

BOROUGH OF RIDGEFIELD

A G E N D A

Special Meeting of the Mayor and Council

Date: December 30, 2013

Open Public Meetings Statement by Mayor Suarez

Public Session: 7:00 P.M. C.T.O.:
Adjourn:

Pledge of Allegiance

Citizens Comment on Agenda:

Correspondence:

ROLL CALL-PUBLIC SESSION

	PRESENT	ABSENT
Mayor Suarez		
Castelli		
Severino		
Acosta		
Jimenez		
Penabad		
Shim		

PROPOSED CONSENT AGENDA:

- 314-2013 Councilman Jimenez Designate Chief of Police as Contact Person for Third Party Billing
- 315-2013 Councilman Jimenez Approve Developers Agreement-Luppino Homes
- 316-2013 Councilman Acosta Approve Additional Stipend for Recycling Coordinator

COUNCIL VOTE

	YES	NO	ABSTAIN	ABSENT
Castelli				
Severino				
Acosta				
Jimenez				
Penabad				
Shim				
Mayor Suarez				

RESOLUTIONS:

317-2013	Councilman Jimenez	Transfer of Appropriations
318-2013	Councilman Jimenez	Warrants

COMMENTS BY MAYOR:

COMMENTS BY COUNCILMEN:

COMMENTS BY CITIZENS: (All speakers are limited to five minutes maximum per meeting)

Respectfully submitted,

Linda M. Silvestri,
Borough Clerk

BOROUGH OF RIDGEFIELD
Bergen County, New Jersey

Meeting December 30, 2013

Presented by Councilman Jimenez

RESOLUTION NO. 314-2013

WHEREAS, the Borough of Ridgefield has previously approved third party billing for ambulance services; and

WHEREAS, in connection with the application process it is necessary that the Borough designate an appropriate person to serve as a contact and to execute the application on behalf of the Borough; and

WHEREAS, the Borough believes that the Chief of Police would be the appropriate person;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Ridgefield that Chief of Police T.J. Gallagher be and he hereby is appointed as the contact person in connection with the Borough's third party billing, and is further authorized to execute required applications and paperwork on behalf of the Borough in connection with same.

COUNCIL VOTE

	YES	NO	ABSTAIN	ABSENT
Castelli				
Severino				
Acosta				
Jimenez				
Penabad				
Shim				
Mayor Suarez				

Approved:

Attest:

Anthony R. Suarez, Mayor

Linda M. Silvestri,
Borough Clerk

BOROUGH OF RIDGEFIELD
Bergen County, New Jersey

Meeting December 30, 2013

Presented by Councilman Jimenez

RESOLUTION NO. 315-2013

WHEREAS, the Planning Board of the Borough of Ridgefield has approved the development application of Luppino Homes (Lillia's Properties, LLC) for property at 555 Edgewater Avenue, 504 Studio Road by and within the Borough of Ridgefield; and

WHEREAS, the Planning Board Attorney has prepared a developer's agreement for execution by and between the developer and the Borough; and

WHEREAS, the execution of that agreement has been recommended by the Planning Board Attorney; and

WHEREAS, execution of same is within the best interests of the Borough of Ridgefield;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Ridgefield as follows:

1. The Mayor and Borough Clerk be and hereby are authorized to sign the developer's agreement with Luppino Homes (Lillia's Properties, LLC) in the format annexed hereto.

2. Upon execution, a fully executed copy shall be delivered to the applicant's attorney, Mark Sokolich, Esq., the Borough's Building Department, and the Planning Board.

Approved:

Anthony R. Suarez, Mayor

Attest:

Linda M. Silvestri,
Borough Clerk

COUNCIL VOTE

	YES	NO	ABSTAIN	ABSENT
Castelli				
Severino				
Acosta				
Jimenez				
Penabad				
Shim				
Mayor Suarez				

BOROUGH OF RIDGEFIELD
Bergen County, New Jersey

Meeting December 30, 2013

Presented by Councilman Acosta

RESOLUTION NO. 316-2013

BE IT RESOLVED, by the Mayor and Council of the Borough of Ridgefield that Nick Gambardella be awarded an additional \$2,000.00 for his services as Recycling Coordinator bringing his annual stipend for Recycling Coordinator to \$9,000.00.

BE IT FURTHER RESOLVED that funds for this award are certified by the CFO from the Recycling Trust Account, not from the 2013 Budget.

