

RESOLUTION NO. 2020-139

RESOLUTION APPROVING THE CONTRIBUTION AGREEMENT TO THE THIRD AMENDMENT TO THE MASTER REDEVELOPMENT AGREEMENT BETWEEN THE TOWNSHIP OF ABERDEEN AND SOMERSET DEVELOPMENT, L.L.C.

WHEREAS, the Township, in its function as an instrumentality pursuant to the provisions of the Local Redevelopment and Housing Law, as amended and supplemented, *N.J.S.A. 40A:12A-1 et seq.* (the “Housing Law”), and commenced a program for the redevelopment of a former industrial site located at Block 155, Lot 1, commonly known as the Anchor Glass Site within the Anchor Glass Redevelopment Area (hereinafter referred to as the “Redevelopment Area”); and

WHEREAS, the Township adopted the Redevelopment Plan for the Redevelopment Area as set forth in Township Ordinance No. 14-2010, known as the Glassworks Mixed Use Redevelopment Plan; and

WHEREAS, on February 21, 2006, the Township adopted Resolution No. 2006-40 designating Somerset Development L.L.C. (“Somerset”) to serve as the redeveloper of the Redevelopment Area; and

WHEREAS, a Master Redeveloper Agreement (“Master Agreement”) was entered into by Somerset and the Township in August of 2006, amended by the First Amendment to the Master Agreement on April 2016, and further amended by the Second Amendment to the Master Agreement on August 2016; and

WHEREAS, the Master Agreement requires the Redeveloper to pay the Township a contribution of approximately \$805,000, plus the Township’s interest and bonding costs, towards an offsite 16 inch water main (the “Water Infrastructure Contribution”) in accordance with Section 1.01 of the Master Agreement; and

WHEREAS, the Water Infrastructure Contribution remains outstanding and the Township has agreed to accommodate the Redeveloper as to the timing of the payment of the Water Infrastructure Contribution; and

WHEREAS, the Township and Redeveloper entered into a Third Amendment to the Master Agreement for the purpose of amending the timing of the payment of the Water Infrastructure Contribution; and

WHEREAS, the Township and Redeveloper desire to enter into a Sewer Improvement Reimbursement/Contribution Agreement for the purpose of memorializing the methodology to determine the reimbursement and fair share contribution for each property that will use or benefit from the sanitary sewer pump stations, and the amount and terms of the fair share contribution to be paid to Redeveloper.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the Township of Aberdeen, County of Monmouth, State of New Jersey, that the Contribution Agreement to the Third Amendment to the Master Agreement is hereby approved substantially in the form attached hereto as “**Exhibit A**”; and be it further

RESOLVED, that the Mayor and the Township Clerk are authorized to execute and attest to same.

ATTEST:

TOWNSHIP OF ABERDEEN

Karen Ventura, Township Clerk

By:

Fred Tagliarini, Mayor

EXHIBIT A

SEWER IMPROVEMENT REIMBURSEMENT/CONTRIBUTION AGREEMENT

THIS SEWER IMPROVEMENT REIMBURSEMENT/CONTRIBUTION AGREEMENT (the “**Agreement**”) is made as of this ___ day of _____, 2020 by and between the **TOWNSHIP OF ABERDEEN** (the “**Township**”), a body corporate and politic of the State of New Jersey with offices at 1 Aberdeen Square, Aberdeen, New Jersey 07747, and **SOMERSET DEVELOPMENT, LLC** (the “**Redeveloper**”) with offices at 101 Crawfords Corner Road, Holmdel, NJ 07733 (collectively referred to as the “**Parties**”).

RECITALS

A. **WHEREAS**, Redeveloper is the designated redeveloper of certain real property located in the Township of Aberdeen, Monmouth County, New Jersey that is identified on the Township of Aberdeen Tax Map as Block 155, Lot 1 (the “Property” or “Master Lot”); and

B. **WHEREAS**, the Property is situated in the Township Landfill Redevelopment Area (the “Redevelopment Area”), which the Aberdeen Township Governing Body designated an area in need of redevelopment; and for which the Aberdeen Township Governing Body adopted Ordinance No. 14-2010 adopting a the Glassworks Mixed Use Redevelopment Plan for the Property as amended from time to time thereafter (the “Redevelopment Plan”); and

C. **WHEREAS**, the Aberdeen Township Governing Body designated Somerset Development as the “Redeveloper” of the Master Lot; and

D. **WHEREAS**, the Parties entered into a redevelopment agreement dated August 30, 2006 and as amended by First Amendment dated April 2016 and Second Amendment dated August 2016 (collectively referred to as the “Redevelopment Agreement”), whereby Somerset Development agreed, subject to relevant approvals and other conditions in the Redevelopment Agreement to develop a mixed use project on the Property as permitted in the Redevelopment Plan (the “Project”); and

