

**WATER FACILITIES AGREEMENT**

MADE as of this 5th day of June, 2006;

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, with offices located at 500 Barnegat Boulevard, North, Building 400, Suite 402, Barnegat, New Jersey 08005.

(hereinafter referred to as the "Owner")

**WITNESSETH:**

**WHEREAS**, Owner is the owner and/or contract purchaser of certain tracts of land hereinafter described in the Township of Barnegat, County of Ocean and State of New Jersey, including approximately 733 subdivided single-family residential lots known as a portion of "Ocean Acres", as well as a premises known as "Whispering Hills" for which Owner is seeking approvals for a residential development community (jointly the "Projects"); and

**WHEREAS**, the Township, through its governing body, serves as the municipal utilities division of the Township and operates water distribution facilities; and

**WHEREAS**, the Safe Drinking Water Act Rules require that the Township's water distribution system meet all demand requirements imposed on the water system and have the firm capacity to meet the applicable peak daily demand as defined by the rules, N.J.A.C. 7:10-11.6(a); and

**WHEREAS**, in order for the Township to provide water distribution service to the Projects and other properties in Barnegat Township, New Jersey, it will first be necessary for the

Township to submit a firm capacity and water allocation analysis to demonstrate that the Township's water system will have adequate firm capacity to meet peak daily demand, all as defined in the Safe Drinking Water Act regulations, and that the Township's water system possesses a valid water allocation permit with applicable limits and/or bulk purchase agreements to divert or obtain the amount of water needed to meet the monthly and annual estimated demands, as determined in accordance with the Safe Drinking Water Act Rules, N.J.A.C. 7:10-11.5(e); and

**WHEREAS**, the Township's water distribution system must also satisfy the regulatory requirements for system storage capacity, N.J.A.C. 7:19-6.7; and

**WHEREAS**, in order for the Township to satisfy the aforesaid regulatory provisions required to provide water distribution service to the Projects and to certain other properties in Barnegat Township, New Jersey, it will first be necessary to construct and install an additional well (Well #9) with a capacity of 1,000 gallons per minute ("gpm"), an associated water treatment plant, and a elevated water storage tank with a capacity of one million gallons (collectively referred to as the "Water Facilities"), and to modify the Township's water allocation permit to permit the full utilization of Well #9 and the Township's existing Well #6; and;

**WHEREAS**, the Owner has agreed to construct the Water Facilities which will also benefit lands owned by others and enable the Township to provide water service to future developments in addition to the Projects, upon the condition that Owner will receive reimbursement via the Township from Future Users within the area of the Township to be serviced by the Water Facilities (the "Service Area") which Reimbursement will be at the expense of Future Users and will not be at the expense of the Township; and

**WHEREAS**, the Township, through its governing body has adopted, or is about to adopt, an ordinance requiring property owners/applicants who fall within the Service Area, as a condition of approval and/or permits, to pay their pro-rata share of the cost for the Water Facilities; and

**WHEREAS**, the within Agreement is limited to "offsite" improvements, as the Owner recognizes its responsibility to design and install all on-site water facilities required to provide a water system to all dwelling units in the Projects, and to post all regularly required bonding and inspection fees in connection with all on-site water facilities; and

**WHEREAS**, the Owner has agreed to finance and advance the costs required for the construction and installation of the Water Facilities in excess of those required to service its own Projects, which has been deemed to be in the best interests of Owner, and will also increase the capacity of the Township's water system, provided that Owner receives an appropriate reimbursement for those costs;

**NOW, THEREFORE**, for and in consideration of the premises and the sum of One Dollar (\$1.00) to each of the parties hereto paid by the other party, receipt of which is hereby acknowledged, the parties hereto agree to and with each other as follows:

1. Defined Terms. Wherever used in this Agreement, the following terms shall have the meanings set forth below:

"Agreement" means when fully executed by Township and Owner, this Water Facilities Agreement.

"Approved Plans" means those plans prepared or about to be prepared by GPM Associates, Inc. for the construction of the Water Facilities, as same are hereinafter reviewed and approved by the Township, and any subsequent approved revisions and amendments thereto.

"Building" means any type of residential dwelling and any kind of non-residential structure, regardless of use, which requires water service and which is connected to the Township's water distribution facilities.

"Equivalent Development Unit" or "EDU" means one or more Buildings or portions thereof with an average daily water demand equivalent to 395 gallons per day, which is the average daily water demand for a 4-bedroom single-family home calculated pursuant to the Residential Site Improvements Standards ("RSIS"). For residential development, the average daily water demand shall be determined in accordance with the RSIS at N.J.A.C. 5:21-5.2, Table 5.1; for non-residential development, the average water daily water demand will be determined in accordance with N.J.A.C. 7:10-12.6(b)2, Table 1. For example, pursuant to the RSIS, a 3-bedroom PAC has an average daily water demand of 320 gpd, or the equivalent of approximately 0.81 EDUs.

