

LAND DEVELOPMENT

28 Attachment 2

Borough of Watchung

APPENDIX B
(Section 28-807B)

Prepared by: _____ _____, Esq.

DEVELOPER'S AGREEMENT

THIS AGREEMENT, made on _____, _____
between

THE BOROUGH OF WATCHUNG, a Municipal Corporation of the County of Somerset, State of New Jersey, having its principal offices at 15 Mountain Boulevard, Watchung, New Jersey 07060, hereinafter called the "Borough",

and

_____, residing or having its offices at _____, New Jersey _____, hereinafter called the "Developer".

WHEREAS, the Developer received Preliminary Major Subdivision Approval from the Watchung Borough Planning Board on _____, Application # _____ for Block _____, Lot _____, known as _____, located on _____; and

WHEREAS, the approved plans are designated as ___ sheets, prepared by _____ dated _____ with a latest revision date of _____; and

WHEREAS, the approval was granted subject to, among other things, the execution of this Agreement between the Borough and the Developer and the posting of certain guarantees as hereinafter set forth and other conditions as more fully set forth in the resolution of said Planning Board;

NOW, THEREFORE, in consideration of the foregoing and the sum of One (\$1.00) Dollar lawful money of the United States of America, each to the other in hand paid, at or before the signing of this Agreement, the receipt whereof is hereby acknowledged by each party, and in consideration of the mutual covenants, agreements, conditions, understandings and undertakings hereinafter contained and set forth, the parties hereto hereby agree as follows:

1. That the Developer shall at the time of final approval and prior to the signing of the final map or plans, provide the following for all on-tract improvements:

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(a) Performance Bond secured by appropriate surety in the sum of \$_____ as a guaranty for the installation of the public improvements in said project. In the event the Developer has installed any of the required improvements prior to the application for final approval, this amount shall be reduced in accordance with the Borough Engineer's cost estimate for work completed; and

(b) Cash escrow in the amount of ten (10%) percent of the performance bond amount as additional performance guarantee.

The Developer shall, prior to the commencement of any off-tract improvements or improvements within any existing public right-of-way, provide the following:

(a) Performance bond secured by appropriate surety in the sum of _____ as a guaranty for the completion of the installation of the off-tract improvements or improvements in the public right-of-way; and

(b) Cash escrow in the amount of ten (10%) percent of the performance bond amount as additional performance guarantee.

The Developer shall further post with the Borough inspection fees in the sum of \$_____ (Initial Deposit of \$_____). These fees may be paid in installments in accordance with N.J.S.A. 40:55D-53.

Any improvements undertaken by the Developer on the tract prior to the receipt of final approval are undertaken at the Developer's risk.

2. That the Developer shall cause to be installed at its own expense in any street or streets, sewer lines and house connections to the curb at each of its individual units, if required, and any trunk sewer line, if any, leading through and within said development and shall maintain the same until the said lines are accepted by the Borough.

3. That the improvements to be made in any streets shall consist of grading each street for its entire width, laying water mains, storm and drainage sewers, sanitary sewers and connections, if required, constructing Belgium block curbing and paving the roadway with a bituminous concrete pavement from curb to curb as may be specified in any Preliminary and Final Site Plan documents or Preliminary and Final Subdivision documents, all of which work shall be performed in accordance with any conditions contained in the resolution of the Planning Board and all ordinances, resolutions, rules and regulations of the Borough, the Board of Health, the Sewer Authority, and any State or County Department or Agency respecting the opening and improvement of streets and construction of utilities and further subject to issuance of a road opening permit by the Superintendent of Public Works. All of the said work shall be performed subject to the inspection and approval of the Borough Engineer. All catch basins shall be initially set at subgrade and shall be raised to finished height at time of installation of top course.

4. That after the completion of the public improvements, the Developer shall post with the Borough a maintenance bond appropriately secured in form and amount satisfactory to

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the Borough, conditioned on the Developer maintaining all of such streets, sewers and mains and other improvements within such completed section for a period of two (2) years therefrom. Upon posting and acceptance of said maintenance bond, the performance bond shall be released.

