

RESOLUTION

WHEREAS, Michael Bielak of 158 Bathurst Avenue, North Arlington, New Jersey entered into a Developer's Agreement dated June 14, 2005 with the Township of West Orange for the improvement of real property known as Old Indian Estates, Block 156, Lot 29 on the Tax Maps of the Township which Agreement was recorded with the Essex County Register on July 12, 2005 in Book 6206, page 118; and

WHEREAS, Paragraph 7 of the Agreement required the Developer, Mr. Bielak, to complete all improvements within two years of the date of the Agreement unless the times are extended by a Resolution of the Township Council; and

WHEREAS, to assure the completion of the improvements, the Agreement required the posting of performance guarantees with the Township in the amount of \$353,890.80 of which 10 percent or \$35,389.08 was cash and the remainder of \$313,501.72 a surety bond; and

WHEREAS, the Developer posted the cash bond with the Township and a surety bond No. S20094 in the amount of \$313,501.72 as issued by First Indemnity of America Insurance Company, 119 Littleton Road, Parsippany, New Jersey; and

WHEREAS, in accordance with N.J.S.A. 40:55D-53 upon completion of certain improvements, the Township upon the request by the Developer and the recommendation of the Municipal Engineer authorized the reduction in the performance guarantee to \$114,600.00 of which ten percent or \$11,460.00 was cash and the remainder of \$103,140.00 a surety; and

WHEREAS, by letter dated August 4, 2010 from the Township Engineer to Michael Bielak and First Indemnity of America Insurance, the Township placed both Mr. Bielak as Developer and Principal of Fidelity Indemnity of America Bond No. S20094 and Fidelity Indemnity of America Insurance on notice of Mr. Bielak's failure to complete the improvements associated with the Old Indian Estates subdivision within the two year period of the date of the Agreement as specified in Paragraph 7 of the Agreement; and

WHEREAS, the Township Engineer by letter dated September 21, 2010 requests the Township Council find Mr. Bielak in default of his Developer's Agreement and declare Mr. Bielak as a Co-Principal with Bozena Bielak and Old Indian Estates in default of Bond No. S20094 issued by First Indemnity of America Insurance Company; and

WHEREAS, the Township Council concurs in the foregoing.

NOW, THEREFORE BE IT RESOLVED by the Township Council of the Township of West Orange that Michael Bielak is found to be in default of the Developer's Agreement with the Township dated June 14, 2005 for the Old Indian Estates subdivision due to his failure to complete the improvements associated with the subdivision within a two year period of the date of the Agreement as specified in Paragraph 7 of the Agreement.

BE IT FURTHER RESOLVED that Mr. Bielak as a Co-Principal along with Bozena Bielak and Old Indian Estates Corp. are declared in default of their obligations to improve real property known as Old Indian Estates Block 156, Lot 29 whose performance was guaranteed by First Indemnity of America Insurance Company Bond No. S20094.

BE IT FURTHER RESOLVED that Fidelity Indemnity of America Insurance Company shall in accordance with the terms and conditions of Bond No. S20094 complete the work associated

with the Old Indian Estates Subdivison.

BE IT FURTHER RESOLVED that certified copies of this Resolution be sent by Certified Mail to Michael Bielak and Fidelity Indemnity of America Insurance Company.

**Karen J. Carnevale, Municipal Clerk
President**

Sal M. Anderton, Council

Adopted: September 28, 2010