"Installation Costs" means the actual costs of the Water Facilities as installed by Owner, including material, labor, engineering, permit application fees, inspection fees, bonding costs and fees, insurance premiums, and all professional fees for which Owner reimburses the Township, as well as the actual costs of all work, if any, performed by Owner pursuant to the Maintenance Warranty provided for in Section 7, herein, all as documented by invoices received by Owner from its vendors and subcontractors, which shall list with particularity all labor, machinery and material involved, including field engineering, office engineering, subcontractors and general contractor costs, a breakdown by unit and item of the costs thereof, but expressly excluding general, administrative and field overhead costs of Owner. With regard to the elevated water tank, in the event Owner relocates the water tank currently located in the Stafford Business Park, the Installation Costs shall also include the depreciated value of that water tank. The depreciated value of that water tank shall be determined at the time it is relocated, and shall be calculated as the total cost of a new tank (including installation costs), reduced by 2.5% for each year of the age of the water tank currently located in the Stafford Business Park. For example, if the Stafford tank were installed in 1992 and were relocated in 2006, and if the cost of a new tank completely installed in 2006 would be \$2,000,000.00, then the depreciated value \$1,300,000.00, i.e.,  $\$2,000,000.00 \times 14/40 =$  depreciated value. The final depreciated value of the tank will be the replacement costs less depreciation as calculated at the time of the relocation.

"Litigation Parties" means the parties to that certain litigation currently pending in the Superior Court of New Jersey, Ocean County, Docket No. L-565-92, concerning water supply for inclusionary housing developments in Barnegat Township.

"Owner" means Mark Madison, LLC, its successors or assigns.

"Owner's Allocation for Water" means the supply and storage firm capacity to meet peak daily demand which would be available upon completion of the Water Facilities and modification of the water allocation

permit and which would be sufficient to service 1030 four-bedroom, single-family homes or EDUs in the Projects.

"Planning Board" means the Planning Board for the Township of Barnegat.

"Projects" mean Owner's 850 single family lots within Ocean Acres (consisting of approximately 800 lots presently owned by Owner and approximately 50 additional lots hereinafter to be acquired by Owner), on which owner proposes to construct single family detached residences, and the Whispering Hills' parcel, consisting of Block 144.01, Lots 7, 7.01, 8, 11, 12, 14 through 23, 25, 27, 30.10, and 31.01 on which Owner proposes to construct 180 EDUs consisting of a mix of single-family homes, town homes and apartments. Copies of the metes and bounds description of the property within the Projects are attached hereto.

"Regulatory Agency Approvals" means any and all permits and approvals from any governmental regulatory agency or authority which may now, or until completion of the installation, be entitled to review and approve any aspect of the Water Facilities, including but not limited to New Jersey Department of Environmental Protection ("NJDEP"), OCUA, Barnegat Township Water and Sewer Utility, Pinelands Commission, CAFRA.

"Reimbursement Arrangement" means that portion of this agreement whereby the Township agrees to condition subdivision and site plan approvals and/or building permits obtained by any third parties within the Service Area, upon the payment, by way of reimbursement to the Owner via the Township of a pro-rata share of the cost of the Water Facilities.

"Rules & Regulations" means the current Rules and Regulations prepared by Charles H. Mackie Associates, Inc., undated, and adopted by the Township Committee of the Township of Barnegat acting as the Municipal Utilities Division of the Township governing the extension of, connection to and use of the Township's water distribution system.

"Service Area" means that area constituting the territorial boundaries of the Township of Barnegat.

"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.

"Township Water Engineer" means Birdsall Corporation, Route 9, Barnegat, New Jersey, 08005, however the Township reserves the right to redesignate at its sole option a new Township Water Engineer during the duration of this Agreement.

"Water Connection Fee" means the charge imposed by the Township under the Rules & Regulations for a permit to connect any Building to the Township's water distribution system in the amount in effect at the time such permit is applied for, or at the time of Final Water Approval (whichever occurs first), currently set at \$900.00 per unit on an individual basis and \$600.00 per unit for developers.

"Water Facilities" means the construction of an additional well (Well #9), the associated water treatment plant, and an elevated water storage tank with a capacity of one million gallons, to be more particularly defined and described in certain approved plans and specifications prepared by the Water Facility Engineers in accordance with proper utility engineering standards.

"Water Facilities Engineers" mean the engineering firm of GPM Associates which prepared or is about to prepare the Approved Plans.

"Well #9" means the water supply well of the Water Facilities which is to have a minimum pumping capacity of 1,000 gallons per minute and is known as Well #9.

