

RESOLUTION 2010-128

**RESOLUTION OF THE TOWNSHIP OF STAFFORD,
COUNTY OF OCEAN, STATE OF NEW JERSEY, TO
AUTHORIZE FINAL EXECUTION OF A FIFTH
AMENDMENT TO REDEVELOPMENT AGREEMENT
BETWEEN THE TOWNSHIP AND STAFFORD PROPERTIES
URBAN RENEWAL, LLC AND STAFFORD PARK
RESIDENTIAL, LLC**

WHEREAS, the Township has previously entered into a Redevelopment Agreement (the "Redevelopment Agreement") with Walters Homes, Inc. (together with its successors and assigns, the "Developer") on September 5, 2006; and

WHEREAS, the Redevelopment Agreement provides for the development of retail, commercial and residential properties in the Stafford Township Business Park by the Developer; and

WHEREAS, the Redevelopment has previously been amended on four separate occasions, by agreements between the Township and the Developers; and

WHEREAS, the Township Council, by adoption of Resolution 2010-89, previously authorized a Fifth Amendment to Redevelopment Agreement, subject to certain terms and conditions that had yet to be finalized; and

WHEREAS, the Township Council now desires to authorize the final execution of the Fifth Amendment to Redevelopment Agreement, in the form attached hereto;

NOW, THEREFORE, BE IT RESOLVED, by the governing body of the Township of Stafford, County of Ocean, State of New Jersey, as follows:

1. The Mayor is authorized to execute, and the Township Clerk to attest to, the Fifth Amendment to Redevelopment Agreement, in the form attached hereto.
2. That a certified copy of this resolution shall be forward to the Business Administrator of Stafford Township and to Walters Homes, Inc.

CERTIFICATION

I, **BERNADETTE M. PARK**, Municipal Clerk of the Township of Stafford, do hereby certify that the foregoing resolution was duly adopted by the Stafford Township Council at a meeting held on the 18th day of May, 2010.


BERNADETTE M. PARK, RMC, CMC

FIFTH AMENDMENT TO REDEVELOPMENT AGREEMENT

THIS FIFTH AMENDMENT TO REDEVELOPMENT AGREEMENT ("Fifth Amendment"), dated as of the 19th day of May, 2010, by and between **STAFFORD TOWNSHIP** ("Stafford" or the "Township"), a municipal corporation of the State of New Jersey, whose address is 260 East Bay Avenue, Manahawkin, New Jersey, 08050, acting in the capacity of a redevelopment entity pursuant to the provisions of the Local Redevelopment and Housing Law (the "Redevelopment Law"), and **STAFFORD PROPERTIES URBAN RENEWAL, LLC**. ("SPUR"), a New Jersey limited liability company having its principal offices located at 500 Barnegat Boulevard North, Building 100, Barnegat, New Jersey, 08005 and **STAFFORD PARK RESIDENTIAL LLC**, a New Jersey limited liability company having its principal offices located at 500 Barnegat Boulevard North, Building 100, Barnegat, New Jersey, 08005 ("Stafford Park Residential") (Collectively SPUR and Residential are referred to as "Redeveloper").

WITNESSETH:

WHEREAS, the Redevelopment Agreement (the "Redevelopment Agreement") was signed by and between Walters Homes, Inc. ("Walters") and the Township on September 5, 2006; and,

WHEREAS, Walters' right, title and interest in and to the Redevelopment Agreement was assigned to SPUR by Assignment of Agreement, Licenses and Permits dated November 29, 2006; and,

WHEREAS, a First Amendment to the Redevelopment Agreement was signed by and between the Township and SPUR on December 7, 2006 (the "First Amendment"); and,

WHEREAS, a Second Amendment to the Redevelopment Agreement was signed by and between the Township and SPUR on December 19, 2006 (the "Second Amendment"); and,

WHEREAS, a Third Amendment to the Redevelopment Agreement was signed by and between the Township and SPUR and Stafford Park Residential on April 7, 2009 (the Third Amendment); and,

WEHREAS, a Fourth Amendment to the Redevelopment Agreement was signed by and between the Township and SPUR and Stafford Park Residential on June 14, 2009 (the Fourth Amendment"); and,

WHEREAS, the Redevelopment Agreement, the First Amendment, the Second Amendment, the Third Amendment, and the Fourth Amendment are sometimes hereinafter collectively referred to as the Amended Redevelopment Agreement; and,

WHEREAS, SPUR by Assignment Agreement dated March 1, 2010 assigned its right title and interest to the ownership and development of the residential portion of the Project on the land identified as lot 34.02, block 25 on the municipal tax map (the "Residential Assignment); and,

WHEREAS, the Residential Assignment is consistent with the requirements of the Amended Redevelopment Agreement; and,

WHEREAS, all of the land and property described in the original Redevelopment Agreement has been conveyed to SPUR or its affiliates with the exception of the parcel referred to in the Amended Redevelopment Agreement as Lot 36; and,