COUNCIL VOTE

	YES	NO	ABSTAIN	ABSENT
Castelli				
Severino				
Acosta				
Jimenez				
Penabad				
Shim				
Mayor Suarez				

Approved:

Attest:

Anthony R. Suarez, Mayor

Linda M. Silvestri,
Borough Clerk

BOROUGH OF RIDGEFIELD
Bergen County, New Jersey

Meeting December 30, 2013

Presented by Councilman Jimenez

RESOLUTION NO. 317-2013

Transfer Resolution #3

WHEREAS, N.J.S.A. 40A:4-58 allows appropriation transfers during the last two months of the calendar year should it become necessary to expend for any of the purposes specified in the budget an amount in excess of the respective sums appropriated therefor and there shall an excess in any appropriations over and above the amount deemed to be necessary to fulfill the purpose of such appropriation, the governing body may, by resolution setting forth the facts, adopted by not less than 2/3 vote of the full membership thereof, transfer the amount of such excess to those appropriations deemed to be insufficient; no transfers may be made to appropriations for contingent expenses or deferred charges.

WHEREAS, the Mayor and Council of the Borough of Ridgefield are desirous of executing such transfers:

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of Ridgefield that the Chief Financial Officer is herewith directed to execute the following Calendar Year 2013 budget appropriation transfers:

<u>CURRENT FUND</u>	<u>FROM</u>	<u>TO</u>
Construction Official		
Salaries & Wages	\$ 15,000	
Youth Commission		
Other Expenses	1,000	
Social Security	20,000	
Utilities		
Gasoline	13,075	
Street Lighting	10,000	
Department of Public Works		
Buildings & Grounds	10,000	
Police Department		
Salaries & Wages		\$ 20,000
Department of Public Works		
Other Expenses		10,000
Sanitation		

Other Expenses	10,000
Recreation	
Other Expenses	10,000
Mayor & Council	
Salaries & Wages	375
Property Maintenance	
Other Expenses	300
Youth Commission	
Salaries & Wages	1,400
Utilities	
Telephone	5,000
Legal Services	10,000
Engineering Services	2,000
	\$ 69,075
	\$ 69,075

COUNCIL VOTE

	YES	NO	ABSTAIN	ABSENT
Castelli				
Severino				
Acosta				
Jimenez				
Penabad				
Shim				
Mayor Suarez				

Approved:

Attest:

Anthony R. Suarez, Mayor

Linda M. Silvestri,
Borough Clerk

The undersigned, being the Chief Financial Officer of the Borough of Ridgefield, County of Bergen, New Jersey, and the person charged with the responsibility of maintaining financial records of said Borough in accordance with N.J.S.A. 40:4-57 and the rules of the Local Finance Board of the State of New Jersey adopted thereunder, does hereby certify that there are adequate funds available for the payment of the attached list of invoices, duly adopted by said Borough, and which said list indicates the specific line item of said budget to which expenditures shall be charged.

Joseph Luppino,
Chief Financial Officer

BOROUGH OF RIDGEFIELD
Bergen County, New Jersey

Meeting December 30, 2013

Presented by Councilman Jimenez

RESOLUTION NO. 318-2013

BE IT RESOLVED, that warrants totaling \$946,850.58
be drawn on the following accounts:

CURRENT	\$807,513.66
TRUST	\$73,215.75
CAPITAL	\$26,632.95
POOL OPERATING	\$6,084.62
DOG LICENSE	\$82.20
UNEMPLOYMENT FUND	\$33,321.40
TOTAL	\$946,850.58

COUNCIL VOTE

	YES	NO	ABSTAIN	ABSENT
Castelli				
Severino				
Acosta				
Jimenez				
Penabad				
Shim				
Mayor Suarez				

Approved:

Attest:

Anthony R. Suarez, Mayor

Linda M. Silvestri,
Borough Clerk

DEVELOPER'S AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 2013,
between:

THE BOROUGH OF RIDGEFIELD
a Municipal Corporation of the State of New Jersey,
having offices located at
604 Broad Avenue, Ridgefield, New Jersey, 07657;
(hereinafter referred to as the "Borough"),

and

LUPPINO HOMES, now known as LILLIA'S PROPERTIES, LLC
having an office located at
1265 15TH Street
Fort Lee, New Jersey
(hereinafter referred to as the "Developer");

WITNESSETH:

WHEREAS, the Developer is the owner and developer of certain property and has made application to the Planning Board of the Borough of Ridgefield, New Jersey, for variances for impervious coverage and floor area ratio, subdivision approval to merge lots and site plan approval in order to construct twelve (12) townhouses on premises located at 555 Edgewater Avenue and 504 Studio Road on Lots 17.01, 17.02 & 18 in Block 2504 as depicted on the Tax Assessment Map of the Borough of Ridgefield, commonly known as 711 Broad Avenue, Ridgefield, New Jersey; and

WHEREAS, the Planning Board of the Borough of Ridgefield on February 16, 2012 granted the Developer site plan approval together with variances for impervious coverage and floor area ratio and subdivision approval to merge lots in order to construct twelve (12) townhouses subject to the terms and conditions as more specifically set forth in the Resolution of the Planning Board of the Borough of Ridgefield which is attached hereto and incorporated herein; and

WHEREAS, as a result of said resolution adopted on February 16, 2012, it is necessary that a Developer's Agreement be entered into as a condition of such Developer

proceeding with the work which was the subject of said application; and

WHEREAS, it is mutually desired by the parties hereto that the premises described above shall be improved and developed in such a manner as will insure the protection of the surrounding and neighboring properties, as well as the public roadways in and about the proposed development to the end that said development shall result in a desirable development within the Borough of Ridgefield; and

WHEREAS, it is the purpose of this Agreement to set forth all of the terms and conditions which shall control such project and the work to be performed pursuant to same; and

NOW, THEREFORE, in consideration of these promises, mutual covenants, conditions and agreements contained herein, the parties hereto agree as follows:

1. The Developer agrees that it will comply with all of the conditions set forth in the Resolution of the Planning Board of the Borough of Ridgefield, and any amendments thereto, as modified by this Agreement. Copy of said Resolution is annexed hereto as Exhibit "A" by reference, made a part hereof.

2. The Developer shall comply with all of the terms and conditions imposed and mandated by the Bergen County Planning Board, the Department of Transportation, if applicable, and any and all other Municipal, County, State or Federal bodies, agencies or authorities as may rightfully apply any such terms and conditions.

3. The Developer shall within a period of 24 months from the date of commencement of construction of the project, at its sole cost and expense, complete all of the improvements as set forth on certain site plan prepared by John E. Collazuol & Associates dated March 29, 2011, last revised October 4, 2011, referred to as Exhibit B. In the event that the developer requires additional time beyond the 24-month period provided herein, and it is not otherwise in default of the terms of this agreement, such time period may

be extended by the governing body for a period sufficient to permit the completion of construction.

The Developer will further comply with all the requirements set forth by the Borough Engineer. Should the Developer fail to complete improvements to the site within 24 months of the date of commencement of construction of the project, and good cause is not shown by the Developer why the time period should be extended by the Borough, then the Borough shall have the authority to complete any and all improvements as are reasonably necessary for the public health, safety and welfare without further notice to the Developer and to utilize bond funds. If good cause is shown as to why the premises have not been completed within 24 months, the Borough, at its sole discretion, may extend the time period for construction.

4. In addition, it is agreed by and between the parties to this Agreement that the within plan may be modified only with the consent of the appropriate board, and the Developer shall install such improvements as may be deemed reasonably necessary to effectuate the intent and purpose of the Ordinances of the Borough of Ridgefield, as determined by the Borough Engineer or such other agent of the Municipality acting within the scope of his or her authority, it being further agreed that the certification on said plans certifies that the design standards employed in such plans minimally meet the requirements of the Ordinances of the Borough of Ridgefield and such other codes and regulations as shall rightfully apply.

5. Upon the execution of this Agreement by the parties hereto, and prior to the issuance of a building permit, the Developer shall make the following deposits in cash or certified check with the Borough of Ridgefield:

a) the sum of \$17,113.20 to reimburse the Borough of Ridgefield for engineering and inspection fees expended on account of the review of the site development plan; however the applicant shall have the option of making quarterly payments provided the balance held in escrow is not less than ten (10%) of the total fee.

b) the sum of \$4,000.00 to reimburse the Borough of Ridgefield for legal fees expended on account of the review of the site development plan and the preparation and review of this agreement.

