AMENDMENT & SUPPLEMENT TO THE 2025 HOUSING ELEMENT AND FAIR SHARE PLAN

March 2026

Hardyston Township
Sussex County, New Jersey

Hardyston Township Joint Land Use Board

Prepared By:

Carrine Piccolo-Kaufer, AICP, PP
Township Planner

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NJ PP License # 33LI00613500

The original of this report was signed and
Sealed in accordance with N.J.S.A. 45:14A-12.

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Introduction

The following is intended to amend and supplement the Hardyston Township Housing Element and Fair Share Plan (HEFSP) adopted by the Hardyston Township Joint Land Use Board on June 24, 2025 in order to comply with the terms of the *Mediation Agreement Before the Affordable Housing Dispute Resolution Program* executed by Fair Share Housing Center and the Township of Hardyston and filed with the Court on December 19, 2025.

In accordance with the terms of the Mediation Agreement, the Township is required to amend the HEFSP in order to strengthen the analysis relative to the durational adjustment for the 4th round obligation, incorporate an overlay zone for specific parcels within the Township's existing sewer service areas to address the Township's 4th round unmet need, and incorporate the scattered site affordable housing partnership program in order to address the nineteen (19) unit shortfall from the market to affordable compliance mechanism used to address a p the Township's 3rd round obligation.

Affordable Housing Obligation

The Township of Hardyston's affordable housing obligation consists of present need (rehabilitation), prior round (1987-1999), 3rd round and gap period (1999-2025) and 4th round (2025-2035) obligations.

The Township's Present Need or Rehabilitation Obligation is 22, the Township's combined First and Second Prior Round Obligation(1987-1999) is 18, the Township's Third Round Prospective Need Obligation (1999-2025) is 270, the Township's Fourth Round Prospective Need (2025-2035) is 647.

The following tables depict the Township's compliance mechanisms:

Present Need

Present Need (Rehab Share)		**Status**
Municipally Sponsored Program	22	Prospective
Total	**22**	

Prior Round (1987-1999)

MECHANISM	**TYPE**	**UNITS**	**BONUS**	**TENURES**	**STATUS**
SCARC	Supportive and Special Needs	3		Rental	Completed
Willowglen (1)	Supportive and Special Needs	3	1	Rental	Completed
Willowglen (2)	Supportive and Special Needs	4	4	Rental	Completed
SEED Corp Group Home	Supportive and Special Needs	3		Rental	Completed
Total		**13**	***5***		

Third Round & Gap Period (1999-2025)

MECHANISM	TYPE	UNITS	BONUS	TENURES	STATUS
Crystal Springs Village	Inclusionary, family	143		Rental	Site plan approved 2007; Redevelopment plan adopted 2024
Grand Cascades Lodge	Inclusionary, family	8		Rental	Developer's Agreement approved 2006
Ridgefield Commons	Inclusionary, family	24	24	Rental	16 units built and occupied, 8 affordable units to be built (expected completion 2026)
Indian Fields	Inclusionary, family	8		Rental	Site plan approved 2006
Forest Knolls	Inclusionary, family	3		Rental	Site plan approved 2008
Horse Valley	Inclusionary, family	5		Rental	Site plan approved 2011
Lam Development Crystal Springs	Inclusionary, Family	10		Rental	Under construction
Emerald Estates	Inclusionary, family	4	4	Rental	Complete
Market-to-Affordable Program		8			8 units completed
SEED Corp. Group Homes	Supportive and Special Needs	1	1		Complete
Capitol Care Group Homes	Supportive and Special Needs	4	4		Complete
Municipal Partnership Projects	Family For-Sale	19			Proposed
Total		**237**	**33**		

Fourth Round (2025-2035)

Obligation	**647**
Durational Adjustment	647
Overlay Zones	46
Unmet Need	**601**

Durational Adjustment

The Township of Hardyston has limited sewer service areas and sewer capacity to support the creation of additional inclusionary housing beyond the units planned for and allocated in prior rounds. As a result, the Township is seeking a durational adjustment in accordance with N.J.A.C 5:93-4.3 to address the entirety of the Township's 4th round obligation of 647 affordable housing units.

Sewer allocation within Hardyston Township is administered by other agencies as provided in the table below.

SCMUA Upper Wallkill Water Pollution Control Facility		
Sewage Capacity Allocation Within Hardyston Township		
SCMUA Participant	**Allocation (gpd)**	**Committed Allocation Thru Actual Flows or Agreements**
Hardyston Township MUA	**452,000**	**450,350**
Crystal Springs		335,500
Indian Field		87,500
Wallkill Valley Regional HS		17,000
Storage Solutions		350
Hardyston YMCA		10,000
Aqua - Wallkill Serwer Co.	**155,000**	**155,000**
Total	**607,000**	**605,350**

Allocation not currently committed as the result of the actual flows from existing units or treatment work approvals for planned units is subject to the terms and conditions of established developer's agreement whereby the developer has paid and continues to pay for the reservation of future capacity or existing service contracts with the Sussex County Regional Sewage Authority. Agreements with SCMUA and respective developers are included in appendix A at the end of this document.

In accordance with N.J.A.C 5:93.-4.3(c)(1), the Township is required to reserve new public water and or sewer capacity for the provision of affordable housing. Sewer capacity is regulated by the Sussex County Regional Sewer Authority and the Hardyston Township Municipal Utility Authority. Hardyston Township does not have the authority to reserve capacity. Should public water and/or sewer become available in Hardyston Township through SCMUA or the HTMUA, Hardyston Township cooperate and coordinate with prospective affordable housing developers to reserve and set aside the water and/or sewer capacity, when it becomes available, for very

low-, low-, and moderate-income housing on a priority basis until it has satisfied its fair share obligations through the developer's agreement/service contract process established by the respective agencies .

Furthermore, the Township will cooperate with appropriate parties, and act in good faith and with continuity of purpose, to assist any proposed inclusionary development, whether on the sites zoned for the Third Round or on currently unforeseen site within the Township in order to facilitate the provision of public water and sewer to those sites.

Overlay Zones

The Township Housing Element and Fair Share Plan is amended to include overlay zones on specific parcels located within the existing sewer service areas to allow for inclusionary development in the event additional capacity becomes available. The Township has identified four (4) additional parcels, totaling forty-two acres, suitable for development at a density of six (6) dwelling units per acre. These parcels are located along State Route 94 in proximity to other higher density single-family and multi-family housing developments. At the permitted density, the overlay zones would generate an additional forty-six (46) affordable units.

The parcels suitable for future development are identified in the table below.

Block	Lot	Description	DCA Parcel ID #	Acres	Density Units/Acre	Units	20% Set-aside (Rounded)	Net Additional Units
67	2.08	YMCA Front Tract	28807	14	6	84	17	17
67	16.03	Indian Field Commercial	28814	2	6	12	2	2
67.05	1	Indian Field Commercial	28824	12	6	72	14	14
67.29	1	Indian Field Phase 5		14	6	84	17	13
Total				**42**		**84**		**46**

The proposed overlay zones are incorporated into this amendment as appendix B.

Furthermore, as part of the Township's durational adjustment and in order to comply with the terms of the settlement agreement, the Township will seek to further amend the HEFSP, if in the future, if an appropriate party proposes an inclusionary development with a realistic plan for providing public water and sewer on currently unforeseen sites within the Township.

In addition, the Township will amend its existing affordable housing ordinance to require a mandatory twenty percent (20%) affordable housing set-aside for any new development of five (5) or more residential units. New development located within the Highlands Planning Area Existing Community Zone or an approved sewer service area shall require a 20% set-aside at a density of six (6) units per acre or greater. New development of five (5) or more residential units located in the Highlands Preservation Area, environmentally constrained Planning Areas 4 and 5, or outside of an approved sewer service area, shall require a 20% set-aside without a presumptive minimum density. A draft affordable housing ordinance is incorporated into this amendment as appendix C.