2. Agreement Limited to Water Facilities. Except as otherwise expressly provided herein, this Agreement is expressly limited to the construction, installation and completion of, and reimbursement to Owner for costs incurred in the completion of the Water Facilities in excess of the costs of Owner's Allocation for Water. Notwithstanding any provisions of this Agreement, Owner shall comply with all applicable provisions of the Rules & Regulations in respect of (1) securing the approval of the Township for, (2) constructing, installing and completing, and (3) connection to the Township's existing water distribution system of, the on-site water system required to service all dwelling units in the Projects, including all mains and accessory items to be installed pursuant to Barnegat Township water utility specifications at owner's sole cost and expense.

2A. Irrigation. The Projects will be subject to any restrictions that may be imposed throughout the Service Area on use of the Township's water supply for irrigation purposes.

3. Design of Water Facilities. The Water Facilities are being designed on behalf of the Township by the Water Facilities Engineers, subject to review and approval by the Township Water Engineer, and submitted to the appropriate regulatory agencies for review and approval. The Township is to receive all necessary approvals. The Approved Plans shall constitute the Water Facilities to be constructed for the purposes of this Agreement.

The Water Facilities include Well # 9, the associated water treatment plant, and the elevated water storage tank. NJDEP BSDW permits are required to construct these facilities, and the Township has submitted applications for these permits to NJDEP. The Township has also submitted an application to the NJDEP for the BSDW permit for Well #6. The Township shall diligently pursue these permit applications. The Township shall promptly forward any and all correspondence from the NJDEP to the Water Facilities Engineers. Any requests for additional data which require the Township Water Engineer to provide data shall be answered within 30 working days.

3A. The Township has also submitted to the NJDEP a Water Allocation permit application for Wells #6 and #9. This Water Allocation application requests peak daily flows, peak monthly flows, and annual flows in the amount necessary to provide for full utilization of the two wells at 1,000 GPM each. The Township shall diligently pursue this application. The Township shall promptly forward any and all correspondence from the NJDEP to the Water Facilities Engineers. Any requests for additional data which require the Township Water Engineer to provide data shall be answered within 30 working days.

4. Regulatory Agencies' Approvals. The installation of the Water Facilities by Owner shall be in accordance with the Approved Plans, all Regulatory Agency Approvals and shall be in accordance with the Rules and Regulations of the Barnegat Township Water and

Sewer Utility, NJDEP, and the Township Engineer. The Water Facilities shall be installed in a good and workmanlike manner so as to afford water service to the Projects. To the extent necessary or required in order for Owner to construct the Water Facilities, the Township will allow Owner to utilize all plans, permits and approvals, related to and required for the construction of the Water Facilities.

4A. Inspection Fees. Owner shall post inspection fees in an amount estimated by the Township Engineer to cover inspections by the Township Water Engineer of the Water Facilities, and agrees to reimburse the Township for professional fees expended by the Township to compensate the Township Water Engineer and Township Water Attorney in reviewing plans, preparing this Agreement, attending to meetings with NJDEP, etc. Owner shall post inspection fees prior to commencement of construction in accordance with applicable Rules and Regulations. Said inspection and review fees shall be considered part of the cost of constructing the Water Facilities.

4B. Performance Guarantees. Performance guarantees are required in accordance with the Township's rules and regulations governing the installation and maintenance of its water system. Owner is permitted to post individual performance guarantees for each of the individual components of the Water Facilities.

5. Township Water Engineer's Inspections. The Township Water Engineer shall be entitled to inspect the Water Facilities during all phases of its construction and installation pursuant to the Rules & Regulations and shall be empowered to stop work thereon or otherwise direct and order the correction of any improper work in the event that he determines that the Water Facilities are not being constructed and installed in accordance with the Approved Plans.

6. Acceptance. Township shall use the Water Facilities to service any individual users at such time that the Water Facilities have received (1) all requisite operating approvals from NJDEP (except as may be allowed otherwise by NJDEP) and (2) authorization from the Township Water Engineer to commence service. The Township shall not finally accept the Water Facilities until they have been finally completed (including all punch list items) and upon the recommendation of the Township Water Engineer; and acceptance shall not be unreasonably withheld or delayed.

7. Maintenance Warranty. Upon completion of the installation of the Water Facilities as required by this Agreement, Owner shall warrant said Water Facilities to be free from any defects in material or workmanship for a period of two (2) years from the date of the acceptance of each component of the Water Facilities by the Township. A maintenance guarantee shall be required. Owner is permitted to post individual maintenance guarantees for each of the individual components of the Water Facilities as each component is accepted by the Township.

