

DEVELOPERS AGREEMENT

THIS AGREEMENT, made this 26 day of March, 2020 between the Township of Mendham, in the County of Morris, a Municipal Corporation of the State of New Jersey (hereinafter referred to as the "Township"), and PITNEY FARM DEVELOPMENT, LLC, (hereinafter referred to as the "Developer") whose address is 524 Union Avenue, Bridgewater, New Jersey 08807.

WITNESSETH

WHEREAS, Developer has received preliminary and final major subdivision approval for five (5) residential building lots and proposes to construct certain improvements on the subject premises which are owned by it consisting of approximately 5.11 acres known and designated as Block 131.01: Lots 1.01 and 1.03 on the Official Tax Map of the Township, and commonly known as being located on a new street to be constructed by the Developer to be named Samuel Farm Lane, (hereinafter the "premises" and or the "property"); and

WHEREAS the improvements include the construction of five (5) residences, a new road (Samuel Farm Lane), together with certain other improvements such as drainage and drywells. The improvements shall also include those improvements referenced in certain Resolution adopted by the Mendham Township Planning Board dated February 10, 2020 (the "Resolution") conferring preliminary and final major subdivision approval with associated variances and waivers. The improvements are also set forth and described in a

variety of documents including but not limited to the preliminary and final subdivision documents entitled "Preliminary Major Subdivision Plan for Pitney Farm Estates, Block 131.01-Lots 1.02 & 1.03, Township of Mendham, Morris County, New Jersey", prepared by Kastrud Engineering, LLC, Bound Brook, New Jersey 08805, dated 6/6/2019, latest revision 9/24/2019, consisting of 8 sheets ("Plans"); and (ii) Boundary Survey, entitled "Pitney Farm Subdivision Block 131.01, Lots 1.02 & 1.03 Mendham Township, Morris County, New Jersey", prepared by E&LP, High Bridge, New Jersey 08829, dated 7/17/2019, consisting of one sheet ("Survey"). (The "Approved Plans") and such other improvements as may reasonably be required by the Township Engineer, all of the foregoing in accordance with the terms and conditions of the Resolution granting preliminary and final subdivision approval and the requirements of Township Ordinances; and

WHEREAS, the approval granted the Planning Board of the Township of Mendham (The "Board") as above recited on February 10, 2020 includes the following conditions:

1. The application for (a) preliminary and final major subdivision approval be and the same is hereby approved in accordance with the revised Plans, except as modified hereinafter; (b) the request for a variance to exclude the floor area of garages in the floor area calculations as required under the Ordinance, be and the same is hereby approved; (c) the request for design exceptions/waivers and, to the extent noted below, *de minimis* exceptions from RSIS requirements, be and the same is hereby approved as follows: (i) a design exception/waiver to allow a pavement width of 28', whereas the Township Ordinance requires a minimum pavement width of 30' in the R Zone; (ii) a design exception/waiver to allow the cul-de-sac bulb with a 50' wide radius, slightly in excess of the 48' radius required under RSIS standards but less than the 55' minimum radius

required under the Township Ordinance; (iii) a design exception/waiver to allow a 40' curb radius at the cul-de-sac, consistent with RSIS standards, but inconsistent with the 45' cul-de-sac curb radius required under the Township Ordinance; (iv) a design exception/waiver and a *de minimis* exception to RSIS to eliminate the installation of sidewalks in the development, whereas RSIS requires sidewalks (and the Township Ordinance vests discretion in the Planning Board as to whether sidewalks should be installed); and (v) a design exception/waiver to allow the disturbance of various categories of slope in excess of the maximum disturbance permitted under the Township Ordinance, in three categories:

- (a) In the 10%-15% category, to allow the disturbance of 11,338 square feet, whereas the permitted disturbance is 3,999 square feet;
- (b) In the 15%-25% category, to allow the disturbance of 6,305 square feet, whereas the permitted disturbance is 1,289 square feet; and
- (c) In the 25% category and beyond, to allow the disturbance of 1,585 square feet, whereas the permitted disturbance is 138 square feet.

