

RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT BY AND BETWEEN THE CITY OF VINELAND AND AMERICAN SOUTHERN INSURANCE TO RELEASE PERFORMANCE SURETY BOND NUMBER B98808-016544 REGARDING LOUIS COURT MAJOR SUBDIVISION.

WHEREAS, the City of Vineland Planning Board, by Resolution 5316 granted final major subdivision approval to the residential development project commonly known as Louis Court, identified on the Tax Maps of the City of Vineland as Block 919, Lots 8.05, 8.06, 8.07, 8.10, 8.11, 8.12, 8.15 and 23; and

WHEREAS, in connection with the Louis Court major subdivision, the previous developer, MFNN, LLC was required to post a performance bond with the City of Vineland (City) to ensure the completion of certain improvements and posted Performance Surety Bond Number B98808-016544 which Bond was issued by American Southern Insurance Company (Surety) in an original amount of \$664,690.00.

WHEREAS, MFNN, LLC completed certain of the Improvements at the Louis Court property in accordance with the plans approved by the City's Planning Board; and

WHEREAS, MFNN, LLC defaulted in its obligation to complete all the improvements in accordance with the approved plans and various improvements and development remained to be performed; and

WHEREAS, the City has made a claim against the Surety demanding the completion of incomplete improvements and development covered by the Bond; and

WHEREAS, the City and the Surety entered into an Agreement dated December 7, 2016 (**Exhibit A**, attached) to resolve any and all claims by and between them arising out of or in relation to the Louis Court development and the completion of improvements and development; and

WHEREAS, the subject improvements have been completed, but for completion of the project's detention basin; and

WHEREAS, the City Engineer has approved a revised Basin Forebay Plan and the Surety has agreed to perform the Basin work in accordance with such Plan; and

WHEREAS, a form of Agreement (**Exhibit B**, attached) has been proposed for Release of the subject Surety Bond upon completion of the Basin work, subject to approval by the City Engineer.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Vineland as follows:

1. City Council does hereby approve and authorize execution by the Mayor of the City of Vineland of the attached Agreement to Release Surety Bond (**Exhibit B**).

Adopted:

President of Council

ATTEST:

City Clerk

EXHIBIT A

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made on this ____ day of November, 2016, by and between the City of Vineland (Vineland") and American Southern Insurance Company ("Surety").

RECITALS

WHEREAS, in connection with a final major subdivision approval commonly known as Louis Court and identified on the Vineland Tax Maps as Block 919, Lots 8.05, 8.06, 8.07, 8.10, 8.11, 8.12, 8.15 and 23 (the "Property") the previous developer, MFNN, LLC was required to post a performance bond with the City to ensure the completion of the Improvements and posted Bond Number B98808-016544 which Bond was issued by the Surety in an original amount of \$664,690.00.

WHEREAS, MFNN, LLC completed certain of the Improvements at the Property in accordance with the plans approved by the City's Planning Board; and

WHEREAS, MFNN, LLC has defaulted in its obligation to complete the improvements in accordance with the approved plans and various items of incompleteness exist; and

WHEREAS, Vineland has made a claim against the Surety demanding the completion of incomplete items covered by the Bond; and

WHEREAS, Vineland and the Surety desire to enter into this Agreement to resolve any and all claims by and between them arising out of or relating to the Property and the completion of Improvements without the admission of liability and

without the costs of a potential Lawsuit;

NOW, THEREFORE, in consideration of the Agreement and undertakings herein and for other good and valuable consideration having been exchanged, the receipt and adequacy thereof being acknowledged, Vineland and the Surety hereby agree as follows:

1. RECITALS:

The recitals set forth above are a material part of this Agreement and are therefore incorporated herein by reference.

2. TERMS:

(a) The Surety shall contract with appropriate contractors to complete the Improvements as outlined in the attached scope of work attached hereto as Exhibit A and incorporated herein by reference.

(b) In consideration for the completion of the Improvements by the Surety as outlined on Exhibit A, Vineland hereby releases and forever discharges the Surety and any related entity, representative, officer or agent from any and all actions, causes of action, rights and remedies, and claims raised or which could have been raised relating to the Property and the completion of Improvements.

(c) Upon completion of the Improvements, Vineland agrees to immediately release the Surety from Bond No B98808-016544 in the amount of \$664,690.00 and shall return the original bond to the Surety.

3. **SEVERABILITY:**

The invalidity or unenforceability of any provision hereof will in no way affect the validity or enforceability of any other provision.

4. **CONSTRUCTION:**

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey;

(b) No presumption shall exist, in construing this Agreement against the party who shall have caused this Agreement to have been drafted.

5. **WHO IS BOUND:**

The parties agree to be bound by this Agreement without limitation, restriction, or reservation. Anyone who succeeds to the rights and responsibilities of the parties, such as their heirs, successors or assigns shall also be bound.

