

24



Township Council
1 Municipal Plaza
Bloomfield, NJ 07003

Louise M. Palagano
Municipal Clerk

http://www.bloomfieldtwpnj.com

Meeting: 11/21/16 07:00 PM

2016 RESOLUTION AGREEMENTS

WILLET STREET DEVELOPERS AGREEMENT

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and Council of the Township of Bloomfield, County of Essex, State of New Jersey hereby authorizes the Mayor to execute the attached agreement and the Clerk to attest to his signature.

* * * * *

I hereby certify that the above resolution was duly adopted by the Mayor and Council of the Township of Bloomfield at a meeting of said Township Council held on November 21, 2016.

Louise M. Palagano
Municipal Clerk of the Township of Bloomfield

MVP
Mayor of the Township of Bloomfield

✓ Vote Record - Resolution						
		Yes/Aye	No/Nay	Abstain	Absent	
<input type="checkbox"/> Adopt	Elias N. Chalet	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/> Deny	Nicholas Joanow	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/> Withdrawn	Carlos Bernard	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/> Table	Wartyna Davis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/> Not Discussed	Joseph Lopez	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
<input type="checkbox"/> First Reading	Carlos Pomares	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
<input type="checkbox"/> Table with no Vote	Michael J. Venezia	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/> Approve						
<input type="checkbox"/> Veto by Mayor						
<input type="checkbox"/> Discussion						
<input type="checkbox"/> Defeated						
<input type="checkbox"/> Discussion No Vote						

[Signature]
APPROVED AS TO FORM AND PROCEDURE
ON BASIS OF FACTS SET FORTH
DIRECTOR OF LAW-TOWNSHIP ATTORNEY

AGREEMENT

BETWEEN

SOUND DEVELOPER, LLC,

A DEVELOPER, @

AND

THE TOWNSHIP OF BLOOMFIELD

A Municipal corporation of the
State of New Jersey,

A TOWNSHIP @

DATED:

DEVELOPER'S AGREEMENT

This Developer's Agreement ("the Agreement"), is made this _____ day of September, 2016, by and between SOUND DEVELOPMENT, LLC, as developer, with a principal place of business located at 2 Gateway Center, Suite 200, Newark, NJ 07102, (hereinafter referred to as "Developer") and the TOWNSHIP OF BLOOMFIELD, a municipal corporation of the State of New Jersey located at the Township of Bloomfield Municipal Building, Municipal Plaza, Bloomfield, New Jersey 07003 ("Township").

WHEREAS, Developer is the present owner of a tract of land designated as Block 491, Lot 1, as set forth on the tax maps of the Township of Bloomfield, which premises are also known as 59 Willet Street, Bloomfield, New Jersey (the "Subject Property"); and

WHEREAS, the Township of Bloomfield Zoning Board of Adjustment ("Board"), on May 8, 2008, granted Developer's predecessor in interest, CRD Associates, LLC, preliminary and final site plan approval and variances pursuant to N.J.S.A. 40:55D-70(c) and (d) to permit the construction of an eighteen (18) unit multi-family dwelling on the Subject Property. The Board's memorializing resolution was adopted on July 10, 2008 (the "Approval"); and

WHEREAS, Developer intends to construct the 18-unit multi-family residential building in conformance with the plans submitted to the Board for the Approval, including engineering plans prepared by Neglia Engineering Associates, dated December 11, 2007, and architectural plans prepared by CSR Group, PA, dated December 4, 2007 and December 4, 2006; and

WHEREAS, the Approval was subject to certain conditions as more fully set forth in the Board's July 10, 2008 resolution (the "Resolution"), a copy of which is annexed hereto as

Exhibit A, and which is incorporated by reference into this Agreement as if the same was set forth at length herein; and

WHEREAS, Developer has submitted a Performance Guarantee in the amount of Twelve Thousand Dollars (\$12,000.00) to complete water and sewer connections pursuant to N.J.S.A. 40:55D-53 and applicable municipal ordinances; and

WHEREAS, no additional performance guarantee shall be required by the Township Engineering Department; and

WHEREAS, Developer shall submit a Maintenance Guarantee in the amount of fifteen percent (15%) of the total cost of the improvements as set forth in full on Exhibit B annexed hereto (the "Improvements"), with the Township Engineer having determined that Exhibit B represents the proper costs for the Improvements for use in calculating the amount of the maintenance guarantee pursuant to N.J.S.A. 40:55D-53 and 53.4; and

WHEREAS, the Township has waived the requirement for a deposit for inspection fees to be paid to the municipal engineer pursuant to N.J.S.A. 40:55D-53(h); and

WHEREAS, all monies deposited by Developer with the Township shall be held in escrow and any remaining balance shall be promptly returned to the Developer upon completion of the Improvements required hereunder; and

WHEREAS, the final construction documents submitted by Developer with its permit applications shall incorporate all changes required by the Resolution.