Scattered Site Municipal Partnership Program

The Township included a Market to Affordable Program as a compliance mechanism to address the 3rd round obligation. The Township completed 8 units as part of the 3rd round. Drastic changes in the housing market have hindered the feasibility of completing the remaining 19 units proposed in the Township's 3rd round plan.

As part of the amended HEFSP, the Township is proposing a scattered site municipal partnership program. The Township will identify suitable lots owned by the Township for the development of one, two or multi-family affordable dwelling units (no larger than 4 units). The Township will authorize the transfer of ownership to approved affordable housing providers and shall allocate affordable housing trust fund monies to help subsidize the affordable units.

Crystal Springs Village Center Amended Redevelopment Plan

The Crystal Springs Village Center is an inclusionary affordable housing site that was included in the Township's 2016 HEFSP to address a portion of the Township's 3rd round obligation. In 2021, the site was designated as an area in need of redevelopment. The Township adopted the Route 94 Village Center Redevelopment Plan in 2024. The redevelopment designation and redevelopment plan were adopted to incentivize development of the property after traditional zoning and private capital failed to spur development of the property. A portion of the remaining sewer allocation currently under the control of the Hardyston Township Municipal Utility Authority is committed via a developer's agreement with the current owner/developer of the lots included in the redevelopment area. This HEFSP amendment incorporates an amended redevelopment plan that allows for affordable housing to be built in both Village Center South and Village Center North. The original plan only permitted the affordable housing to be located in the Village Center South. The amended plan improves the likelihood that affordable housing will be constructed throughout the Village Center and allows for the appropriate phasing in accordance with affordable housing regulations. Once a redeveloper(s) is selected for the site, the future redeveloper's agreement(s) shall include provisions for affordable housing and require an appropriate phasing schedule to ensure that sewer capacity remains available for affordable housing. The amended redevelopment plan is incorporated as appendix D.

APPENDIX A

11/25/86
12/3/86
1/9/87

1987
SERVICE CONTRACT

between

THE SUSSEX COUNTY MUNICIPAL UTILITIES AUTHORITY

and

THE HARDYSTON TOWNSHIP MUNICIPAL UTILITIES AUTHORITY
IN THE COUNTY OF SUSSEX

Dated as of January 15, 1987

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ARTICLE VI

MISCELLANEOUS

SCHEDULES

THIS AGREEMENT

made and dated as of

BETWEEN

THE SUSSEX COUNTY MUNICIPAL UTILITIES AUTHORITY (the "Authority), a public body politic and corporate of the State of New Jersey,

AND

THE HARDYSTON TOWNSHIP MUNICIPAL UTILITIES AUTHORITY, a public body politic and corporate of the State of New Jersey (and hereinafter referred to as the "HTMUA",

W I T N E S S E T H

WHEREAS, pursuant to the Municipal and County Utilities Authorities Law, constituting Chapter 183 of the Pamphlet Laws of 1957, of the State of New Jersey, approved August 22, 1957, as amended and supplemented (the "Act"), the Authority was created by virtue of a resolution duly adopted on August 10, 1971 by the Board of Chosen Freeholders of the County of Sussex, New Jersey (the "County") and is a public body politic and corporate of the State of New Jersey organized and existing under the Act constituting a political subdivision and established as an instrumentality exercising public and essential governmental functions to provide for the public health and welfare, with all necessary or proper powers to acquire, construct, maintain, operate or improve works for (i) the accumulation, supply or distribution of water, (ii) the collection, treatment, purification or disposal of sewage or other wastes, (iii) the operation of a septic tank or other "on-site wastewater system" (as defined in the

Act), and (iv) the collection, treatment, recycling, and disposal of solid wastes, and to provide for utility services designed to provide or distribute an adequate supply of water for public and private uses and to relieve the lands and waters in, bordering or entering the County from pollution or threatened pollution from domestic, industrial or other sources, including pollution derived from chemical and hazardous wastes, to provide utility services for the collection, disposal and recycling of solid waste, including sewage sludge in an environmentally sound manner and for improvement of conditions affecting the public health and with all the powers, privileges and authority conferred by the Act; and

WHEREAS, in partial fulfillment of its functions, the Authority has constructed an interceptor sewer system and sewage disposal plant for the transmission, treatment and disposal of certain sanitary sewage and other wastes, as generally described in the "201" Facilities Plan for the Upper Wallkill Basin, certified by the New Jersey Department of Environmental Protection (the "DEP") and the United States Environmental Protection Agency (the "EPA"); and

WHEREAS, the HTMUA has requested to have sewage originating from it or within its territory situate within the Wallkill River basin treated and disposed of by the Authority pursuant to the terms of this Agreement and has duly authorized its proper officials to enter into and execute for it this Agreement;

NOW, THEREFORE, in consideration of the premises, of the mutual covenants and agreements herein set forth, and of the undertakings of each party to the other, the parties

hereto, each binding itself, its successors and assigns, do mutually covenant, promise and agree as follows:

ARTICLE I

DEFINITIONS

Section 101. Definitions. As used or referred to in this Agreement, unless a different meaning clearly appears from the context:

"Act" means the Municipal and County Utilities Authorities Law, constituting Chapter 183 of the Pamphlet Laws of 1957, of the State of New Jersey, approved August 22, 1957, and the acts amendatory thereof and supplemental thereto;

"Agreement" means this Service Contract;

"Annual Charge" shall have the meaning given to such term in Article IV hereof;

"Authority" shall have the meaning hereinabove given to such term;

"Customer" means a user of the Authority's facilities other than a participant.

"District" means the area within the territorial boundaries of all of the municipal corporations of the State of New Jersey situate in the County of Sussex, except (a) any such municipal corporation, the Governing body of which did, prior to the creation of the Authority, create or join in the creation of a sewerage authority pursuant to Section 9 of the Act; and (b) any such municipal corporation, the Governing body of which adopted a resolution in accordance with section 11 of the Act or Chapter 423 of the Laws of 1971 and has not adopted an ordinance in accordance with section 11 of the Act determining that the area within the territorial area of such municipal corporation shall again be a part of the District;

"Federal Acts" means the Federal Water Pollution Control Act (33 U.S.C.1251 et seq.), as amended by the Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92-500 and Pub. L. 93-243) and the Clean Water Act of 1977 (Pub. L. 97-217), as the same may be further amended and supplemented;

"Fiscal Year" means the period of twelve calendar months ending with November 30 of any year;

"Force Majeure", as employed herein, means acts of God, strikes, lockouts or other industrial or similar disturbances, acts of the public enemy, orders of any kind of the Government of the United States, of the State or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, tornadoes, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, partial or entire failure of utilities, shortages of labor, material, supplies or transportation, or any other similar or different cause not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of existing or impending strikes, lockouts or other industrial disturbances shall be entirely within the discretion of the party having the difficulty and that the above requirements that any force majeure shall be reasonably beyond the control of the party and shall be remedied with all reasonable dispatch shall be deemed to be fulfilled even though such existing or impending strikes, lockouts and other industrial or similar disturbances may not be settled and could have been settled by acceding to the demands of the opposing person or persons;

"Governing Body" shall have the meaing given to such term by the Act;

"H.T.M.U.A." means the Hardyston Township Municipal Utilities Authority;

"Hardyston Twp." means the Township of Hardyston, in the County of Sussex, New Jersey;

"Local Sewerage System" means all existing and future sewer systems of the HTMUA which are or may be connected, or are or may be required under the terms of Article III hereof to be connected, with the Upper Wallkill System, including all outfalls of any such Local Sewerage System and any extensions or enlargements thereof;

