

RESOLUTION
of the
BOROUGH OF NEW PROVIDENCE
Resolution No. 2017-250

Council Meeting Date: 10-10-2017

Date Adopted: 10-10-2017

TITLE: RESOLUTION AUTHORIZING DEVELOPERS AGREEMENT WITH
RESPECT TO 603 MOUNTAIN AVE STREET, BLOCK 320, LOT 15

Councilperson Kapner submitted the following resolution, which was duly seconded
by Councilperson Madden .

BE IT RESOLVED by the Mayor and Borough Council of the Borough of New
Providence, in the County of Union and State of New Jersey, that they do hereby
approve and authorize an the Developer's Agreement with respect to 603 Mountain
Avenue, Block 320, Lot 15 in the Borough of New Providence, in the form attached
hereto, and they do further authorize and direct the Mayor and Borough Clerk to
execute same on behalf of the Borough of New Providence.

APPROVED, this 10th day of October, 2017.

RECORD OF VOTE

	AYE	NAY	ABSENT	NOT VOTING
GALLUCCIO			X	
GENNARO	X			
KAPNER	X			
MADDEN	X			
MUÑOZ	X			
ROBINSON	X			
MORGAN			TO BREAK COUNCIL TIE VOTE	

I hereby certify that the above resolution was adopted at a meeting of the Borough Council held on the 10th day of October, 2017.

Wendi B. Barry, Borough Clerk

AMENDED AND RESTATED
DEVELOPER'S AGREEMENT

THIS AGREEMENT, made this ____ day of _____, 2017 between THE BOROUGH OF NEW PROVIDENCE, a Municipal Corporation of the State of New Jersey, whose address is 360 Elkwood Avenue, New Providence, NJ 07974 (hereinafter referred to as the "Borough"), and REDWOOD-ERC NEW PROVIDENCE II, LLC (hereinafter referred to as the "Developer") whose address is c/o Rick W. Slosson, Erickson Living Management, LLC, 701 Maiden Choice Lane, Baltimore, MD 21228.

WITNESSETH

WHEREAS, Developer obtained approvals from the Borough Zoning Board of Adjustment (the "Zoning Board") by Resolution No. 2011-13, adopted May 16, 2011, and Resolution No. 2012-14, adopted June 4, 2012, and pursuant to such approvals is constructing a continuing care retirement community facility (the "CCRC") on property known as 535 Mountain Avenue, and identified as Block 320, Lot 17 on the Borough of New Providence Official Tax Map (the "Phase I & II Property");

WHEREAS, Developer also obtained approval by Resolution No. 2015-19, adopted May 4, 2015, to expand the CCRC and construct other related improvements on property adjacent to the Phase I & II Property, known as 603 Mountain Avenue, and identified as Block 320, Lot 15 on the Borough of New Providence Official Tax Map (the "Phase III Property");

WHEREAS, Developer subsequently obtained approval from the Zoning Board by Resolution No. 2017-11, adopted June 5, 2017 (the "Resolution"), which is attached hereto as **Exhibit A**, for Amended Preliminary and Final Major Site Plan Approval with Variances to further expand the CCRC use on the Phase III Property, including the construction of a fifth (5th)

story on the previously approved four-story CCRC building on the Phase III Property, along with other improvements referenced in the Resolution, and in the documents identified and incorporated by reference in the Resolution, and as set forth on all other submissions constituting the Developer's application to the Zoning Board;

WHEREAS, it is appropriate that Developer enter into an Agreement with the Borough to set forth the obligations of the respective parties in connection with the development approved pursuant to the Resolution (the "Development").

NOW, THEREFORE, in consideration of and pursuant to the provisions of the Statutes of the State of New Jersey, and the mutual covenants and agreements herein contained, Developer and the Borough do hereby agree with each other as follows:

ARTICLE I. Preliminary and final site plan approval and variance relief has been granted, and Developer intends to complete construction of the improvements referenced in the Resolution.

ARTICLE II. Developer shall secure all required and necessary permits and shall be responsible for complying with all conditions of said permits throughout construction.

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

ARTICLE III. Developer agrees to deposit with the Borough the inspection fees for the site work improvements (including any fees for review of design or change in design) in accordance with the Land Development Ordinances of the Borough, upon the commencement of any site work. Developer's engineer shall prepare an estimate of such fees and the anticipated time periods over which such fees are to be incurred for approval by the Borough Engineer. Upon the Borough's approval of such estimate and commencement of the site work

improvements, Developer shall deposit ten percent (10%) of the total inspection fees and shall from time to time replenish such escrow account as directed by the Borough and in accordance with the time periods described in the approved estimate. Replenishment of the escrow account shall be made by Developer within thirty (30) days of request of same.

ARTICLE IV. Developer's engineer shall prepare and submit a Schedule of Values to the Borough Engineer setting forth the cost estimate of each portion of the site improvements for which a performance guarantee will be required. Permits for site improvements shall be issued upon the filing of construction drawings and upon posting of a suitable performance bond for the value of such portion of the site improvement work for which the permit is issued based on the Schedule of Values as reviewed and approved by the Borough Engineer.

