessment, based upon said reduction, will be \$850,000 instead of \$1,175,400 for Block 301, Lot 25; and

**WHEREAS**, the 2016 assessment, based upon said reduction, will be \$850,000 instead of \$1,175,400 for Block 301, Lot 25; and

**WHEREAS**, any tax refunds due shall be effectuated by way of credits against future tax bills within sixty (60) days of the entry of the Tax Court Judgment, such that the credit for the refund shall be applied in full before any future taxes are due; and

**WHEREAS**, Taxpayer has agreed to waive the payment of statutory interest on any refund or overpayment due, provided the credits are applied as set forth above; and

**WHEREAS**, the Township Council leaves the allocation between land and improvements of the aforesaid tax assessment reduction to the Township of Berkeley Heights' Tax Assessor's discretion with the direction that the same be set so as to be most beneficial to the Township; and

**WHEREAS**, the aforesaid reduction has no general application to other properties within the Township of Berkeley Heights as a result of the aforesaid specific fact situation; and

**WHEREAS**, the Township Council makes this settlement with Taxpayer without prejudice to its dealing with any other Berkeley Heights Township's taxpayers' request for tax assessment reduction; and

**WHEREAS**, the Mayor and Township Council have reviewed a copy of the proposed Stipulation of Settlement, which is annexed hereto and incorporated herein by this reference.

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and Township Council of the Township of Berkeley Heights, County of Union, State of New Jersey, as follows:

1. The Township of Berkeley Heights' Tax Assessor is hereby directed to establish the allocation between land and improvements of a \$850,000 total tax assessment for the 2014, 2015 and 2016 tax years for Block 301, Lot 25, which is most beneficial to the Township of Berkeley Heights and advise the Special Tax Counsel of that allocation.
2. The Special Tax Counsel, Martin Allen, is hereby authorized to execute a Stipulation of Settlement relative to the tax appeal of Brookside Partnership, L.P. ("Taxpayer") Docket Nos. 007183-2012, 004536-2013, 007862-2014, 002922-2015 and 001182-2016 which affirms the total tax assessments for Tax Years 2012 and 2013 for Block 301, Lot 25; which reduces the total tax assessment on Block 301, Lot 25 from \$1,175,400 to a reduced total tax assessment of \$850,000 for the 2014, 2015 and 2016 tax years; which provides that the Taxpayer waives the payment of statutory interest on any

refund or overpayment due provided that any tax refunds due shall be effectuated by way of credits against future tax bills within sixty (60) days of the entry of the Tax Court Judgment, such that the credit for the refund shall be applied in full before any future taxes are due.

3. The settlement outlined above shall be without prejudice to the Township of Berkeley Heights' dealings with any other Township taxpayers' request for tax assessment reductions.

**APPROVED this 23<sup>RD</sup> day of August, 2016.**

**ATTEST:**

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Ana Minkoff

Township Clerk

(A0915844)

ARCHER & GREINER  
A Professional Corporation  
101 Carnegie Center  
3<sup>rd</sup> Floor, Suite 300  
Princeton, NJ 08540  
(609) 580-3700

BY: JOSEPH J. NORCIA  
ID # 023952012

BROOKSIDE PARTNERSHIP, L.P.,  
Plaintiff,

v.

BERKELEY HEIGHTS TOWNSHIP,  
Defendant.

:  
: TAX COURT OF NEW JERSEY  
: DOCKET NOS. 007183-2012, 004536-2013,  
: 007862-2014, 002922-2015 & 001182-2016  
:  
: Block 301  
: Lot 25  
:  
: Civil Action  
:  
: STIPULATION OF SETTLEMENT  
:

1. It is hereby stipulated and agreed that the assessment of the following property be adjusted and a judgment entered as follows:

Block: 301  
Lot: 25  
Street: 261 Springfield Avenue  
Year: 2012

	Original Assessment	County Tax Board Judgment	Requested Tax Court Judgment
Land	352,600	N/A	352,600
Improvements	<u>822,800</u>	DIRECT	<u>822,800</u>
Total	1,175,400	APPEAL	1,175,400

2. It is hereby stipulated and agreed that the assessment of the following property be adjusted and a judgment entered as follows:

Block: 301  
Lot: 25  
Street: 261 Springfield Avenue  
Year: 2013

	<b>Original Assessment</b>	<b>County Tax Board Judgment</b>	<b>Requested Tax Court Judgment</b>
Land	352,600	N/A	352,600
Improvements	<u>822,800</u>	DIRECT	<u>822,800</u>
Total	1,175,400	APPEAL	1,175,400

3. It is hereby stipulated and agreed that the assessment of the following property be adjusted and a judgment entered as follows:

Block: 301  
 Lot: 25  
 Street: 261 Springfield Avenue  
 Year: 2014

	<b>Original Assessment</b>	<b>County Tax Board Judgment</b>	<b>Requested Tax Court Judgment</b>
Land	352,600	N/A	352,600
Improvements	<u>822,800</u>	DIRECT	<u>497,400</u>
Total	1,175,400	APPEAL	850,000

4. It is hereby stipulated and agreed that the assessment of the following property be adjusted and a judgment entered as follows:

Block: 301  
 Lot: 25  
 Street: 261 Springfield Avenue  
 Year: 2015

	<b>Original Assessment</b>	<b>County Tax Board Judgment</b>	<b>Requested Tax Court Judgment</b>
Land	352,600	N/A	352,600
Improvements	<u>822,800</u>	DIRECT	<u>497,400</u>
Total	1,175,400	APPEAL	850,000

5. It is hereby stipulated and agreed that the assessment of the following property be adjusted and a judgment entered as follows:

Block: 301  
 Lot: 25  
 Street: 261 Springfield Avenue  
 Year: 2016

	<b>Original Assessment</b>	<b>County Tax Board Judgment</b>	<b>Requested Tax Court Judgment</b>
Land	352,600	N/A	352,600
Improvements	<u>822,800</u>	DIRECT	<u>497,400</u>
Total	1,175,400	APPEAL	850,000

6. The undersigned have made such examination of the value and proper assessment of the property and have obtained such appraisals, analysis and information with respect to the evaluation and assessment of the property as they deem necessary and appropriate for the purpose of enabling them to enter into the stipulation. The assessor of the taxing district has been consulted by the attorney for the taxing district with respect to this settlement and has concurred.

7. Based upon the foregoing, the undersigned represent to the court that the above settlement will result in an assessment at the fair assessable value of the property consistent with assessing practices generally applicable in the taxing district as required by law.

8. All refunds as a result of the settlement set forth herein shall be applied in full against the next occurring future tax payments within sixty (60) days of the Tax Court judgment entered as a result of this settlement agreement, such that the credit for the refund is applied in full before any future tax is due. If applied in such manner, the taxpayer waives interest that may otherwise be payable pursuant to *N.J.S.A. 54:3-27.2* for the refunds that are due as a result of this settlement.

Date: 7/5/16

Archer & Greiner, P.C.  
Attorneys for the Plaintiff

  
\_\_\_\_\_  
JOSEPH J. NORCIA

DiFrancesco, Bateman, Kunzman,  
Davis, Lehrer & Flaum, PC  
Attorneys for the Defendant

Date: \_\_\_\_\_

\_\_\_\_\_  
SANDRA BELLI

Agenda Item No.: 6

**TOWNSHIP OF BERKELEY HEIGHTS  
UNION COUNTY, NEW JERSEY**

**RESOLUTION**

**WHEREAS**, the Township of Berkeley Heights is in need of energy generation services (electricity) for public use for the Township, and wants to procure same at competitive rates; and

**WHEREAS**, the Local Unit Technology Pilot Program and Study Act, P.L. 2001, c. 30 (the "Act"), authorizes the purchase of energy generation services for public use through the use of an online auction service; and

**WHEREAS**, the Act requires the New Jersey Department of Community Affairs, Division of Local Government Services to pre-qualify vendors to offer their auction platforms to receive bids on behalf of the Township; and

**WHEREAS**, the Township finds it to be in the best interest of the Township and its citizens to utilize the online auction services of EMEX, LLC, an approved vendor pursuant to the Act, waiver number EMEX LLC-I, located at [www.energymarketexchange.com](http://www.energymarketexchange.com) ("EMEX"), which shall be conducted pursuant to the Act; and

**WHEREAS**, the Township has determined to proceed with the EMEX in order to procure energy generation services (electricity) for the Township; and

**WHEREAS**, the Act also requires the various prospective bidders to be pre-qualified by the New Jersey Board of Public Utilities in order to submit a bid for energy generation services (electricity); and

**WHEREAS**, the Township finds it to be in the best interest of the Township and its citizens to award a contract to the lowest responsive, pre-qualified bidder for a twenty-four (24) month term pursuant to the results of the online auction services.

**NOW, THEREFORE, BE IT RESOLVED** that the Township Council of the Township of Berkeley Heights, County of Union, State of New Jersey, hereby authorizes the Township to utilize the online auction services of EMEX, LLC, an approved vendor pursuant to the Act, waiver number EMEX LLC-I, located at [www.energymarketexchange.com](http://www.energymarketexchange.com), for the purchase of energy generation services (electricity) in accordance with the requirements of the Act.

