

**TOWN OF WESTFIELD
WESTFIELD, NEW JERSEY**

RESOLUTION NO. 2020

**RESOLUTION OF THE TOWN OF WESTFIELD, COUNTY OF UNION,
STATE OF NEW JERSEY, APPROVING A CONDITIONAL
DESIGNATION & INTERIM COSTS AGREEMENT WITH SW
WESTFIELD LLC**

WHEREAS, the Local Redevelopment and Housing Law, *N.J.A.C. 40A:12A-1, et seq.*, as amended and supplemented (the “**Redevelopment Law**”), provides a process for municipalities to participate in the redevelopment and improvement of areas designated by the municipality as being in need of redevelopment; and

WHEREAS, on March 10, 2020, the Mayor and Council of the Town (the “**Governing Body**”) adopted Resolution Number 77-2020, requesting and authorizing the Town’s Planning Board (“**Planning Board**”) to undertake a preliminary investigation to determine whether certain properties including:

Block	Lot	Street Address
3101	5	300 South Avenue West
3103	7	301 North Avenue West
3116	11	148 Central Avenue

as identified on the Official Tax Map of the Town (the “**Train Station Properties**”) qualify as a “non-condemnation” area in need of redevelopment pursuant to the Redevelopment Law; and

WHEREAS, on March 10, 2020, the Governing Body also adopted Resolution Number 78-2020, requesting and authorizing the Planning Board to undertake a preliminary investigation to determine whether the properties:

Block	Lot	Street Address
2502	14	630 North Avenue West
2506	1	526 North Avenue West
2508	11	601-613 North Avenue West

as identified on the Official Tax Map of the Town (the “**L&T Properties**”, together with the Train Station Properties, the “**Project Site**”) qualify as a “non-condemnation” area in need of redevelopment pursuant to the Redevelopment Law; and

WHEREAS, on June 30, 2020, based upon a recommendation from the Planning Board following a public hearing on June 1, 2020, the Governing Body adopted Resolution No. 145-2020, designating the Train Station Properties as a non-condemnation area in need of redevelopment pursuant to the Redevelopment Law; and

WHEREAS, on August 11, 2020, based upon a recommendation from the Planning Board following a public hearing on July 20, 2020, the Governing Body adopted Resolution No. 180-2020, designating the L&T Properties as a non-condemnation area in need of redevelopment pursuant to the Redevelopment Law; and

WHEREAS, on November 10, 2020, the Governing Body approved Ordinance No. 2198 adopting the “Downtown Westfield Scattered Site Redevelopment Plan” dated October 5, 2020, prepared by the Town’s Planner, Donald B. Sammet, PP/AICP, for the Project Site; and

WHEREAS, SW Westfield LLC (“**SW**”) has approached the Town with an interest in being conditionally designated as the redeveloper of the Project Site and in pursuing pre-redevelopment activities with the Town with respect to the redevelopment of the Project Site

including, but not limited to, the negotiation in good faith of a redevelopment agreement and other related agreements and actions for future redevelopment; and

WHEREAS, the Governing Body has determined it to be in the best interests of the Town to designate SW as the conditional redeveloper of the Project Site and to undertake the Pre-Redevelopment Activities subject to the terms and conditions of that certain Conditional Designation & Interim Costs Agreement (the “**Agreement**”), a copy of which is affixed to this Resolution as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Town of Westfield, County of Union, and State of New Jersey, as follows:

1. The Agreement annexed to this Resolution as Exhibit A is hereby approved. The Mayor is authorized to execute the Agreement on behalf of the Town.
2. SW is hereby conditionally designated as the redeveloper of the Project Site subject to the terms and conditions of the Agreement, effective upon all conditions set forth in Paragraph 1 of the Agreement having been met.
3. All Town officials and employees are hereby authorized and directed to take all action necessary and appropriate to effectuate the terms of this Resolution.
4. This Resolution shall take effect immediately.