All of the foregoing approvals and relief being subject to the following conditions:

- A. The Applicant shall comply with all Township ordinances and rules and regulations which are applicable to this development application.
- B. The foregoing approval is subject to review of, approval by, and requirements imposed by such other federal, state, county and local bodies that shall have jurisdiction over the development.
- C. The Applicant shall seek and obtain all necessary and required permits from such federal, state, county, and local bodies that shall have jurisdiction over the application.

D. The Applicant shall pay all outstanding real estate taxes to the date of the perfection of this subdivision and shall further pay all outstanding fees, assessments, escrows and inspection fees associated with the municipal approval process, in accordance with all requirements of the Township of Mendham.

E. To the extent required, the Applicant shall submit revised Plans to reflect the changes to which the Applicant agreed and/or those modifications that are required by the Board or the Board's experts, as set forth in the various reports and/or in this Resolution, including, without limitation, the relocation of the curb at the intersection of the new street and Ballantine Road to a point 24' from the northerly property line.

F. Except to the extent otherwise set forth in this Resolution, the Applicant shall comply with the recommendations of the various reports that have been submitted by the Board's professionals, including: (i) the October 10, 2019 report of H2M Associates, Inc.; (ii) the October 15, 2019 report from Princeton Hydro; (iii) the October 15, 2019 report of French & Parrello Associates; (iv) the 6/19/19 report from the Mendham Township Environmental Commission; (v) the October 31, 2019 report of the Fire Chief and Fire Official; (vi) the July 24, 2019 report from Public Works; (vii) the 8/14/2019 report from the Tree Committee; and (viii) the December 3, 2019 letter from the Township Board of Health.

G. Curbing in the new cul-de-sac shall be a full height curb.

H. The Applicant shall obtain a Tree Removal Permit and move the proposed 22 trees along the cul-de-sac out of the right-of-way.

I. There shall be no removal of trees from April 1 to October 1 to maintain the habitat of the endangered Indiana Bat.

J. No construction on this project shall commence until the Township of Mendham is assured that the drainage plan as proposed by the Applicant can be implemented. Among other things, the Applicant must demonstrate to the satisfaction of the Board Engineer and the Board attorney that the Applicant can discharge its stormwater ultimately into the detention basin owned and operated by the Pitney Farm Estates Homeowners' Association detention basin.

K. The variance to exclude the floor area of garages in the floor area calculations under the Township Ordinance is specifically conditioned on the prohibition of converting any portion of the garage (including space above or below the garage floor) to livable space without further relief from the appropriate Board in the Township of Mendham having jurisdiction thereover. The individual deed for each of the lots created under this subdivision shall contain a specific restriction as follows: "No portion of the garage space (including space above or below the ground floor) shall be converted to, or used as, livable space without further relief from appropriate Board in the Township of Mendham having jurisdiction thereover."

L. The Applicant shall perfect this major subdivision by filing with the County Recording Officer, the Township Engineer and the Tax Assessor a Plat in conformity with this approval as approved by the Board Engineer prior to filing.

M. The Applicant shall be required to obtain approval from the Morris County Planning Board.

N. The Applicant shall be subject to all requirements of the Morris County Soil Conservation District.

O. The applicant shall be subject to all requirements of the Board of Health for septic system design.

2. The Applicant shall be bound to comply with all the representations made before this Board by the Applicant and the Applicant's witnesses and professionals at all public hearings and the same are incorporated herein and are representations upon which this Board has relied in granting the approvals set forth herein. Said representations shall be enforceable as if those representations were made conditions of approval of this application.;

NOW, THEREFORE, in consideration of and pursuant to the provisions of the land use ordinances of the Township, the rules and regulations of the Morris County Planning Board, the rules and regulations of the Morris County Soil Conservation District, and the Statutes of the State of New Jersey, and the mutual covenants and agreements herein contained, Developer and the Township do hereby agree with each other as follows.

