

**RESOLUTION NO. 2022-272**

**RESOLUTION OF THE TOWNSHIP OF BARNEGAT,  
COUNTY OF OCEAN, STATE OF NEW JERSEY,  
AUTHORIZING EXECUTION OF DEVELOPER'S  
AGREEMENT FOR PHASE 10 OF PARAMOUNT  
ESCAPES AT OCEAN BREEZE**

**WHEREAS**, the Township Committee of the Township of Barnegat, County of Ocean, State of New Jersey, (the "Township") has negotiated with Paramount Homes at Forest Hills, LLC (the "Developer") with regard to a Developer's Agreement for Phase 10 at the Paramount Escapes at Ocean Breeze development (the "Project"); and

**WHEREAS**, the parties have negotiated a Developer's Agreement in order to resolve issues related to the Affordable Housing Phasing schedule and outstanding building permits as well as installation of water improvements and additional issues; and

**WHEREAS**, the Township has prepared the Developer's Agreement which will provide that the Township can issue temporary certificates of occupancy as well as certificates of occupancy in order to get pending buyers in their homes to ensure that the Developer complies with the Affordable Housing Phasing schedule required by its approvals, the Township ordinances, and state regulations; and

**WHEREAS**, the Township finds it's necessary and appropriate to authorize the execution and recording of the Developer's Agreement; and

**NOW THEREFORE BE IT RESOLVED** on this 6<sup>th</sup> day of September 2022, by the Mayor and Township Committee of the Township of Barnegat, County of Ocean, State of New Jersey as follows:

- 1.** The Township authorizes the execution of the Developer's Agreement for Phase 10 of Paramount Escapes at Ocean Breeze located in the Township of Barnegat at Forest Hills, LLC.

2. The Township authorizes the Mayor, Township Administrator, Township Clerk, and any other Township official to execute any and all documents to implement the intent of this resolution. The Developer's Agreement will be recorded in the Office of the Ocean County Clerk.

3. The Developer's Agreement is on file with the Office of the Township Clerk and can be viewed during normal business hours.

4. A certified copy of this Resolution shall be forwarded by the Township Clerk to the following:

- (a) Albert Cirulli, Mayor;
- (b) Martin J. Lisella, Township Administrator;
- (c) Kurt Otto, Township Engineer;
- (d) Roger Budd, Water/Sewer Supervisor
- (e) Louis Fisher, Construction Official
- (f) Stephan R. Leone, Esq.
- (g) John Paul Doyle, Esq.
- (h) Mike A. Jedziniak, Esq.
- (i) Christopher J. Dasti, Esq., Township Attorney

**CERTIFICATION**

I certify that the forgoing Resolution was duly adopted by the Township of Barnegat at a meeting held on September 6, 2022, a quorum being present and voting in the majority.

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Donna M. Manno, RMC  
Municipal Clerk

Prepared by:

**DASTI & ASSOCIATES, P.C.**

## DEVELOPER'S AGREEMENT FOR

### PHASE 10 OF PARAMOUNT ESCAPES AT OCEAN BREEZE

**THIS DEVELOPER'S AGREEMENT** is made on **6th day of September 2022** (the "Effective Date"), between the **TOWNSHIP OF BARNEGAT**, a municipal corporation in the County of Ocean, State of New Jersey, having its principal offices at 900 West Bay Avenue, Barnegat, New Jersey 08005 (hereinafter "Township"), and **PARAMOUNT HOMES AT FOREST HILLS, LLC**, having its principal offices at 2431 Atlantic Avenue, Unit 1, Manasquan, New Jersey 08736 (hereinafter "Developer").