NOW THEREFORE, in consideration of the sum of ONE DOLLAR (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, and of the mutual promises and covenants contained herein, it is mutually agreed as follows:

1. Developer hereby expressly agrees to construct and install all Improvements, including, without limitation, streets, internal drives, grading, pavement, gutters, curbs, sidewalks, drainage facilities, flood storage areas, water mains, culverts, sanitary sewer lines, storm sewers, monuments, street signs, shade trees, fire hydrants, street lighting, underground utilities, erosion control and sediment control devices, open space, landscaping and other on-tract improvements as may be shown on the aforementioned Plans, and consistent with the terms and conditions of the Resolution.

2. The Improvements to be made are more particularly shown on the aforementioned Plans, and shall include details and profiles and cross sections as shown therein, and shall consist of the items, quantity, unit price and amount as set forth on Schedule A (attached hereto). All of the Improvements on Schedule A are to be completed within eighteen (18) months from the date hereof, unless extended as hereinafter provided. The work is to be performed in accordance with the approved Plans, the Resolution, the design standards set forth in Article IV of Chapter 315 of the Township of Bloomfield Land Development Ordinance and all applicable building codes.

3. All required Improvements shall be installed and shall be subject to the approval and inspection by the Township Engineer, who shall be notified by the Developer at least twenty-four (24) hours prior to the start of construction of any improvement. No underground installation shall be covered until inspected and approved by the Township Engineer. The

Township Engineer shall inspect any underground installations upon 24 hours notice to the Developer, excluding Saturday, Sundays and Holidays. The Township Construction Official shall prohibit Developer from proceeding on any further work and shall not issue any additional permits of any kind unless compliance with this requirement is strictly adhered to.

4. In the event the Developer does not complete the aforementioned work in a satisfactory manner within eighteen (18) months, except, however, if any delays are caused by force majeure, or any water or sewer ban, building moratorium or other governmental action which prevents Developer from obtaining any necessary permits or approvals in a timely manner, or unless an extension of this Developer's Agreement is granted by the Township Council upon the request of the Developer, which shall not be unreasonably denied, the Developer shall be liable to the Township for any legal, engineering and installation costs which the Township incurs in order to have the work completed properly. If the Township Council grants an extension pursuant hereto, or the Township Engineer certifies that in his opinion, the Developer's completion of certain Improvements are immediately imminent and necessary, or the delays were the result of governmental action as described herein, then Developer will receive written notice that Developer will have a reasonable amount of time, as determined by the Township Council or Engineer, as the case may be, to complete the Improvements at issue. In the event of a failure on the part of the Developer to fully and properly complete the aforementioned work after notice of same and a reasonable opportunity to cure, the Township shall not be under any obligation to complete same; but if the Township shall endeavor to complete the work, it may bring an action

on the Bond Guarantee, bring an action for specific performance or seek to effect completion on the basis of any other remedy available to the Township.

5. Developer shall undertake the site work and the construction of the 18-unit multi-family residential building in accordance with the Plans and the Resolution, consistent with all applicable construction codes and subject to the inspection of the Township's Engineer and code enforcement officials.

6. Developer has provided the Township Engineer with evidence of all other required governmental approvals.

7. Developer has furnished the Township a Performance Guarantee in the Township's favor in the amount of Twelve Thousand Dollars (\$12,000.00), which represents one hundred and twenty percent (120%) of the estimated cost of construction of the water and sewer connections, as so determined by the Township Engineer.

8. Developer, upon completion of all Improvements, shall deliver to the Township a two (2) year Surety Maintenance Bond in the amount of fifteen percent (15%) of the total cost of the Improvements as set forth in Exhibit B, issued by a surety company satisfactory to the Township Attorney. The Maintenance Bond shall cover all Improvements constructed by Developer in connection with the Plans.

9. The Township has waived its right to collect inspection fees in accordance with N.J.S.A. 40:55D-53(h).

10. The Developer and its successors and assigns shall be responsible for the maintenance of internal driveways and parking areas, including, without limitation, the removal of ice and snow during periods of inclement weather.