ARTICLE I. Final development approval with associated variances and waivers has been granted subject to the terms and conditions of the resolutions, including conditions requiring the posting of suitable performance guarantees as hereinafter more particularly described.

ARTICLE II. Building permits may be issued upon satisfaction of all conditions set forth in the Resolution. The developer shall pay all required performance guarantees and make payment of one half of the development fee. All escrows for inspections are similarly preconditions for the issuance of building permits. All improvements shown on

the approved plan must be installed and accepted by the Township Engineer, except that the Township Engineer may permit a certificate of occupancy to issue before installation of the final (wearing) road surface course and for shade trees where installation is prevented by winter weather conditions and performance guarantees acceptable to the Township Engineer are in place. Required improvements shall include but not be limited to:

- (a) Streets, drives, driveways, curbing, sub-base and base course, and curbing shall be installed in accordance with the type and standards approved;
- (b) All utilities, gas lines, telephone, electric, cable, underground wiring, water mains, valves and appurtenances, individual waste water disposal systems for each lot in accordance with the type and standards approved;
- (c) Street signs;
- (d) All internal drives and driveways;
- (e) Street lights; (if required)
- (f) Soil erosion and sediment control measures;
- (g) All wetlands are delineated and protected by silt fence;
- (h) All conservation easement areas protected by snow or silt fence;
- (i) Tree preservation plan is followed;
- (j) Detention basins, buffer areas, fences, etc., as shown on approved plans.
- (k) Individual subsurface waste water disposal systems as required by the

“Resolution.”

ARTICLE III. Prior to issuance of the first certificate of occupancy, if applicable, the Developer shall arrange to dedicate to the Township all necessary and appropriate easements for site distance, drainage, conservation, shade tree easements for buffer areas, sanitary sewer easements, maintenance easements for storm water detention ponds, wetland and wetland conservation easements, all of which shall be submitted to the Township Engineer and Attorney for their review and approval prior to the recording of deeds providing for current and future installation and maintenance of utilities.

ARTICLE IV. The Developer shall, as a prerequisite to the issuance of the first certificate of occupancy, be required to post a performance guaranty in amounts established by the Township Engineer in accordance with Township Ordinance to guarantee completion of all improvements required for the development. The foregoing performance guaranty shall be automatically renewed prior to its expiration dates unless otherwise released by the Township as provided herein and failure to renew performance guarantees before their expiration date shall subject the Developer to revocation of the approvals granted by the Board. Performance guarantees in the form of Letter of Credit shall not expire until released by the Township Committee and shall be approved by the Township Engineer and Attorney.

ARTICLE V. The performance and cash bonds as referred to in Article IV above shall remain in full force and effect until the work secured thereby is completed, which shall in no event extend beyond one (1) year following the completion of construction and the work included therein shall consist of, but not limited to the following, to the extent applicable to their subdivision:

- (a) Wearing surface of the street, drives and driveways;
- (b) Shade trees, as required of the type approved by the Township;
- (c) Street signs conforming to the standards of the Township and State, including approval from the State as to their location where required;
- (d) Topsoil redistribution over the entire grass previously stripped and not used for streets, drives, driveways or houses;
- (e) Monuments or controls satisfactory to the Township Engineer;
- (f) Sidewalks, if any, to be concrete as approved by the Township Engineer;
- (g) Installation of all other improvements as set forth in the Developer's Utility and Improvement Plans as submitted and approved by the Planning Board of the Township.
- (h) Township Engineer office must be notified two (2) days prior to start or restart of all above mentioned site work requesting inspection.
- (i) Developer shall be responsible for removal of all dead trees in each lot created, for a period of two years from the date of issuance of Certificate of Occupancy.
- (j) Developer shall be responsible for the installation of replacement trees as required by the resolution.

ARTICLE VI. Developer shall have the right from time to time during construction of the project to apply to the Township for partial release of such performance guaranty if required under Article IV hereunder, commensurate with the value of improvements certified by the Developer's engineer to have been completed pursuant to **N.J.S.A. 40:55D-53**, and approved by the Township Engineer. No credit will be given for any un-inspected work at the time of bond reduction or partial release.