5. That the Developer further agrees to convey to the Borough for street and highway purposes all of the lands lying in the beds of all of the streets set forth on said map or plans. The Developer shall convey in writing by deed or easement as may be specified by the approval all drainage, storm and sanitary sewers, sidewalk easements, conservation or trail easements, sight easements and other public areas to the Borough or to the County of Somerset, when requested by the Borough, all as shown on said maps or plans.

6. That the Developer further covenants and agrees that all buildings erected by it on the said tract, to which this Agreement applies by reference, shall be constructed and equipped strictly in accordance with all conditions of approval by the Planning Board and the provisions of all ordinances, resolutions, rules and regulations of the Borough, the Planning Board, the Board of Health, and any State, Borough or County Department or agency, relating to the construction and equipment of buildings.

7. That the Developer agrees to keep any streets, whether Borough streets or streets under construction, used by trucks or equipment of the Developer or his agents, broom clean and also agrees to use every effort to lay approved material to prevent dust from blowing on other houses in the Borough during excavation and construction of the development. Should the Developer fail or neglect to do either as stated in this Paragraph, upon twenty-four (24) hours written notice from the Borough Engineer, informing it of failure to do so, and then further neglects, the Borough may perform such work and Developer agrees to reimburse the Borough for same. This Paragraph is not intended to relieve the Developer of duties or obligations under any existing municipal ordinance but is rather intended to provide an additional remedy to the Borough and to permit the Borough to recover the costs of such corrective work. This Paragraph shall also apply to the removal of snow and ice from any street or roadway constructed by the Developer which is open to the public but which has not been accepted by the Borough. Any Developer permitting dirt, dust, debris, mud, rock or similar material to accumulate or remain upon any Borough street shall remain subject to a citation returnable in municipal court for violation of appropriate municipal ordinances.

8. That the Planning Board and Borough Council agree to approve, when requested to do so, any necessary maps or deeds for the purpose of filing in the Somerset County Clerk's Office, provided that the Developer is then in compliance with all the requirements and provisions of this Agreement and applicable ordinances and statutes and the conditions of any approvals by the Planning Board then applicable.

9. That the Developer shall provide, for the use of all persons employed in the construction of all of the aforesaid improvements, easily accessible water closets and portable toilets. Such toilet facilities shall be installed within twenty-four (24) hours of the time work has been commenced, and their use shall be terminated upon approval of the Board of Health within twenty-four (24) hours of the time work has been completed.

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10. That the Borough agrees to authorize and direct the Construction Official of the Borough of Watchung to issue building permits for the erection of dwelling units or other structures on lots or the site shown on the applicable portion of said maps or plans upon the compliance by the Developer with all the terms and conditions herein contained and contained in the terms of preliminary and final subdivision approval or preliminary and final site plan approval, including applicable ordinances, rules and regulations. The Developer shall provide and file with the Borough Engineer two (2) complete sets of as-built improvement plans and profiles, one (1) set of translucent prints and one (1) set of black-on-white paper prints, showing actual construction, as approved, prior to release of performance guarantees.

11. That it is further agreed between the parties hereto that the final approval by the Borough of storm and sanitary sewers and connections and drainage easements, roadways and other public improvements shall constitute a dedication thereof to public use unless otherwise provided in the resolution of the Planning Board and that the ownership and title thereto is thereafter vested in the Borough, and shall be confirmed by deed or other recorded instrument to the Borough or to the County as appropriate.

12. That before commencing construction, the Developer shall deposit with the Borough Clerk the sum of \$_____ (Initial deposit of \$_____) for services to be rendered by the Borough Engineer or his authorized representatives or other approving authority in connection with inspection of the improvement of the Developer's tract, and a charge of 1.6 times the employee's hourly rate for the Borough Engineer or as established by ordinance for other individuals will be charged against said deposit. Upon completion of all improvements and release of any maintenance bonds or escrows, the Borough shall return to the Developer the unused portion of any previously deposited inspection costs and fees. In the event the inspection costs and fees exceed the amount deposited by the Developer, the Developer shall be required to submit payment to the Borough for said additional inspection costs and fees prior to the release of any maintenance bonds and escrows. Inspection services of the Borough whether by the Borough Engineer, and/or Board of Health shall comprise, but in no way be limited to:

a. Inspections of road and drainage construction and other inspections as may be required by the Borough in the enforcement of its standards.

b. As to sanitary sewer construction in said development:

(1) Review and approval of plans and specifications;

(2) Inspection services during said construction;

(3) Costs of laboratory, pipe, leakage, and infiltration tests, following construction to enforce compliance with the Borough sanitary sewer standards.

