

ORDINANCE NO. 2015 - 12

AN ORDINANCE OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF BARNEGAT, COUNTY OF OCEAN, STATE OF NEW JERSEY, AMENDING AND SUPPLEMENTING CHAPTER 74 OF THE TOWNSHIP CODE ENTITLED "WATER/SEWER UTILITY" TO INCLUDE NEW SECTION 74-42 ENTITLED "OFF TRACT REIMBURSEMENT AGREEMENT FOR SEWER FACILITIES CONSTRUCTED BY MARK MADISON, LLC" AND AUTHORIZING ACCEPTANCE AND EXECUTION OF THE AGREEMENT

BE IT ORDAINED by the Township Committee of the Township of Barnegat, County of Ocean State of New Jersey (hereinafter referred to as the "Township") as follows:

WHEREAS , on or about October 31, 1973, approximately 2,000 single family building lots were created when the following subdivision plats were filed as maps I-285 in Ocean County:

Plan of Lots Ocean Acres Inc. Section 19
Plan of Lots Ocean Acres Inc. Section 20
Plan of Lots Ocean Acres Inc. Section 21
Plan of Lots Ocean Acres Inc. Section 22
Plan of Lots Ocean Acres Inc. Section 23
Plan of Lots Ocean Acres Inc. Section 24
Plan of Lots Ocean Acres Inc. Section 25
Plan of Lots Ocean Acres Inc. Section 26
Plan of Lots Ocean Acres Inc. Section 27
Plan of Lots Ocean Acres Inc. Section 28
Plan of Lots Ocean Acres Inc. Section 29

(collectively "Ocean Acres");

WHEREAS , for the ensuing years, Ocean Acres was not developed due to a lack of sufficient infrastructure;

WHEREAS , in or about 2002, Developer entered into an agreement to purchase and develop a significant number of building lots within Ocean Acres, which Developer has since developed, along with other lots within Ocean Acres ("Developer's Lots");

WHEREAS in order for Developer to proceed with construction of Developer's lots within Ocean Acres, significant infrastructure improvements were required, which improvements were undertaken at Developer's sole cost and expense (the "Ocean Acre Improvements");

WHEREAS, the Ocean Acres Improvements include both on tract and off-tract improvements that benefitted not only Developer's Lots but additional, privately owned lots

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within Ocean Acres known and previously defined in the 2003 Agreement (hereinafter defined) as the Independent Lot Owners;

WHEREAS, the Ocean Acres Improvements, in part, were also the subject of a July 26, 2002 Court Order (the “2002 Court Order”), wherein it was established that the Developer would be entitled to pro rata reimbursement from those users who benefitted from the Ocean Acres Improvements;

WHEREAS, the Developer and the Township entered into a Development and Reimbursement Agreement dated March 28, 2003, which detailed Developer’s reimbursement entitlements for Developer’s construction of the Ocean Acres Improvements and which 2003 Agreement was revised per a First, Second and Third Addendum in order further clarify and refine the reimbursement requirements relative to the Ocean Acres Improvements (collectively referred to as the “2003 Agreement”);

WHEREAS, the primary purpose of the 2003 Agreement was to require each developer of a building lot within Ocean Acres, whether the Developer or Independent Lot Owner, to provide a pro rata contribution toward the cost of the Ocean Acres Improvements;

WHEREAS, the underlying premise of the 2003 Agreement was that the Ocean Acres Improvements only served to benefit the building lots within Ocean Acres;

WHEREAS, however the Ocean Acres Improvements included the construction of certain off-tract sewer infrastructure in the area of Barnegat Boulevard that has benefitted and will continue to benefit landowners and/or developer located outside of Ocean Acres (the “Sewer Improvements”);

WHEREAS, as further described herein, the construction of the Sewer Improvements was done at substantial cost to the Developer, which Improvements provided for increased sewer conveyance capacity within the Service Area (as hereinafter defined);

WHEREAS, the Developer’s construction of the Sewer Improvements has provided opportunities for access to public sewer in portions of the Township that would not have otherwise been afforded such access;

WHEREAS, the 2002 Court Order specifically provided for Developer’s reimbursement entitlements from those property owners and developers that benefitted from the Developer’s construction of the Sewer Improvements, beyond those landowners and/or developers within Ocean Acres, and required the parties to enter into a Developers Agreement

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which would implement the manner in which the Developer would be reimbursed by other users connecting to the sanitary sewer system.