E. **WHEREAS**, pursuant to Section 9.09(a) of the Redevelopment Agreement, the Redeveloper constructed two sanitary sewer pump stations known as the Cliffwood Beach Pump Station (the “Cliffwood Beach Pump Station”) and River Gardens Pump Station (the “River Garden Pump Station”) and collectively referred to herein as the “Pump Stations”) which serves the Project as well as surrounding properties; and

F. **WHEREAS**, the Redevelopment Agreement provides for reimbursement and the fair share contribution (the “Fair Share Contribution”) from other third party property owners that will use the Cliffwood Beach Pump Station and/or the River Gardens Pump Station and that the Township will condition any action on building permit applications or site plan or subdivision applications that the Township may receive from properties that will use or benefit from the Pump Stations (the “Benefitting Properties”) so that the Benefitting Properties pay its fair share of the cost of the Cliffwood Beach Pump Station and/or the River Gardens Pump Station to the Redeveloper.

G. **WHEREAS**, 241 Cliffwood Avenue Townhouses, c/o Salvatore Alfieri, Esq., 955 State Route 24, Suite 200 Matawan, New Jersey 07747) is the first Benefitting Property to benefit from the Cliffwood Beach Pump Station; and

H. **WHEREAS**, this Agreement shall memorialize the methodology to determine the Fair Share Contribution for each Benefitting Property and the amount and terms of the Fair Share Contribution to be paid by 241 Cliffwood Avenue Townhouses to Redeveloper as a Benefitting Property connecting to the Cliffwood Beach Pump Station.

I. **NOW, THEREFORE**, Township and Redeveloper, for and in consideration of the mutual covenants and obligations contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, agree as follows:

Section 1 CONSTRUCTION OF THE CLIFFWOOD BEACH PUMP STATION AND RIVER GARDENS PUMP STATION

1.1 The Redeveloper has, at its cost and expense, constructed the Cliffwood Beach Pump Station and the River Gardens Pump Station and the Township has inspected the installation of the Pump Stations and has approved the Pump Stations. The full cost of the Pump Stations have been agreed upon and approved by the Parties as attached hereto as Exhibit "A" (the "Pump Station Costs").

1.2 The Township agrees that Redeveloper has satisfied its obligation under the Redevelopment Agreement for the Pump Stations and is entitled to a fair share reimbursement from each Benefitting Property in accordance with this Agreement.

Section 2 METHODOLOGY AND REIMBURSEMENT

2.1 Pursuant to the Redevelopment Agreement the Township agreed and hereby re-affirms the Township's agreement to condition any action on building permit applications and site plan and/or subdivision applications that the Township may receive from any Benefitting Properties that any such Benefitting Property pay their fair share of the Pump Stations Costs as calculated pursuant to the methodology provided herein.

2.2 The Township and the Redeveloper agree that the Parties agree that the Fair Share Contribution for the Pump Station Costs shall be calculated based upon the following methodology: (1) multiply the projected sanitary sewer flow in gallons per day ("GPD") to the Benefitting Property by the peaking factor of 2.5; (2) divide the result by 1440 minutes per day to find the flow to the Benefitting Property in gallons per minute; and (3) divide the result by the Pump Station's net increase in gallons per minute due to the modifications to the Pump Station (351 GPM). The result is the percentage of Pump Station Costs for which the Benefitting Property is responsible (the "Fair Share Calculation").

2.3 Based upon the Fair Share Calculation, the Township and Redeveloper agree that the fair share cost for the 241 Cliffwood Avenue Townhouses to connect to the Cliffwood Beach

Pump Station shall be 5.787% of the Pump Station Costs, or \$39,789.60 (the "241 Cliffwood Avenue Fair Share Cost").

2.4 The Township agrees that the issuance of building permits to any 241 Cliffwood Avenue Townhouses shall be conditioned upon the 241 Cliffwood Avenue Fair Share being paid in full to Redeveloper. Redeveloper agrees to promptly notify the Township upon receipt of the 241 Cliffwood Avenue Fair Share Cost.

Section 3 NOTICES

4.1 Any notice or transmittal of any document required, permitted or appropriate hereunder and/or any transmittal between the Parties relating to this Agreement (herein "Notice(s)") shall be written and shall be served upon the respective Party by certified mail, return receipt requested, or recognized overnight or personal carrier.

Copies of all notices, demands and communications shall be sent as follows:

If to the Township:

Township of Aberdeen
1 Aberdeen Square
Aberdeen, New Jersey 07747
Attn: Township Clerk

with a copy to: J.S. Lee Cohen, Esq.
DeCotiis, FitzPatrick & Cole, LLP
500 Frank W. Burr Blvd.
Teaneck, New Jersey 07666
Fax: (201-928-0588
Email: lcohen@decotiislaw.com

If to the Redeveloper:

Ralph Zucker
Somerset Anchor, LLC
101 Crawfords Corner Road
Holmdel, NJ 07733

with a copy to: Michael A. Bruno, Esq.
Giordano Halleran & Ciesla, PC
125 Half Mile Road, Suite 300
Red Bank, New Jersey 07701-6777
Fax: (732) 224-6599
Email: mbruno@ghclaw.com

Section 5

MISCELLANEOUS

5.1 **Assignment:** Redeveloper shall be permitted to assign this Agreement with the prior written consent of the Township which consent shall not be unreasonably withheld or delayed. The Township shall not be permitted to assign this Agreement.