### FACTUAL RECITALS

**WHEREAS**, the Developer is the owner of the and development known as Section 10 of the Paramount Escapes Ocean Breeze subdivision, which is also known as Block 90, Lot 1301; Block 90.22, Lot 2; and Block 92, Lot 37 on the Tax Map of the Township of Barnegat ("the Property"); and

**WHEREAS**, the Developer applied for and received amended preliminary and major subdivision approval for Sections 6 through 8 to create new Section 10 pursuant to Barnegat Township Planning Board Resolution P-2008-12, Docket No. PB-03-19 which was approved on July 31, 2008 and the Resolution was adopted on February 26, 2008 a copy of said resolution of approval is attached hereto as Exhibit A and made a part hereof; and

**WHEREAS**, the Developer has received subdivision approval from the Barnegat Township Planning Board to permit the construction of a residential inclusionary development known as Paramount Escapes at Ocean Breeze ("the Project"); and

**WHEREAS**, the Project will include the construction of 506 units sold at market rates and

56 units affordable to low and moderate-income households in the region (“Affordable Units”);

and

**WHEREAS**, as of the date of the execution of this Agreement, 255 Certificates of Occupancy have been issued for market rate units and 7 Certificates of Occupancy have been issued for Affordable Units; and

**WHEREAS**, in order to comply with the affordable housing regulations, Developer must secure Certificates of Occupancy for an additional 21 affordable units (for a total of 28) before any additional final Certificates of Occupancy are issued for market rate units; and

**WHEREAS**, as a result of the Planning Board approval, Sections 6 through 10 include a total of 233 units and the total number of units in the entire development is 562 units; and

**WHEREAS**, pursuant to Planning Board approval the 29 Affordable Units originally located in Sections 6 through 8 would be relocated to the new Section 10 and the Developer is required to complete a total of 56 Affordable Units; and

**WHEREAS**, pursuant to approval, the Developer is required to build the Affordable Units in accordance with the Council on Affordable Housing (“COAH”) schedule and the Township’s development ordinances which requires as follows:

<b>Percentage of Affordable Housing Units Completed</b>	<b>Percentage of Market Housing Units Completed</b>
0%	25%
10% (7 Units)	25% + 1
50% (28 Units)	50%
75% (42 Units)	75%
100% (56 Units)	90%

**WHEREAS**, the Developer has fallen behind delivering the Affordable Units, and as a result there is an issue with regard to the issuance of Certificates of Occupancy for the market-rate units which have been built in violation of the Affordable Housing schedule; and

**WHEREAS**, the Township finds its necessary and appropriate to authorize execution of this Agreement in order to memorialize the agreement between the parties as to the build out of the development.

**NOW, THEREFORE**, on **this 6<sup>th</sup> Day of September 2022** in consideration of the foregoing 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 of which is hereby acknowledged by each party, and in consideration of the mutual covenants, agreements, conditions, understandings, and undertakings hereafter contained and set forth, the parties hereto hereby agree as follows:

1. As of the date of execution of this Agreement, Developer acknowledges that it has fallen behind in the affordable housing phasing schedule for Phase 10. Currently the Developer has completed and received Certificates of Occupancy for 255 market rate units and 7 Affordable Units.

There are currently 31 market rate units that have received building permits and are currently under construction and there are currently 24 Affordable Units under construction.

In order to comply with the affordable housing phasing schedule, the Developer is required to receive a Temporary or Final Certificate of Occupancy for 21 of the current 24 Affordable Units under construction in order to comply with the affordable housing phasing schedule.

2. **Water Lines and Electric Hookup.** The Developer previously received water extension permits and treatment works approvals for each section of the Project. However, the New Jersey Department of Environmental Protection (“NJDEP”) permits have expired for Section

8. Developer resubmitted its application with the NJDEP to receive approval. Atlantic City Electric is requiring that the main electric service be looped within Dusty Miller.

Drive and Paramount Escapes Road between Sections 1 and 4 through Sections 5, 6, 7 and 8 to provide electric service to the Affordable Units under construction in Section 10. Atlantic City Electric requires the roads to be constructed and utilities infrastructure to be installed before it will furnish electric service to Section 10.

The Developer shall construct dry water main and laterals along Dusty Miller Drive (within Section 8) to Section 10, a distance of roughly 1,000 linear feet, which will facilitate electric service to Section 10 by Atlantic City Electric. The Developer shall not run water service through those lines until it receives its NJDEP water extension permits and all other required approvals from governmental entities to run the water service. Contemporaneously with the execution of this Agreement, Developer shall execute Indemnification and Hold Harmless Agreement in favor of the Township to undertake the installation of the dry water lines. The installation of the dry water lines shall comply with all other local, state, or federal regulations and shall receive any permits or approvals necessary for the installation of dry lines prior to installation.