8. Bill of Sale. Owner herewith acknowledges that upon installation of the Water Facilities and acceptance thereof by Township, title to the Water Facilities, together with all appurtenances thereto, shall vest in Township without the necessity of a bill of sale. Notwithstanding this provision however, upon request, Owner shall deliver a bill of sale to Township in form reasonably acceptable to the attorney for the Township. Additionally, at the time of conveyance of title of each component of the Water Facilities, Owner covenants to deliver to the Township the following:

- A. Fee-ownership interest for those portions of the land upon which the Water Facilities are being constructed, to include (1) the site for Well #9, (2) the site of the water treatment facility and (3) the site of the elevated water storage tank. In the event, any further subdivision approval shall be required in order to effectuate

such transfer, the Township hereby agrees to accept and process any application for subdivision approval submitted by Owner as a minor subdivision, which shall not in any way reduce the number of residential units within the Project.

- B. Easements for any water distribution facilities in any street or right of way or across any lands in the Projects, if located in lands other than dedicated public streets, and if needed in relation to the Water Facilities.
- C. Affidavit of Title as to any fee interest to be granted hereunder or in connection with any other instrument of conveyance to be delivered hereunder.
- D. Resolution from Owner (if a corporation) approving the conveyance of all Water Facilities to the Township.
- E. Such releases of, or subordination agreements for all mortgages, liens and other encumbrances on the properties of Owner necessary to convey good, marketable and insurable title as required under this Section 8.
- F. Surveys of, and metes and bounds descriptions for all easements.
- G. Three copies of as-built drawings for each component of the Water Facilities installed.
- H. A Certificate of Title in favor of the Township issued by a reputable title insurance company authorized to do business in the State of New Jersey attesting that fee title or any easement conveyed hereunder is good, at regular rates, subject only to such restrictions of record that will not interfere with the uses as shall be set forth in the form of Deed which shall be acceptable to the attorney for the Township.

9. Owner's Responsibility During Construction. The Owner shall assume responsibility for any personal injury or property damage occurring as a result of its construction related activities under this Agreement. Owner shall obtain and submit to the Township proof of liability insurance, in an amount not less than \$1,000,000.00, from each and every contractor employed by the Owner in connection with the construction of the same, naming the Owner, the Township, and the Township Water Engineer as additional insured parties. Any such insurance shall be subject to the prior approval of the Township which shall not be unreasonably withheld.

In consideration of the mutual covenants contained herein, the Owner agrees to indemnify, defend and save harmless the Township or its assigns from any and all claims which

are or may be brought against the Township as a result of the construction of the Water Facilities provided for in this Agreement, whether the same be made by materialmen, suppliers or third parties who may be damaged or injured as a result of actions occurring during or after the construction but before Township acceptance of said Water Facilities. This indemnification shall include payment of any and all reasonable legal fees incurred by the Township, of defense of any action brought against the Township arising out of the construction of the Water Facilities provided for herein. This indemnification shall specifically exclude any claims which are the result of any actions by the Township, its employees, contractors or consultants. This indemnification shall expire upon the Township's acceptance of the Water Facilities provided for in this Agreement, for any events which shall occur after the Township's acceptance of the Water Facilities; provided however, that the acceptance thereof shall not constitute a waiver of any other rights or remedies which the Township may have against the Owner in law or equity after acceptance of the Water Facilities.

10. Affidavit of Owner. Prior to acceptance of the Water Facilities, Owner shall furnish to Township an affidavit setting forth that there are no liens or unpaid bills outstanding for material, labor or equipment supplied or utilized in the installation of the Water Facilities.

11. Reimbursement of the "Reimbursement Amount" to Owner. Township acknowledges that while the Water Facilities are required in order to provide water service to the Projects and the dwelling units therein, the Water Facilities when completed will provide sufficient firm capacity during times of peak daily demand to provide service to other properties from the Township's water supply system (the "Other Properties") in excess of Owner's Allocation for Water. Accordingly, while Owner is advancing the entire Installation Costs under this Agreement because the Projects require the Water Facilities, it is agreed and acknowledged

that Owner is entitled, in addition to a credit in lieu payment of all Water Connection Fees for each and all anticipated 1030 EDUs units located within the Projects, to other credits and/or reimbursements, pursuant to the provisions herein. The parties agree that this Agreement shall provide two means, individually and/or collectively, by which the Owner will be reimbursed for the Reimbursement Amount as defined herein. Payment of the Reimbursement Amount to Owner shall commence for each respective component of the Water Facilities as construction of that component is substantially completed.

The "Reimbursement Amount" shall be defined as the total of the actual "Installation Costs" for the Water Facilities as defined herein, plus all accrued interest. Interest shall be calculated on the entire Installation Costs. The rate of interest shall be adjusted annually on the first business day at each calendar year, and set at two percent (2%) over the prime rate as published in the Wall Street Journal on the first business day of each calendar year. Interest on the Installation Costs for each component of the Water Facilities shall begin to run from the date of substantial completion of the respective component. Well #9, the water treatment plant, and the elevated water storage tank shall each be deemed a separate component of the Water Facilities. The interest referred to in this Section and elsewhere in the Agreement shall be simple interest.