The amount so deposited pursuant to Paragraph (a) above, which is to be used to reimburse the Borough for the expenses incurred by it with respect to the professional review and inspection of the within project is deposited in accordance with the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq. and is to be considered an estimate and shall be increased or decreased at the reasonable exercised discretion of the Borough Engineer from time to time so as to provide sufficient funds to effectuate the purpose of this Agreement. In the event that there shall be any surplus after the work has been certified to have been completed in a good and workmanlike manner and after the acceptance thereof by the Borough Engineer, such surplus shall be promptly returned to the Developer.

The amount so deposited pursuant to Paragraph (b) above, is to be used to reimburse the Borough for the expenses incurred by it with respect to the drafting and revision of this agreement, the review of all documentation, and any other legal work as the Borough shall deem necessary. Said amount is deposited in accordance with the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. and is to be considered an estimate and shall be increased or decreased at the reasonably exercised discretion of the Planning Board Attorney from time to time so as to provide sufficient funds to effectuate the purpose of this Agreement.

6. The Developer and Borough agree that the Developer shall comply with the recommendations of the Borough Engineer.

7. In the event that any drainage easements are created or relocated, the appropriate deeds or amendments thereto shall be prepared by the Developer's attorney and submitted for approval by the Planning Board Attorney and Borough attorney.

8. The Developer shall obtain and keep in force during the life of the project, an insurance policy issued by a

company licensed in the State of New Jersey and having a Best's rating of A or better. The insurance policy shall carry General Liability limits for Bodily Injury and Property Damage of not less than Three Million (\$3,000,000.00) Dollars per person, Three Million (\$3,000,000.00) Dollars. Combined Single Limit or if written on a split limit basis, shall carry limits of Three Million (\$3,000,000.00) for Bodily Injury on an occurrence basis and Three Million (\$3,000,000.00) in the aggregate. Property Damage Liability shall be three Million (\$3,000,000.00). Said insurance contract shall provide for the liability of all sub-contractors and shall include a provision for Products/Completed Operations Liability with the same applicable limits. A Certificate of Insurance shall be issued to the Borough of Ridgefield and shall name the Borough of Ridgefield as additional insured. The Certificate of Insurance shall carry a thirty day cancellation notification clause. The Certificate of Insurance shall be forwarded to the Borough Clerk and Borough Risk Manager for review.

9. The Developer shall provide, or cause to be provided by its contractor, a performance bond issued by an insurance company approved by the New Jersey State Department of Insurance or letter of credit in the amount of **FOUR HUNDRED TEN THOUSAND, SEVEN HUNDRED SIXTEEN and 80/100 (\$410,716.80) DOLLARS** as may be modified by the Borough Engineer, which represents 100 Percent (100%) of the cost of completion of all site improvements contemplated herein as estimated by the Borough Engineer. Said guarantee shall remain with the Borough until a Certificate of Occupancy is issued. Upon request by the Developer, the Borough shall grant a partial reduction in the amount of the performance guarantee commensurate with the portion of the site improvements completed by the Developer and approved by the Borough Engineer.

10. Upon completion of the improvements and prior to issuance of a Certificate of Occupancy, the Developer shall post a maintenance guarantee or letter of credit representing Fifteen Percent (15%) of the cost of completion of all site improvements within the public right of way, or which shall be otherwise dedicated to or maintained by the Borough as

estimated by the Borough Engineer in Exhibit C attached hereto. Said guarantee shall remain with the Borough for a period of two (2) years from the date a Certificate of Occupancy is issued. In the event that the amount on deposit or the amount realized from the bond posted with the Borough of Ridgefield is insufficient to complete maintenance or repair, the Borough of Ridgefield is authorized upon notice to the Developer, to assess the costs thereof against the property, which assessment shall constitute a lien thereon.

11. All performance and/or maintenance guarantees or letters of credit, including but not limited to, guarantees for monuments, improvements and landscaping shall be in a form approved by the Planning Board Attorney and/or Borough Attorney.

12. The Developer agrees that should it damage the pavement, curb, sidewalks, or any other real or personal property not wholly owned or leased by the Developer, that they shall be required to repair or replace same within twenty (20) days of notice by the Borough to the Developer at the address first set forth above, unless weather does not permit same or the Borough shall have the right to make the repairs and deduct the cost of same from the bond. It is further agreed that during the course of construction, the Developer shall sweep clean all the surrounding streets which may be cluttered with debris as a result of its construction on a regular basis. The Developer shall implement, with Borough approval and review, a regular schedule of street cleaning and sweeping in the area of the job site for the purpose of removing such debris. Additionally, the Developer shall install gravel strips at all driveways into the site for the purpose of cleaning vehicle tires upon egress from the site. The Developer shall take all precautions for the safety of pedestrians and vehicular traffic in the immediate area of the job site to protect the same from falling debris and to provide adequate and safe walkways as required by law if so designated by the Police Department or Construction Code Official for the protection of the general public during the course of construction.