3. **Affordable Housing Phasing Schedule/Certificate of Occupancy.** Immediately upon the execution of this Agreement, Developer shall begin installing the dry water line in order to apply and receive electric connection from Atlantic City Electric. Developer shall have 100 days from the date of this Agreement, as may be extended pursuant to the tolling provisions set forth in Paragraph 4 below, to complete its dry water line improvements, receive connection with Atlantic City Electric, complete the 21 Affordable Units and receive Temporary or Final Certificates of Occupancy for said units in order to comply with the phasing schedule.

Upon completion of the dry lines same will be inspected and approved as completed by the Township Engineer and the Township's professionals.

In order to ensure compliance with this schedule, the Township shall issue Temporary Certificates of Occupancy ("TCOs") for each affordable housing and/or market rate unit currently under construction that meets all of the requirements to receive a TCO. Said TCOs for the 31 market rate units currently under construction shall be issued with a \$500 per week fine which shall accrue



for each and every week until the Developer meets the Affordable Unit phasing schedule by securing Temporary or Final Certificates of Occupancy for at least 21 Affordable Units. The \$500 per week fine for each TCO shall relate back, regardless of the issuance date of the TCO, and begin to accrue upon the Effective Date of this Agreement. The \$500 per week fine will be held in abeyance and not enforced provided the Developer meets the 100-day phasing schedule requirement. Upon the Developer's application for the Temporary or Final Certificate of Occupancy for the 21<sup>st</sup> Affordable Unit within 100 days of this Agreement or as may be tolled as set forth below, the fines will be discharged.

4. **Tolling.** Upon completion and inspection of the installed the dry water lines as required by Paragraph 2 hereof, the Developer shall notify Atlantic City Electric that it is ready for installation of electric service through Section 8 and to the Affordable Units and shall copy the Township on said notice. Thereafter, and provided the Developer is not responsible for causing the delay, the \$500.00 per week penalty provision of this Agreement shall be tolled until such time as Atlantic City Electric completes the electrical hookup. Upon final inspection of said electric service, the penalties will continue to accrue.

By way of example, but not limitation, if this Agreement is signed on September 1, 2022, the Developer installs the dry water lines by October 1, 2022, and thereafter, Atlantic City Electric installs the electric with final inspection on December 1, 2022, the \$500 weekly penalties would have accrued from September 1 to October 1, and would be tolled until December 1. On December 2, 2022, the penalties would continue to accrue.

If Developer fails to comply with the extended phasing schedule as set forth herein, then the Township shall be entitled to enforce the accrual of the fines pursuant to the Penalty Enforcement Act.

In addition to the above, the 100-day deadline shall be tolled each day the Barnegat Township School District is closed due to inclement weather. Tolling of the deadline may also

occur based upon additional force majeure, upon consent of the Township, which shall not be unreasonably withheld.

5. **Bonding.** Contemporaneously with the execution of this Agreement, Developer shall post bond or cash bond in the amount of **\$200,000.00** the purpose of which is to cover the cost and/or accrual of fines to the extent the Developer fails to complete the affordable housing phasing within 100 days. The Developer further agrees that, should it fail to meet the phasing schedule deadline as set forth herein, it shall surrender the bond to the Township. If the amount of the bond is insufficient to cover the fines, the Developer shall be liable for the deficiency.

6. **Remaining Affordable Housing Unit Phasing Schedule.** 75% of the Affordable Units required for the Project, 42 in total, shall be completed and receive Temporary or Final Certificates of Occupancy on or before March 1, 2023 as may be extended based upon the tolling provisions set forth above. Assuming the Developer secures Temporary or Final Certificates of Occupancy for the 24 Affordable Units currently under construction in Section 10, the 75% benchmark will be achieved by construction of at least 11 additional Affordable Units. Regardless of the status of additional market rate units, Developer shall complete the 75% affordable housing phasing schedule ahead of its completion of 75% of the market rate units on or before March 1, 2023.