Within thirty days of the date of this Agreement, Owner shall provide to Township a current cost itemization, including all supporting documentation, providing a complete breakdown of the Installation Costs, as defined herein, paid by Owner as of said date (the "Cost Itemization"). Owner shall thereafter update the Cost Itemization quarterly. At such time as Township has accepted all Water Facilities as provided in Section 6, herein, the Maintenance Warranty period has expired, and all Maintenance Warranty work, if any, has been completed,

Owner shall provide to Township a final Cost Itemization. Upon receipt of the initial Cost Itemization and each quarterly update, Owner and Township shall mutually agree upon the then current Installation Costs. Upon issuance of the final Cost Itemization, the Owner and Township shall mutually agree upon the final Reimbursement Amount. If Township fails to provide specific written objections to the initial Cost Itemization, any quarterly Cost Itemization, or the final Cost Itemization within thirty days of receipt, Township shall be deemed to have agreed to such Cost Itemization for purposes of determining the Reimbursement Amount.

The parties agree that, the Owner shall be reimbursed and/or credited for the Reimbursement Amount by any one or more or all of the following methods:

- (a) A credit in lieu of payment of connection fees for all units within the Project. See Section 11.01 herein.
- (b) Payment to the Owner, via the Township, of monies from developers of Other Properties representing those developers' pro rata share for construction of the oversized Water Facilities, pursuant to the formula set forth herein. See Section 11.02 herein.

Payment of the Reimbursement Amount to the Owner under the provisions herein, shall commence on a component-by-component basis as construction of each individual component of the Water Facilities is substantially completed, provided, however, that at no time shall the total amount of combination of credits and reimbursements exceed the actual Installation Costs as provided herein, documented in the most recent Cost Itemization, plus accrued interest.

11.01 Credit for Water Connection Fees for the Projects. For the considerations set forth herein, and provided that Owner is not in default of any of the terms herein, the Owner, as one manner of reimbursement, shall receive a credit in lieu of payment of the Water Connection Fees for all the units within the Projects for connecting to the Water Facilities and all other water facilities owned and operated by the Township. The amount credited against the Reimbursement Amount by virtue of the Water Connection Fees, shall be calculated on the basis of \$600.00 for

each dwelling unit within the Project. This right to credit for the payment of Water Connection Fees shall be valid until Owner is paid in full in accordance with the terms of this Agreement.

11.02 Unit Reimbursement Amount From the "Future Users". It is acknowledged between the Township and the Owner that as a result of the construction of the Water Facilities, the Township will have firm capacity to meet peak daily demand for water supply and water storage in excess of that required to service the Projects. Also, the Owner's Reimbursement Amount as defined herein is in excess of the amount of Water Connection Fees which would normally be paid by Owner to the Township as the Project is developed, and therefore the parties have agreed to adopt additional mechanisms to reimburse Owner for the excess. One of these mechanisms is defined in this Section.

The parties agree that the Owner will be constructing Water Facilities which will service approximately 2,530 four-bedroom single-family homes or EDUs, (1,000,000 gallons/395 gallons per EDU) therefore 1,500 more EDUs than necessary to service the need for the Projects, which together contain approximately 1030 EDUs. Presuming that the Owner has properly constructed the Water Facilities and is not in default of this Agreement, the Owner shall be entitled to receive an amount of reimbursement from future users of the additional 1,500 EDUs (the "Future Users"). For purposes of reimbursement it is understood that the 1,500 future EDUs represent 59.289% of the total 2,530 EDUs. Therefore Owner shall be reimbursed or credited the amount of 59.289% of the Installation Costs, plus the cost of maintenance guaranty work, plus interest calculated on the entire Installation Costs and costs of maintenance guaranty work, from the proceeds of payments made to the Township by the "Future Users", calculated on a per EDU-basis (the "Unit Reimbursement Amount").

The following is an example only illustrating the calculation of the Unit Reimbursement Amount for each EDU to be developed by the Future Users. The following assumptions have been made for this example:

- Construction cost of the Water Facilities is assumed at \$3,500,000.
- All components of the Water Facilities were not completed at the same time.
- No reimbursements were made for the period of years following completion.
- The--prime rate was 6% during the -5-year-period, and did not change.