ARTICLE VII. Upon completion the improvements required herein, and prior to issuance of the first certificate of occupancy the Developer shall furnish to the Township Mylar “as built” plans or drawings of all public improvements serving the subdivision.

ARTICLE VIII. Developer agrees to adhere to the standards outlined in “soil erosion and Sediment Control Regulations” and to release and indemnify the Township and hold the Township and any of its officials harmless from any damage from storm water runoff onto any adjoining properties, resulting from Developer’s construction activities.

ARTICLE IX. Developer agrees to take all steps as may be reasonably necessary to protect persons and property, including roads both on and off the site, from injury to damage due to the conditions resulting from the development contemplated herein.

ARTICLE X. Developer grants to the Township and its agents the right of full and complete access to the construction site during the entire period of development for inspection and enforcement purposes.

ARTICLE XI. The Developer agrees to deposit with the Township the appropriate inspection fees in accordance with the Land Development Ordinances of the Township, prior to the commencement of any site work.

ARTICLE XII. No certificate of occupancy shall be issued until “as built” drawings for storm and sanitary sewer, street and curb improvements located therein, certified by the Developer’s engineer, are furnished to the Township. The sewer “as built” plan shall show off-set to permanent object or building corners for laterals, and their depth.

ARTICLE XIII. Any planting, seeding or landscaping as is required by the plans for the development of any section shall not be required to be done during any period other

than the natural planting season; providing, however, that appropriate performance guarantees shall be posted for any and all uncompleted landscaping work and temporary precautions as necessary shall be taken to prevent erosion washouts in areas where, because of development work, such erosion and washouts may occur; and further provided that any such planting, seeding or landscaping shall be completed during the next planting season.

ARTICLE XIV. The Developer agrees to indemnify and hold harmless the Township and all officials, employed or appointed, during the time of construction from any and all liability arising out of any claims made during or after construction as a result of the construction of the development thereon.

ARTICLE XV. The Developer agrees to construct all the improvements in accordance with the approved plans and in accordance with the ordinances of the Township.

ARTICLE XVI. The plans are referred to herein as those plans identified as Preliminary Major Subdivision Plan for Pitney Farm Estates, Block 131.01-Lots 1.02 & 1.03, Township of Mendham, Morris County, New Jersey”, prepared by Kastrude Engineering, LLC, Bound Brook, New Jersey 08805, dated 6/6/2019, latest revision 9/24/2019, consisting of 8 sheets (“Plans”); and (ii) Boundary Survey, entitled “Pitney Farm Subdivision Block 131.01, Lots 1.02 & 1.03 Mendham Township, Morris County, New Jersey”, prepared by E&LP, High Bridge, New Jersey 08829, dated 7/17/2019, consisting of one sheet.

ARTICLE XVII. Responsibility for all maintenance of the streets, roads, drives and parking areas, which shall include, but not be limited to, the responsibility for snow and ice removal, during periods of inclement weather, shall remain with the Developer

until the improvements are accepted by the Township and a deed of dedication is approved and recorded. It is expressly understood and agreed that until such time the Developer agrees to indemnify and hold the Township harmless for any residents or the general public.

ARTICLE XVIII. The maintenance and ownership of roadways, common property and open space shall be as depicted on the approved maps and plans.

ARTICLE XIX. All drawings, maps and agreements approved by the Planning Board of the Township shall, following their approval, be incorporated by reference in this Agreement as though set forth fully at length herein.