5.2 **Binding Effect:** This Agreement shall be binding upon and inure to the benefit of Redeveloper and Township and their respective successors and permitted assigns.

5.3 **Governing Law:** This Agreement shall be governed by and be construed in accordance with the laws of the State of New Jersey applicable to agreements made and to be performed within the State of New Jersey without giving effect to rules, laws, precedent, practice or provisions relating to the conflict of laws.

5.4 **Counterparts:** This Agreement may be executed in any number of counterparts, each of which shall be an original, and such counterparts together shall constitute one and the same instrument. Facsimile signatures and signatures shall be binding.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement, as of the day and year first-above written.

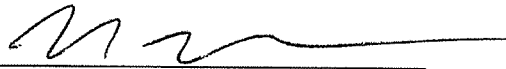
Witness or Attest:

TOWNSHIP OF ABERDEEN

By: _____
Name: Fred Tagliarini, Mayor

Witness or Attest:

SOMERSET DEVELOPMENT, LLC

By:  _____
Name: Ralph Zucker, Managing Member

CLIFFWOOD BEACH	
WORK DESCRIPTION	COST
MOBILIZATION	\$30,000.00
CLEARING	\$1,650.00
DEMOLITION & DISPOSAL	\$16,600.00
BUILDING MODIFICATIONS	\$6,200.00
ELECTRICAL EQUIPMENT PAD	\$7,350.00
GENERATOR PAD	\$11,000.00
GENERATOR	\$61,000.00
TRANSFER SWITCH	\$4,000.00
BY-PASS PUMPING	\$35,200.00
WET WELL MODIFICATIONS	\$4,600.00
PUMPS	\$148,000.00
PIPING	\$45,800.00
ELECTRICAL CONDUIT	\$15,000.00
PUMP DISCONNECT & SWITCHES	\$12,000.00
ELECTRICAL SERVICE	\$28,800.00
ELECTRICAL CONTROLS	\$25,000.00
ELECTRICAL WORK INITIAL PHASE	\$22,000.00
ELECTRICAL WORK SECOND PHASE	\$15,000.00
ELECTRICAL WORK COMPLETION PHASE	\$23,000.00
PAVEMENT	\$5,000.00
FENCING	\$6,500.00
CALIBRATION, TESTING, START-UP & WARRANTIES	\$3,500.00
SUBTOTAL CONSTRUCTION CONTRACT	\$527,200.00
CO1 - INTERIOR PAINTING REQUEST BY TOWNSHIP	\$2,800.00
JCPL FIXED COSTS	\$1,067.32
ENGINEERING DESIGN	\$62,500.00
ENGINEERING CONSTRUCTION SERVICES	\$9,250.00
MANAGEMENT FEE 7.5%	\$84,751.30
STATION TOTAL	\$687,568.62

RIVER GARDENS PUMP STATION	
WORK DESCRIPTION	COST
MOBILIZATION	\$15,000.00
CLEARING	\$250.00
DEMOLITION & DISPOSAL	\$16,600.00
BUILDING MODIFICATIONS	\$6,200.00
ELECTRICAL EQUIPMENT PAD	\$7,350.00
GENERATOR PAD	\$11,000.00
GENERATOR	\$47,000.00
TRANSFER SWITCH	\$4,000.00
BY-PASS PUMPING	\$26,050.00
WET WELL MODIFICATIONS	\$4,600.00
PUMPS	\$107,000.00
PIPING	\$8,000.00
ELECTRICAL CONDUIT	\$13,000.00
PUMP DISCONNECT & SWITCHES	\$10,000.00
ELECTRICAL SERVICE	\$24,700.00
ELECTRICAL CONTROLS	\$25,000.00
ELECTRICAL WORK INITIAL PHASE	\$24,000.00
ELECTRICAL WORK SECOND PHASE	\$14,000.00
ELECTRICAL WORK COMPLETION PHASE	\$19,000.00
PAVEMENT	\$1,250.00
FENCING	\$6,500.00
CALIBRATION, TESTING, START-UP & WARRANTIES	\$3,500.00
SUBTOTAL CONSTRUCTION CONTRACT	\$394,000.00
CO1 - INTERIOR PAINTING REQUEST BY TOWNSHIP	\$2,800.00
CO2 - TOWNSHIP REQUEST TO CHANGE PIPING	\$117,300.00
JCPL FIXED COSTS	\$1,067.32
ENGINEERING - DESIGN	\$62,500.00
ENGINEERING - CONSTRUCTION SERVICES	\$9,250.00
MANAGEMENT FEE 7.5%	\$73,568.80
STATION TOTAL	\$660,486.12