"Participant" shall mean Franklin Borough, Hamburg Borough, the Wallkill Sewer Co.,Vernon Valley Sewer Co., the HTMUA, or any combination thereof;

"Phase I-A Project" means the following sewerage facilities in the Upper Wallkill River Basin and any improvements thereto owned by the Authority, with all necessary and incidental connections, manholes, valves, metering stations, equipment, apparatus, structures and appurtenances, and all other real or tangible personal property necessary or desirable for the efficient construction and operation of such facilities;

(a) An interceptor pipeline beginning at a point near the intersection of Franklin Avenue & Cork Hill Road in Franklin Borough, and continuing in a Northerly direction to the Northern end of Newton Street, within Franklin Borough, at which point it discharges into a sewage pumping station located at the Northern end of Newton Street in Franklin Borough;

(b) An interceptor pipeline between a beginning point near Stanaback Road, within Franklin Borough, and the interceptor pipeline described in (a) above, including a spur interceptor to Fowler Street;

(c) A sewage force main between a beginning point at a sewage Pumping Station located at the Northern end of Newton Street, within Franklin Borough, and continuing in a Northerly direction to a wastewater treatment plant located near the Wallkill River, within the Township of Hardyston;

(d) A sewage pumping station located at the Northern end of Newton Street, within Franklin Borough;

(e) An interceptor pipeline between a beginning point at the intersection of the Lehigh and Hudson River Railroad and Ginger Bread Castle Road, within Hamburg Borough, and a sewage pumping station located approximately 500 feet northerly of the intersection of the abandoned New York Susquehanna and Western Railroad spur and Wallkill Avenue, within Hamburg Borough;

(f) A sewage pumping station located approximately 500 feet northerly of the intersection of the New York Susquehanna and Western Railroad spur and Wallkill Avenue within Hamburg Borough;

(g) A sewage force main between a beginning point at the sewage pumping station described in (f) above, within the Borough of Hamburg, continuing in a westerly direction to a wastewater treatment plant located near the Wallkill River, within the Township of Hardyston;

(h) A sewage pumping station, known as the "Hardyston Regional Pumping Station", located on State Route 94 in

Hardyston Township, near Wits End Drive, approximately 2000 feet north of the intersection of Wheatsworth Road and State Route 94, said "Hardyston Regional Pumping Station" capable of pumping an average daily wastewater flow of 0.155 million gallons per day;

(i) A wastewater treatment plant located near the Wallkill River, within the Township of Hardyston, said plant capable of treating and discharging a maximum average daily wastewater flow of two and one-half million gallons per day (2.5 MGD) to sufficient purity to maintain the current New Jersey Department of Environmental Protection Water Quality Standards for the Wallkill River, as well as treating the sewage and septic tank sludges generated within Sussex County. Said plant is designed to be compatible with a future expansion and upgrading in treatment level, capable of treating a maximum average daily wastewater flow of five million gallons per day (5.0 MGD);

"Pollution" shall have the meaning given to such term in the Act;

"Service Charges" means rents, rates, fees or other charges for direct or indirect connection with, or the use or servises of, the Upper Wallkill System which the Authority, under the provisions of Sections 22 or 23, or both, of the Act, is or may be authorized to charge and collect with regard to persons or real property;

"Sewage" or "sewage" shall have the meaning given to such term in the Act;

"Upper Wallkill Basin" or "Upper Wallkill River Basin" means that area of the District contained within the Wallkill

River Drainage Basin, with the exception of such lands located within Wantage Township, Sussex Borough, Vernon Township, Frankford Township, and Lafayette Township.

"Upper Wallkill System" means the Phase I-A Project and all additions, extensions and improvements thereto or any part of the foregoing, and any renewals or replacements thereof, acquired or constructed or to be acquired or constructed by the Authority for the purposes of the Authority under the Act, but does not include the Local Sewage System of any Participant.

"Upper Wallkill System Service Area" means the area contained within Hamburg Borough, Franklin Borough, Hardyston Township, and the Route 94 corridor of Vernon Township.

Section 102. Short Title. This agreement may hereafter be cited by the Authority or by the HTMUA and is herein sometimes referred to as the "1986 HTMUA Service Contract".

Section 103. Severability of Invalid Provision. If any one or more of the covenants or agreements provided in the Agreement, on the part of the Authority or the HTMUA to be performed should be contrary to law, then such covenant or covenants, agreement or agreements, shall be deemed separable from the remaining covenants and agreements, and shall in no way affect the validity of the other provisions of the Agreement.

ARTICLE II

OPERATION AND ENLARGEMENT OF THE PHASE I-A PROJECT

Section 201. Operation and Enlargement of Phase I-A Project and the Upper Wallkill System and Associated Improvements. The Authority will operate the Phase 1-A system in accordance with applicable requirements of governmental authorities having jurisdiction with respect thereto, and maintain, alter, improve, renew and replace, and subject to the terms of Section 202, Section 405, and Section 601 hereof, enlarge and extend the Upper Wallkill System so as to treat and dispose of all sewage originating within the service area of the Upper Wallkill System.

Section 202. Public Hearings Prior to Enlargement and Extension of the Upper Wallkill System. The Authority shall not construct, and nothing in this Agreement shall be deemed to require the Authority to construct, any enlargement or extension of the Upper Wallkill System unless it shall (A) have caused to be prepared by its consulting engineers a study with respect to such enlargement or extension which sets forth an estimate as of the then current Fiscal Year of the total cost and expense of planning, financing, constructing and acquiring the enlargement or extension, and putting it in operation, the estimated date of completion of the enlargment or extension, and an estimate of the Annual Charges payable by each Participant for or with respect to the five (5) Fiscal Years immediately succeeding the Fiscal Year in which completion of the enlargement or extension is estimated by the Authority, (B) file a copy of such study with each Participant, (C) cause notice of the time, subject matter and place of the hearing hereinafter mentioned (i) to be published at least once in a newspaper of general circulation published in the County of Sussex, New Jersey, and (ii) to be mailed to each Participant, and (D) not sooner than fifteen (15) days after such publication and mailing and thirty (30) days after such filing, hold a public hearing on such study at which any Participant may appear and, by agent or attorney, be heard with respect thereto.

Section 203. Project Plans to be Approved. Before undertaking construction of any enlargement or extension of the Upper Wallkill System, the Authority will submit the plans and specifications for such construction to the NJDEP (or a successor thereto) for approval as to sufficiency of

design of the Authority's proposed sewage treatment plant and compliance with standards as then promulgated by NJDEP, and all necessary permits shall be obtained by the Authority from NJ DEP to proceed with such construction, and all necessary approvals shall be secured from any other agency of the State of New Jersey or any other governmental authorities which have jurisdiction or authority as to type or degree of treatment of sewage by said sewage treatment plant or as to effluent therefrom.

Section 204. Insurance. The Authority will at all times maintain with responsible insurers all such insurance as is customarily maintained with respect to sewerage systems of like character against loss or damage to the Upper Wallkill System and against public or other liability to the extent not less than that reasonably necessary to protect the interests of the Authority and all Participants, and will at all times maintain with responsible insurers all insurance reasonably required and obtainable within limits and at costs deemed reasonable by the Authority to indemnify and save harmless all Participants against all liabilities, judgments, costs, damages, expenses and attorneys' fees for loss, damage or injury to person or property resulting directly or indirectly from the operation or a failure of operation of the Upper Wallkill System caused by the negligence or willful act of the Authority, its employees or agents.

