

RESOLUTION NO. 2024-159

**RESOLUTION OF THE TOWNSHIP OF LITTLE
EGG HARBOR, COUNTY OF OCEAN, STATE OF
NEW JERSEY, AUTHORIZING THE EXECUTION
OF A SETTLEMENT AGREEMENT AS TO
TOWNSHIP OF LITTLE EGG HARBOR V.
HARBORVIEW ESTATES, LLC, ET AL., DOCKET
OCN-L-939-20**

WHEREAS, Harbor View Estates, LLC (“HIVE”) obtained approval in 2009 from Little Egg Harbor Township Planning Board for the construction of a Final Major Subdivision located at Block 326, Lot 63 under Planning Board Application No. P2004-10B (hereinafter “Subdivision”); and

WHEREAS, FIA, as surety, issued its Standard New Jersey Performance Surety Bond for the Subdivision, in the original amount of \$1,311,947.28, naming HIVE as principal and bearing Bond No. FP0020472 (hereinafter “Bond”); and

WHEREAS, the Township, by Resolution No. 2015-223, reduced the Bond to the amount of \$856,355.76; and

WHEREAS, FIA issued its Rider reducing the Bond to the amount of \$856,355.76 (hereinafter “Rider”); and

WHEREAS, the Township’s performance guarantee for the Subdivision consists of the Bond as reduced by Resolution No. 2015-223 and the Rider, and a cash performance guarantee in the amount of \$95,150.64 plus interest (hereinafter, the “Cash Performance Guarantee”); and

WHEREAS, a dispute has arisen between the Parties regarding the completion of the improvements in the Subdivision covered by the Bond, which is currently the subject of litigation before the Ocean County Superior Court, *i.e.*, Township of Little Egg Harbor v. Harborview Estates, LLC, et al., bearing docket number OCN-L-939-20 (hereinafter, the “Litigation”); and

WHEREAS, it is the desire of the Township to fully and finally settle and resolve, for valuable consideration, any and all actual and potential claims and disputes between the FIA and the Township regarding the Subdivision, the Bond, the Cash Performance Guarantee and the Litigation ; and

WHEREAS, accordingly, the Township and FIA have reached settlement after considering the substantial expense and uncertainty of future litigation, trial, and appeals; and

r|ms|h|c

Rothstein, Mandell, Strohm,
Halm & Cipriani, P.A.
ATTORNEYS AT LAW

98 East Water Street
Toms River, NJ 08753

o: 732.363.0777
f: 732.905.6555

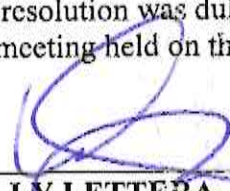
WHEREAS, the Township hereby authorizes the settlement of the Litigation and further authorizes the execution of a Settlement Agreement in accordance with this Resolution.

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

1. That the governing body does hereby authorize the settlement of the Litigation in accordance with the Settlement Agreement and Release attached hereto as Schedule A, in a form subject to the approval of the Township Attorney.
2. That the Township Attorney is authorized to prepare any and all documentation necessary to effectuate said settlement and file same with the Superior Court.
3. That the Township Administrator and/or and the Mayor and the Township Clerk are hereby authorized to execute said Settlement Agreement and Release on behalf of the Township, as well as any and all appurtenant documentation, in form as approved by the Township Attorney.
3. That a certified copy of this resolution, together with a copy of the Settlement Agreement and Release, shall be forwarded to the Chief Financial Officer and the Township Attorney.

CERTIFICATION

I, KELLY LETTERA, CMC, RMC, Municipal Clerk of the Township of Little Egg Harbor do hereby certify that the foregoing resolution was duly adopted by the Township of Little Egg Harbor Township Committee at a meeting held on the **13th** day of **June, 2024**.



KELLY LETTERA, CMC, RMC
Township Clerk
Little Egg Harbor Township

r|m|sh|c

Rothstein, Mandell, Strohm,
Halm & Cipriani, P.A.
ATTORNEYS AT LAW

98 East Water Street
Toms River, NJ 08753

o: 732.363.0777
f: 732.905.6555

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and General Release (hereinafter "the Agreement") is made by and between First Indemnity of America Insurance Company (hereinafter "FIA") and the Township of Little Egg Harbor (hereinafter the "Township"), with its principal offices located at 665 Radio Road, Little Egg Harbor, New Jersey 08087 (collectively, the "Parties").