CONDITIONAL DESIGNATION & INTERIM COSTS AGREEMENT

This **CONDITIONAL DESIGNATION & INTERIM COSTS AGREEMENT** (“**Agreement**”) dated as of December 8, 2020 (the “**Effective Date**”), by and between the **TOWN OF WESTFIELD**, having an address at Westfield Town Hall, 425 East Broad Street, Westfield, New Jersey 07090 (the “**Town**”), and **SW WESTFIELD LLC**, having an address of 225 Liberty Street, 31st Floor, New York City, New York 10281 (“**SW**”). The Town and SW may each be referred to herein as a “**Party**” or collectively as the “**Parties.**”

RECITALS

A. The Local Redevelopment and Housing Law, *N.J.A.C. 40A:12A-1, et seq.*, as amended and supplemented (the “**Redevelopment Law**”), provides a process for municipalities to participate in the redevelopment and improvement of areas designated by the municipality as being in need of redevelopment.

B. On March 10, 2020, the Mayor and Council of the Town (the “**Governing Body**”) adopted Resolution Number 77-2020, requesting and authorizing the Town’s Planning Board (“**Planning Board**”) to undertake a preliminary investigation to determine whether certain properties including:

Block	Lot	Street Address
3101	5	300 South Avenue West
3103	7	301 North Avenue West
3116	11	148 Central Avenue

as identified on the Official Tax Map of the Town (the “**Train Station Properties**”) qualify as a “non-condemnation” area in need of redevelopment pursuant to the Redevelopment Law.

C. On March 10, 2020, the Governing Body also adopted Resolution Number 78-2020, requesting and authorizing the Planning Board to undertake a preliminary investigation to determine whether the properties:

Block	Lot	Street Address
2502	14	630 North Avenue West
2506	1	526 North Avenue West
2508	11	601-613 North Avenue West

as identified on the Official Tax Map of the Town (the “**L&T Properties**”, together with the Train Station Properties, the “**Project Site**”) qualify as a “non-condemnation” area in need of redevelopment pursuant to the Redevelopment Law.

D. On June 30, 2020, based upon a recommendation from the Planning Board following a public hearing on June 1, 2020, the Governing Body adopted Resolution No. 145-2020, designating the Train Station Properties as a non-condemnation area in need of redevelopment pursuant to the Redevelopment Law.

E. On August 11, 2020, based upon a recommendation from the Planning Board following a public hearing on July 20, 2020, the Governing Body adopted Resolution No. 180-2020, designating the L&T Properties as a non-condemnation area in need of redevelopment pursuant to the Redevelopment Law.

F. On November 10, 2020, the Governing Body approved Ordinance No. 2198 adopting the “Downtown Westfield Scattered Site Redevelopment Plan” dated October 5, 2020, prepared by the Town’s Planner, Donald B. Sammet, PP/AICP (the “**Redevelopment Plan**”), for the Project Site.

G. The Town has incurred costs and expenses related to the Project Site, including investigation of the Project Site as an area in need of redevelopment, the designation of the Project Site as an area in need of redevelopment, the preparation of the Redevelopment Plan, and other activities and actions related to the Redevelopment Plan (the “**Prior Costs**”).

H. SW has approached the Town with an interest in being conditionally designated as the redeveloper of the Project Site and in pursuing pre-redevelopment activities with the Town with respect to the redevelopment of the Project Site including, but not limited to, the negotiation in good faith of a redevelopment agreement and other related agreements and actions (“**Pre-Redevelopment Activities**”) for future redevelopment.

I. The Governing Body has determined it to be in the best interests of the Town to designate SW as the conditional redeveloper of the Project Site and to undertake the Pre-Redevelopment Activities commencing upon the Effective Date and terminating on December 31, 2021, subject to any earlier termination or extension as set forth in this Agreement.

J. SW recognizes that the Town has incurred the Prior Costs and has and will incur additional costs and expenses in connection with the Pre-Redevelopment Activities, and SW is willing to defray the actual costs and expenses of Reimbursable Activities (as defined in Section 9, below) related to the Project Site, with no assurances of a particular result for SW from the Town.

K. As an inducement to the Town to engage in Pre-Redevelopment Activities, and as a precondition thereto, SW has agreed to deposit two hundred and fifty thousand dollars (\$250,000.00) (“**Initial Escrow Deposit**”), to be deposited in escrow and disbursed in accordance with the provisions of this Agreement to reimburse the Town for the Prior Costs and to pay for Reimbursable Activities (as defined below) during the term of this Agreement.