13. The Developer agrees with the Borough to hold the said Borough harmless for any damage or liability that might arise due to the discharge of surface waters upon, or the

alteration of lateral support from, the lands adjacent to the property being developed, caused by such development or the work required by this Agreement, and agree to assume any and all liability so caused for the discharge of waters upon, or the removal of lateral support from, the lands abutting the property being developed as shown on said plans hereinabove and hereinafter referred to, and further agree to alleviate any and all conditions so caused that may arise by reason of the discharge of water, soil or dirt upon said abutting properties or the removal of lateral support from said abutting properties. The Developer further agrees to grade the entire premises so as to avoid the collection of water or drainage causing gullies or erosion and the deposit of soil on abutting properties and to create and construct any and all retaining walls necessary to maintain adequate lateral support to properties owned by surrounding property owners. Any plan to control the drainage, collection, direction or flow of surface or sub-surface waters, must be approved by Borough Engineer. Any plan to construct any system of lateral support including, but not limited to, retaining walls and beams shall be approved by the Borough Engineer prior to construction.

14. During and at the conclusion of the construction of improvements, the Developer shall clean all drainage facilities impacted by the project of silt and debris at Developer's sole cost and expense and restore the same to its design section and volume prior to the acceptance by the Borough Engineer.

15. The Developer shall furnish off-street parking for any and all tradesman, contractors or sub-contractors and employees thereof, or any individual or party whatsoever performing any work or labor upon the job site, including, but not limited to, any and all trucks or vehicles delivering materials or equipment to the site and shall do everything necessary to prevent the congestion of traffic in the area of the job site and to facilitate the progress of the same. There shall be no off-loading of materials or equipment on the public street.

16. No additional structures or buildings of any type shall be constructed on said premises without further approval of the appropriate Board of the Borough of

Ridgefield, except those referred to in the plans presently on file with the Borough of Ridgefield.

17. Should it become necessary as a result of this development to enlarge or install any utility line such as water, gas, electric, telephone or sewer lines located in or upon the public streets, the Developer shall do so at its own cost and expense. The Developer shall obtain all necessary permits to open the street and install such improvements.

18. The Developer shall be limited to the hours between 8:00 AM and 6:00 PM on weekdays and 9:00 AM and 5:00 PM on Saturdays, except in case of urgent necessity in the interest of public health and safety, and then only with a permit from the Building Inspector, which permit may be granted for a period not to exceed three (3) days or less while the emergency continues and which permit may be renewed for a period of three days or less while the emergency continues. If the Building Inspector should determine that the public health and safety will not be impaired by the erection, demolition, alteration or repair of any building or the excavation of streets and highways during any other period of time and if he shall further determine that loss or inconvenience would result to any party in interest, he may grant permission for such work to be done within any other period of time upon application being made at the time the permit for the work is awarded or during the progress of the work.

19. The Developer further agrees to comply with additional recommendations by the appropriate Borough official concerning the proper police and fire protection for the construction site, including the hiring of special police officers as may be required during the course of construction to ensure the public safety.

20. Any and all sanitary and storm sewer facilities, on or off the site, including, but not limited to the installation of sewer and storm basins and hookups, and pump stations and equipment specified in the plans referenced herein, are to be constructed at the sole cost of the Developer shall be done only with the approval and review of the Borough Engineer and the relevant authorities of the County of Bergen and the Department of Environmental

Protection. Said approval and review shall include, but not be limited to, the Developer obtaining a Department of Environmental Protection Treatment Works Approval, if required.

21. Upon the execution of this Agreement and the posting of the cash deposits as aforesaid, a building permit shall be issued to the Developer by the Construction Code Official of the Borough upon approval of the complete building plans, payment of all fees, proof of insurance, bonds and escrows and any other requirements set forth herein.

22. Improvements shown on the plans herein referred to shall be constructed in accordance with such plans and such applicable Ordinances of the Borough of Ridgefield.

