

RESOLUTION NO. 2019 - 354

**RESOLUTION OF THE TOWNSHIP OF BARNEGAT,
COUNTY OF OCEAN, STATE OF NEW JERSEY,
AUTHORIZING THE EXECUTION OF A
DEVELOPER'S AGREEMENT FOR US HOMES CORP.,
D/B/A/LENNAR WITH REGARD TO INSTALLATION
OF WATER AND SEWER IMPROVEMENTS AND
OPERATION OF A TEMPORARY PUMP STATION.**

WHEREAS, the Township Committee of the Township of Barnegat, County of Ocean, State of New Jersey ("the Township"), is desirous of entering into a Developer's Agreement with US Homes, Corp. d/b/a Lennar (the "developer"), for the installation of water and sewer improvements by the developer to Block 113, Lot 4.01 for the Township; and

WHEREAS, the Township will operate a temporary pump station as installed by the developer and located at Block 113.11, Lot 54; and

WHEREAS, the Township Attorney has prepared a developer's agreement which is attached hereto; and

WHEREAS, it is the desire of the Township Committee to authorize the execution of the developer's agreement.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and the Township Committee of the Township of Barnegat, County of Ocean, and State of New Jersey as follows:

1. The Township Committee hereby authorizes the execution of the developer's agreement which is attached hereto and made a part hereof by the Mayor, Township Clerk, and the Township Administrator.
2. A certified copy of this Resolution shall be forwarded by the Township Clerk to the following:

**LAW OFFICES OF
CHRISTOPHER J. DASTI**

COUNSELLOR AT LAW

**900 NEWARK AVENUE
P.O. BOX 779
FORKED RIVER, N.J. 08731**

- (a) Alfonso Cirulli, Mayor
- (b) Martin Lisella, Township Administrator
- (c) Kurt Otto, P.E., Township Engineer
- (d) Roger Budd, Supervisor of Water & Sewer Department
- (e) Christopher J. Dasti, Esq., Township Attorney
- (f) Sean Kean, Esq., Water & Sewer Attorney
- (g) Tyler Prime, Esq., Prime & Tuvel law firm

CERTIFICATION

I CERTIFY that the forgoing Resolution was duly adopted by the Township of Barnegat at a meeting held on November 7, 2019, a quorum being present and voting in the majority.

Michele Rivers, Township Clerk

Prepared by:

**THE LAW OFFICES OF
CHRISTOPHER J. DASTI**

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COUNSELLOR AT LAW

900 NEWARK AVENUE
P.O. BOX 779
FORKED RIVER, N.J. 08731

DEVELOPER'S AGREEMENT

THIS AGREEMENT is made on this 7 day of November, 2019, by and between the **TOWNSHIP OF BARNEGAT** ("the Township") Municipal Corporation of the State of New Jersey, having an address of 900 West Bay Avenue, Barnegat, New Jersey 08005 and **US HOME CORP., d/b/a LENNAR** ("the Developer"), having an address of 2465 Kuser Road, 3rd Floor, Hamilton, New Jersey 08690.

WITNESSETH:

WHEREAS, Developer is the owner of property identified as Block 113.06, Lots 86, 87, 95.014 on the tax Map of the Township of Barnegat ("Property"); and

WHEREAS, the Property of the Developer is known as the Venue at Lighthouse, Section 2 development; and

WHEREAS, Developer received approvals from the Barnegat Township Planning Board on November 21, 2006 in Resolution Z-2006-27 and April 16, 2010 in Resolution Z-2010-6; and

WHEREAS, as part of its approvals Developer has agreed to install water and sewer improvements to adjacent property owned by Barnegat Township known as Block 113, Lot 4.01, (the "Township Property"); and

WHEREAS, it is the desire of the parties that the condition of the aforementioned Resolutions providing for Developer to install the water and sewer improvements to the Township property be incorporated into this Developer's Agreement and that this Agreement also serve as a memorialization of the understanding between the Developer and the Township with regard to the construction of the improvements contemplated herein; and

WHEREAS, it is understood by the parties that this Agreement shall be read in conjunction with the Resolutions of Approval and rules and regulations set forth in the Township code and the requirements of the Municipal Land Use Law.

NOW, THEREFORE, in consideration of One (\$1.00) Dollar and other good and valuable consideration, the receipt of which is hereby acknowledged, and of the mutual promises and covenants contained herein, it is agreed by the Developer and the Township as follows:

1. **Approvals Required.** Developer shall obtain all necessary Federal, State, County, and local approvals before the commencement of construction.
2. **Comply with Land Use Approvals.** Developer agrees to meet all of the conditions of approvals set forth in Resolution Z-2006-27 and Resolution Z-2010-6 of the Barnegat Township Planning Board
3. **Installation of Water & Sewer Infrastructure.** Developer agrees to install water and sewer lines connecting to the Barnegat Township Property known as Block 113, Lot 4.01, and is otherwise known to be the future site of Barnegat Township Public Works Building. The improvement shall be in accordance with the water and sewer connection plan prepared by FWH and are attached hereto as Exhibit "A".
4. **Easements.** Developer to work with Township in providing and filing the necessary easements upon which the proposed water and sewer extension will be located. Easements shall be provided to Township water and sewer Engineer and Attorney for review and filing and are attached hereto at Exhibit "B".
5. **Performance & Maintenance Guarantees.** Developer shall have the option of either posting a performance guarantee or completing construction of the improvements prior to obtaining building permits in Sections 2. A performance guarantee may be in the form of an

irrevocable letter of credit "LOC" or a bond issued by a bond company licensed to do business in New Jersey. The amount guaranteed shall equal 120% of the cost of installation of the improvements. Ten percent (10%) of that amount shall be in cash. The cost of improvements shall be determined as set forth in the Municipal Land Use Law. Any bond so posted shall be reduced and/or released at the request of the Developer as the improvements are completed, in accordance with Municipal Land Use Law