L. On December 8, 2020, the Governing Body adopted Resolution No. 286-2020 conditionally designating SW as the redeveloper of the Project Site subject to the terms and conditions set forth in this Agreement and authorizing the execution of this Agreement.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, and intending to be legally bound hereby, the Parties hereto agree as follows:

1. **When Effective.** This Agreement shall not become effective unless and until the (i) the Initial Escrow Deposit has been made, and (ii) this Agreement has been fully executed by both Parties.

2. **Conditional Designation.** SW is hereby designated as the redeveloper for the Project Site upon the conditions set forth in this Agreement (the “**Conditional Designation**”). The Parties acknowledge that redevelopment of the Project Site shall be pursuant to the terms of the Redevelopment Law, the Redevelopment Plan, as may be amended and/or supplemented, and a future redevelopment agreement to be negotiated and executed by the Parties (the “**Redevelopment Agreement**”). SW acknowledges and accepts that this Agreement (i) provides no assurances, commitments or guarantees to SW that a Redevelopment Agreement will be executed, and (ii) does not constitute an entitlement or approval to redevelop the Project Site in any way.

3. **Term.** The Conditional Designation shall be effective upon execution of this Agreement and shall expire on December 31, 2021 (as may be extended the “**End Date**”), or upon termination of this Agreement, whichever shall come first. The Town represents that it is using continuous and diligent efforts to complete its ongoing Master Planning process and adopt a new Unified Land Use and Circulation Element of the Master Plan (hereinafter referred to as the “**Element**”) no later than April 1, 2021. In the event that the new “Element” is not adopted by the Town by April 1, 2021, the End Date shall be extended by one day for each day after April 1, 2021 until the date the new “Element” is adopted by the Town. The Town’s Mayor is authorized to unilaterally approve two (2) extensions of the End Date of six (6) months each on behalf of the Town and agrees, upon the written request by SW by no later than September 1, 2021, to consider the request for approval of the first extension of the End Date no later than October 1, 2021. Any additional extensions shall require the adoption of a formal amendment to this Agreement approved by the Governing Body.

4. **Interim Period.** The period of time during which the Conditional Designation remains in effect shall be referred to herein as the “**Interim Period.**” During the Interim Period, the Town agrees to negotiate exclusively with SW toward the execution of a Redevelopment Agreement pertaining to the Project Site, which shall include all the terms and conditions, schedules, and financial arrangements and other such conditions and representations between the Parties, as more specifically identified herein. Both Parties shall negotiate the Redevelopment Agreement in good faith.

5. **Prior Costs.** As an inducement to the Town to enter into this Agreement, SW agrees to reimburse the Town for the Prior Costs (as defined in Recital G, above) and to be paid from the Initial Escrow Deposit in accordance with the terms of this Agreement. The Prior Costs shall include only costs for Reimbursable Activities (as defined below) related to the Project Site. The Town has provided SW with an accounting of the Prior Costs which included a statement from each professional, identifying the personnel performing the Reimbursable Activities, each date the services were performed, the hours spent, the hourly rate, and a description of the Reimbursable Activities. SW acknowledges having reviewed all costs and expenses comprising the Prior Costs and accepts same as reasonable and undisputed. Payment of the Prior Costs shall be made from the Initial Escrow Deposit and shall not be reimbursable.

6. **Initial Escrow Deposit.** Immediately following execution of this Agreement, SW shall deposit the Initial Escrow Deposit in order to reimburse the Town for the Prior Costs and pay for the Reimbursable Activities (defined below) incurred by the Town pursuant to the terms of this Agreement in anticipation of the execution of a Redevelopment Agreement. SW may ultimately be required to pay other fees and escrow deposits pursuant to the Redevelopment Agreement, which would be in addition to the Initial Escrow Deposit. Concurrently with its submission of the Initial Escrow Deposit to the Town, SW shall provide a copy of its Business Registration Certificate and Form W-9 to aid in the administration of funds.