13. That the Developer is hereby given the right and privilege to transfer title to said tract to the name of any individual or corporation, and said new owner shall have the rights and obligation afforded by this Agreement, and the right to transfer title to all or part of the lands,

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subject to the rights and obligations imposed on the Developer by this Agreement and the terms of its preliminary and final subdivision or site plan approval. It is understood and agreed that, as part of the transfer of title, the grantee must agree to be bound by all of the terms and conditions of this Agreement. Upon request the Borough shall be provided with an assumption of obligation as signed by such grantee. In the event that the Developer hereunder transfers, sells, or assigns title to less than the entire project, the grantee(s) of any portion thereof shall each be liable in full to complete the obligations of the Developer herein whether such obligations relate to the portion transferred, sold, or assigned or to any other portion of the project unless such grantee secures a release from the Borough for the obligations relating to the portion not transferred, sold or assigned to grantee prior to the transfer, sale, or assignment.

14. That it is further understood and agreed between the parties hereto as follows:
 - a. The Developer will comply with the Revised General Ordinances, Borough of Watchung and all other applicable ordinances;
 - b. Developer agrees to place all utilities underground.
 - c. Road excavation and grading operations shall be under the direct supervision of a licensed professional engineer so that rainfall run-off will not create serious problems of erosion, flooding or the deposition of mud and debris on abutting properties. Said engineer shall advise the Borough Engineer of the measures to be taken which will afford this protection.
 - d. Connections to existing sanitary sewers shall be plugged at the start of construction and shall not be opened until the line has passed a leakage test and has been inspected and approved by the Sewerage Authority Engineer or his authorized agent.
 - e. Where required by the Construction Official and Borough Engineer, a site development plan shall be submitted before issuance of a building permit in order to insure adequate means of ingress and egress to property with extreme topography.
 - f. The Developer shall, for a period of one (1) year after acceptance of the public improvements as hereinafter set forth, insure that all dead trees on any public right-of-way within said development shall be removed.
 - g. No building permits will be issued or impervious surface (excluding curbs) shall be constructed until all detention facilities and drainage improvements are fully constructed and operational.
 - h. No construction vehicle or equipment shall park on or utilize, except in coming to or going from the site, any existing Borough street unless required to do so by the approved plans or unless otherwise provided in the Resolution of Approval.

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15. That the Borough Engineer shall direct the Developer when to install the final wearing surface of the final pavement and will determine the approximate date when the same shall be laid. Said work to be completed by the Developer within thirty (30) days of the date Borough Engineer directs the Developer to install said surface, weather permitting. Such direction shall not constitute acceptance of the improvements by the Borough.

16. That drainage and grading shall be as follows:

a. All springs or water emanating therefrom shall be piped to the nearest available storm sewer or as otherwise set forth in the approved plans in a manner approved in writing by the Borough Engineer.

b. Water from driveway sumps and basement sump pumps shall be piped to the nearest existing storm drains, and where such drains do not exist, new drains shall be constructed at such points and in such manner as may be directed by the Borough Engineer.

c. The Developer will insure that all lots and other areas in said development will be properly graded and properly drained and will in this regard obey all reasonable instructions of the Borough Engineer relating thereto.

d. The Developer shall also see to it that no stumps, dead trees or debris are deposited upon or be permitted to remain upon any portions of said development nor upon the undeveloped portion, nor shall any stumps, dead trees or debris be deposited below the surface of the earth.

e. In the event that any drainage problem shall be created on adjoining properties by development of this subdivision or site, corrective measures shall be provided within the area limits of the subdivision or site, at such places and in such manner as the Borough Engineer may approve.

f. The Developer will remove silt deposited in the Borough's storm sewers, brooks and catch basins or other drainage areas, resulting from the wash down of soil or debris in the course of the construction. Any reasonable instructions given by the Borough Engineer to prevent such wash down shall be promptly carried out.

17. That within two (2) years from the date of commencement of site work the Developer shall complete to the satisfaction of the Borough Engineer and the Borough Council all improvements as required by the Planning Board, the Borough Engineer and as imposed by this Agreement unless such time limit is extended by the Borough Council.