Example:

Amount of 1st component completed year 1:  
\$500,000.00

Amount of 2nd component completed year 2:  
\$1,000,000.00

Amount of 3rd component completed year 4:  
\$1,300,000.00 (\$2,000,000.00 \* 14/40)

Total amount to be reimbursed by Future Users:  
 $59.289\% \times \$2,800,000 = \$1,660,092.00$

Unit Reimbursement Amount per unit to be developed by Future Users:  
 $\frac{\$1,660,092.00}{1500 \text{ Users}} = \$1,106.73 \text{ per EDU}$

It is further stated herein for clarification purposes, that using the above example, a Future User in year 1 makes a Unit Reimbursement Amount payment of \$1,106.73 (\$1,660,092.00 divided by 1500 users) towards principal debt and a payment of \$0 towards interest

Using the above example, and the assumption that payments are made for 100 EDUs in year 1, a Future User in year 2 makes a Unit Reimbursement Amount payment of \$1,106.73 (\$1,660,092.00 divided by 1500 users) towards principal debt and a payment of \$22.25

$[(\$500,000 - (\$1,106.73 \times 100) \times 0.08)] / (1500 - 100)$  towards interest for a total payment of \$1,128.98.

It is to be noted that the above illustration is an example only. The actual Unit Reimbursement Amount shall be calculated based on the actual Installation Costs, the actual dates of completion, the varying interest rates, any amounts reimbursed to Owner, actual amounts outstanding and the period or periods during which such amounts are outstanding.

In the event that the actual number of units constructed within the Projects is less than 1030 4-bedroom single-family homes or EDUs because of limits on the number of units constructed in Whispering Hills or because of any other reason, then all calculations herein based on the figure of 1030 EDUs will be changed to reflect the correct number of actual EDUs constructed within the Projects. The changing of the figure of 1030 EDUs shall not occur until and unless the Owner notifies the Township in writing, certifying as to the reduced exact number of units constructed and/or to be constructed within the Projects.

Until the date when the final Installation Cost is determined and agreed to following the final Cost Itemization, Future Users shall pay an interim Unit Reimbursement Amount based on the amount of \$ 1,106.73 per EDU (\$ 1,660,092.00 divided by 1500 units plus accrued interest). If following review of any quarterly Cost Itemization, it reasonably appears that the final Unit Reimbursement Amount determined in accordance with Section 11.03, herein, is likely to be higher or lower than \$1,106.73 per EDU, Owner and Township shall agree to an appropriate adjustment in the interim Unit Reimbursement Amount. Any such adjustment in the interim Unit Reimbursement amount shall be prospective, and shall apply only to Unit Reimbursement Amounts paid subsequent to the date of said adjustment.

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

Every Future User of any property served by the Township's water distribution system and that will benefit from the Water Facilities shall pay to the Owner via the Township, an amount calculated by multiplying the Unit Reimbursement Amount (including accrued interest) 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 11.03 hereinbelow. A Future User will benefit from the Water Facilities if its property is serviced directly or indirectly by any of the components of the Water Facilities, or if, in the absence of any component of the Water Facilities, the Township's water system would lack the adequate firm capacity to meet peak daily demand needed to secure the Future User's property.

It is agreed that the combination of the total reimbursements and/or credits under the provisions of section 11.02 shall not exceed the sum calculated by multiplying the Installation Costs by 59.289% plus accrued interest as defined herein.

11.03 Payments By Others. It is understood that it will be necessary to have 1,500 Unit Reimbursement Amounts being paid to Owner via the Township by Future Users. The Township agrees to adopt an appropriate ordinance requiring the Future Users who are served by the Township's water distribution system, as a condition of approval, to pay that developer's pro-rata share of the cost of the Water Facilities, as represented by the Unit Reimbursement Amount. The condition to be placed on the Future Users as to subdivision or site plan approvals or building permits in Barnegat Township shall provide that the Unit Reimbursement Amount shall be paid by all Future Users to the Owner via the Township as follows:

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

D. This Reimbursement Requirement shall not apply to any user for which a Unit Reimbursement Amount is paid pursuant to the November 5, 1998 Water Facilities Agreement between the Township and Menk Corporation ("Menk Corporation").

E. In the event the interim Unit Reimbursement Amount paid by any Future User is greater than the final Unit Reimbursement Amount determined and agreed to following the final Cost Itemization, Owner shall refund the difference to Township. Township shall use same for debt payments, capital costs or operating expenses for the Township's water distribution system.

Any standard Water Connection Fees to be charged by and received by the Township for connections to subdivisions or lots not within the Projects, which Water Connection Fees are in addition to the aforementioned Unit Reimbursement Amounts, shall be paid in accordance with the Township's Rules & Regulations. It is agreed, however, between the parties hereto that if a Court of competent jurisdiction determines that the Township may not collect a connection fee from Future Users while the Owner is collecting the Unit Reimbursement Amounts from the same Future Users, then the money received from the Future User, either from connection fees or payment of Unit Reimbursement Amounts shall first be paid to the Owner in order to reduce the amount of the outstanding Reimbursement Amount.