WHEREAS, in accordance with the terms of the Amended Redevelopment Agreement, Redeveloper is continuing, at its sole cost and expense, to redevelop the Property and install the Project Improvements which efforts include but are not limited to the completion of the Closure

Operations in their entirety, the completion of the affordable apartments, the reconstruction and reconfiguration of the Garden State Parkway interchange, the installation of all other off site improvements , and the construction of over 400,000 square feet of retail stores; and,

WHEREAS, since the original Redevelopment Agreement was signed the parties have made various modifications to the development plans and have otherwise modified the terms and conditions of the Redevelopment Agreement as conditions have warranted; and,

WERHEAS, over at least the past two years extreme economic conditions have prevailed in the region, state and nation that have detrimentally impacted Redeveloper's ability to complete the Project successfully; and,

WHEREAS, it is in the best interest of the Township and its residents that the Project be completed successfully; and,

WHEREAS, the Amended Redevelopment Agreement currently provides that approximately 565 attached and detached, age restricted, market rate residential units may be constructed as part of the Project Improvements; and,

WHEREAS, Redeveloper has requested that the Amended Redevelopment Agreement be further amended to permit but not require up to 565 market rate residential units with no age restriction as part of the Project Improvements; and,

WHEREAS, Redeveloper has further requested that up to 220 of the 565 units be permitted to be apartment units; and,

WHEREAS, the parties acknowledge that in connection with the general economic downturn the market for age restricted market rate residential units has deteriorated dramatically; and,

WEHREAS, the parties further acknowledge that based upon existing and generally accepted studies the long term prospects for recovery in the age restricted residential market are not promising; and,

WHEREAS, the State of New Jersey has specifically acknowledged the short and long term problems with the market rate age restricted residential market in the language of N.J.S.A. 45:22A-46.3 et al, legislation passed on July 2, 2009 that permits the conversion of previously zoned and approved age restricted residential projects to projects with no age restriction; and,

WHEREAS, the market rate non age restricted housing will also help qualitatively and quantitatively with the retail leasing at the Project; and,

WHEREAS, the Redevelopment Plan adopted by the Township already permits the construction of attached and detached residential units with no age restriction; and,

WHEREAS, neither age restricted nor non age restricted apartments are specifically permitted by the Redevelopment Plan but such a use is consistent with the spirit of the Redevelopment Plan; and,

WHEREAS, in accordance with the terms of the Redevelopment Agreement the Township and the Redeveloper entered into a financial agreement dated March 23, 2007 (the "First Financial Agreement") whereby the Redeveloper agreed to pay and the Township agreed to accept payments in lieu of taxes on the retail portion of the Project in accordance with the terms and conditions more particularly set forth in the First Financial Agreement; and,

WHEREAS, the Township has determined that it is in its best interests to enter into a second financial agreement or series of financial agreements (collectively the "Second Financial Agreement") under the Long Term Tax Exemption Law, 40A:20-1 *et seq.* ("LTEL") with the

Redeveloper and Stafford Park Residential covering the residential portion of the Project, subject to the terms and conditions set forth below; and,

WHEREAS, as reflected in the Fourth Amendment to Redevelopment Agreement the Redeveloper has been engaged, with the Township's encouragement and cooperation, in efforts to finalize arrangements to provide substantial renewable energy to be utilized by occupants of the Project; and,

WHEREAS, the Redeveloper's efforts have advanced to the point that the Redeveloper and the Township can enter into a long term lease for the New Landfill under the terms and conditions that have been contemplated by the parties since the Redeveloper began its efforts to provide renewable energy to the Project; and,

WHEREAS, the development of the New Landfill is unlikely due to the fact that it is a closed and capped landfill and development of the New Landfill is in any event specifically prohibited due to a deed restriction imposed at the direction of the Pinelands Commission; and,

WHEREAS, the State of New Jersey is strongly encouraging the use of properly closed landfills for the generation of renewable energy and Redeveloper's plans are consistent with that goal; and,

WHEREAS, leasing the New Landfill to Redeveloper is consistent with local and state public policy and will have the added benefit of providing income to the Township; and,

WHEREAS, for the reasons set forth herein and for the reasons expressed at the Township Council's regular public hearing held on March 2, 2010 and again on May 18, 2010 the Township agrees that the benefits of amending the Amended Redevelopment Agreement far outweigh any detriments that may result from such an amendment; and,

WHEREAS, the parties wish to further modify the terms of the Redevelopment Agreement accordingly.

NOW THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the parties hereby agree as follows:

1. **DEFINITIONS**

1.1 All defined terms referenced in this Fifth Amendment shall have the same meaning as the defined terms contained in the Amended Redevelopment Agreement unless the context clearly indicates to the contrary.