ARTICLE XX. The Developer further agrees to:

- (a) Grant the Township through its agents and employees the right to enter upon the Developer's lands to inspect work in progress whenever deemed necessary by the Township;
- (b) Prepare and record all necessary deeds and instruments dedicating all required easements as heretofore referred to the Township;
- (c) Join in the inspection of the work in progress as deemed necessary by the Township and to immediately correct any hazardous or unsafe conditions as may be required by the Township;
- (d) Assume responsibility for all acts, maintenance and control in the project area until the developer's completion of all work covered by this Agreement and the Township's acceptance of same;

- (e) Obtain all required and necessary permits and certificates prior to any construction with the Developer being responsible for complying with all conditions of the permits;
- (f) Cause the construction of the aforesaid project and improvements covered by this Agreement to be approved by the Township and constructed at no cost to the Township;
- (g) Pay the Township for all costs and professional fees incurred, including any fees for review of design or change in design, and as required pursuant to the provisions of this Agreement by maintaining an escrow account with the Township in an amount as required by the Township, with payment as requested to be made by Developer within thirty (30) days of request of same;
- (h) To defend, indemnify, protect and save harmless the Township and its agents, servants or employees from and against any and all suits, claims, losses, demands or damages of whatsoever kind or nature, including, but not limited to, personal injury claims and contractual liability claims, arising out of or claimed to arise out of the performance of any services, actions or operation by Developer in connection with this Agreement or any breach of the Agreement by Developer. The Developer shall, at its own expense, appear, defend and pay all charges for attorneys and all costs and other expenses arising from such suit or claim or incurred in connection therewith; and, if any judgment shall be rendered against the

Township in any such action the Developer shall at its own expense discharge the same;

- (i) The Developer shall cause the Developer and the Developer's contractors and their subcontractors to carry automobile liability insurance, worker's compensation insurance and general comprehensive liability insurance and to provide the Township with valid certificates of insurance as evidence of coverage thereof;
- (j) The Developer expressly understands and agrees that any insurance protection as required by this Agreement shall in no way limit the Developer's obligations assumed in this Agreement and shall not be construed to relieve the Developer of liability in excess of such coverage;
- (k) The Developer agrees to fully comply with all terms and conditions of the Resolution, and to construct the project as approved by the Planning Board of the Township of Mendham and the Township reserves the right to revoke the approval granted or take appropriate action in the event there is any deviation from or alteration to the plans unless prior written approval for any such deviation or alteration has been obtained from the Planning Board or its authorized representatives.
- (l) To meet with the Township Engineer, Planner and Construction Official prior to the commencement of construction to discuss the construction activities and any special requirements that may need to be addressed for safety, environmental or traffic purposes.

- (m) Comply with all requirements issued by the Township Engineer regarding site stabilization, protecting and keeping clean Township roadways (tracking mats e.g.), maintaining slope and soil stabilization, site cleanliness, etc. (Note, if work should cease for more than thirty (30) days the developers shall be required to stabilize, grade and seed any disturbed areas.)
- (n) Comply with Township ordinances regarding permitted times for work. (Ordinance 131-3 and 131-4).
- (o) Maintain the work site in a neat and orderly manner, free of garbage, litter and debris.
- (p) Cut sheets shall be provided to the Township Engineer two (2) days prior to the commencement of any construction, excavation or installation of piping, curbing, inlets, outlets, drainage structures, manholes, etc.
- (q) Abide by and respect any stop work orders issued by the Engineer.

ARTICLE XXI. The Township agrees to:

- (a) Promptly inspect all work in progress upon request of the Developer for same;
- (b) To release performance bonds and security commensurate with the value of improvements certified by the Township's Engineer to have been completed.

ARTICLE XXVIII. Developer shall comply with any and all Federal, State, County or local statutes, ordinances and regulations which may apply to the development.

ARTICLE XXIX Developer shall notify the Township Chief of Police prior to the commencement of any work which adversely (in the sole opinion of the Chief) impact the flow of traffic or safety of the public traveling upon roadways in the Township. If so required by the Chief, the developer shall at Developer's sole cost and expense provide for such traffic safety measures as directed by the Chief and in accordance with local ordinance.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals, in triplicate, respectively, the day and year first above mentioned.


TOWNSHIP OF MENDHAM

By: _____
Sarah Neibart, Mayor

ATTEST:

Maria Coppinger, Clerk

Pitney farm Development, LLC



By: Anatol Siemienczuk

ATTEST:



WARREN L. FINK, E.S.Q.
AN ATTORNEY AT LAW OF NEW JERSEY