18. That the Developer shall appoint a job superintendent, whose name, home address and phone number shall be furnished to the Borough Engineer; and no work, other than sales, shall be performed in the subdivision or on the site by the Developer, his agents, employees, servants or sub-contractors between the hours of 6:00 p.m. and 7:00 a.m. Monday through Saturday and all day Sunday.

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19. That this Agreement contains the entire agreement between the parties hereto and no statement, promise or endorsement made by any party hereto, or agent of any party hereto, which is not contained in this written contract or the instruments incorporated herein by reference, shall be valid or binding; and this Agreement may not be enlarged, modified or altered except in writing, signed by the parties and endorsed thereon. Nothing herein shall be deemed a waiver of other existing municipal construction requirements or any conditions contained in the Resolution of Approval.

20. That this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the respective parties hereto.

21. It is understood and agreed that the obligations imposed upon the Developer under the within agreement shall not constitute an estoppel against the Borough of Watchung Planning Board or the Borough Council nor relieve the Developer from Complying with all other federal, state, county, and local requirements.

22. Prior to the commencement of site work, the Developer shall meet with the Borough Engineer for a pre-construction conference to discuss the anticipated construction schedule, procedures of construction, and any particular requirements of the Engineer.

23. The Borough, its consultants, employees and agents shall be given free access to observe construction of roads, sanitary sewers, water mains, storm sewers, landscaping for buffer areas and appurtenances associated with the approved plat. The purpose of such observations shall be limited to providing the Borough with an opportunity to determine that such improvements will be constructed in accordance with the Developer's approved submittals. The Borough or its representatives, consultants, employees or agents shall not supervise, direct or have control over the Developer's work during such observations or as a result thereof, nor shall they have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by the Developer, for safety precautions and programs incident to the work of the Developer or for any failure of the Developer to comply with applicable laws, rules, regulations, ordinances, codes or orders.

The Developer shall hold harmless, indemnify and defend the Borough, its representatives, consultants, employees and agents from any and all liabilities, claims, losses or damage arising or alleged to arise from the construction of the improvements included in the relevant approval but not including such liabilities, claims, losses or damage arising from the sole negligence of the Borough, its representatives, consultants, employees and agents.

The Developer shall purchase and maintain during construction of said improvements a Comprehensive General Liability Insurance Policy with minimum limits of One Million (\$1,000,000.00) Dollars per occurrence and One Million (\$1,000,000.00) Dollars aggregate. The coverage shall include endorsements for Broad Form Property Damage; explosion, collapse, and underground hazards; completed operations; and contractual liability. The contractual liability coverage shall specifically apply to the above indemnification clause. All liability coverages shall be on an occurrence basis.

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Certificates of Insurance evidencing the above-referenced coverage shall be provided to the Borough before work on the improvements begins.

24. This Agreement is intended to govern approved development within the Borough whether such approval was in the form of preliminary and/or final major subdivision and/or preliminary and/or final site plan, and such terms are to be freely substituted for each other where the context and the nature of the approvals require.

IN WITNESS WHEREOF, the Borough and Developer have caused these presents to be signed and attested by their respective corporate officers and their respective corporate seals to be affixed hereto the day and year first above written.

ATTEST:

BOROUGH OF WATCHUNG

Borough Clerk

BY: _____
Mayor

ATTEST:

BY: _____

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STATE OF NEW JERSEY)
) ss:
COUNTY OF)

I CERTIFY that on _____, _____, personally came before me, and this person acknowledged under oath, to my satisfaction, that:

- (a) this person is the Secretary of _____, the Corporation named in this document;
- (b) this person is the attesting witness to the signing of this document by the proper corporate officer who is _____, the President of the corporation;
- (c) this document was signed and delivered by the corporation as its voluntary act duly authorized by a proper resolution of its Board of Directors;
- (d) this person knows the proper seal of the corporation which was affixed to this document;
- (e) this person signed this proof to attest to the truth of these facts; and
- (f) the full and actual consideration paid or to be paid for the transfer of title to realty evidenced by the within deed, as such consideration is defined in P.L. 1968, c. 49, sec. a(c), is One Dollar (\$1.00).

Signed and sworn to before me on
this _____ day of _____, _____.