It is furthermore understood and agreed between the parties hereto that the Township will be under no obligation whatsoever to pay to the Owner any of the Township's funds in order that Owner will recoup in full the Reimbursement Amount. All such payments will come from Future Users only, pursuant to the provisions herein. Owner understands that the possibility exists that Owner may never be paid in full the Owner's Reimbursement Amount in the event

that an insufficient number of Buildings are developed within Barnegat Township, and further understands and agrees that this will in no way relieve Owner of the obligation to repay any refund otherwise due and owing pursuant to Section 11.03.F, herein.

Once Menk Corporation has been paid the full Reimbursement Amount it is entitled to under the Menk Agreement, all Future Users in the Township which connect to the Township's water distribution system and will benefit from the Water Facilities as described in Section 11.02, shall pay Unit Reimbursement Amounts pursuant to the within Agreement. All sums collected under paragraphs A, B, C and D above shall, upon receipt by the Township, be placed into an interest bearing escrow account by the Township and, to the extent reimbursement amount is due to be turned over to Owner pursuant to Section 11, above, the funds shall be released to the Owner within thirty (30) days of receipt and processing by the Township. The Unit Reimbursement Amount shall be paid to the Owner as to such number of units to be approved or built until such time as Owner has been reimbursed up to the full amount of the Reimbursement Amount.

11.04 Building Connection Subject to Reimbursement Amount. For purposes of determining Owner's right to receive payments under this Section 11, Owner shall receive payment against the Reimbursement Amount for those properties which are located anywhere within Barnegat Township or any other municipality serviced by Barnegat Township and which will benefit from the Water Facilities as described in section 11.02.

12. No Limitation to Right of Reimbursement. It is understood and agreed that the Owner shall only be entitled to reimbursement, as herein provided in Section 11. The Owner's rights regarding credits for Water Connection Fees due to the Owner for the Projects, as well as the amount due to be paid to Owner for the Reimbursement Amount from Future Users as set

forth herein, shall be without time limitation, shall run in perpetuity and shall continue to be paid to Owner until the full amount of the Reimbursement Amount is paid to Owner, with all accrued interest.

All work as completed and installed and the Water Facilities as constructed and installed pursuant to this Agreement, once accepted by the Township, shall at all times be owned by, and remain the property of the Township. Township shall have the right to use water from the Water Facilities so installed pursuant to the terms of this Agreement to serve other lands and other streets, and Owner shall have no right to receive any payment by reason thereof other than as provided for in this Agreement. In no event shall Owner be entitled to receive payments hereunder which in the aggregate amount exceeds the amount of the Reimbursement Amount, including accrued interest as set forth herein.

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

13.01 Fee and Easement Acquisitions. The Township hereby represents that it has acquired all necessary fee interests and easements so as to facilitate the construction of the Water Facilities, with the exception of Block 162.03, Lot 1.02 which is by or under the control of the Owner, upon which the elevated water tank will be located. For the consideration set forth herein, that lot or a portion thereof will be deeded over to the Township for no further consideration, free and clear of any liens or encumbrances, with the understanding that the elevated water tank will be located upon the Property. The value of the property in question shall not be considered part of the Installation Costs.

13.02 Dedication. The Township recognizes that the use of the Water Facilities and the benefit to the Owner require that the Owner have full access to existing lines.

13.03 Return to Owner of Lots Not Needed for Water Supply System. Owner has previously dedicated, or offered to dedicate, Block 161.05, Lot 1; Block 161.01, Lot 9, and Block 161.01, a portion of Lot 8 the ("Previously Dedicated Lots"), to Township for purposes of locating a well and water treatment facility. Township has determined that it does not require said lots for its water supply system but, instead, shall locate Well #9, the water treatment facility, and the elevated water storage tank on the lots to be conveyed by Owner to Township pursuant to Section 8.A, herein. Accordingly, the Township shall convey to Owner by quit claim deed any right, title, or interest Township may have in the Previously Dedicated Lots simultaneous with Owner's conveyance to the Township of fee ownership interest in those portions of the land upon which the Water Facilities are being constructed pursuant to Section 8.A, herein. Township shall adopt any ordinance or resolution or take any other action necessary to accomplish this.

13.04 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 that the Reimbursement Amount will constitute an indebtedness to the Owner from others which will be satisfied by a combination of the two aforementioned methods pursuant to Section 11. Accordingly, Township agrees that its obligation to honor the Reimbursement Amount, as set forth in this Agreement, upon completion of the Water Facilities 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 water

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 water 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 Owner by the Township.