6. Developer shall also post with the Township reasonable inspection fees to cover the costs of inspection of improvements. Said fees and bonds shall be payable in conformance with the requirements of N.J.S.A. 40:55D-53 and deposited by the Township in conformance with the requirements of N.J.S.A. 40:55D-53.1. Upon completion of the improvements for the entire project, Developer shall post a maintenance guarantee providing for maintenance of the improvements for a two (2) year period, if applicable. The amount of the bonds or LOC shall be determined by the Township Engineer. The form of the bonds or LOC shall be approved by the Township Attorney.

The form of the bonds or LOC shall be approved by the Township Attorney and shall guaranty performance of the obligations set forth in this Agreement.

7. **Acceptance of Improvements.** The parties agree that Developer shall dedicate to the Township all public improvements as shown on the Approved Plans and that the Township shall accept same pursuant to Resolution of the Township Committee, to be adopted upon completion of the improvement as certified by the Township Engineer.

8. **Cooperation.** The Township will cooperate with Developer and diligently review, prepare and/or sign, as applicable, any and all required plans, designs, specifications and

applications for the various infrastructure and off-site improvements contemplated herein and by the approval and/or as shown on the plans approved by the Township.

10. Temporary Pump Station. The Township shall operate the Temporary Pump Station located at Block 113.11, Lot 54 installed by Developer that handles the wastewater from The Venue at Barnegat development. The Township shall provide the day to day operation and the cleaning of the pump station. Developer shall be responsible for any and all service, repairs, upgrades, to the pump station due to breakdowns. Developer shall be responsible for construction defects during the maintenance period of this agreement . Upon completion of downstream facilities that are approved and accepted by the Township, Developer shall decommission the pump station and all associated improvements, unless Developer has sold and closed on the last home in the Venue at Barnegat Community. Developer agrees to guarantee financing and/or the hiring of a contractor to complete all repairs to the pump station and equipment until the last certificate of occupancy is issued, including but not limited to pumps, emergency generators, controls and control panel and building and accompanying outside apparatus in accordance with standard industry practices. Developer agrees to appropriate the funds for the decommissioning of the pump station when it is no longer required. That determination will be agreed upon between the Township and the Developer.

11. Hold Harmless. The Developer agrees to make payment of all proper charges for labor and materials required in the aforementioned work, indemnify, defend and save harmless the Township, its officers, agents and servants, and each and every one of them, against and from all suits and costs of every description including but not limited to costs of legal and any claims under, the Americans with Disabilities Act, and from all damages which the Township or any of its

officers, agents and servants may be put, by reason of injury to the person or property of others resulting from the carelessness in the performance of the work, or through any improper or defective machinery, implements or appliances used by the Developer in the work, or through any act or omission on the part of the Developer or their agent or agents. This . This section shall not apply to the day to day operation of the pump station, including but not limited to cleaning and ordinary maintenance.

12. **Dedication.** Should the pump station still be in operation upon the closing of the last home at the Venue at Barnegat, Developer shall be entitled to offer for dedication, the pump station in the usual course of business as it would for all other public improvements and any obligation to decommission previously detailed in this Agreement shall be null and void.

13. **Insurance Requirements.** The Developer agrees to provide necessary insurance , as agreed to and attached as Exhibit "C"

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

14.2 This Agreement may not be modified or amended nor any provision thereof be waived except by written agreement fully executed by all parties hereto.

14.3 This Agreement or any memorandum to this Agreement may be recorded by any party.

14.4 Any modifications to this Agreement must be in writing signed by the parties hereto.

14.5 All communications provided for or required herein shall be in writing and delivered by mail, postage prepaid, by first class, certified or registered mail, to the addresses of

the respective parties stated above or at such other address as any party may furnish to the other party in writing.

14.6 This Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey and venued in Ocean County.

14.7 All covenants and agreements herein intended to shall bind and inure to the benefit of the respective successors and/or assigns of the parties.

14.8 This Agreement may be simultaneously executed and delivered in several counterparts each of which, when so executed and delivered, shall constitute a single instrument.

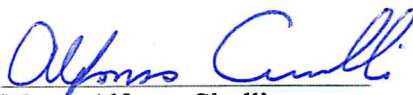
14.9 The parties hereto agree that the provisions of this Agreement are deemed and considered to be severable, and that if any of the provisions herein are declared invalid and/or unenforceable by a Court of competent jurisdiction, it is the intention of the parties that the remaining paragraphs and/or provisions remain in full force and effect.

IN WITNESS WHEREOF the parties have executed this Agreement on the day and year first above written.

WITNESS

BARNEGAT TOWNSHIP

By: _____

By: 
Mayor Alfonso Cirulli

US HOME CORP. d/b/a LENNAR

By: _____

By: _____