6. **ENTIRE AGREEMENT:**

This Agreement is the entire Agreement between the parties and supersedes any existing oral or written Agreements with respect to the resolution, or potential resolution of the threatened Litigation between the parties.

7. **AMENDMENT:**

This Agreement cannot be amended, supplemented or modified, and no provisions shall be waived, except by written instrument executed by all parties to this Agreement.

8. **LEGAL COUNSEL:**

The parties acknowledge that they have consulted with counsel before signing this Agreement.

9. **FULL UNDERSTANDING:**

The parties acknowledge that they have read this Agreement carefully, and fully understand the meaning of the terms of the Agreement, and are signing the Agreement of their own volition, knowingly and voluntarily. Each person signing this Agreement represents and warrants that he or she is authorized and empowered to sign on behalf of and by the parties on whose behalf this document has been executed.

10. **COUNTERPARTS:**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise a single instrument.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound,
have caused this Agreement to be signed the day and the year first above written.

Attest:

The City of Vineland

Christine A Scarpa

By: 

Christine A. Scarpa, Deputy Clerk

Dated: December 7, 2016

American Southern Insurance Company

Witness

By: _____
Edward Vollertsen

Dated: _____

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound,
have caused this Agreement to be signed the day and the year first above written.

Attest:

The City of Vineland

,Clerk

By: _____
Ruben Bermudez, Mayor

Dated: _____

Candace Cheatham

Witness

American Southern Insurance Company

By: *Jerry Underwood*
Jerry Underwood

Dated: *11-28-2016*

Exhibit A - Scope of Work

Principal: MFNN, LLC
Obligee: City of Vineland, NJ (City)
Surety: American Southern Insurance Company (ASIC)
Bond No.: B98808016544
Project: Louis Court Major Subdivision

Asphalt and Concrete Work:

- Asphalt base repairs.
- Asphalt surface course.
- Concrete depressed curb – 100 LF.
- Replace concrete curb – 20 LF.
- Replace handicap Ramps – 5 total.
- Installation of concrete sidewalk in front of basin.
- Adjustment of water valves for asphalt.
- Adjustment of manholes for asphalt.
- Asphalt milling as needed for final asphalt surface course.

Basin Scope of Work:

- Pump out/dewater the basin.
- Mow/cut down the vegetated grown on the basin lot and inside the basin perimeter fence in order for an inspection to be performed.
- After the inspection, if it is determined the basin has not been constructed per the approved plans, ASIC will perform the basin remedial work for acceptance by the City. This may include demucking/removal of silt and installation of the 1 ft by 6 ft by 40 ft stone trench, if not installed. The determination as to whether the basin has been constructed in accordance with the approved plans shall be made in the reasonable discretion of the City Engineer in consultation with ASIC's Engineer and reasonable remedial work as necessary shall be documented by the City Engineer in consultation with ASIC's Engineer.
- Install a total of 6 Evergreen trees (2 on the front side and 2 each on each side outside the basin fence).
- Install a total of 12 Bayberry shrubs (4 on the front side and 4 on each side outside the basin fence).

Monuments and Signs:

- Concrete monuments – 13 total.
- Street signs at Tammie Trail, New Magnolia Road and at interior intersection & stop signs.

EXHIBIT B

AGREEMENT TO RELEASE SURETY BOND

WHEREAS, American Southern Insurance Company (hereinafter "ASIC") issued Performance Surety Bond #B98808-016544 (hereinafter "Bond") in the original amount of \$664,690.00 in favor of the City of Vineland (hereinafter "Vineland");

WHEREAS, the Bond was issued in accordance with the procedures of the New Jersey Municipal Land Use Law to secure the completion of the public improvements in the development project known as Louis Court and being designated upon the City of Vineland Tax Maps as Block 919, Lots 8.05, 8.06, 8.07, 8.10, 8.11, 8.12, 8.15 and 23;

WHEREAS, by letter dated February 3, 2016, demand was made by the City of Vineland against the Bond demanding that the Louis Court project be completed;

WHEREAS, Vineland claimed that there were improvements as yet unperformed by the principal on the bond, MFNN, LLC;

WHEREAS, ASIC and Vineland have endeavored to resolve all issues relating to said improvements and the Bond;

WHEREAS, the only issue remaining outstanding are improvements to the detention basin; and

WHEREAS the parties have come to an agreement regarding same;

IT IS AGREED TO BY THE PARTIES AS FOLLOWS:

1. Attached hereto at Exhibit A is a revised Basin Forebay Plan prepared by Gary Civalier, PE;

2. ASIC agrees to have performed, at its expense, the basin forebay physical work as set forth in Exhibit A;
3. Following completion of said physical work by ASIC, and approval of said work by Vineland's Municipal Engineer (which approval shall not be unreasonably withheld):
 - (a) Vineland agrees: to release and discharge, in full and final, the Performance Surety Bond #B98808-016544; to forever release and discharge ASIC from any obligations arising under the Bond or related in any way to the project or improvements designated therein; and to return the Bond to ASIC.; and
 - (b) ASIC agrees to release and discharge Vineland from any obligations related to the Bond or the project designated therein.
4. Vineland agrees to take any official municipal action as may be necessary to effectuate the terms of this agreement.