WITNESSETH:

WHEREAS, Harbor View Estates, LLC ("HVE") obtained approval from the Township Planning Board for the construction of a Final Major Subdivision located at Block 326, Lot 63 under Planning Board Application No. P2004-10B (hereinafter "Subdivision"); and

WHEREAS, FIA, as surety, issued its Standard New Jersey Performance Surety Bond for the Subdivision, in the original amount of \$1,311,947.28, naming HVE as principal and bearing Bond No. FP0020472 (hereinafter "Bond"); and

WHEREAS, the Township by Resolution No. 2015-223 reduced the Bond to the amount of \$856,355.76; and

WHEREAS, FIA issued its Rider reducing the Bond to the amount of \$856,355.76 (hereinafter "Rider"); and

WHEREAS, the Township's performance guarantee for the Subdivision consists of the Bond as reduced by Resolution No. 20015-223 and the Rider, and a cash performance guarantee in the amount of \$95,150.64 plus interest (hereinafter, the "Cash Performance Guarantee"); and

WHEREAS, a dispute has arisen between the Parties regarding the completion of the improvements in the Subdivision covered by the Bond, which is currently the subject of litigation before the Ocean County Superior Court, *i.e.*, Township of Little Egg Harbor v. Harborview Estates, LLC, et al., bearing docket number OCN-L-939-20 (hereinafter, the "Litigation"); and

WHEREAS, it is the desire of the Parties to fully and finally settle and resolve, for valuable consideration, any and all actual and potential claims and disputes between the Parties regarding the Subdivision, the Bond, the Cash Performance Guarantee and the Litigation ; and

WHEREAS, accordingly, the Parties have reached this Agreement and compromise after considering the substantial expense and uncertainty of future litigation, trial, and appeals.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, it is hereby agreed by and between the Parties as follows:

1. **Monetary Consideration; Release of Bond and Cash Performance Guarantee.** FIA shall make a monetary settlement to the Township in the amount of two hundred twenty-five thousand dollars (\$225,000.00), pursuant to the terms of the Bond, which permits FIA “in its sole discretion may make a monetary settlement with the municipality as an alternative to completing the work.” The Township hereby accepts FIA’s monetary settlement of \$225,000.00 under the Bond. FIA shall submit the payment in the amount of \$225,000.00 to the Township via check, in one lump sum, as soon as practicable after this Agreement is executed by the Parties. In exchange for this consideration, the Township agrees that once the monetary settlement is received, the Township shall release the Bond, Rider and Cash Performance Guarantee to FIA as soon as practicable. Payment of the Cash Performance Guarantee shall be via check from the Township to FIA, in one lump sum in the amount of \$98,038.40 as soon as practicable after this Agreement is executed by the Parties.
2. **General Release and Waiver.** In exchange for the agreements set forth herein, FIA hereby releases the Township and any of its predecessors, successors, parents, affiliated or subsidiary entities, and its or their present or former officers, directors, agents, Township Committee members, representatives, employees or attorneys, and the various Township benefit plans, committees, trustees, fiduciaries, trusts and their respective successors and assigns, heirs, executors and personal or legal representatives (hereinafter collectively referred to as the "Releasees") from any and all claims or causes of action FIA has, may have, claim to have or may hereinafter have against the Releasees, known or unknown, accrued or to accrue, from the beginning of time through the date of the execution of this Agreement, including, but not limited to, any claims or causes of action arising out of or related to HVE, the Subdivision, the Bond, the Rider, the Cash Performance Guarantee and/or the Litigation.

In exchange for the agreements set forth herein, the Township hereby releases FIA from any and all claims or causes of action the Township has, may have, claim to have or may hereinafter have against FIA, known or unknown, accrued or to accrue, from the beginning of time through the date of the execution of this Agreement, including, but not limited to,

any claims or causes of action arising out of or related to HVE, the Subdivision, the Bond, the Rider, the Cash Performance Guarantee and/or the Litigation.

The claims released by the Parties, against each other include, but are not limited to:

- (a) all claims arising under the United States or New Jersey Constitutions;
- (b) all claims arising under any Executive Order or derived from or based upon any state or federal statute or regulations;
- (c) all statutory and/or common law claims, including but not limited to any and all rights to discovery, violation of public policy, breach of an express or implied contract, breach of an implied covenant of good faith and fair dealing, negligent or intentional infliction of emotional distress, defamation, conspiracy, tortious interference with contract or prospective economic advantage, promissory estoppel, equitable estoppel, fraud, misrepresentation, detrimental reliance, negligence and retaliation;
- (d) all claims for personal injury, including physical injury mental anguish, emotional distress, pain and suffering, embarrassment, humiliation, damage to name or reputation, interest, punitive, and liquidated damages; and
- (e) all claims for costs, interest, and attorneys' fees.

3. **Agreement Not to Sue; Dismissal with Prejudice.** The Parties hereto represent that they have not, and agree that they will not, file any other lawsuit or claim against each other based on any events, whether known or unknown, occurring prior to date of this Agreement's execution including, but not limited to, any events related to, arising out of, or in connection with the Subdivision, the Bond, the Rider, the Cash Performance Guarantee and/or the Litigation, in any court or tribunal of the United States, New Jersey, or any other state, city, county, or locality.