11. The Developer shall hold the Township, its officers, agents and servants harmless and indemnify it from any claims arising out of the work provided for in this Agreement, including any alleged damage to adjacent property as well as the defense of any such claims, which the Developer shall insure against.

12. The Township and Developer acknowledge that as of the date hereof, the Developer has received permits for the construction of the improvements and the multi-family dwelling.

13. The Township shall deposit all escrow monies in a banking institution or savings and loan association in the State of New Jersey insured by an agency of the Federal Government, or in any other fund or depository approved for such deposits by the State of New Jersey, in an account bearing interest at the minimum rate currently paid by the institution or depository on time or savings deposits. The Township shall notify Developer in writing of the name and address of the institution or depository in which the deposit is made and the amount of the deposit. The Township shall notify Developer in writing of the name and address of the institution or depository in which the deposit is made and the amount of the deposit. The Township shall not be required to refund any amount of interest paid on a deposit which does not exceed \$100.00 for the year. If the amount of interest exceeds \$100.00, it shall be refunded to the Developer by the Township at the time the deposit is repaid or applied to the purposes for

which it was deposited, as the case may be; except that the Township may retain for administrative expenses a sum equivalent to no more than 33 1/3% of the interest amount, which shall be in lieu of all other administrative and custodial expenses.

14. The Developer, as well as any subcontractors retained by the Developer to install any and all Improvements as described herein, shall maintain public liability insurance of \$1,000,000.00 per person for each accident involving bodily injury and \$2,000,000.00 aggregate coverage, as well as insurance for property damage, within the development site or on adjoining or adjacent land, in the amount of \$2,000,000.00 for each occurrence. Developer, as well as any subcontractors installing any and all Improvements as described herein, shall also maintain automobile and/or fleet liability insurance on all of its automobiles of not less than \$1,000,000.00 bodily injury for each person, \$2,000,000.00 aggregate bodily injury for each occurrence, and \$500,000.00 for property damage. Certificates disclosing proper coverage, and naming the Township as an additional insured, shall be delivered to the Township for approval by the Township Attorney as to form and content as well as to the insurer, before any construction is undertaken. Developer and all subcontractors shall maintain Worker's Compensation Insurance in amounts in accordance with law.

15. The Township Engineer shall determine, using his or her reasonable discretion, when the final "as built" plan shall be furnished by Developer to the Township Engineer for review and approval.

16. All work shall be subject to the inspection of the Township Engineer or office of the Township Construction Official, as appropriate. The Developer shall provide safe access at all times for inspection by Township personnel.

17. The Developer's Performance Guarantee shall not be released until it fully complies with all of the terms of this Agreement and all work is accepted by the Township Engineer.

18. The Developer shall comply with all appropriate Federal and state statutes, rules and regulations and all appropriate Municipal and County ordinances in regard to Developer's performance under this Agreement. The Developer's application and all final acts and approvals issued by the State, Township and County with respect to the Plans, including all the terms and conditions of approval, are hereby incorporated herein by reference as if set forth herein at length.

19. The Developer may seek reductions of the Performance Bond in accordance with N.J.S.A. 40:55D-53, but such request by Developer shall be made not more frequently than at six-month intervals. It is specifically understood and agreed by the Developer that a reduction in the amount of total bonds due hereunder will not constitute an acceptance or approval by the Township of any Improvements or parts thereof. Upon Developer's completion of all Improvements delineated herein, which are inspected and approved by the Township, formal acceptance of said Improvements will be acted upon by the Township.

20. Regarding the Improvements to be made by Developer to its Property and the building to be constructed, Developer shall meet the following conditions with regard to their construction:

(a) The construction of all buildings and all facilities in connection therewith shall be in accordance with the Plans, the requirements of the Township's Land Development Ordinance in effect at the time of the adoption of the Resolution (unless such requirements were waived or a variance was granted by the Board) and all applicable laws, codes and ordinances;

(b) Developer shall not remove any top soil from the site unless authorized by the Township Engineer;

(c) No dumping in the form of a sanitary landfill shall be allowed on the Subject Property. Temporary dumping upon the surface of the land during confined periods of construction at specific locations for inorganic and inert construction debris shall be allowed with prior approval of the Township Engineer, which approval may be withdrawn for health reasons. Prior to withdrawing said approval, the Township Engineer shall notify Developer of the problems and Developer shall have a reasonable time to cure said problems;

(d) Should any land be stripped and/or cleared in preparation for construction, and thereafter the construction is not commenced within a reasonable time, with any such delay causing drainage or dust problems, Developer shall cause, at its own expense, the exposed land to be drained, re-graded, stabilized or planted or it shall take such other similar action as may be reasonably necessary to abate the problem; and

(e) Installation of engineering controls to cap the historic fill on site, which shall consist of building pads, paved areas and where necessary, two feet of clean fill material. The Applicant shall record a Deed Notice in the chain of title to the property that historic fill remains on site, which shall be in a form satisfactory to the DEP.