ARTICLE III

CONNECTIONS TO THE UPPER WALLKILL SYSTEM

Section 301. Connections Required. Upon notice from the Authority, the HTMUA will permit its sewer system or that portion thereof which collects sewage originating within the Upper Wallkill River Basin, or the discharge pipes therefrom to be connected with the Upper Wallkill System, at such point or points which the Authority and the HTMUA may mutually agree upon. Thereafter, upon request by the HTMUA for any additional connection of its sewer system to the Upper Wallkill System, the Authority may, but shall not be required to, permit and make such additional connection, but all costs and expenses of every such additional connection, including all sewage meters and other facilities appurtenant thereto, shall be paid by the HTMUA. Points of connection from the HTMUA's Local Sewerage System will be to manholes or wet wells in the Upper Wallkill System or through other more convenient means. The HTMUA at its own cost and expense, will construct, install and operate any and all extensions of its Local Sewerage System necessary to cause the same to reach to and deliver sewage at the said point or points of connection, and, after the making of such connection or connections, will keep its Local Sewerage System connected with the Upper Wallkill System, and will deliver and discharge into the Upper Wallkill System all sewage originating in its territory and collected in its Local Sewerage System.

Section 302. Sewage Not Required to be Discharged Into Upper Wallkill System. Notwithstanding the provisions of Section 301 hereof, the HTMUA shall not be obligated to deliver and discharge into the Upper Wallkill System sewage which the Authority may by its written consent exempt from delivery and discharge into the Upper Wallkill System.

Section 303. Sewage to be Accepted for Discharge Into Upper Wallkill System. The Authority hereby agrees to accept and treat, from the HTMUA, sewage (including domestic, commercial, institutional and industrial sewage, plus associated infiltration, as provided by Authority Rules and Regulations) of a volume not to exceed 365,000 gallons per day, annual average. The strength and characteristics of said sewage must comply with Authority Rules and Regulations as set forth in Section 501 hereof and N.J.S.A.40:14B-20(12). Notwithstanding the provisions of Section 301 hereof or any other Section hereof, the HTMUA shall not have the right under this Agreement to deliver and discharge into the Upper Wallkill System any sewage or other wastes except either (a) sewage originating within the territorial area of the HTMUA up to a maximum volume of 365,000 Gallons per day, annual average, and (b) any other sewage delivered and discharged into the Upper Wallkill System by the HTMUA with the written consent of the Authority.

During the term of this Agreement, the HTMUA may choose to return any unused portion of its allocation to the Authority. Should this occur, any Assigned Minimum Flows contained in this Agreement shall be reduced in accordance with the procedure noted in schedule A. The revised annual payment reflecting the reduced allocation shall be adjusted accordingly on the next quarterly billing by the Authority.

Section 304. Meters and Measurements of Sewage and Records Thereof.

(A) The HTMUA will provide and install and the Authority shall use and maintain as part of the Upper Wallkill System a meter or meters (which meter shall be calibrated at least annually by the Authority) and from time to time as necessary make tests and use other means for determining the quality and other characteristics of all sewage which shall be delivered and discharged into the Upper Wallkill System by or for the account of the HTMUA and, in accordance with sound engineering practice, will determine such volume and, when necessary, such quality and characteristics. The meter used for measuring the sewage flows received from the HTMUA shall be placed in a mutually agreed upon location. The HTMUA shall be notified at least forty eight (48) hours prior to the calibration of said meter and shall have the right to witness said meter calibrations. In the event of malfunction or failure of any meter or other device, the Authority may use its estimates as to flow, quality and other characteristics of sewage until such meter or device is repaired or replaced and any such required repair or replacement shall be promptly made or undertaken by the Authority. Such estimates to be so used shall be based upon the monthly average of flow, quality and other characteristics of sewage for the prior twelve (12) months (or lesser period of months) last past prior to the malfunction or failure of any such meter. A copy of every such determination made by the Authority with respect to any Fiscal Year shall be mailed to each participant at its usual place of business

and for all purposes of the 1986 HTMUA service contract shall be conclusively deemed to have been made in accordance with the 1986 HTMUA Service Contract and be correct at the expiration of the period of ninety (90) days after such certified mailing except as may be provided by an award in an arbitration or the final judgment of a court of competent jurisdiction in any action or proceeding begun by a participant within such period.

(B) The Authority will make and keep permanent records of the volume and, when ascertained, the quality and other characteristics of sewage delivered and discharged into the Upper Wallkill System by or for the account of each Participant. For the purpose of determining the volume, quality and other characteristics of any sewage which shall or may be delivered and discharged into the Upper Wallkill System by the HTMUA, the Authority shall have the right at all reasonable times, to enter upon and inspect the sewer, sanitation or drainage systems of the HTMUA, in accordance with State law, and to take normal samples under ordinary operating conditions and make tests, measurements and analyses of sewage or other wastes in, entering or to be discharged into such sewer, sanitation or drainage systems, and upon the written request of the HTMUA will make available to the HTMUA the results of such tests, measurements or analyses. The costs of such testing and analyses shall be borne by the Authority.

(C) The HTMUA shall have the right at all reasonable times when accompanied by an Agent of the Authority to enter upon and inspect the Phase I-A project including particularly all meters and flow measuring devices.

Section 305. Insurance.

The HTMUA will at all times maintain with responsible insurers all such insurance as is customarily maintained with respect to sewerage systems of like character against loss or damage to the HTMUA Sewerage System and against public or other liability to the extent not less than that reasonably necessary to protect the interests of the HTMUA, and will at all times maintain with responsible insurers all insurance reasonably required and obtainable within limits and at costs deemed reasonable by the HTMUA to indemnify and save harmless the Authority against all liabilities, judgments, costs, damages, expenses and attorney's fees for loss, damage or injury to personal property resulting directly or indirectly from the operation or a failure of operation of the HTMUA Sewerage System caused by the negligence or willful act of the HTMUA, its employees or agents.

ARTICLE IV

AUTHORITY CHARGE AND PAYMENT THEREOF

Section 401. Obligation of the HTMUA. The HTMUA shall make payments (herein sometimes called "Annual Charges") annually to the Authority for or with respect to the facilities and services made or to be made available to it hereunder by the Authority regarding the treatment and disposal of sewage and other wastes originating within its territorial area.

Section 402. Annual Charge. (A) The Annual Charge for each Fiscal Year payable hereunder by the HTMUA shall consist of and include a HTMUA Operating Charge and a HTMUA General Charge. The Upper Wallkill Operating Charge to all Participants shall at all times be sufficient to pay or provide for the expenses of operating, repair and maintenance of the Upper Wallkill System including (without limitation of the foregoing) insurance, renewals and replacements, and the cost of all enlargements and alterations of the Upper Wallkill System not otherwise provided for. The Upper Wallkill General Charge to all Participants shall at all times be sufficient to pay the principal of and interest on any and all bonds or other obligations of the Authority issued to finance in whole or in part the Upper Wallkill System as the same become due, and to provide for any deficits of the Authority resulting from failure to receive sums payable to the Authority by any Participant or any other person, partnership, firm or corporation, or from any other cause, and to provide and maintain such reserves or sinking funds for any of the foregoing purposes as may be required by the terms of any contract or other obligation of the Authority. The Annual

Charges made and imposed by the Authority shall be computed at rates which shall at all times be uniform as to all Participants for the same type, class and amount of use or services of the Upper Wallkill System, and the rates applicable with respect to sewage delivered and discharged into the Upper Wallkill System by any Participant shall not be more favorable to such Participant than the rates applicable with respect to sewage so delivered and discharged by any other Participant. The Authority shall periodically prescribe a schedule of such rates and, from time to time whenever necessary after prescribing such rate schedule (but only after public hearing thereon held by the Authority, at least twenty days after notice of the time and place on such hearing shall have been mailed to each Participant at its usual place of business), the Authority shall revise the schedule of such rates, which shall at all times comply with the terms of any contract or other obligation of the Authority and shall be based or computed on the quantity, quality and other characteristics of sewage so discharged and delivered. Any Participant aggrieved by any part of such a revised schedule which fails to conform with the terms and provisions of this Agreement may institute appropriate judicial proceedings to have the same reviewed for the purpose of obtaining correction of said part of such revised schedule.