7. **Deposit and Administration of Escrow Funds.** The Initial Escrow Deposit, and all additions thereto, shall be held by the Town in a banking institution in the State of New Jersey insured by an agency of the federal government, or in any other fund or depository approved for such deposits by the State of New Jersey, in segregated, non-interest bearing accounts, separate from all Town operating funds (the “**Escrow Account**”).

8. **Additional Deposit(s).** If at any time the balance in the Escrow Account is less than fifty thousand dollars (\$50,000), the Town shall provide SW with a written notice of the insufficient escrow deposit balance (“**Deficiency Notice**”). Within ten (10) business days of the Deficiency Notice, SW shall deposit into the Escrow Account additional funds such that the total amount on deposit in the Escrow Account shall be not less than seventy-five thousand dollars (\$75,000), or such lower amount as set forth by the Town in the Deficiency Notice.

9. **Scope of Reimbursable Activities.** SW shall reimburse the Town for all actual and reasonable fees, costs and disbursements charged by any third party professional or consultant retained by the Town including, but not limited to, attorneys, planners, engineers, architects, consultants, contractors, and vendors, as well as actual and reasonable out-of-pocket expenses of any of the Town’s salaried staff and professionals, for services related to the Project Site in connection with the Pre-Redevelopment Activities (the “**Reimbursable Activities**”). The Reimbursable Activities shall include, but not be limited to, all correspondence, meetings, and communications with SW and its professionals, and the Town’s retained professionals, and the review, analysis, preparation and comment on agreements, plans, reports, studies, models, proposals, and other documentation, including all costs incurred by the Town as of the Effective Date for Reimbursable Activities and not included in Prior Costs, if any, until such time that this Agreement is terminated. The Town shall provide SW with copies of agreements with any third party professional or consultant, including such professional or consultants hourly rates and billing structure.

10. **Payments from Escrowed Funds.** Each payment for Reimbursable Activities to be charged to the Escrow Account shall be pursuant to a voucher from the professional, identifying the personnel performing the Reimbursable Activities, each date the services were performed, the hours spent, the hourly rate, and a description of the Reimbursable Activities. All professionals shall submit the required vouchers or statements to the Town in accordance with procedures established by the Town. The Town shall provide SW with invoices, along with copies of such vouchers or other receipts or back-up information, setting forth the Reimbursable Activities incurred by the Town which the Town determines are to be paid from the Escrow Account, on no less than a monthly basis, along with an estimate of costs for Reimbursable Activities anticipated for the following thirty (30) day period. Estimates provided (i) shall be a good faith approximation

of anticipated costs by the Town, (ii) shall be based upon consultation between the Town and SW, and (iii) are not guaranteed by the Town or any of its consultants to be accurate. Further, the failure of the Town to provide estimates shall not be considered a breach of this Agreement.

11. **Disputed Charges.** Any disputes arising over charges made for Reimbursable Activities shall be governed by the processes set forth under *N.J.S.A. 40:55D-53.2a*. Prior to filing a formal appeal, SW shall first notify the Town of its dispute. If notification of an objection is made, the Parties agree to make good faith efforts to resolve the dispute. If the matter is not resolved by the Parties to the satisfaction of SW, SW may make a formal appeal to the Union County Construction Board of Appeals.

12. **Accounting.** Upon the termination of this Agreement, or upon SW's request (no more frequently than every thirty (30) days), the Town shall prepare and send to SW a statement that shall include an accounting of funds listing all deposits, disbursements and the cumulative balance of the Escrow Account.

13. **Close Out Procedures.** Upon the termination of this Agreement, the Town will instruct its professionals to immediately cease all Reimbursable Activities and SW shall send a written request to the Town requesting that the remaining balance of the funds in the Escrow Account be refunded or otherwise applied as agreed to by the Parties in the Redevelopment Agreement or otherwise. After receipt of such notice, the Town shall instruct its professional(s) to render a final bill to the Town within sixty (60) days. Within thirty (30) days of receipt of the final bill, the Town shall pay all outstanding bills for Reimbursable Activities through the termination date in accordance with this Agreement and render a written final accounting to SW detailing the uses to which the escrow funds were put. SW will not be responsible for any additional charges once the final accounting has been rendered by the Town in accordance with this Section, except as specified in a Redevelopment Agreement.