23. Whether or not stated herein, the Developer shall perform all the work in a good and workmanlike manner and at all times comply with all laws and/or regulations of the Federal Government, the State of New Jersey and all Ordinances of the Borough as well as such other reasonable requirements as may be imposed by the Borough Engineer.

24. Prior to the commencements of demolition, installation and construction of any of the improvements required by this Agreement, the Developer shall submit and have approved by the Borough Engineer, detailed plans of same. In no case shall demolition or construction work be commenced on any part of the development until such detailed plans have been submitted and approved. In the event that the Borough Engineer, in his opinion, reasonably requires further details to existing plans, the Developer shall furnish said details within a reasonable time of the request by the Borough Engineer.

25. The Borough contemplates and the Developer agrees to the inspection of all facilities to be constructed by the Developer by the appropriate Borough Code Officials. The Borough Engineer shall inspect the installation of improvements as set forth in the hereinabove cited plans as the same may now exist or shall be amended or revised in the future. The Developer shall notify the Borough Engineer at least forty-eight (48) hours prior to the commencement of

demolition or construction of any such facilities. In the event of temporary suspension, the Engineer shall be notified of the renewed starting date thereof. Backfilling, after the laying of any drainage or sanitary sewer pipes, or other facilities in connection therewith, shall be absolutely forbidden except after inspection and approval by the Borough Engineer or his duly authorized representatives.

26. Prior to the final release of any security herein required by this Agreement, and prior to the issuance of a Certificate of Occupancy, the Developer shall submit "as built" plans prepared and certified by a licensed New Jersey professional land surveyor which plans shall be approved by the Borough Engineer, and the Borough Engineer shall certify to the Governing Body and to the Construction Code Official that all of the work required by this Agreement has been contemplated in a good and workmanlike manner and in compliance with local Ordinances and regulations.

27. Any and all aids to additional drainage, including on-site grading, contour landscaping, swales and retaining walls and/or piping that may be reasonably deemed necessary by the Borough Engineer and/or the Borough Board of Health, shall be installed by the Developer, at its sole cost, where conditions may warrant, whether or not the present plans provide for the same, as a condition of the release of the Developer and the surety from the performance obligation, provided the present plans are approved by the Borough Engineer and provided the additional drainage is necessary to accomplish the intent and purpose of the applicable Ordinances of the Borough of Ridgefield.

28. Nothing herein contained shall be construed in any way to render the Borough of Ridgefield liable for any damages, costs or debts for material, labor or other expenses incurred in making the improvements, but this Agreement shall be construed only as permission of said Developer so as to make improvements upon the compliance with the terms thereof.

29. Until the completion of improvements to the site and of this Agreement and the acceptance thereof by the Borough, the Developer shall be and remain liable for any and all damage occasioned by any neglect, wrongdoing, omission or

commission, by any person, corporation or partnership arising from the making of said improvements and shall save, indemnify and hold harmless the Borough from any and all actions at law or in equity, charges, liens, debts or encumbrances which may arise therefrom or thereby.

30. Upon the completion of all of the work on site and prior to the issuance of a Certificate of Occupancy, the Developer shall fill and grade pursuant to the plans referenced herein and to the satisfaction of the Borough Engineer, all excavations as exist on the site and which were created at any time whatsoever. In the event that the final fill and grade is not to the satisfaction of the Borough Engineer, or is not performed by the Developer, the Borough may turn to the funds deposited under the performance guarantee or letter of credit as set forth above for the completion of the grading and filling of all such site excavation.

31. The parties hereto agree that a memorandum of this Agreement may be placed on record in the Office of the County Clerk of the County of Bergen and shall fully cooperate in the execution of all appropriate documents to effectuate same. All recording fees shall be paid by the Developer. In the event said memorandum is recorded it shall be released upon the issuance of a Final Certificate of Occupancy. However, such memorandum shall specifically state that this Agreement and any liens or charges created hereunder against the property, or any portion thereof, shall be subject and subordinate to any construction or permanent mortgage now or hereafter to be placed on said property to the extent that said mortgage funds are used for the actual construction of site improvements on the property, including engineering, architectural, legal and land acquisition, and all other costs related thereto.

32. The parties hereto agree that the terms and conditions of this Agreement shall be binding upon them, their heirs, successors and assigns, until such time as all work required hereto has been performed in a good and workmanlike manner and has been so certified to the Borough by the Borough Engineer. Wherever used herein, the term "Developer" shall mean and include the Developer named above, its successors, assignees and/or designees.