(B) The portion of the Upper Wallkill General Charge to be included in the Annual Charge of the HTMUA shall bear the same ratio to the total amount to be included in the Upper Wallkill General Charge pursuant to subsection

(A) of this Section as the amount of the sewage delivered by the HTMUA into the Upper Wallkill System (which amount, for the purposes of this subsection (B), shall in no event be less than the HTMUA's Assigned Minimum Flow of Wastewater, as set forth in Schedule A hereto) bears to the total amount of sewage delivered by all Participants into the Upper Wallkill System.

This provision shall become effective immediately upon execution of this service contract.

(C) The portion of the Upper Wallkill Operating Charge to be included in the Annual Charge of the HTMUA shall bear the same ratio to the total amount to be included in the Upper Wallkill Operating Charge pursuant to subsection (A) of this Section as the amount of the sewage delivered by the HTMUA into the Upper Wallkill System (which amount, for the purposes of this subsection (C), shall in no event be less than the HTMUA's Assigned Annual Minimum Flow of wastewater, as set forth in Schedule A hereto) bears to the total amount of sewage delivered by all Participants into the Upper Wallkill System.

This provision shall become effective immediately upon execution of the Service Contract.

Section 403. Payment of Annual Charges by the HTMUA

(A) On or before December 15 in each Fiscal Year the Authority will make an estimate of the amount of the Annual Charge which will become payable by the HTMUA for such Fiscal Year, and make and deliver to the HTMUA its certificate signed by an Authority Officer stating such estimated amount of such Annual Charge for such Fiscal Year.

(B) The HTMUA shall pay to the Authority in each Fiscal Year the estimated amount of the Annual Charge stated in the certificate delivered to it by the Authority as

aforesaid in four equal payments on or before February 15, May 15, August 15 and November 15 of such Fiscal Year, subject to the provisions of Section 303.

(C) On or before December 31 of each Fiscal Year the Authority will make and deliver to the HTMUA its certificate signed by an Authority Officer stating (1) the amount of the Annual Charge with respect to the HTMUA for the immediately preceding Fiscal Year computed in accordance with Section 402; and (2) the part (if any) of such Annual Charge not previously paid to the Authority by the HTMUA pursuant to and in accordance with Paragraph (B) of this Section, accompanied by an Accountant's Certificate approving the statements in such certificate, and on or before February 1 immediately following the close of such Fiscal Year, the HTMUA will pay to the Authority the unpaid part of any Annual Charges so stated in such certificate. The Annual Charge, payable by the HTMUA for each Fiscal Year, shall in all events be due and payable no later than February 1 immediately succeeding the close of such Fiscal Year, but current provision for and payment of such Annual Charges on an estimated basis shall be made by the HTMUA in accordance with the foregoing Paragraphs of this Section. In the event that the amount of the Annual Charge made and charged by the Authority to and payable by the HTMUA for any Fiscal Year computed as provided in this Article shall be less than the estimated amount of such Annual Charge stated in the certificate delivered in such Fiscal Year to it by the Authority and paid by it to the Authority, the Authority will return the amount of the difference between said amounts of Annual Charges to the

HTMUA on or before February 15 of the immediately succeeding Fiscal Year by credit against payments due to the Authority under the provisions of Paragraphs (B) or (C) of this Section.

(D) The HTMUA will in each year make all budgetary, emergency and other provisions or appropriations necessary to provide for and authorize the prompt payment by the HTMUA to the Authority of all amounts payable by the HTMUA pursuant hereto, all as stated in the certificates delivered to it by the Authority as aforesaid.

Section 404. Limitation on Service Charges. The sums payable by the HTMUA to the Authority under the provisions of this Article are and shall be, (except as provided in Section 405 below) in lieu of Service Charges with regard to real property directly or indirectly connected with the Upper Wallkill System and real property connected to the Local Sewerage System of the HTMUA connected with the Upper Wallkill System in accordance with Article III. So long as the HTMUA shall not be in default in the making of any payments becoming due from it under the provisions of this Article, the Authority will suspend Service Charges with regard to such real property. For the purposes of this Section, the HTMUA shall be deemed to be in default if the HTMUA, for a period of thirty (30) days after its due date, shall fail to make in full to the Authority any payment required to be made by it under the provisions of this Agreement or perform any of its obligations hereunder.

Section 405. Reimbursement to Hamburg & Franklin Boroughs The HTMUA shall, upon execution of the 1987 Service Contract,

be required to reimburse the Authority a portion of all prior year General Charges as determined by the Authority, based on Assigned Minimum Flow of 182,500 GPD.

This payment shall be directly reimbursed to the Boroughs of Hamburg and Franklin by the Authority in accordance with the 1980 Borough Service Contracts. Amendments to the 1987 HTMUA Service Contract for any additional allocation shall be cause for an increase in reimbursement payments, based on the adjusted aggregate Minimum Assigned Flow (as used for purposes of General Charge) for the HTMUA.

ARTICLE V

OPERATION OF THE UPPER WALLKILL SYSTEM AND LOCAL SEWERAGE SYSTEMS

Section 501. Rules and Regulations. (A) The Authority may at any time promulgate, issue, publish and from time to time amend, supplement and enforce, all such rules and regulations concerning the Upper Wallkill System or the business and affairs of the Authority as may be permitted by law, including but not limited to rules and regulations regulating the making of connections to the Upper Wallkill System or the use or services of the Upper Wallkill System or prohibiting or regulating the discharge into the Upper Wallkill System or any sewer, sanitation or drainage systems connected therewith of (a) storm water drainage from ground surface, roof leaders or catch basins or from any other source, (b) industrial wastes, or (c) oils, acids, garbage, metallic salts, radioactive, toxic or explosive materials or any other substances which, alone or in combination with other substances discharged into the Upper Wallkill System, are or may be in the opinion of the Authority injurious or deleterious to the Upper Wallkill System or to its efficient operation, or the Wallkill River, or both. The HTMUA shall fully comply with such rules and regulations and will cause the same to be fully observed and complied with throughout its territorial area. Such rules and regulations may include lists of harmful wastes, the discharge of which into the Upper Wallkill System or any sewer, sanitation or drainage system connected therewith shall be prohibited. In the enforcement of such rules and regulations (or in the enforcement

of Annual Charges), the Authority may refuse to permit or continue the connection to the Upper Wallkill System of properties in the HTMUA's territorial area for good cause. Such refusal shall not be deemed to result in any violation by the Authority of the provisions of this Agreement as to construction or operation of the Upper Wallkill System or the charging or collection of Annual Charges or any other matter. All such rules and regulations and amendments thereof shall take effect as to the HTMUA sixty (60) days after a copy thereof shall have been mailed to the HTMUA and, for all purposes of this Agreement, shall be conclusively deemed to have been made in accordance with this Article at the expiration of said period of sixty (60) days except as may be provided by the final judgment of a court of competent jurisdiction in an action, or determined pursuant to arbitration as hereinafter mentioned, begun by the HTMUA within such period. Any controversy arising out of or relating to such rules or regulations may, upon notice given by the HTMUA to any other Participant under contract with the Authority which may be affected thereby, be settled by arbitration in accordance with the rules then obtaining of the American Arbitration Association and any decision rendered shall be binding upon the HTMUA and the Authority; provided, however, that any such decision which would prevent the Authority from complying with the provisions of any contract or other obligation of the Authority with or for the benefit of holders of its bonds, notes or other obligations shall not be binding upon the Authority.