14. **Termination.** This Agreement may be terminated only as follows:

(a) Automatically upon Execution of a Redevelopment Agreement. Upon the execution of a Redevelopment Agreement, this Agreement shall automatically terminate and the provisions governing the redevelopment of the Project Site shall be governed by the Redevelopment Agreement.

(b) Automatically upon Failure to Execute a Redevelopment Agreement. If the Parties fail to negotiate a Redevelopment Agreement by the End Date, as may be extended herein, this Agreement shall automatically terminate at 11:59 p.m. on the End Date as so extended.

(c) Voluntarily by SW. SW may terminate this Agreement with or without cause by giving the Town ten (10) business days' written notice (the "**SW Termination Notice**"). This Agreement shall automatically terminate upon the tenth (10th) business day following delivery of the SW Termination Notice. Upon receiving the SW Termination Notice, the Town shall immediately provide written directions to all engaged professionals to cease all solicited work pursuant hereto. If SW sends the SW Termination Notice, such notice shall include a request for the accounting set forth in Section 12 and shall be considered the notice required under such Section.

(d) By the Town Upon Default by SW. SW shall be deemed to be in default of this Agreement if SW shall fail to comply with any of its obligations herein, and such failure continues more than sixty (60) days of SW's receipt of a written notice from the Town of SW's specific default (an "**Event of Default**"). Upon an Event of Default, the Town may terminate this Agreement by giving SW ten (10) business days' written notice (the "**Town Termination Notice**"). This Agreement shall automatically terminate upon the tenth (10th) business day following delivery of the Town Termination Notice. Upon sending the Town Termination Notice, the Town shall immediately provide written directions to all engaged professionals to cease all solicited work pursuant hereto.

15. **Notices.** Notices and other communications required or permitted under this Agreement shall be in writing and delivered by nationally recognized overnight delivery service to a Party's address as set forth as follows:

For the Town:

James Gildea, Business Administrator
Town of Westfield
Westfield Town Hall
425 East Broad Street
Westfield, New Jersey 07090

with copy to Robert S. Goldsmith, Esq.
Greenbaum, Rowe, Smith & Davis LLP
75 Livingston Avenue, Suite 301
Roseland, New Jersey 07068

For SW:

SW Westfield LLC
225 Liberty Street, 31st Floor
New York City, New York 10281
Attn: President of Real Estate
cc: General Counsel

with copy to Nicholas Racioppi, Jr., Esq.
Riker Danzig Scherer Hyland Perretti
Headquarters Plaza
One Speedwell Avenue
Morristown, New Jersey 07962-1981

16. **Governing Law.** This Agreement shall be governed, construed and enforced according to the laws of the State of New Jersey, without regard to its conflicts of laws principles. Any action hereunder shall be brought exclusively in a court of the State of New Jersey sitting in Union County, New Jersey, and SW hereby waives all objections to such venue.

17. **Successors and Assigns.** This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and upon each party's successors and assigns.

18. **Review by Counsel.** Interpretation of this Agreement shall be made without regard to or any presumption against or other rule requiring construction against either Party drawing or causing this Agreement to be drawn, as counsel for both SW and the Town have combined in their review and approval of same.

19. **Entire Agreement; No Modification Unless in Writing.** This Agreement contains the entire agreement of the Parties relative to the subject matter hereof. Any amendment hereto or modification or variation hereof shall be ineffective unless in writing signed by each of the Parties hereto.

20. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument. This Amendment may be executed by facsimile or scanned signatures; any signed Amendment or signature page to this Amendment that is transmitted by facsimile or in the portable document format (.pdf) shall be treated in all manners and respects as an original agreement or signature page.

INTENDING TO BE LEGALLY BOUND, the parties hereto have caused this Agreement to be executed by their duly authorized representatives on the Effective Date set forth above.

TOWNSHIP OF WESTFIELD

By: _____
Mayor Shelley Brindle

SW WESTFIELD LLC

By: _____
Name:
Title: Authorized Signatory