

Resolution 2023-62

RESOLUTION OF THE TOWN OF PHILLIPSBURG, COUNTY OF WARREN, STATE OF NEW JERSEY AUTHORIZING THE TOWN TO EXECUTE A CONTRIBUTION AGREEMENT WITH R& F PHILLIPSBURG, LLC

WHEREAS, R&F Phillipsburg, LLC (“Developer”) sought a sewer will-serve letter from the Town of Phillipsburg (“Town”) for a proposed Chipotle restaurant development project to be located in Pohatcong Township at Block 75, Lot 3 on the official tax map of the Township of Pohatcong, County of Warren, State of New Jersey; and

WHEREAS, sanitary sewage flows from the warehouse project will be conveyed to the Town’s wastewater treatment plant via the main trunk line on Sawmill Road, which is at capacity during wet weather flows, as a result of which the United State Environmental Protection Agency via administrative order is requiring system modifications to increase capacity of the aforesaid sewer main; and

WHEREAS, in connection with the issuance of the will-serve latter and pursuant to Section 492-37D of the Phillipsburg Municipal Code, the Town is requiring the Developer to pay a sewer impact fee of \$2,250.00 to the Town for improvements to the sewer main referenced above; and

WHEREAS, the Developer is agreeable to entering into an agreement with the Town for the aforesaid payment.

NOW THEREFORE BE IT RESOLVED by the Town Council of the Town of Phillipsburg, County of Warren, State of New Jersey, that the Mayor is authorized to execute an agreement with Developer for payment of the required contribution in substantially the form attached hereto as Exhibit A, subject to and consistent with the terms of this resolution and such revisions as deemed advisable by the Town Attorney or other Town professionals, along with other documents and/or agreements that may be necessary to implement the agreement, and for the Town Clerk to witness same.

Exhibit A

AGREEMENT

THIS AGREEMENT is made on this ____ day of _____, 2023, by and between R & F PHILLIPSBURG, LLC, a [*insert state*] limited liability company, having offices at [*insert address*]_____ (hereinafter "Developer") and the TOWN OF PHILLIPSBURG, a New Jersey municipal corporation having offices at 120 Filmore Street, Phillipsburg, NJ 08865 (hereinafter "Town").

WHEREAS, Developer is constructing a 2,335 SF Chipotle restaurant with drive-thru on certain lands located in the Township of Pohatcong (hereinafter "Pohatcong") known and designated as Block 75, Lot 3 on the official tax map of Pohatcong, more commonly known as 1314 U.S. Route 22, Pohatcong, New Jersey (the "Project"); and

WHEREAS, sewage from the Project will flow to the Town's wastewater treatment plant via the main trunk line along Sawmill Road in the Town ("Sawmill Line"); and

WHEREAS, the Town has advised Developer that the Sawmill Line is currently at capacity and that the United States Environmental Protection Agency via administrative order has required the Town to undertake certain improvements to the Sawmill Line to increase capacity; and

WHEREAS, Developer has requested that the issue a sewer will-serve letter for the Project; and

WHEREAS, as a condition of issuing the will-serve letter, the Town is requiring, and Developer is willing to provide, an impact fee to be used towards the required improvements to the Sawmill Line pursuant to Section 492-37D of the Phillipsburg Town Code.

NOW, THEREFORE, in consideration of the mutual promises herein set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the Town and Developer agree as follows:

1.0 Developer's Obligations.

1.1 Impact Fee. Developer agrees to pay an impact fee to the Town in the amount of \$15,550.00 for use by the Town for the required improvements to the Sawmill Line, based upon the Project's estimated daily peak flow of 6,220 gallons per day of sewage. Such payment shall be in addition to the sewer connection fees to be paid by Developer pursuant to the Town's and Pohatcong's municipal codes. The contribution

payments shall be made simultaneously with the payment of the connection fees for the Project, in certified funds.