7. **Stop Work Order.** Immediately upon the Effective Date of this Agreement, the Township shall issue a Stop Work Order any new market rate building permits for the Project. The stop work order will remain in effect until the Developer meets the phasing schedule requirements for the Affordable Units which, as of the date of this Agreement, requires the Developer to receive an additional 21 Certificates of Occupancy for Affordable Units currently under construction. Once the Developer achieves initial compliance with the affordable housing phasing requirement, the Stop Work Order will become null and void without further action by the Township, and the Developer will be free to pull building permits on the market rate units as long as it complies with the provisions set forth in Paragraph 6 above. If the Developer violates any provision in Paragraph 6, the Stop Work Order will be

reinstated until the Developer achieves compliance with same.

8. **Reimbursement to the Township for Fees and Costs.** Upon the execution of this Agreement, Developer shall issue a check to the Township in the amount of \$35,000.00 representing reimbursement to the Township of Barnegat for fees and costs incurred by the Township including, but not limited to professional fees, site monitoring fees, expenses, as well as penalties that the Township could have assessed to date.

9. **Performance Guarantee.** The Developer acknowledges that it has posted all Performance Guarantees required by the Township to date for Section pursuant to N.J.S.A.

40:55D-53.

In the event the Developer defaults under its obligations as provided herein, and said obligations are satisfied by Developer's surety to the satisfaction of the Township Engineer, Developer hereby authorizes the Township, upon demand of the Developer's surety, to turn over all or part of the sum posted to secure performance hereunder, or to use a cash bond, if any as

provided under the Municipal Land Use Law N.J.S.A. 40:55D-1 et seq.

A reduction in the Performance Guarantee is permitted at the discretion of the Township Engineer.

10. That Developer covenants and agrees that all buildings, structures, and any other improvements erected by it on site shall be constructed and equipped strictly in accordance with the Code of the Township of Barnegat and the provisions of all other applicable ordinances, resolutions, rules and regulations of the Township, the Planning Board, the Board of Health, and any State, Township or County Department or agency.

11. Notwithstanding anything contained herein to the contrary, Developer shall comply with all approvals for the Property.

12. That Developer shall erect all improvements in strict accordance with the Plans and the Resolution, along with any conditions contained therein.

13. That Developer agrees to keep any streets, whether Township streets or otherwise, used by trucks or equipment of Developer or its agents, broom clean in regard to its use of those streets and also agrees to use every effort to lay approved material to prevent dust from blowing on other houses in the Township during excavation and construction of the development. Should Developer fail or neglect to do either as stated in this Paragraph, upon twenty-four (24) hours written notice from the Township Engineer, informing it of failure to do so, and then further neglects, the Township may perform such work and Developer agrees to reimburse the Township for same. This Paragraph is not intended to relieve Developer of duties or obligations under any existing municipal ordinance but is rather intended to provide an additional remedy to the Township and to permit the Township 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

Developer which is open to the public, but which has not been accepted by the Township. Any Developer permitting dirt, dust, debris, mud, rock or similar material to accumulate or remain upon any Township street shall remain subject to a citation returnable in municipal court for violation of appropriate municipal ordinances.

14. That Developer shall provide for the use of all persons employed in the construction of all of the aforesaid development easily accessible water and toilet facilities. Developer shall provide 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.

15. The Township will authorize the Construction Official of the Township of Barnegat to issue building permits for the development on the site shown on the applicable portion of said Plans upon the compliance by Developer with all the terms and conditions herein contained and contained in Resolution, and any applicable ordinances, rules or regulations and any other applicable state regulations including but not limited to, rules or regulations, or approvals required by the Department of Community Affairs, and compliance with the terms and installation of the remaining improvements as set forth in this Agreement. Developer shall provide and file with the Township 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 a full release of performance guarantee.

16. That Developer shall appoint a job superintendent, whose name, home address and phone number shall be furnished to the Township Engineer; and no work, other than sales, shall be performed on the site by Developer, its agents, employees, servants or subcontractors between the hours required by Township ordinance.

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

18. It is understood and agreed that the obligations imposed upon Developer under this Agreement shall not constitute an estoppel against the Planning Board or the Township nor relieve Developer from complying with all other federal, state, county, and local requirements.

