

TOWNSHIP OF UPPER DEERFIELD

RESOLUTION 11-87

**RESOLUTION REGARDING IRREVOCABLE STANDBY LETTER OF CREDIT
REGARDING RJ'S HERITAGE HOMES, INC. D/B/A
NOCENTINO HOMES WITH RESPECT TO BLOCK 2401, LOT 55
ON THE TAX MAP OF THE TOWNSHIP OF UPPER DEERFIELD**

WHEREAS, the Planning Board of the Township of Upper Deerfield approved of a subdivision and site plan with respect to property known as Block 2401, Lot 55 on the Tax Map of the Township of Upper Deerfield which approval was obtained by RJ's Heritage Homes, Inc. d/b/a Nocentino Homes; and

WHEREAS, a performance guarantee in the amount of \$639,833.98 was approved and provided by The Bank pursuant to an irrevocable standby letter of credit, #SO40344; and

WHEREAS, the Engineer of the Township of Upper Deerfield has certified that the site improvements are incomplete and have failed to be completed satisfactorily in accordance with the plans and drawings submitted for approval before the Planning Board of the Township of Upper Deerfield; and

WHEREAS, a notice of the incompleteness has been provided to the applicant at least 30 days prior to the certification of the Municipal Engineer as to the failure of the developer to satisfactorily complete improvements; and

WHEREAS, the Township Committee of the Township of Upper Deerfield is desirous of authorizing that the irrevocable standby letter of credit be honored in favor of the Township of Upper Deerfield as a result of the default of the developer; and

WHEREAS, the Township Committee of the Township of Upper Deerfield has reviewed the Engineer's Certification and accepted and endorsed the findings of the Engineer and hereby confirms that the improvements to the property, Block 2401, Lot 55, have not been approved or accepted; and

WHEREAS, the Township of Upper Deerfield is desirous of resorting to and requesting, pursuant to the terms of the aforesaid letter of credit, that the funds on standby be made available to the Township in order that the Township may complete the site improvements in accordance with the approved plans;

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Upper Deerfield that notice shall be provided to The Bank, 100 Park Ave., Woodbury, NJ 08096, requesting and demanding that The Bank make available the amount of \$639,833.98 and demand that said sum be immediately transferred and provided to the Township of Upper Deerfield in order that the Township may complete site improvements; and

BE IT FURTHER RESOLVED by the Township Committee of the Township of Upper Deerfield that the developer, RJ's Heritage Homes, Inc. d/b/a Nocentino Homes be and

is hereby declared as in default of and has failed to comply with the completion and installation of site improvements as required by the approval of the Planning Board of the Township of Upper Deerfield; and

BE IT FURTHER RESOLVED by the Township Committee of the Township of Upper Deerfield that the Engineer’s Certification as to the incompleteness be and the same is hereby endorsed and constitutes the findings of the Township Committee of the Township of Upper Deerfield; and

BE IT FURTHER RESOLVED that the improvements regarding Block 2401, Lot 55, have not been approved nor accepted by the governing body of the Township of Upper Deerfield; and

BE IT FURTHER RESOLVED that the failure of the guarantor, The Bank, to honor the letter of credit pursuant to the terms and conditions thereof shall result in the Township of Upper Deerfield taking such legal action as may be necessary to enforce the obligation in favor of the Township of Upper Deerfield; and

BE IT FURTHER RESOLVED that the failure of the Developer to rectify the deficiencies as set forth in the Certification of Brian Murphy, P.E. within 30 days from the date of notice hereof by certified mail, return receipt requested, shall entitle the Township, in the discretion of the Mayor, to notify the guarantor of the performance guarantee that the letter of credit is being demanded in favor of the Township of Upper Deerfield to remit the performance guarantee to the Township of Upper Deerfield.

Moved By: John Daddario

Seconded By: Bruce Peterson

VOTING

James P. Crilley
 John L. Daddario
 John T. O’Neill, Sr.
 Bruce T. Peterson
 Scott Smith

<u>In Favor</u>	<u>Against</u>	<u>Abstain</u>	<u>Absent</u>
X			
X			
X			
X			
X			

CERTIFICATION

I hereby certify that the foregoing is a true copy of Resolution adopted by the Township Committee of the Township of Upper Deerfield, in the County of Cumberland, at a meeting thereof held March 3, 2011

Roy J. Spoltore, Township Clerk

CERTIFICATION OF MUNICIPAL ENGINEER, BRIAN MURPHY
REGARDING BLOCK 2401, LOT 55 ON THE TAX MAP
OF THE TOWNSHIP OF UPPER DEERFIELD
REGARDING RJ'S HERITAGE HOMES, INC. D/B/A
NOCENTINO HOMES

I, Brian Murphy, P.E., of full age, certify and say as follows:

1. I am the Township Engineer of the Township of Upper Deerfield.
2. I make this Certification pursuant to the terms of an irrevocable standby letter of credit, no. SO40344 regarding property formerly known as Block 2401, Lot 55 on the Tax Map of the Township of Upper Deerfield. This property was subdivided into a housing development pursuant to an application before the Township Planning Board submitted by RJ's Heritage Homes, Inc. d/b/a Nocentino Homes.
3. Among other things, the retention/detention basins on the property have been either improperly constructed or improperly engineered. The Township has repeatedly notified the developer by contacting Robert Nocentino on various occasions to advise that the retention/detention basins are not draining, accumulations of water and soil are lying upon the property creating a dangerous and unhealthy condition to the Township and residents of the development. Among other things, the standing water has bred mosquitos during the warmer months, and the failure of the design and the improvements to the property with respect to the detention and retention basins has been inadequate in that the basins do not drain adequately and standing water and soil has existed for considerable periods of time. Despite repeated

requests by myself to the developer to correct these deficiencies going back to February, 2010, there has been no meaningful progress or corrections made to the improvements.

4. As of March, 2011, standing water still exists over significant areas of the development which creates a hazard to Township residents and, in particular, children who may be drawn to the area.

5. Despite repeated requests the developer has failed to remedy these deficiencies.

6. In addition, the roadway leading into the development is breaking up and the roadway is substandard. The developer has not completed the improvements and despite the Township's request that the developer complete improvements, it has not done so.

7. The Township is, therefore, requesting that the performance guarantee be made available to allow the Township to complete the improvements.

8. I certify that a copy of this Certification as notice to the developer has been sent by certified mail on March 4, 2011, to the developer notifying him of the Township's intention to request that the performance guarantee be made available to the Township and transferred to the Township to allow the Township to complete the necessary improvements and correct the longstanding deficiencies with respect to this property unless within 30 days the deficiencies are corrected to the satisfaction of the Township.

I certify that the foregoing statements made by me are true. I am aware that if the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: _____

BRIAN MURPHY, P.E.