33. The parties hereto mutually agree to perform and undertake any necessary action and execute and deliver any and all documents which may now or in the future become necessary in order to effectuate the intent and purpose of this Agreement.

34. It is agreed by the Developer that this Agreement shall not be transferred or assigned to any other third parties without the prior consent of the Borough.

35. Nothing herein contained shall be construed as preventing the Borough from exercising in any court of law or elsewhere any right or duties which it may have by statute, ordinance, or other law. Nothing herein contained shall be deemed a waiver by any party or any ordinance or state statute or other law, or be construed as an abridgement, preemption or waiver of the powers of any Borough Board, Agency or Public Body. This clause shall not operate to confer upon any such public body any powers, rights or duties it does not now possess, nor abridge the right of the Developer vis-a-vis any such public body.

36. Nothing herein contained shall be construed to render the Borough or any of its officers, board members, or employees liable for any charges, cost, or debts for material, labor or other expenses incurred in the making of the improvements.

37. In no case shall a Certificate of Occupancy be issued if a material breach or default in this Agreement has occurred and has not been cured. Without limitation upon any other remedy provided herein or by law, the Mayor and Council of the Borough of Ridgefield (hereinafter the "Mayor and Council") may order that no, or no further, building permits or certificates of occupancy shall be issued until any material breach or default in this Agreement is cured.

38. Upon a default by the Developer under the terms and/or conditions of this Agreement, the Borough shall provide the Developer with fourteen (14) days written notice within which period of time the Developer shall be required to comply with all the terms of this Agreement and appropriate ordinances and rules and regulations of the Borough and its agencies. Notwithstanding the foregoing

sentence, if the default is of a nature that it cannot, with the exercise of reasonable diligence, be cured within said 14 day period, then said 14 day period shall be extended to a period of time as agreed by the parties to enable the Developer to cure the default with the exercise of reasonable diligence. At the expiration of the period to cure where the Developer has failed to perform in accordance with this Agreement and in accordance with all applicable Borough ordinances and rules and regulations of the Borough and its agencies, the Borough, without further notice to the Developer, may utilize the deposited performance guarantees for the full, complete and adequate performance of this Agreement in compliance with all Borough ordinances and rules and regulations of the Borough and its agencies. In addition, the Borough may bring an action on the Performance Guaranty; expend the cash guarantee funds; bring an action for specific performance; or seek to effect completion on the basis of any other remedy available to the Borough.

39. If, before the completion of the work, the Developer abandons the job, files a petition in bankruptcy or insolvency, or is declared bankrupt or insolvent or suffers any type of receivership, insolvency, bankruptcy, or other similar proceeding to be filed against it, or ceased work for a period of ten (10) consecutive days without notice to or the permission of the Borough Engineer and fails to resume work within ten (10) days after receipt of notice by certified mail, return receipt at the address stated in this Agreement, then it shall be the duty of the surety immediately to undertake the completion of the work at the expense of the Developer and its surety, or to pay to the Borough the cost of completion of the work as a local improvement pursuant to the provisions of N.J.S.A. 40:56 et seq.

40. The Developer shall complete all terms and conditions of this Agreement as specified herein. In the event that the Developer cannot complete same due to a force majeure, the time for contemplation of this Agreement shall be extended for a period equal to the duration of the said force majeure.

41. This Agreement may only be modified or amended by a written instrument signed by all parties hereto and duly approved according to law.

42. Each of the provisions set forth herein shall have the same force and effect as if set forth at length as conditions of the granting of site plan approval.

43. The provisions of this Agreement are severable; if any one provision be determined unenforceable, this shall have no effect on the balance of the provisions hereof which shall remain in full force and effect.

IN WITNESS WHEREOF, the Borough has caused this instrument to be signed by its Mayor, attested by its Borough Deputy Clerk and its Municipal Seal to be hereunto affixed, pursuant to the Resolution of the Borough passed for that purpose, and the Developer has likewise signed and sealed this Agreement on the day and year first above written.

WITNESS:

LUPPINO HOMES *now known as*
LILLIA'S PROPERTIES, LLC



Mark J. Sokolich, Esq.
[Witness Only]

BY 

ROMINA LUPPINO-STARACE
Managing Member

ATTEST:

BOROUGH OF RIDGEFIELD

Borough Clerk

Anthony Suarez, Mayor