The Township agrees it shall dismiss all counts, with prejudice, against FIA in relation to Township of Little Egg Harbor v. Harborview Estates, LLC, et al., bearing docket number OCN-L-939-20, which shall occur after the Township receives the monetary settlement from FIA, as well as the execution of this Agreement by the Parties. In addition the

Township shall withdraw the remainder of the Complaint, without prejudice, against the remaining Defendants once the Agreement is executed by the Parties and payment is received by the Township. This Agreement does not impact any claims asserted by FIA in the Litigation by way of cross-claim or third party complaint against any co-defendant and/or third party defendant.

4. **Indemnification and Hold Harmless.** FIA agrees to indemnify, defend and hold harmless the Township in connection with any claim that may be brought against the Township for the Township's payment of the Cash Performance Guarantee to FIA. FIA acknowledges this indemnification includes, but is not limited to, FIA appointing counsel, at no cost to the Township, to defend the Township against the aforementioned claims. The Township shall reasonably cooperate with FIA and the attorneys retained by FIA to represent the Township's interests.
5. **Non-Admission of Liability.** The Parties hereto understand that this Agreement does not constitute an admission by either party that either party has violated any statute, regulation or ordinance or any other legal obligation that may be owed to the other party.
6. **Attorney's Fees.** Each party shall bear its own attorney's fees and costs arising from this action and in connection with the litigation, the Agreement, and the matters and documents referred to herein, as well as the filing of the Dismissal of the Complaint.
7. **Non-Disparagement.** The Parties agree that they will not directly or indirectly disparage the name, reputation, services or competency of one another. The Parties also agree that, to the maximum extent permitted by law and regulation, they will not make statements for publication or public dissemination accusing one another or any current or former Township member, officer, director, member, employee or agent of the Township, of wrongful, improper, unlawful or unfair actions or conduct.
8. **Material Breach of Agreement.** All terms of this Agreement are deemed material. This document may not be altered, amended, modified, or revoked except by an instrument executed in writing by the Parties.

9. **Jurisdiction.** This Agreement shall be governed by the laws of the State of New Jersey, and the Superior Court of New Jersey shall have jurisdiction over, and be the proper venue for, any disputes arising out of this Agreement.
10. **Knowing and Voluntary; Capacity to Execute Agreement.** The Parties represent and warrant that they have entered into this Agreement willingly and without coercion, been given sufficient opportunity to consult with an attorney of their own choosing, and that they have been represented fully, fairly, and without bias in connection with this Agreement. The Parties further acknowledge that they fully understand the duties and obligations enumerated herein and have been informed of their legal rights and obligations. The Parties agree that the signator for each Party has the right and authority to execute this Agreement.
11. **Interpretation and Construction.** Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party. This Agreement shall be governed by New Jersey law, and the Courts of New Jersey, either federal or state, shall have jurisdiction over, and be the proper venue for, any disputes arising out of this Agreement.
12. **Severability.** Should any provision of this Agreement be declared or determined by any Court of competent jurisdiction to be illegal, invalid or unenforceable (except for Paragraphs 1 and 2), the legality, validity and enforceability of the remaining parts, terms or provisions shall not be affected thereby and said illegal, unenforceable or invalid part, term or provisions shall be deemed not to be part of this Agreement.
13. **Additional Documents.** Parties agree to cooperate fully and to execute any and all supplementary documents and to take all action which may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

14. **Entire Agreement.** This Agreement sets forth the entire understanding and agreement between the Parties and fully supersedes any and all other conflicting agreements or understandings between the Parties.
15. **Successors.** This Agreement shall inure to the benefit of the Parties hereto, and their respective officers, directors, employees, attorneys, heirs, exccutors, administrators, successors and assigns.
16. **Execution.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one instrument. Emailed or facsimile signatures are valid and binding on the Parties.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

I ACKNOWLEDGE THAT I HAVE READ CAREFULLY THIS AGREEMENT AND GENERAL RELEASE AND UNDERSTAND ALL OF ITS TERMS, INCLUDING THE FULL AND FINAL RELEASE AND WAIVER OF CLAIMS SET FORTH ABOVE. I FURTHER ACKNOWLEDGE THAT I HAVE VOLUNTARILY ENTERED INTO THIS AGREEMENT AND GENERAL RELEASE, AND THAT I HAVE NOT RELIED UPON ANY REPRESENTATION OR STATEMENT, WRITTEN OR ORAL, NOT SET FORTH IN THIS AGREEMENT AND GENERAL RELEASE.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the date and year aforesaid.

For the Township:

For First Indemnity of America Insurance:

Rodney Haines, Township Admin.
Signature

Signature

Dated: _____

Dated: _____