(B) The Authority may from time to time fix, charge and collect reasonable rates or other charges for the discharge into the Upper Wallkill System from the HTMUA of sewage in volumes or of a quality or other characteristics which are not in compliance with said rules and regulations then in effect. Such charges shall equal the increase in the cost of managing the effluent or the sludge of the Upper Wallkill System as determined by the Authority.

Section 502. Operation of Local Sewerage System.

(A) The HTMUA will at all times operate its Local Sewerage System in such a manner so that the HTMUA will at all times be in compliance with the provisions of the Federal Acts and any rules and regulations promulgated pursuant thereto and any laws of the State of New Jersey with respect to the collection, treatment and disposal of sewage, including by way of illustration rather than limitation, any rules and regulations of DEP (or any successor thereto). The Local Sewerage System of the HTMUA shall be operated and maintained in such a manner as to exclude any excessive infiltration or storm water inflow therefrom, as defined in USEPA and NJDEP regulations then in effect, and in the event such excessive infiltration or inflow shall exist or occur the HTMUA shall promptly make all repairs and take all other measures necessary or desirable to reduce the amount or volume thereof to normally allowable levels which are acceptable to the Authority and DEP or EPA (or any successor or successors thereto). In connection with any such excessive infiltration or inflow condition, the HTMUA shall undertake with all practicable speed any required sewer system evaluation survey and necessary or desirable rehabilitation.

(B) The HTMUA agrees to take all available administrative steps, and pursue any and all remedies provided by law, to enforce compliance, in the operation of its Local Sewerage System, with all rules and regulations promulgated by the Authority, and to adopt and maintain in full force and effect rules and regulations for sewage use in compliance with the rules and regulations of NJDEP, the Authority, and the EPA. The HTMUA further agrees to comply with all EPA requirements relating to user charges.

(C) The HTMUA shall not make or permit any new connection to or extension of its sewer, sanitation or drainage systems which is so designed as to permit entrance directly or indirectly into the Upper Wallkill System of storm water drainage from ground surface, roof leaders, catch basins or any other source. The HTMUA before making any new connection to or extension of its said sewer, sanitation or drainage systems, will submit the plans therefor to the Authority and, in making the same, will permit the Authority to inspect the work and will comply with all reasonable requests of the Authority with respect thereto reasonably designed to assure exclusion from the Upper Wallkill System of any such storm water drainage.

Section 503. Accounts The Authority will keep proper books of record and account in which complete and correct entries shall be made of its transactions relating to the Upper Wallkill System or any part thereof, and which, together with all other books and papers of the Authority, shall at all reasonable times be subject to public inspection. The Authority will cause its books and accounts to be audited

annually by a certified public or registered municipal accountant selected by the Authority, and annually within one hundred (100) days after the close of each Fiscal Year, copies of the reports of such audits so made shall be furnished to the Authority including statements in reasonable detail accompanied by a certificate of said accountant, of financial condition, of revenues and operating expenses, and of all funds held by or for the Authority.

ARTICLE VI

MISCELLANEOUS

Section 601. Contracts with or Service to Others.

(A) Nothing in this Agreement contained shall restrict in any way the right and power of the Authority, in its discretion, at any time and from time to time, to enter into agreements with any municipal corporation or with any other body, person, partnership, firm or corporation providing for or relating to the disposal of sewage or with respect to the delivery or discharge into the Upper Wallkill System of sewage or other wastes originating within or without the District, provided that the charges with respect to such sewage or other wastes delivered and discharged into the Upper Wallkill System made and imposed with respect thereto or charged and collected pursuant to the Act shall not be computed or established at any rates less favorable to the Authority than the rates applicable with respect to sewage delivered and discharged into the Upper Wallkill System by the HTMUA and the terms and conditions of any such agreement shall not be less favorable to the Authority than the terms and conditions of this Agreement.

(B) Nothing in this Agreement contained shall restrict in any way the right of the HTMUA, in its discretion, at any time and from time to time, to enter into agreements with any body, person, partnership, firm or corporation providing for the collection of sewage by the HTMUA for discharge into the Upper Wallkill System, provided all necessary approvals by the Authority are obtained, as per State law and the applicable sections of this Agreement, and

provided all requirements of this Agreement are complied with.

Section 602. Enforcement. (1) The Authority will at all times take all reasonable measures permitted by the Act or otherwise by law to collect and enforce prompt payment to it or for it of all Service or Annual Charges prescribed, fixed, certified or charged by it in accordance with this Agreement. If any payment or part thereof due to the Authority from the HTMUA shall remain unpaid for thirty (30) days following its due date, the HTMUA shall be charged with and will pay to the Authority interest on the amount unpaid from its due date until paid at the maximum applicable legal rate of interest. In such a case, the Authority, according to State law, in its discretion may charge and collect Service Charges with regard to person and real property directly or indirectly connected to the Upper Wallkill System sufficient to meet any default or deficiency in any payments herein agreed to be made by the HTMUA. If in any such case Service Charges are so collected, the amount so collected by the Authority from the territorial area will be credited against the amount of such default or deficiency or any payments then or theretofore due to the Authority from the HTMUA under the provisions of Article IV hereof, and the Authority will furnish to the HTMUA a list of the names of the persons making payment to the Authority of such Service Charges and of the several amounts so paid by such persons respectively, and the HTMUA will give fair and proper credit to such persons for the several amounts so paid by them.

(2) Every obligation assumed by or imposed upon the HTMUA by this Agreement shall be enforceable by the

Authority by appropriate action, suit or proceeding at law or in equity, and the Authority may have and pursue any and all remedies provided by law for the enforcement of such obligations including the remedies and processes provided by the Act with respect to Service Charges or other obligations.

(3) Failure on the part of the Authority or of the HTMUA in any instance or under any circumstances to observe or fully perform any obligation assumed by or imposed upon it by this Agreement shall not make the Authority liable in damages to the HTMUA or any Participant or the HTMUA liable in damages to the Authority or any Participant or relieve the HTMUA from making any payment to the Authority provided the Authority continues (unless such continuation is rendered impractical by reason of the occurrence of Force Majeure) to accept and treat sewage from the HTMUA or fully performing any other obligations required of it under this Agreement, but the HTMUA may have and pursue any and all other remedies provided by law for compelling performance by the Authority of said obligation assumed by or imposed upon the Authority.

Section 603. Certain Acts Not a Waiver. Acceptance by the Authority into the Upper Wallkill System from the company of sewage in a volume or at a rate or with characteristics exceeding or violating any limit or restriction provided for by or pursuant to this Agreement in one or more instances or under one or more circumstances shall not constitute a waiver of such limit or restriction or of any of the provisions of this Agreement and shall not in any way obligate the Authority thereafter to accept or make provision for sewage delivered and discharged into the Upper Wallkill System in a

volume or at a rate or with characteristics exceeding or violating any such limit or restriction in any other instance or under any other circumstance.

Section 604. Special Consents by HTMUA. Whenever under the terms of this Agreement the HTMUA is authorized to give its written consent, such consent may be given and shall be conclusively evidenced by a copy, certified and sealed by its Secretary, of the resolutions purporting to have been adopted by the Commissioners of the HTMUA, and purporting to give such consent.

Section 605. Special Consents by Authority.

(A) Whenever under the terms of this Agreement the Authority is authorized to give its written consent, such consent may be given and shall be conclusively evidenced by a copy, certified by its Secretary and under its seal, of a resolution purporting to have been adopted by the Authority or its members and purporting to give such consent.