WHEREAS, the Parties acknowledge and agree that New Jersey law, consistent with the 2002 Court Order, requires that all landowners and/or developers that benefit from the construction of off-tract improvements constructed by others, should pay their corresponding fair share toward the costs of such improvements;

WHEREAS, the Parties further recognize that consistent with the provisions of the 2002 Court Order, the Sewer Improvements have benefitted and will continue to benefit users beyond those set forth in the 2003 Agreement and that this Agreement and implementing ordinance are intended to balance the equities associated with the construction of the Sewer Improvements, all in accordance with and in order to comply with the provisions of N.J.S.A. 40:5D-42

WHEREAS, the Parties intend to enter into this Agreement to provide for reimbursement to the Developer for the costs of the Sewer Improvements in a manner consistent with New Jersey's Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., specifically, N.J.S.A. 40:55D-42; and

WHEREAS, the Township believes it appropriate and necessary in order to comply with the requirements of the New Jersey Municipal Land Use Law, specifically, N.J.S.A. 40:55D-42, to adopt an Ordinance providing for reimbursement for the cost of the sanitary sewer improvements referenced herein above.

NOW THEREFORE BE IT ORDAINED by the Township Committee of the Township of Barnegat, County of Ocean and State of New Jersey as follows:

SECTION 1. The Township adopts the "Off Tract Reimbursement Agreement for Sewer Facilities constructed by Mark Madison, LLC", a true copy of which is on file at the office of the Township Clerk and can be reviewed during normal business hours.

SECTION 2. This Ordinance and Agreement provides a mechanism by which Mark Madison, LLC will be reimbursed the fair share of the cost of improvements benefited by others who connect to the sanitary sewer system in accordance with the terms of the Agreement.

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SECTION 3. The Township authorizes and directs the Mayor, Township Clerk and Township Administrator to execute any and all necessary documents in order to implement the intent of this Ordinance.

SECTION 4. The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.

SECTION 5. Any Ordinances or parts thereof in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

SECTION 6. This Ordinance shall take effect upon publication in an official newspaper of the Township, as required by and in conformance with law.

NOTICE

NOTICE IS HEREBY GIVEN that the foregoing Ordinance was introduced and passed on the first reading by the Township Committee of Barnegat, County of Ocean, State of New Jersey on **August 17, 2015 at 6:30 p.m.**, or as soon thereafter as the matter may be reached and considered, at the Barnegat Township Municipal Building located at 900 West Bay Avenue, Barnegat, New Jersey. The Ordinance will be considered for second and final reading at a meeting of the Township Committee on **September__21__, 2015 at 6:30 p.m.**, or as soon thereafter as the matter may be reached and considered, at the Barnegat Township Municipal Building located at 900 West Bay Avenue, Barnegat, New Jersey. At that time the public is invited to ask questions, raise objections or provide public comment with regard to the proposed adoption of this Ordinance.

MICHELE RIVERS, RMC, Township Clerk

Prepared by:

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OFF TRACT REIMBURSEMENT AGREEMENT FOR SEWER FACILITIES CONSTRUCTED BY MARK MADISON,
LLC

This Off Tract Reimbursement Agreement for Sewer Facilities Constructed by Mark
Madison, LLC (the "Agreement") is made as of this ____ day of _____, 2015;

BY AND BETWEEN:

TOWNSHIP OF BARNEGAT, in the County of Ocean, a Municipal Corporation of the State
of New Jersey, with offices located at 900 West Bay Avenue, Barnegat, New Jersey
08005

(hereinafter referred to as the "Township");

AND

MARK MADISON, LLC, and its affiliated entities, with offices located at 500
Barnegat Boulevard, North, Building 400, Suite 402, Barnegat, New Jersey 08005

(hereinafter, collectively referred to as the "Developer")

The Township and the Developer shall be referred to individually as "Party" and
collectively as the "Parties."