21. The Improvements shall be made in accordance with the Plans and Resolution approved by the Board, and the following conditions shall be met:

- (a) Water system improvements shall be in accordance with Township specifications;
- (b) Installation of an eight inch sanitary sewer pipe;
- (c) Developer shall prepare and obtain all necessary sanitary sewer construction permits from the Township, the Passaic Valley Sewage Commission, the NJDEP and all other governmental authorities having jurisdiction over the sanitary sewer system in accordance with the procedures and specifications established by each such entity. The Developer shall retain a licensed professional engineer and land surveyor for all applications and related certifications necessary to obtain such permits;
- (d) Developer's engineer shall provide a certification to the appropriate governmental authorities that the sanitary sewer system was constructed in accordance with the approved plans and specifications and with the permits issued to the Developer.
- (e) If necessary, Developer shall prepare and obtain all permits for flood control, stream encroachment and stormwater management from the Township, the NJDEP and all other governmental authorities having jurisdiction over each such system in accordance with

the procedures and specifications established by each such entity. The Developer shall retain a licensed professional engineer and land surveyor for all applications and related certifications necessary to obtain such permits;

(f) If necessary, Developer shall obtain all inspections and certificates for the sanitary sewer system, the stormwater management system and the flood control system and, to the extent such inspections and certificates are within the jurisdiction of a governmental entity other than the Township, Developer shall provide the Township with copies of same. Inspections shall ensure that the stormwater management system and the flood control system are constructed in accordance with the Plans submitted by Developer for the Amended Approval and all applicable codes.

22. Developer shall eliminate the existing northerly, narrow driveway stem, converting it to a pedestrian, concrete walkway with landscaping and low, bollard lighting, and will install garage doors for all parking stalls within the building.

23. All Improvements shall be constructed in accordance with the Plans, the Resolutions and the Residential Site Improvement Standards issued by the State of New Jersey.

24. With regard to the general overall construction of the development, the Developer shall comply with the following:

(a) Particular attention shall be given by the Developer to the maintenance of a clean road in areas not undergoing construction, the elimination of dust, removal of dirt and mud, the reduction of noise, the safety of persons and the preservation of property. In so doing,

the Developer shall comply with all applicable provisions of the Township Code and with all requirements of the Hudson/Passaic/Essex Soil Conservation District.

(b) The Developer shall take all reasonable precautions to ensure that sedimentation and siltation does not occur. In the event that such sedimentation and siltation should occur, the Developer shall be responsible to restore affected areas to their original conditions, depth and cross-section.

25. Any time extensions requested under the terms of this Agreement must be obtained from the Township Council, and prior to any extensions, all bonds and insurance certificates must be updated and approved by the Township Attorney. In addition, all taxes and fees must be current with the Township.

26. The Developer agrees that if it does not comply with all the terms and conditions of this Agreement, all work shall cease upon written notice to the Developer by the Township Engineer.

27. If any guarantee posted by the Developer pursuant to the terms of this Agreement expires prior to the compliance by the Developer with all the terms of this Agreement and the requirements of the Township's Ordinances, the Developer shall automatically be in default under the terms of this Agreement and all work shall cease upon notice to the Developer by the Township Engineer. It is the obligation of the Developer to provide instruments or binding written documents which obligate Developer, the issuing bank, depository or surety or similar parties to notify the Township at least sixty (60) days prior to the expiration of any guarantee or similar security furnished to the Township pursuant to the terms of this Agreement.

28. The Developer hereby recognizes and acknowledges that this Agreement incorporates by reference all conditions placed upon its development plan by the Board, as reflected in the Resolution adopted July 10, 2008.