(B) Whenever under the terms of the Agreement, the Authority is authorized to give its written consent, the Authority, in its discretion, may give or refuse such written consent, and, if given, may restrict, limit or condition such consent in such manner as it shall deem advisable.

Section 606. Term of Agreement. This Agreement shall come into effect upon its execution and delivery by or on behalf of the HTMUA and the Authority, shall take effect as of Dec. 1, 1986, and shall thereafter be and remain in full force and effect, but at any time after five (5) years from the date of this Agreement and after payment in full of all obligations of the Authority, including its bonds, notes or other obligations, original or refunding or both, issued to finance the planning, financing,

construction, replacement, maintenance or operation of the Upper Wallkill System, the HTMUA and the Authority may agree in a signed writing to terminate this Agreement.

Section 607. Obligation of the Authority. All bonds, notes or other obligations of the Authority referred to in this Agreement or to be issued by the Authority shall, for all purposes of this Agreement be the sole obligation of the Authority and shall not in any way be deemed a debt or liability of the HTMUA.

Section 608. Pledge or Assignment. The Authority may at any time assign or pledge for the benefit and security of the holders of bonds, notes or other evidence of indebtedness heretofore or hereafter issued by the Authority any of its rights under the provisions of this Agreement including but not limited to its rights to receive payments from the HTMUA and thereafter this Agreement shall not be terminated, modified, amended, supplemented or changed by the Authority or the HTMUA except in the manner (if any) and subject to the conditions (if any) permitted by the terms and provisions of such assignment or pledge.

Section 609. Execution in Counterparts. This Agreement may be executed in any number of counterparts each of which shall be executed by the Authority and the HTMUA and all of which shall be regarded for all purposes as one

original and shall constitute and be but one and the same.

IN WITNESS WHEREOF, the Authority and the company have caused their respective corporate seals to be hereunto affixed and attested and these presents to be signed by the respective officers thereunder duly authorized and this Agreement to be dated as of the day and year first above written.

THE SUSSEX COUNTY MUNICIPAL UTILITIES AUTHORITY

(SEAL)

ATTEST: _____
Secretary

By: _____
Chairman

THE HARDYSTON TOWNSHIP MUNICIPAL UTILITIES AUTHORITY

(SEAL)

ATTEST: _____
Secretary

By: _____
Chairman

SCHEDULE A

ASSIGNED MINIMUM FLOW OF *

WASTEWATER IN

GALLONS PER DAY

HTMUA

For purposes of General Charge and Reimbursements to Hamburg and Franklin Boroughs:

182,500 Gal. per Day
(50% of 365,000 GPD allocation)

For Purposes of Operating Charge:

Fiscal Year	A.M. Flow	% of Allocation
FY1987	58,000 GPD	16
FY1988	116,000 GPD	32
FY1989	174,000 GPD	48
FY1990	232,000 GPD	64
FY1991	290,000 GPD	80
FY1992	315,000 GPD	86
FY1993	340,000 GPD	93
FY1994 and thereafter	365,000 GPD	100%

*NOTE: The assigned minimum flow will be reduced upon relinquishment by HTMUA of any unused portion of its allocation to the SCMUA in accordance with the provisions of Section 303 of this Agreement.

The assigned minimum flow (AMF) for the purpose of the general charge is reduced by one half of the amount of the gallonage relinquished, while the schedule for the assigned minimum flow for the purpose of the operating charge is reduced proportionately by the percent (%) of allocation (shown above).

Schedule A shall be revised whenever an adjustment (increase or decrease) of the total allocation is made.

DOLAN AND DOLAN
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
BOX D
NEWTON, N. J. 07860

ONE LEGAL LANE
(AND FIFTY-THREE SPRING STREET)

(201) 383-1600

FRANCIS E. BRIGHT
LEWIS P. DOLAN, JR.
WILLIAM A. DOLAN II
WILLIAM M. COX
RICHARD V. HOLLYER
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ROGER W. THOMAS
RICHARD I. CLARK

OF COUNSEL
JOHN T. MADDEN

ASSOCIATES
WILLIAM T. HAGGERTY
KATHLEEN J. O'BRIEN
LORING B. LINCOLN, JR.
DONALD M. ROSS

January 12, 1987

Mr. Alfred Smith
R. D. 2 - Box 117
Franklin, New Jersey 07416

Dear Al:

I am enclosing herewith six copies of the revised pages furnished to me by the SCMUA which will replace pages in the Service Contract as previously forwarded under date of December 8, 1986.

The changes reflected in these pages, which were made as a result of a request by HTMUA through Mr. Bracken have been approved by the SCMUA and can now be approved by HTMUA subject to entering into a revision of the Developer's Agreement with Hardyston Development Co.

Very truly yours,

DOLAN AND DOLAN, P.A.

By: WM Cox

WMC/mjm
Enclosures

During the term of this Agreement, the HTMUA may choose to return any unused portion of its allocation to the Authority. Should this occur, any Assigned Minimum Flows contained in this Agreement shall be reduced in accordance with the procedure noted in schedule A. The revised annual payment reflecting the reduced allocation shall be adjusted accordingly on the next quarterly billing by the Authority.

SCHEDULE A

ASSIGNED MINIMUM FLOW OF *

WASTEWATER IN

GALLONS PER DAY

HTMUA

For purposes of General Charge and Reimbursements to Hamburg and Franklin Boroughs:

182,500 Gal. per Day
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FY1993	340,000 GPD	93
FY1994 and thereafter	365,000 GPD	100%

*NOTE: The assigned minimum flow will be reduced upon relinquishment by HTMUA of any unused portion of its allocation to the SCMUA in accordance with the provisions of Section 303 of this Agreement.

The assigned minimum flow (AMF) for the purpose of the general charge is reduced by one half of the amount of the gallonage relinquished, while the schedule for the assigned minimum flow for the purpose of the operating charge is reduced proportionately by the percent (%) of allocation (shown above).

Schedule A shall be revised whenever an adjustment (increase or decrease) of the total allocation is made.

During the term of this Agreement, the HTMUA may choose to return any unused portion of its allocation to the Authority. Should this occur, any Assigned Minimum Flows contained in this Agreement shall be reduced in accordance with the procedure noted in schedule A. The revised annual payment reflecting the reduced allocation shall be adjusted accordingly on the next quarterly billing by the Authority.

SCHEDULE A

ASSIGNED MINIMUM FLOW OF *

WASTEWATER IN

GALLONS PER DAY

HTMUA

For purposes of General Charge and Reimbursements to Hamburg and Franklin Boroughs:

182,500 Gal. per Day
(50% of 365,000 GPD allocation)

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FY1993	340,000 GPD	93
FY1994 and thereafter	365,000 GPD	100%

*NOTE: The assigned minimum flow will be reduced upon relinquishment by HTMUA of any unused portion of its allocation to the SCMUA in accordance with the provisions of Section 303 of this Agreement.

The assigned minimum flow (AMF) for the purpose of the general charge is reduced by one half of the amount of the gallonage relinquished, while the schedule for the assigned minimum flow for the purpose of the operating charge is reduced proportionately by the percent (%) of allocation (shown above).

Schedule A shall be revised whenever an adjustment (increase or decrease) of the total allocation is made.