WITNESSETH:

WHEREAS (1st), on or about October 31, 1973, approximately 2,000 single

family building lots were created when the following subdivision plats were filed
as maps I-285 in Ocean County:

Plan of Lots Ocean Acres Inc. Section 19

Plan of Lots Ocean Acres Inc. Section 20

Plan of Lots Ocean Acres Inc. Section 21

Plan of Lots Ocean Acres Inc. Section 22

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Plan of Lots Ocean Acres Inc. Section 24

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(collectively "Ocean Acres");

WHEREAS (2nd), for the ensuing years, Ocean Acres was not developed due to a lack of sufficient infrastructure;

WHEREAS (3rd), in or about 2002, Developer entered into an agreement to purchase and develop a significant number of building lots within Ocean Acres, which Developer has since developed, along with other lots within Ocean Acres ("Developer's Lots");

WHEREAS (4th) in order for Developer to proceed with construction of Developer's lots within Ocean Acres, significant infrastructure improvements were required, which improvements were undertaken at Developer's sole cost and expense (the "Ocean Acres Improvements");

WHEREAS (5th), the Ocean Acres Improvements include both on tract and off-tract improvements that benefitted not only Developer's Lots but additional, privately owned lots within Ocean Acres known and previously defined in the 2003 Agreement (hereinafter defined) as the Independent Lot Owners;

WHEREAS (6th), the Ocean Acres Improvements, in part, were also the subject of a July 26, 2002 Court Order (the "2002 Court Order"), wherein it was established that the Developer would be entitled to pro rata reimbursement from those users who benefitted from the Ocean Acres Improvements;

WHEREAS (7th), the Developer and the Township entered into a Development and Reimbursement Agreement dated March 28, 2003, which detailed Developer's reimbursement entitlements for Developer's construction of the Ocean Acres Improvements and which 2003 Agreement was revised per a First, Second and Third Addendum in order further clarify and refine the reimbursement requirements relative to the Ocean Acres Improvements (collectively referred to as the "2003 Agreement");

WHEREAS (8th), the primary purpose of the 2003 Agreement was to require each developer of a building lot within Ocean Acres, whether the Developer or Independent Lot Owner, to provide a pro rata contribution toward the cost of the Ocean Acres Improvements;

WHEREAS (9th), the underlying premise of the 2003 Agreement was that the Ocean Acres Improvements only served to benefit the building lots within Ocean Acres;

WHEREAS (10th), however the Ocean Acres Improvements included the construction of certain off-tract sewer infrastructure in the area of Barnegat Boulevard that has benefitted and will continue to benefit landowners and/or developer located outside of Ocean Acres (the "Sewer Improvements");

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WHEREAS (11th), as further described herein, the construction of the Sewer Improvements was done at substantial cost to the Developer, which Improvements provided for increased sewer conveyance capacity within the Service Area (as hereinafter defined);

WHEREAS (12th), the Developer's construction of the Sewer Improvements has provided opportunities for access to public sewer in portions of the Township that would not have otherwise been afforded such access;

WHEREAS (13th), the 2002 Court Order specifically provided for Developer's reimbursement entitlements from those property owners and developers that benefitted from the Developer's construction of the Sewer Improvements, beyond those landowners and/or developers within Ocean Acres;

WHEREAS (14th), the Parties acknowledge and agree that New Jersey law, consistent with the 2002 Court Order, requires that all landowners and/or developers that benefit from the construction of off-tract improvements constructed by others, should pay their corresponding fair share toward the costs of such improvements;

WHEREAS (15th), the Parties further recognize that consistent with the provisions of the 2002 Court Order, the Sewer Improvements have benefitted and will continue to benefit users beyond those set forth in the 2003 Agreement and that this Agreement and implementing ordinance are intended to balance the equities associated with the construction of the Sewer Improvements;

WHEREAS (16th), the Parties intend to enter into this Agreement to provide for reimbursement to the Developer for the costs of the Sewer Improvements in a manner consistent with New Jersey's Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., specifically, N.J.S.A. 40:55D-42;

NOW, THEREFORE, BE IT AGREED, by and between the Township and the Developer, in consideration of the mutual promised contained herein and for other good and valuable consideration, receipt of which is mutually acknowledged, the Parties agree as follows:

1. Defined Terms. Whenever used in this Agreement, the following

terms shall have the meanings set forth below:

"2003 Agreement" means the March 23, 2003 Development and Reimbursement Agreement entered into between the Township and Mark Madison, LLC, which 2003 Agreement was recorded in the Ocean County Clerk's office at Book 11453, Page 1090. The term 2003 Agreement shall also include the First, Second, Corrective and Third Addendum to the 2003 Agreement as said Addendums were likewise recorded in the Ocean County Clerk's Office at Book 11453, page 1090 (First Addendum), Book 13223, page 1566 (Second Addendum) and Book 13223, page 1566 (Corrective Addendum) and Book 15490, page 811 (Third Addendum).

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"Agreement" means when fully executed by the Township and Developer, this Off Tract Reimbursement Agreement For Sewer Facilities Constructed By Mark Madison, LLC.

"CPI" means Consumer Price Index to the Ocean County Region as same is calculated and published by the Bureau of Labor Statistics of the United States Department of Labor.

"DEP" means the New Jersey Department of Environmental Protection.

"Developer" means Mark Madison, LLC, its successors and assigns.

"EDU" means Equivalent Dwelling Unit which is interpreted to mean a four (4) bedroom single family dwelling and the sewer treatment demands of such dwelling as determined by the rules and regulation of DEP.

"Future Users" means those developers and/or landowners that are located within the Service Area and seek to utilize the Sewer Improvements following the date of this Agreement. Future Users include those Independent Lot Owners that have not yet connected their respective Ocean Acres lots to the Sewer Improvements.

"Independent Lot Owner" means various individuals and entities who are not the Developer and who own various building lots within Ocean Acres. For purposes of this Agreement, an Independent Lot Owner that has not yet developed a building lot within Ocean Acres is also a Future User required to pay reimbursement for the Sewer Improvements.

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"Installation Costs" means the actual costs of the Sewer Improvements as installed by Developer, which the Parties acknowledge to be \$3,230,217.90. Said cost includes material, labor, engineering, permit application fees, inspection fees, bonding costs and fees, insurance premiums, and all professional fees for which Developer reimbursed to the Township.

"Ocean Acres Improvements" means the Developer's construction of significant infrastructure both on-tract and off-tract to Ocean Acres, which include but are not limited to, road paving, curbing, water facilities, sanitary sewer facilities, including the Sewer Improvements (as defined herein), storm water facilities, soil erosion control measures, street lights, street signs, traffic control signs,

grading, electric lines, telephone lines, cable television lines and natural gas lines.

"Reimbursement Amount" means the Installation Costs plus an annual adjustment having commenced on January 3, 2005, which adjustment shall be equal to the Consumer Price Index.

"Service Area" means all lands west of the Garden State Parkway that connect to the Barnegat Township sanitary sewer system and all lands east of the Garden State Parkway that connect to the Barnegat Township sanitary sewer system whose sewage flows through the Barnegat Boulevard North sewer improvements, which areas east of the Garden State Parkway are depicted at Exhibit "A," hereto.

"Sewer Improvements" means that portion of the Ocean Acres Improvements consisting of the Bay Avenue Force Main and the Barnegat Boulevard North Sewer. The Bay Avenue Force Main generally consists of a 16" force main from the west side of the Garden State Parkway to Barnegat Boulevard North including two jacking under the Garden State Parkway and one jacking under Bay Avenue. The Barnegat Boulevard North Sewer generally consists of a 16" force main from the terminus of the Bay Avenue force to Rose Hill Road and a gravity sewer from Rose Hill Road to the Barnegat Township sewer interceptor.

"Township" means the Township of Barnegat in the County of Ocean, a municipal corporation of the State of New Jersey, in its dual capacity as a municipal corporation and as the municipal utilities division pursuant to N.J.S.A. 40:62-68 et seq.