2. **AGE RESTRICTION**

2.1 The Amended Redevelopment Agreement is amended to permit, but not require, as part of the Project Improvements up to 565 market rate residential units with no age restriction. The Project will be constructed in general conformity with the "Concept Plan" attached as Exhibit A and any substantial deviation from the Concept Plan must be approved by the Township in accordance with the Amended Redevelopment Agreement. The definition of Project Improvements is modified accordingly. The Concept Plan attached as Exhibit 7 to the original Redevelopment Agreement is replaced and superseded by the Concept Plan attached to this Fifth Amendment to Redevelopment Plan as Exhibit A.

3. **APARTMENTS**

3.1 Redeveloper shall be permitted to construct up to 220 of the 565 residential units referenced in Section 2 above as apartments. The Project will be constructed in general conformity with the "Concept Plan" attached as Exhibit A and any substantial deviation

from the Concept Plan must be approved by the Township in accordance with the Amended Redevelopment Agreement. The definition of Project Improvements is modified accordingly.

4. REDEVELOPMENT PLAN

- 4.1 Redeveloper's right to construct the Project in accordance with the Concept Plan is contingent upon an amendment to the Redevelopment Plan in accordance with the Local Redevelopment Housing Law, NJSA 40A:12A-1 *et seq* to permit an increase in the permitted overall density per acre for non age restricted housing from 3.75 units per acre to 3.9 units per acre, to allow Redeveloper to construct apartments as part of the Project Improvements together with such other modifications as may be necessary to permit construction of the residential portion of the Project in accordance with the Concept Plan. The Township and Redeveloper agree to offer each other their full cooperation in connection with the process of amending the Redevelopment Plan.
- 4.2 Redeveloper will be required to obtain any and all governmental approvals necessary to construct the residential portion of the Project, including but not limited to subdivision and other applicable approvals from the Township's planning board.

5. RENEWABLE ENERGY

- 5.1 The Township and Redeveloper acknowledge that Redeveloper is now in a position to proceed with the redevelopment of the New Landfill with renewable energy facilities including but not necessarily limited to solar panels and wind turbines. Pursuant to the Township's obligation as referenced in the Fourth Amendment to the Redevelopment Agreement the parties will promptly negotiate and enter into a long term lease for the land comprising the New Landfill (less all land currently leased to the County). The

parties acknowledge that the renewable energy facilities are intended to be constructed in three phases. The first two phases will include approximately 3 to 3.5 MW of solar electricity each and the third phase will include approximately 3 to 4 wind turbines. Redeveloper agrees to pay rent in the initial amount of \$3,000.00 per month (with annual increases based on CPI) for each of the 3 phases (\$9,000 per month total) upon receipt of all governmental, financial and other necessary approvals and in no event may any work begin on the New Landfill until such time that rental payments have commenced for that particular phase. The term of the lease shall be 30 years and shall contain such other material terms and conditions as are acceptable to the Township.

5.2 The Redeveloper shall have the obligation to obtain any and all governmental approvals required in connection with the installation and operation of the renewable energy facilities, including but not limited to all local approvals. The Township agrees to cooperate with the Redeveloper in order to enable the Redeveloper to obtain such governmental approvals.

6. MISCELLANEOUS

6.1 The Residential Assignment is acknowledged and approved by the Township in accordance with Section II (4) of the Amended Redevelopment Agreement.

6.2 The Township and the Redeveloper agree to promptly negotiate and sign the Second Financial Agreement under the LTEL for the residential portion of the Project, which Second Financial Agreement shall provide that the Redeveloper and all occupants of the residential portion of the Project will pay an amount thereunder equal to the real estate taxes that would otherwise be due without the Second Financial Agreement and

shall contain such other commercially reasonable terms and conditions acceptable to the Township.

- 6.3 The rights and remedies afforded to the Township under the Amended Redevelopment Agreement and this Fifth Amendment are intended to be cumulative and the rights conferred by this Fifth Amendment are not intended to limit any other rights or remedies that the Township may have under the Amended Redevelopment Agreement.
- 6.4 In the event of any conflict between the terms of this Fifth Amendment and the balance of the Amended Redevelopment Agreement, then the terms of this Fifth Amendment shall control. Otherwise, the terms and conditions contained in the Amended Redevelopment Agreement shall remain in full force and effect.
- 6.5 This Fifth Amendment may be executed in counterparts and shall be effective when the signatures of each party have been forwarded to the other party by telecopier, personal delivery or regular mail. Facsimile signatures shall be considered genuine.

SIGNATURES ON NEXT PAGE

IN WITNESS WHEREOF, the parties have set their hands and seals the day and year first above written.

WITNESS/ATTEST:

Bernadette M. Park

STAFFORD TOWNSHIP.

By: [Signature]
Name: John McMenamin
Title: Mayor

WITNESS:

May Rhea

STAFFORD PROPERTIES URBAN RENEWAL, LLC

By: STAFFORD RETAIL HOLDINGS LLC,
Its Sole Member

By: [Signature]
Name: Timothy Regan
Title: Member

WITNESS:

May Rhea

STAFFORD PARK RESIDENTIAL LLC

By: [Signature]
Name: Timothy Regan
Title: Member