**BE IT FURTHER RESOLVED** that the Mayor is authorized to execute the contracts, subject to legal review and approval, with the lowest responsive bidders for a twenty-four (24) month term.

**BE IT FURTHER RESOLVED** that this Resolution shall take effect pursuant to law.

**APPROVED** this 23rd day of August, 2016.

**ATTEST:**

---

Ana Minkoff  
Township Clerk

**TOWNSHIP OF BERKELEY HEIGHTS  
UNION COUNTY, NEW JERSEY**

**RESOLUTION**

**WHEREAS**, the Governing Body of the Township of Berkeley Heights received notice from the Union County Board of Chosen Freeholders of its eligibility to receive a “Greening Union County” grant; and

**WHEREAS**, through “Greening Union County” every dollar spent by the Township of Berkeley Heights will be matched by Union County, tree for tree and dollar for dollar; and

**WHEREAS**, through “Greening Union County” a forestry professional will provide the installation and one-year maintenance guarantee for every tree purchased; and

**WHEREAS**, the Township of Berkeley Heights wishes to apply to the Union County Trust Fund through the “Greening Union County” grant program, for a grant in the amount of \$16,500.00 for the purchase and installation of eleven (11) trees to be planted within Peppertown Park, which is part of the Township of Berkeley Heights Park System; and

**WHEREAS**, the Township of Berkeley Heights will match the “Greening Union County” grant program dollars in the amount of \$8,250.00; and

**WHEREAS**, the Township of Berkeley Heights will use the Trust Fund dollars in accordance with such rules and regulations governing the grant program.

**NOW, THEREFORE, BE IT RESOLVED** by the Township Council, of the Township of Berkeley Heights, County of Union that the Township Council does hereby make application for the grant; provide additional application information and furnish such documents as may be required; and act as the authorized correspondent of the above named applicant.

**BE IT FURTHER RESOLVED** that the Mayor and Township Clerk be and hereby are authorized to execute a Grant Agreement with the County of Union on behalf of the Township and upon execution of said agreement, the Township of Berkeley Heights does accept the Terms and Conditions specified in the Agreement in connection with this grant.

**BE IT FURTHER RESOLVED** that copies of this resolution be forwarded to the Treasurer, Zoning Official, and Environmental Commission.

**APPROVED** this 23rd day of August.

**ATTEST:**

\_\_\_\_\_  
Ana Minkoff  
Township Clerk

**TOWNSHIP OF BERKELEY HEIGHTS  
UNION COUNTY, NEW JERSEY**

**RESOLUTION**

**WHEREAS**, the Tax Collector has advised that there was an overpayment of a portion of 2016 property taxes for property known as Block #1901, Lot #42 also known as 12 Russo Place, owner 22 Russo Associates, L.L.C., which requires a refund in the amount of \$22,778.91; and

**NOW, THEREFORE BE IT RESOLVED** that the Treasurer is authorized to refund the overpayment for 2016 taxes in the amount of \$22,778.91 to Daniel G Keough, Trustee, 783 Springfield Avenue, Summit, NJ 07901.

**BE IT FURTHER RESOLVED** that a copy of this resolution be transmitted to, Daniel G. Keough; Trustee, Treasurer and Tax Collector.

**APPROVED this 23<sup>rd</sup> April, 2016.**

**Attest:**

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**Ana Minkoff  
Township Clerk**

**TOWNSHIP OF BERKELEY HEIGHTS  
UNION COUNTY, NEW JERSEY**

**RESOLUTION**

**WHEREAS**, by letter dated August 8, 2016 a request was made by Linda Nessenson requesting permission from the Township Council to hold a neighborhood block party between 44 Branko Road and 130 North Road which would involve erecting barricades on a public street; and

**WHEREAS**, the Township Council wishes to support the request for a neighborhood block party subject, however, to the special requirements of the appropriate local Township Officials.

**NOW, THEREFORE BE IT RESOLVED** by the Township Council of the Township of Berkeley Heights that it does hereby approve of a neighborhood block party Between 44 Branko Road and 130 North Road on Saturday, September 10, 2016 from 2:00 p.m. until 8:00 p.m., with a rain date of September 11, 2016.

**BE IT FURTHER RESOLVED** that said approval is subject and contingent upon the approval of the Berkeley Heights Police Department, Fire Department and other appropriate officials; and

**BE IT FURTHER RESOLVED** that a copy of this Resolution is to be forwarded to Linda Nessenson, Chief of Police, Fire Chief, and the Director of Public Works.

**APPROVED this 23rd day of August, 2016.**

**ATTEST:**

\_\_\_\_\_  
Ana Minkoff  
Township Clerk