2. Agreement Limited to Reimbursement from Future Users of the Sewer

Improvements. Except as otherwise expressly provided herein, this Agreement is expressly limited to the reimbursement of Developer by Future Users for the costs incurred in the construction of the Sewer Improvements. Nothing herein shall be construed as a limitation on other costs and/or fees that may be due and owing from Future Users, the Developer and/or Independent Lot Owners associated with the development of land within the Township. In addition, except as expressly provided herein, the terms of this Agreement are not intended to alter the terms and conditions of the 2003 Agreement. Further the Parties agree that the terms of this Agreement are separate and apart from and not in derogation or limitation of any reimbursement to be provided to the Developer pursuant to the June 5, 2006 Water

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Facilities Agreement between the Township and the Developer and _____, 2015 First Amendment thereto.

3. **Developer's Proposed Amendment to the 2003 Agreement to Reflect terms of this Agreement.** This Agreement is intended to serve as the sole mechanism by which the Installation Costs are to be reimbursed to Developer. Pursuant to the 2003 Agreement, reimbursement for the Sewer Improvements was to be allocated to only the 1,352 property owners within Ocean Acres, without contribution from any additional or Future Users. While all lot owners within Ocean Acres, including the Developer, will pay their respective pro rata shares of the Installation Costs, such reimbursement shall be by operation of this Agreement rather than the 2003 Agreement, which shall be further amended to reflect the implementation of this Agreement. Developer recognizes and agrees that as a result of this Agreement, Developer may not be made whole for the construction of the Sewer Improvements as reimbursement for the Installation Costs is limited to Ocean Acres and the Service Area both of which may or may not develop. Developer acknowledges and agrees to proceed with this Agreement as the appropriate means for reimbursement for the Reimbursement Amount despite the acknowledgement that 1,352 units anticipated within Ocean Acres and the additional 148 EDUs anticipated for development in the Service Area, as defined by this Agreement, may not be realized.

4. **Reimbursement of the "Reimbursement Amount" to Developer.** Township acknowledges that while the Sewer Improvements are required in order to provide sewer service to Ocean Acres and the dwelling units therein, the Sewer Improvements also provide sewer infrastructure to other, future users of the Township sewer conveyance system, which users have been previously defined as the Future Users. Accordingly, while the Developer has advanced the entire Installation Costs for the Sewer Improvements, it is agreed and acknowledged that the Developer is entitled to reimbursements, pursuant to the provisions herein. The Parties agree that this Agreement shall provide the means by which the Developer will be reimbursed for the Reimbursement Amount as defined above and explained herein. Payment of the Reimbursement Amount to Developer shall commence immediately upon the adoption of the ordinance described at Section 6 of this Agreement.

The "Reimbursement Amount" shall be defined as the total of the actual Installation Costs plus all annual CPI increases since January 1, 2006. The CPI adjustment shall be made on the first business day of each calendar year. Within ten (10) days of the date of this Agreement, Developer shall provide to Township a current cost itemization, including all supporting documentation, providing a complete breakdown of Installation Costs and CPI increases to date (the "Cost Itemization"). Developer shall thereafter update the Cost Itemization annually. Upon issuance of the annual Cost Itemization, the Developer and Township shall mutually agree upon the revised Reimbursement Amount. If Township fails to provide specific, written objections to the initial or any annual Cost Itemization within

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ten (10) days of receipt, the Township shall be deemed to have agreed to such Cost Itemization for purposes of determining the Reimbursement Amount.

The Parties agree that the Developer shall be reimbursed for the Reimbursement Amount by payment to the Developer, via the Township, of monies from developers of Future Users within the Service Area representing those developers' pro rata share for construction of the oversized Sewer Improvements, pursuant to the formula set forth herein. See Section 5, herein.

5. Unit Reimbursement Amount from the Future Users in the Service Area.

It is acknowledged between the Township and the Developer that as a result of the construction of the Sewer Improvements, adequate sewer conveyance capacity has been provided to the Service Area. Based upon a review of the Service Area and the anticipated scope of development within that Service Area it is agreed by the Parties that a reasonable and realistic estimate of the total users within the Service Area is not less than 1,500 EDUs. The Installation Costs of the Sewer Improvements are \$ 3,230,217.90, plus CPI increases as permitted by the Agreement. As a result, each EDU is responsible to contribute \$2,153.48 in principal toward the costs of the Sewer Improvements, plus CPI increases as permitted by the Agreement, i.e., \$ 3,230,217.90 divided by 1,500 total users. (the "Unit Reimbursement Amount"). The Developer is also responsible for the Unit Reimbursement Amount and for EDUs connected by the Developer, the principal amount shall be reduced accordingly (the "Developer's Pro Rata Share").