SIGNATURES:

City of Vineland

BY: _____

Name/Title:

Date:

American Southern Insurance Company

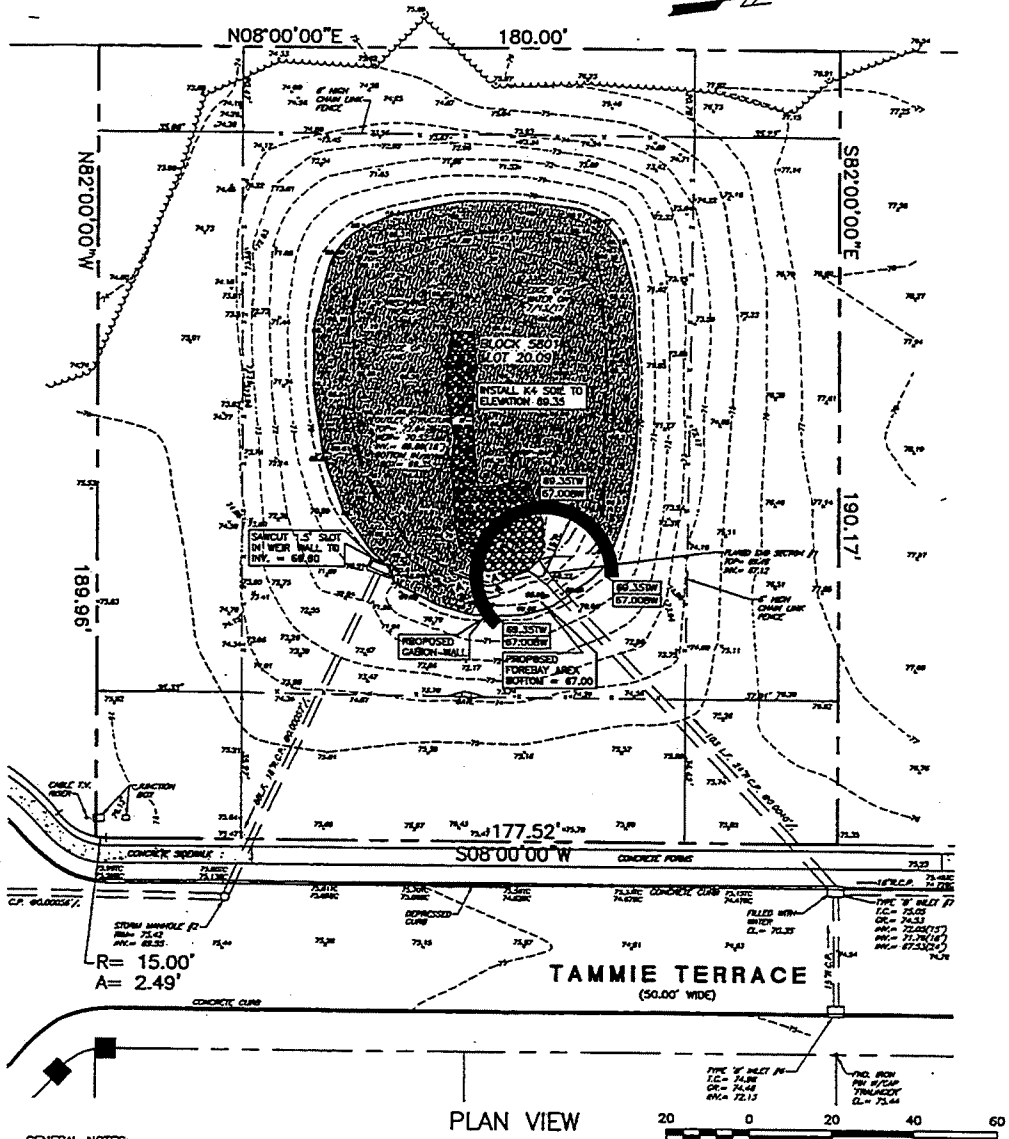
BY: _____

Name/Title:

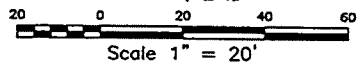
Date:

EXHIBIT A

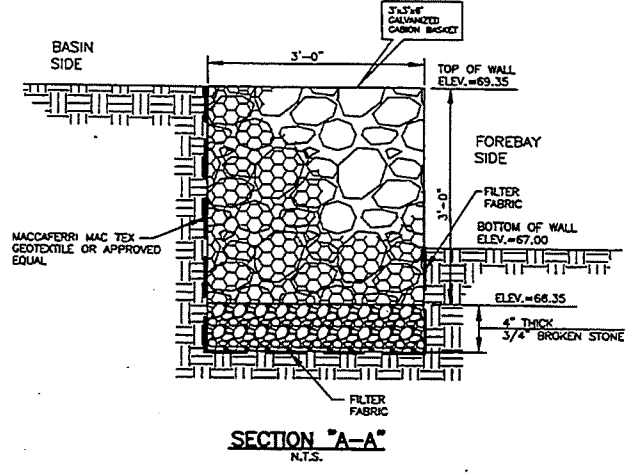
REF. PLAN NOTE #1



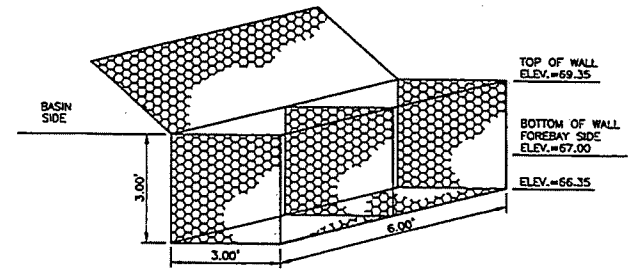
PLAN VIEW



- GENERAL NOTES:**
1. OUTLINES SHOWN HEREIN BASED ON A PLAN ENTITLED: "FINAL PLAN FOR NEWLY L.D. BLOCK 5801, LOTS 8,00-8,07, 8,10-8,12, 8,15 & 23, CITY OF VINELAND, CAMBERLAND COUNTY, N.J." PREPARED BY A-TECH ENGINEERING, INC. OF VINELAND, NEW JERSEY DATED 2/16/2004 LAST REVISED TO 5/8/2008 FILED AT THE CAMBERLAND COUNTY CLERK'S OFFICE.
 2. EXISTING CONDITIONS AND TOPOGRAPHY SHOWN HEREIN BASED ON FIELD WORK PERFORMED BY THIS OFFICE FROM JULY 7, 2016 TO JULY 13, 2017.
 3. SUBJECT PROPERTY BEING KNOWN AS BLOCK 5801, LOT 20.09 AND CONTAINING AN AREA OF 34,206-SQRS. S.F. OR 0.7826 ACRES AS SHOWN ON THE CURRENT OFFICIAL TAX MAPS OF THE CITY OF VINELAND, CAMBERLAND COUNTY, NEW JERSEY.
 4. VERTICAL DATUM IS BASED ON PLANS ENTITLED: "MAJOR SUBDIVISION LINDSAY COURT, NEW MAGNOLIA ROAD & SOUTH EAST AVENUE, CITY OF VINELAND, CAMBERLAND COUNTY, N.J. BLOCK 919, LOTS 8,08, 8,07, 8,10, 8,11, 8,12, 8,15 & 23" PREPARED BY A-TECH ENGINEERING, INC. OF VINELAND, NEW JERSEY DATED 2/16/2004 LAST REVISED TO 5/26/2008. BENCHMARK SANITARY MANHOLE LOCATED IN TAMMIE TERRACE CUL-DE-SAC, RM ELEVATION = 76.29.



SECTION "A-A"
N.T.S.



NOTE:
ALL GABION BASKETS SHALL BE GALVANIZED COATED.

GABIONS - NOMINAL SIZES

LETTER CODE	LENGTH	WIDTH	HEIGHT	NO. OF CELLS	CAPACITY CU. YDS.	COLOR CODE
A	6'	3'	3'	2	2.00	BLUE
B	9'	3'	3'	4	4.00	BLACK
C	12'	3'	3'	3	3.00	WHITE
D	6'	3'	1'-6"	2	1.00	RED
E	9'	3'	1'-6"	3	1.50	GREEN
F	12'	3'	1'-6"	4	2.00	YELLOW
G	6'	3'	1'	2	0.65	BLU/RED
H	9'	3'	1'	3	1.00	BLU/YEL
I	12'	3'	1'	4	1.33	BLU/GRN

GABIONS DETAIL
N.T.S.

DATE	BY	CHKD BY	FIG. NO.
			516-1079
			DATE 2/07/18
			SCALE 1" = 20'
			DATE BY 8'
			DESIGNED BY CRC

BASIN FOREBAY PLAN			
SITUAIE			
PLATE 58	BLOCK 5801	LOT 20.09	
CITY OF VINELAND	CAMBERLAND COUNTY	NEW JERSEY	