ARTICLE V. The performance guarantee which shall be in the amount of one hundred twenty percent (120%) of the estimated cost of the installation of all of the site improvements, said itemized cost estimate to be based on the Schedule of Values approved by the Borough Engineer, shall inure to the benefit of the Borough only and shall remain in full force and effect until the work secured thereby is completed to the satisfaction of the Borough Engineer. Developer shall have the right from time to time during construction to apply to the Borough for partial release of the performance guarantee, commensurate with the value of improvements set forth in the Schedule of Values approved by the Borough Engineer to have been completed pursuant to N.J.S.A. 40:55D-53, and as approved by the Borough Engineer. No credit will be given for any un-inspected work at the time of guarantee reduction or partial release. The Borough agrees to promptly inspect all work in progress upon the request of Developer for same.

ARTICLE VI. The Developer at its own cost and expense shall maintain all improvements required to be installed for the Development for a period of two (2) years from the

date of acceptance or approval of construction by the Borough, provided, however, that this requirement shall not apply to any underground utility installed by a public utility company which will be owned and maintained by such company after installation. Maintenance shall include the repair, reconstruction and replacement of any improvement or portion thereof, which is necessitated by reason of faulty materials or workmanship, settlement or the effects of the forces of nature. Maintenance shall also include the correction of any adverse conditions within road rights-of-way or easements conveyed to the Borough caused by the forces of nature and not evident at the time of acceptance by the Borough. Maintenance shall be deemed to be satisfactorily performed when inspected and approved by the Borough Engineer.

ARTICLE VII. If, upon the acceptance of improvements for the Development by the Borough, the Developer desires to have the performance guarantee released, the Developer shall furnish to the Borough a maintenance bond guaranteeing the two-year maintenance of all improvements as provided in Article VI, which bond shall be in an amount equal to fifteen percent (15%) of the cost of the improvements required to be maintained as such cost is determined by the Borough Engineer.

ARTICLE VIII. Prior to the issuance of a certificate of occupancy for a portion of the Developer's project, all approved site infrastructure necessary for the occupancy of that portion of the project must be installed and must be approved by the Borough Engineer, or the appropriate official or entity having jurisdiction.

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 or damage due to the conditions resulting from the development contemplated herein.

Developer agrees to indemnify and hold harmless the Borough and all officials, employed or appointed, during the time of construction from any and all liability arising out of any claims made during construction arising out of Developer's construction activities, but not relating to any approvals granted pursuant to the Resolution.

ARTICLE X. Developer grants to the Borough 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.

Developer shall join in the inspection of the work in progress by the Borough and shall promptly correct any hazardous or unsafe conditions as may be required by the Borough. Developer and the Borough shall have a pre-construction meeting for the Developer, the Borough Engineer and the general contractor to coordinate the progress of construction and address any security issues related to the Phase III Property.

ARTICLE XI. Developer agrees to construct all improvements in accordance with the approved plans entitled "Amended Preliminary & Final Major Site Plan for Redwood-ERC New Providence II, LLC Proposed Continuing Care Retirement Community," prepared by Bohler Engineering, dated April 6, 2017, and revised as of July 25, 2017, and as required per all conditions set forth in the Resolution.

All drawings, maps, plans and agreements approved by the Zoning Board shall, following its approval, be incorporated by reference in this Agreement as though set forth fully at length herein.

Upon completion of the improvements, Developer shall furnish to the Borough "as built" plans in an electronic format acceptable to the Borough Engineer.

ARTICLE XII. In the event Developer shall breach any of the terms and conditions of this Agreement, Developer shall, upon the Borough's request, immediately take all steps to correct such breach and if not remedied in a reasonably timely manner, the Borough reserves the right to stop all work on the project area by vehicles or pedestrians.

The Borough reserves the right to revoke the applicable approval granted or take appropriate action in the event there is any material deviation from or alteration to the plans unless prior written approval for any such material deviation or alteration has been obtained from the Zoning Board or its authorized representatives.

ARTICLE XIII. Developer shall be responsible and pay for all road, aisle and parking area maintenance on the Phase III Property which shall include, but not be limited to, the responsibility for snow and ice removal during periods of inclement weather, and all services enumerated in Section 2 of the Municipal Services Act, N.J.S.A. 40:67-23.3.

ARTICLE XIV. For purposes of all notices and correspondence arising out of this Agreement, the office of Developer is c/o Rick W. Slosson, Erickson Living Management, LLC, 701 Maiden Choice Lane, Baltimore, MD 21228, with a copy of all correspondence to be directed to General Counsel, Erickson Living, 701 Maiden Choice Lane, Baltimore, Maryland 21228. All notices and correspondence shall be sent to Wendi B. Barry, Clerk, 360 Elkwood Avenue, New Providence, NJ 07974, with a copy to Andrew Hipolit, Borough Engineer, 360 Elkwood Avenue, New Providence, NJ 07974.

ARTICLE XV. This Agreement shall be binding upon and its provisions shall inure to the benefit of the representative successors and assigns of the parties hereto. This Agreement may be assigned to a successor developer and upon replacement of the restoration guarantee by a successor, Developer shall receive a return from the Borough of the guarantee posted.

ARTICLE XVI. If any provisions of this Agreement shall be declared to be illegal or unconstitutional or otherwise defective in whole or in part, such determination shall not be deemed to void the entire Agreement if the remaining portions of the Agreement are of themselves effective, it being the intent that all of the provisions of the Agreement are separable and not necessarily dependent upon any other provisions of the Agreement.

This Agreement shall be interpreted and construed in accordance with the laws of the State of New Jersey.

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

Borough of New Providence

By: _____

ATTEST:

Redwood-ERC New Providence II, LLC

By: _____

WITNESS:

Exhibit A

Resolution No. 2017-11