29. The Developer has entered into this Agreement based upon the advice of independent counsel.

30. Neither this Agreement or any provision hereof shall be amended, waived or modified, or deemed amended, waived or modified except by an Agreement in writing, identifying each particular provision amended, waived or modified, or deemed amended, or modified, and duly subscribed and acknowledged by both parties with the same formality as this Agreement except as expressly provided herein. No oral representation shall constitute an amendment, waiver or modification even if substantially and detrimentally relied upon. Any waiver by either party of any provision of this Agreement or any right or option hereunder shall not prevent or stop such party from thereafter enforcing such provision, right or option, and the failure of either party to insist in any one or more instances upon the strict Performance of any of the terms or provisions of this Agreement by other party shall not be construed as a waiver or relinquishment for the future of any such term or provision, but the same shall continue in full force and effect. Any amendment to the Plans approved by the Board shall require an amendment to this Agreement.

31. Nothing herein shall be construed to create a partnership or a joint venture between the parties hereto. The parties expressly disclaim any right to act by or on behalf of each other unless otherwise expressly provided herein.

32. Notices required by this Agreement to be sent to the Township by the Developer shall be sufficient if sent by the Developer or its representatives by certified or registered mail (return receipt requested) to the Township Attorney at the Township of Bloomfield Municipal Building, Municipal Plaza, Bloomfield, New Jersey 07003 or such other address which the Township, by similar notice, shall have advised the Developer for the sending of such notices.

33. Notices required by this Agreement to be sent to the Developer shall be sufficient if sent by the Township or its representative, by certified or registered mail (return receipt requested) to the Developer at the address first above written on page one, and to Robert A. Gaccione, Esq., c/o Gaccione Pomaco, 524 Union Avenue, P.O. Box 96, Belleville, NJ 07109, or such other address which the Developer, by similar notice, shall have advised the Township for the sending of such notices.

34. In case any provision of this Agreement should be held by a court of competent jurisdiction to be contrary to or invalid under the laws of the State of New Jersey or other applicable jurisdiction, such illegality or invalidity shall not affect in any way any other provision hereof, all of which shall continue, nevertheless, in full force and effect, unless a court of competent jurisdiction holds (a) that such provisions are not severable from all other provisions of this Agreement or (b) that the invalidity of the affected provisions materially alters the substance of this Agreement.

35. This Agreement and all documents executed simultaneously herewith contain the entire Agreement of the parties.

36. Except as otherwise provided herein, each of the respective rights and obligations of the parties hereunder shall be deemed independent and may be enforced independently, irrespective of any of the other rights and obligations set forth herein.

37. The parties agree that each will notify the other of any changes of address and/or telephone number within at least five (5) days of such event.

38. It is expressly agreed that this Developer's Agreement may be assigned by the Developer upon the consent of the Governing Body, which consent shall not be unreasonably withheld. Should the Governing Body grant its assent to the assignment of this Agreement, the assignee shall be given a copy of this Agreement by the Developer, and the Township shall be provided a copy of a fully executed assignment and assumption agreement between the Developer and its assignee, evidencing the assignee's assumption of all of Developer's obligations hereunder, including, without limitation, the assignment and assumption of all bonds, security and any other financial obligations of the Developer as set forth in this Agreement. All such instruments either shall be amended to name the assignee or reissued in the name of the assignee. Following the completion of all steps set forth in this paragraph, the assignment from the Developer to the assignee shall be complete, the assignee shall become the Developer and the assignor shall be deemed released from any obligations set forth in this Agreement. The Township shall look solely to the assignee for the fulfillment of the obligations of the "Developer" under this Agreement.

39. This Agreement shall inure to the benefit of, and shall be binding upon, the parties, their heirs, executors, administrators and assigns.

STATE OF NEW JERSEY)
) SS:
COUNTY OF ESSEX)

I hereby certify that on *NOVEMBER 22*, 2016, Louise Palagano personally came before me and acknowledged under oath, to my satisfaction, that:

- (a) she is the Township Clerk of the Township of Bloomfield;
- (b) she is the attesting witness to the signing of this Developer's Agreement by Michael J. Venezia, the Mayor of the Township of Bloomfield;
- (c) this Developer's Agreement was signed and delivered by the Township of Bloomfield as its voluntary act and duly authorized by its Municipal Council;
- (d) she knows the official seal of the Township of Bloomfield, which is the seal affixed to this Agreement; and
- (e) she signed this proof to attest to the proof of these facts.

Sworn and subscribed to before me
on this *22* day of *NOVEMBER*, 2016

Andrea Schneider

ANDREA SCHNEIDER
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES MAY 4, 2020