13.05 Capacity Reservation to Owner and for all Existing Subdivided Lots. For and in consideration of Owner's performance of this Agreement, and provided Owner shall not be in default, Township agrees to reserve sufficient capacity and supply for all of the EDU requirements for the Projects, specifically including reserving sufficient firm capacity during time of peak daily demand to fully satisfy Owner's Allocation for Water. Additionally, the Township agrees to reserve sufficient capacity and supply for all of the EDU requirements for all undeveloped lots within the Township which have received final subdivision approval and for which subdivision maps are filed with the Clerk of Ocean County as of the date of this Agreement, as well as all developed lots within the Township not presently supplied by the Township's water distribution system, specifically including reserving sufficient firm capacity during time of peak daily demand to satisfy all of the aforesaid lots. This reservation of capacity to satisfy Owner's Allocation for Water and to satisfy the needs of all other existing, subdivided lots in the Township that are either undeveloped or developed and not presently connected to the Township's water supply system shall be referred to as the "Capacity Reservation". This Capacity Reservation shall continue in full force and effect for at least 12 years, presuming that the Owner is not in default of this Agreement. With the sole exception of the properties being

developed by the Litigation Parties, the Township shall not provide, or agree to provide, water distribution service to any other land without first reserving the water distribution capacity needed to fully satisfy the Capacity Reservation, including assuring firm capacity during times of peak daily demand.

14. GENERAL.

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

14.02 Complete Understanding. This Agreement represents the complete understandings between the parties hereto and supersedes all prior negotiations, representations, warranties, statements or 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.

14.03 Assignment. This Agreement may be assigned by the Owner, provided, however, that Owner must assign the entire Agreement and not any individual provisions of the Agreement, and further that Owner 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 Owner shall be relieved of any and all liabilities and obligations under this Agreement.

14.04 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 Owner 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 Owner to Township:	Veronica Jasina, Township Clerk Township of Barnegat 900 West Bay Avenue Barnegat, New Jersey 08005
With copy to Township Water Engineer:	John Hess, PE Birdsall Engineers Inc. 529 Route 9 Barnegat, New Jersey 08005
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 Owner:	Joseph A. Del Duca, Esq. The Walters Group North Crossing Office Complex 100 E. Centre Boulevard Marlton, New Jersey 08053
With copy to Attorney:	Paul H. Schneider, Esq. Giordano, Halleran & Ciesla, P.C. P.O. Box 190 Middletown, New Jersey 07748

14.05 Applicable Law. This Agreement shall be governed by the laws of the State of New Jersey.

14.06 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.

14.07 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.

14.08 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.

15. 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.

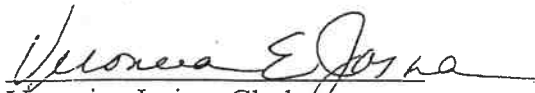
16. Developer's Agreement. The parties acknowledge that they have executed a "Developer's Municipal Agreement" dated March 28, 2003, pursuant to which Owner has agreed to install certain infrastructure, including but not limited to roads, sewer lines, and water lines, within Ocean Acres beyond that needed to satisfy the lots owned by Owner, and which establishes a procedure for Owner to be reimbursed for the pro-rata costs of installation for lots

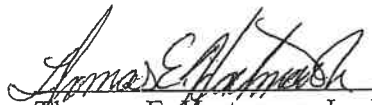
in Ocean Acres that receive building permits, other than lots owned by Owner. The parties acknowledge that the Reimbursement Arrangement for Water Facilities provided for herein is separate and apart from, in addition to, and not in derogation or limitation of any reimbursement provided to Owner pursuant to said Developer's Municipal Agreement. The parties further agree that if a default is caused by one of the parties herein to any one of the other agreements, the default in the accompanying agreement shall be deemed a default in this Agreement which will therefore relieve the non-defaulting party at its sole discretion, from any and all responsibilities in all agreement(s). The non-defaulting party shall retain the rights to any remedies that it may have.

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

**ATTEST:**

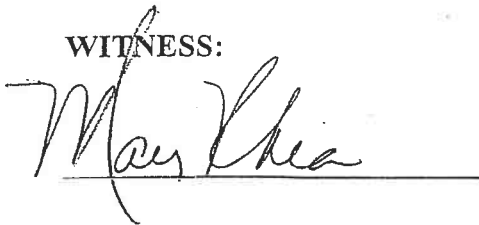
**TOWNSHIP OF BARNEGAT**

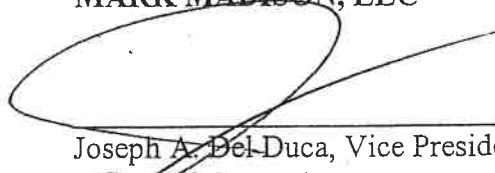
  
Veronica Jasina, Clerk

  
Thomas E. Hartmann, Jr., Mayor

**WITNESS:**

**MARK MADISON, LLC**



  
Joseph A. Del Duca, Vice President &  
General Counsel

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