The mechanism for reimbursing the Developer utilizing the "Unit Reimbursement Amount" provided for in this Section shall operate as follows:

Every Future User of any property served by the Sewer Improvements within the Service Area shall pay to the Developer via the Township, an amount calculated by multiplying the Unit Reimbursement Amount (including accrued CPI increases) by the total number of EDUs for which such Future User obtains subdivision or site plan approval or for lots in Ocean Acres or other lots that already have subdivision or site plan approval, for which such Future User obtains a building permit. Such payment or payments shall act as a reimbursement against the Reimbursement Amount. The manner and time of payments by such developers shall be in accordance with the provisions of Section 6.01 hereinbelow. A Future User will benefit from the Sewer Improvements if its property is located within the Service Area.

It is agreed that the Developer reimbursement shall not exceed the Reimbursement Amount (plus allowable CPI increases) less the Developer's payment

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for units actually connected by Developer. As of the date of this Agreement, Developer has contributed \$679,742.09, which represents Developer's connection of 315.65 EDUs that have utilized the Sewer Improvements (as some of Developer's connections have been for age restricted units, the EDU total, as a fraction, is accurate).

7. **Obligations of the Township**. For an in consideration of Developer's undertakings as set forth in this Agreement, Township expressly covenants and agrees, intending to be bound hereby, as follows:

7.01. **Introduction of Ordinance to Effectuate Purposes of this Agreement.** Within ten (10) days of execution of this Agreement, the Township agrees to adopt an appropriate ordinance requiring the Future Users who are provided sewer service within the Service Area, as a condition of approval, to pay that user's pro rata share of the costs of the Sewer Improvements, as represented by the Unit Reimbursement Amount described above. The condition to be placed on the Future Users as to subdivision or site plan approval or building permits in Barnegat Township shall provide that the Unit Reimbursement Amount shall be paid by all Future Users to the Developer via the Township as follows:

A. 100% of the Unit Reimbursement Amount shall be paid prior to signing of the final subdivision plat or site plan and filing same with Ocean County Clerk.

B. For any Future Users having subdivision plats or site plans filed with the Ocean County Clerk, as to which construction has not yet commenced as of the date of this Agreement, 100% of the Unit Reimbursement Amount shall be paid at the time building permits are issued.

C. For any Future Users on properties within the Service Area which do not require filing with the Ocean County Clerk, and as to which construction has not commenced as of the date of this Agreement, 100% of the Unit Reimbursement Amount shall be paid at the time building permits shall be issued.

It is understood and agreed between the parties hereto that the Township will be under no obligation whatsoever to pay to the Developer any of the Township's funds in order that Developer recoup in full the Reimbursement Amount. All such payments will come from Future Users only, pursuant to the provisions herein. Developer understands that the possibility exists that Developer may never be paid in full the Developer's Reimbursement Amount in the event that an insufficient number of buildings are developed within the Service Area. The Developer further understands and agrees that in the event that this Agreement were to be challenged and a Court of competent jurisdiction determines that a Future User(s) is entitled to reimbursement for funds that have been remitted by the Township to the Developer pursuant to this Agreement, the Developer shall return such funds to the Township

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in order to comply with any such Court order. Notwithstanding the foregoing, the Developer and/or the Township agree to defend the terms of this Agreement against any challenge by any third party, with each Party bearing their own costs and fees in connection with such defense.

7.02. **Continuing Obligation.** Township acknowledges and agrees that this Agreement and the obligation of the Township to turn over the Reimbursement Amount is intended as an agreement to finance a capital improvement which will be owned by Township for its use and benefit, and the Reimbursement Amount will constitute an indebtedness to the Developer from others which will be satisfied by reimbursement from Future Users as set forth in this Agreement. Accordingly, Township agrees that its obligation to honor the Reimbursement Amount as set forth in this Agreement, upon completion of the Sewer Improvements shall be a continuing obligation of the Township which is not subject to set-off. The Township further agrees that in the event Township shall either (1) create a municipal utilities authority, a sewer authority, or any other independent body or agency for the purpose of acquiring, providing, operating and managing the Township's water distribution system, or (2) sell or otherwise convey the Township's sewer distribution system to any other entity, whether governmental or privately owned (in either case the "Township Assignee"), this Agreement and the obligation to repay the Reimbursement Amount hereunder shall be assigned to and expressly assumed by Township's Assignee as a condition of any such conveyance. Copies of such assignments and assumptions shall be provided to the Developer by the Township.