2.0 Town Obligations.

2.1 Will Serve Letter. Subject to the execution of this agreement, the Town shall issue the requested will-serve letter.

2.2 Use of Funds. The Town shall utilize the impact fee exclusively towards the required improvements to the Sawmill Line. The timing, scope and details of such improvements shall be determined in the sole discretion of the Town.

3.0 Miscellaneous.

3.1 Recitals. The above recitals are hereby incorporated into this Agreement as if set forth herein at length.

3.2 Effective Date. The Effective Date of this Agreement shall be the date that this Agreement is fully executed by and delivered to both parties.

3.3 Cooperation. The parties shall cooperate with each other and proceed in good faith and with due diligence to effectuate the intent and purpose of this Agreement.

3.4 Notices. Any notice or communication which may be or is required to be given pursuant to the terms of this Agreement shall be in writing and shall be sent to the respective party at the addresses set forth below, postage prepaid, by certified mail, return receipt requested, by a nationally recognized overnight courier service that provides tracing and proof of delivery, or by facsimile or email transmission with proof of delivery. Notices shall be effective upon receipt. Either party may change the address to which notices to it shall be sent by a notice sent in accordance with the requirements of this Section.

To Developer: [*developer*]
 [*address*]

[city], NJ [zip]
Attention:
Fax No.
Email:

With a copy to: [counsel]
[address]
[city], NJ [zip]
Attn:
Fax No.
Email:

To Town: Township of Phillipsburg
120 Filmore Street
Phillipsburg, NJ 08865
Attention: Matthew Hall, Business Administrator
Fax No. 908-454-6511
Email: busadmin@phillipsburgnj.org

With a copy to: Sandy L. Galacio, Jr., Esq.
Windels Marx Lane & Mittendorf, LLP
120 Albany Street Plaza, 6th Floor
New Brunswick, New Jersey 08901
Fax No. 732.846.8877
Email: sgalacio@windelsmarx.com

3.5 Governing Law; Assigns. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Jersey, without regard to any principles of choice of law, and shall be binding upon and inure to the benefit of the respective heirs, personal representatives, successors and permitted assigns of the Parties.

3.6 Amendment. This Agreement represents the entire, final and integrated understanding and agreement of the parties hereto with respect to the subject matter hereof and may only be amended by a writing executed by the parties hereto. All prior or contemporaneous oral or written agreements, representations, understandings, negotiations and discussions by the parties hereto with respect to the subject matter hereof are merged herein and superseded hereby.

3.7 Counterparts. This Agreement may be executed in any number of identical counterparts. If so executed, each such counterpart shall constitute this Agreement. In

proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

3.8 Captions. The captions in this Agreement are inserted only for the purpose of convenience of reference and in no way define, limit or describe the scope or intent of this Agreement or any part thereof.

3.9 Construction. Each provision of this Agreement has been mutually negotiated, prepared and drafted, each party has been represented by legal counsel, and in connection with the construction of any provision hereof or deletions here from no consideration shall be given to the issue of which party actually prepared, drafted, requested or negotiated any provision or deletion.

3.10 Assignment. This Agreement shall be binding upon and shall inure to the benefit of Developer and the Town, their respective heirs, successors, legal representatives and permitted assigns. Developer may assign its rights and obligations hereunder without the Town's prior written consent.

3.11 Days. If any date herein set forth for the performance of any obligations of a party or for the delivery of any instrument or notice as herein provided should be on a Saturday, Sunday or legal holiday, the compliance with such obligations or delivery shall be deemed acceptable on the next business day following such Saturday, Sunday or legal holiday. As used herein, the term "legal holiday" means any state or Federal holiday for which financial institutions or post offices are generally closed in the State of New Jersey.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

WITNESS:

[developer]

A [*insert state* limited liability company]

BY: _____

BY: _____

Name: _____

Title: _____

Date: _____

TOWN OF PHILLIPSBURG

BY: _____

Lorraine Loudenberry,
Deputy Municipal Clerk

Todd Tersigni, Mayor

Date: _____