19. Prior to the commencement of site work, Developer, or job superintendent, and Developer's contractor shall meet with the Township Engineer and Township Landscape Architect, if applicable, for a pre-construction conference to discuss the anticipated construction schedule, procedures of construction, and any particular requirements of the Engineer.

20. The Township, its consultants, employees and agents shall be given free access to observe construction associated with the approved Plans. The purpose of such observations shall be limited to providing the Township with an opportunity to determine that such improvements will be constructed in accordance with Developer's approved Plans and the Resolution. The Township or its representatives, consultants, employees or agents shall not supervise, direct or have control over 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 Developer, for safety precautions and programs incident to the work of Developer or for any failure of Developer to comply with applicable laws, rules, regulations, ordinances, codes or orders.

21. That Developer shall hold harmless, indemnify and defend the Township, 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 Township, its representatives, consultants, employees and agents. In the event the Township is involved in any litigation, or other similar action, whether initiated by the Township or others, which action relates in any way to the terms of this Developer's Agreement or the Developer's performance hereunder, the Developer agrees to pay and reimburse the Township for any and all costs and expenses, including but not limited to, attorney's fees, court costs, and expert witness fees. The Township shall have the option of having such fees taxed in the underlying action while maintaining a separate action for same.

22. That 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) Dollar's 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.

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

24. In the event, the Developer defaults under its obligations as set forth herein, the Township Engineer shall send written notice to the Developer advising of failure to comply. In addition, the Township has other rights as set forth herein, if the Developer has not complied within thirty (30) days following receipt of the written notice, Township may perform the necessary work to achieve compliance (provided however that the Township shall not have to wait the aforesaid 30 days in the event of an actual emergency), and the Developer shall reimburse the Township for the cost to perform such work. The Developer authorizes the Township to deduct the sums posted

to secure performance hereunder including reasonable court costs and attorney's fees and curd by the Township as a result of such default. In the event that said court costs and attorney's fees exceed the amount deposited herein, the Developer shall be liable to the Township for any such excess and the Developer's obligations under this Agreement shall continue in full force and effect.

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

26. This Agreement shall not be assignable without the written consent of the Township of Barnegat. Any Assignment of the Agreement shall be a condition upon the posting of performance guarantees, if any, and the execution of documents deemed appropriate by the Township Attorney for the purposes of securing the Township's interest in the same extent as presently secured at the time of the entering of this Agreement and compliance with the State and Township Municipal Land Use Law.

27. 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. Nothing herein shall be deemed a waiver of other existing municipal construction requirements, or any conditions contained in the Resolution.

28. This Developer's Agreement shall be interpreted under and governed by the laws of the State of New Jersey and if the enforcement of any action shall be in Ocean County.

29. **Notices.** All notices required or permitted under this Agreement shall be in writing and sent to the following:

For the Developer:

Stephan R. Leone, Esq.

John Paul Doyle, Esq.

Mike Jedziniak, Esq.

Carluccio, Leone, Dimon, Doyle & Sacks, LLC

9 Robbins Street



Toms River, NJ 08753

For the Township:

The Office of the Township Administrator

Township of Barnegat

900 W. Bay Avenue

Barnegat, NJ 08005

Copy to:

Christopher J. Dasti, Esq.

Dasti & Associates

310 Lacey Rd.

Forked River, NJ 08731

30. This Developer's Agreement shall be recorded in the Office of the Ocean County Clerk.

*SIGNATURE PAGE TO FOLLOW*

**IN WITNESS WHEREOF**, the Township 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:  
  
BARNEGAT

TOWNSHIP OF

\_\_\_\_\_  
Donna M. Manno, Township Clerk

By: \_\_\_\_\_  
Alfonso Cirulli, Mayor

ATTEST:  
  
\_\_\_\_\_

PARAMOUNT HOMES AT  
FOREST HILLS, LLC

By: \_\_\_\_\_

STATE OF NEW JERSEY    }  
  } SS:  
COUNTY OF OCEAN        }

I CERTIFY that on \_\_\_\_\_2022, Alfonso Cirulli personally came before me and the acknowledged under oath, to my satisfaction, that:

- (a) He is the Mayor of Barnegat Township; and
- (b) He signed and delivered this document as his act and deed.

Date: \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public of the State of New Jersey