8. **General.**

8.01. **Headings.** Subsequent subsection headings are for convenience of reference only and shall not affect the meanings or interpretation of the contents thereof.

8.02. **Complete Understanding.** This Agreement represents the complete understandings between the parties hereto and supersedes all prior negotiations, representations, warranties, statements of agreements, either written or oral, as to the subject matter described herein. This Agreement may be amended only by a written statement signed by both parties. No requirement, obligation, remedy or provision of this Agreement shall be deemed to have been waived unless so waived expressly in writing or waived pursuant to other provisions of this Agreement and any such waiver of any such provision shall not be considered a waiver of any right to enforce such provision thereafter.

8.03. **Assignment.** This Agreement may be assigned by the Developer provided, however, that Developer must assign the entire Agreement and not any individual provisions of the Agreement, and further that Developer will notify the Township of the assignment and the assignee shall agree in writing to assume and be bound to the terms of this Agreement, at which time Developer shall be relieved of any and all liabilities and obligations under this Agreement.

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8.04 Notices. All notices authorized or required herein shall be in writing and shall be delivered by hand and evidenced by a written receipt or sent by registered or certified mail, return receipt requested, or delivered by an overnight express delivery service which provides an acknowledged receipt of delivery to sender, to Developer or to Township at their respective addresses as set forth above or to such other address as may be designated by notice. All Notices shall be deemed to have been given twenty-four (24) hours after mailing if mailed within the State of New Jersey, forty-eight (48) hours after mailing if mailed outside the State of New Jersey or upon receipt if delivered by hand.

All notices under or pursuant to this Agreement shall be addressed as follows:

From Developer to Township: Michele A Rivers, Township Clerk
Township of Barnegat
900 West Bay Avenue
Barnegat, New Jersey 08005

With copy to Township Engineer: John Hess, PE
Consulting & Municipal Engineers
1460 Rt. 9 South,
Howell, NJ 07731

With further copy to Attorney: Jerry J. Dasti, Esquire
Dasti, Murphy, McGuckin, Ulaky, Cherkos
& Connors
620 West Lacey Road
Forked River, New Jersey 08731

From Township to Developer: Edward Walters
c/o The Walters Group
21 East Euclid Avenue
Suite 200
Haddonfield, NJ 08033

With Copy to Attorney: Richard J. Hoff, Jr., Esq.
Bisgaier Hoff, LLC
25 Chestnut Street, Suite 3
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8.05. Applicable Law. This Agreement shall be governed by the laws of the State of New Jersey.

8.06. Covenants Binding. The covenants, agreements and conditions herein contained shall, subject to the provisions as to assignment, apply to and bind the successors of the parties hereto.

8.07. Representations. The representations warranties, covenants and agreements contained herein shall be deemed to be material and to have been relied upon by the party to whom they have been made.

8.08. Severability. If any term or provision of this Agreement, or the application thereof to any person or circumstances, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

8.09. Voluntary Agreement. The undersigned parties do hereby specifically confirm and acknowledge that the execution of this Agreement by each party is a voluntary act by said party and that this Agreement, all the terms and conditions contained herein and the execution hereof shall in no way be deemed or constituted as resulting from coercion, undue pressure or leverage from the other party, any corporation affiliated with the other party or any officer, employee, agent or representative of the other party hereto.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed by their proper corporate offices and their proper corporate seals have been affixed, the day and year first above written.

**DASTI, MURPHY
McGUCKIN, ULAKY,
KOUTSOURIS & CONNORS**

COUNSELLORS AT LAW

620 WEST LACEY ROAD
P.O. BOX 1057
FORKED RIVER, N.J. 08731

ATTEST:

TOWNSHIP OF BARNEGAT

WITNESS:

MARK MADISON, LLC