AMENDMENT

TO

1987 SERVICE CONTRACT

BETWEEN

THE SUSSEX COUNTY MUNICIPAL UTILITIES AUTHORITY

AND

THE HARDYSTON TOWNSHIP MUNICIPAL UTILITIES AUTHORITY

Dated as of January 15, 1987
Amendment Dated as of October 15, 2003

AGREEMENT

This amendment made and dated as of the 15th day of October, 2003 between the Sussex County Municipal Utilities Authority ("the Authority"), a public body politic and corporate of the State of New Jersey, and the Hardyston Township Municipal Utilities Authority, a public body politic and corporate of the State of New Jersey, situated in the County of Sussex, New Jersey (hereinafter referred to as the "HTMUA");

W I T N E S S E T H

WHEREAS, the Authority and the HTMUA entered into a certain Service Contract providing for the acceptance and treatment of sewage originating within the HTMUA Service Area, dated January 15, 1987; and

WHEREAS, HTMUA, SCMUA, Borough of Franklin and Wallkill Valley Regional High School (WVRHS) entered into a certain agreement dated February 26, 1991 as a result of which WVRHS received 25,000 gpd of sewerage treatment capacity allocation; and

WHEREAS, the Wallkill Valley Regional High School has agreed to transfer to the HTMUA 25,000 gallons per day of sewage treatment capacity allocation, subject to the terms and conditions as put forth within an Agreement (Six Party Agreement) between the Authority, the HTMUA, Wallkill Valley Regional High School, Hardyston YMCA, Wallkill Sewer Company and Franklin Borough which is to be executed simultaneously or prior hereto;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth and of the undertakings of each party to the other, the parties hereto, each binding itself, its successors and assigns, do mutually covenant, promise and agree effective upon execution of the Six Party Agreement referenced above as follows:

The first paragraph of the present Section 303 of the HTMUA Service Contract, shall be deleted in its entirety, and replaced with the following Section 303:

"**Section 303. Sewage to be Accepted for Discharge into Upper Wallkill System.** The Authority hereby agrees to accept and treat, from the HTMUA, sewage (including domestic, commercial, institutional and industrial sewage, plus associated infiltration, as provided by Authority Rules and Regulations) of a volume up to 390,000 gallons per day (annual average), provided the strength and characteristics of such sewage comply with Authority Rules and Regulations as set forth in Section 501 hereof and N.J.S.A. 40:14B-20(12). Nothwithstanding the provisions of Section 301 hereof or any other Section hereof, the HTMUA shall not have the right under this Agreement to deliver and discharge into the Upper Wallkill System any sewage or other waste except either (1) sewage originating within the territorial boundaries of the HTMUA up to a maximum of 390,000 gallons per day (annual average) as outlined above; and (2) any other sewage delivered and discharged into the Upper Wallkill System by the HTMUA with the written consent of the Authority."

All the remaining portions of the original Service Contract between the Authority and the HTMUA are hereby reaffirmed as being in full force and effect, except the attached Schedule A.

"Schedule A. Assigned Minimum Flow of Wastewater" shall be deleted and replaced with the following "Schedule A":

SCHEDULE A

HTMUA
ASSIGNED MINIMUM FLOW OF WASTEWATER IN GALLONS PER DAY

General Charges:

For the purposes of General Charges (Debt Service), the HTMUA shall be charged a minimum of 182,500 gallons per day (50% of 365,000 GPD allocation), exclusive of flow from the Wallkill Valley Regional High School, and Hardyston YMCA.

Operating Charges:

For the purposes of Operating Charges (operation and maintenance expenses), the HTMUA shall be charged a minimum of 365,000 gallons per day, exclusive of flow from the Walkill Valley Regional High School, and Hardyston YMCA.

Note: General Charges and Operating Charges for the Wallkill Valley Regional High School and the proposed Hardyston YMCA shall be calculated and billed based on actual flows from each. Such charges shall be in addition to the charges for the remaining HTMUA service area, which shall reflect actual flow volume therefrom, but not less than the assigned minimum flow charges listed above.

IN WITNESS WHEREOF, the Authority and the HTMUA have caused their respective corporate seals to be hereunto affixed and attested and these presents to be signed by the respective officers thereunder duly authorized and this Agreement to be dated as of the day and year first above written.

(SEAL) THE SUSSEX COUNTY MUNICIPAL UTILITIES AUTHORITY

BY: _____
Richard A. Camp, Chairman

ATTEST:

_____
Andrea Cocula, Secretary

(SEAL) HARDYSTON TOWNSHIP MUNICIPAL UTILITIES AUTHORITY

BY: _____

ATTEST:

_____

le\contract\HTMUArevd

AMENDMENT

TO

1987 SERVICE CONTRACT

BETWEEN

THE SUSSEX COUNTY MUNICIPAL UTILITIES AUTHORITY

AND

THE HARDYSTON TOWNSHIP MUNICIPAL UTILITIES AUTHORITY

Dated as of January 15, 1987
Amendment Dated as of October 15, 2003
Amendment Dated as of September 1, 2004

AGREEMENT

This amendment made and dated as of 1st day of Sept. 2004 between the Sussex County Municipal Utilities Authority ("the Authority"), a public body politic and corporate of the State of New Jersey, and the Hardyston Township Municipal Utilities Authority, a public body politic and corporate of the State of New Jersey, situated in the County of Sussex, New Jersey (hereinafter referred to as the "HTMUA");

WITNESSETH

WHEREAS, the Authority and the HTMUA entered into a certain Service Contract providing for the acceptance and treatment of sewage originating within the HTMUA Service Area, dated January 15, 1987, said Contract being revised on October 15, 2003; and

WHEREAS, pursuant to the Service Contract, Section 303 provides a flow limitation therein, also referred to as sewage treatment capacity allocation; and

WHEREAS, pursuant to an Agreement between the Borough of Franklin and the HTMUA, 125,000 GPD of Franklin's allocation has been reserved by Franklin for, and will be transferred to the HTMUA; and

WHEREAS, the SCMUA has been informed that the HTMUA and the Borough wish to proceed with the transferring of 125,000 GPD of allocation from the Borough to HTMUA, and to execute amendments to their respective Service Contracts to reflect this transfer.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth and of the undertakings of each party to the other, the parties hereto, each binding itself, its successors and assigns, do mutually covenant, promise and agree as follows:

The first paragraph of the present Section 303 of the Service Contract and amendment shall be deleted in its entirety, and replaced with the following Section 303:

"Section 303. Sewage to be Accepted for Discharge into Upper Wallkill System. The Authority hereby agrees to accept and treat, from the HTMUA, sewage (including domestic, commercial, institutional and industrial sewage, plus associated infiltration, as provided by Authority Rules and Regulations) of a volume up to 515,000 gallons per day (annual average), provided the strength and characteristics of such sewage comply with Authority Rules and Regulations as set forth in Section 501 hereof and N.J.S.A. 40:14B-20(12). Nothwithstanding the provisions of Section 301 hereof or any other Section hereof, the HTMUA shall not have the right under this Agreement to deliver and discharge into the Upper Wallkill System any sewage or other waste except either (1) sewage originating within the territorial boundaries of the HTMUA up to a maximum of 515,000 gallons per day (annual average) as outlined above; and (2) any other sewage delivered and discharged into the Upper Wallkill System by the HTMUA with the written consent of the Authority."

All the remaining portions of the original Service Contract, as amended on October 15, 2003, between the Authority and the HTMUA are hereby reaffirmed as being in full force and effect.

IN WITNESS WHEREOF, the Authority and the HTMUA have caused their respective corporate seals to be hereunto affixed and attested and these presents to be signed by the respective officers thereunder duly authorized and this Agreement to be dated as of the day and year first above written.

(SEAL)

THE SUSSEX COUNTY MUNICIPAL UTILITIES AUTHORITY

BY: _____
Wayne Dietz, Chairman

ATTEST:

_____
Andrea Cocula, Secretary

(SEAL)

HARDYSTON TOWNSHIP MUNICIPAL UTILITIES AUTHORITY

BY: _____
Chairman

ATTEST:

_____
Secretary

tk\contract\Htmua revised service contract

RESOLUTION RE: AUTHORIZING AMENDMENT TO HARDYSTON TOWNSHIP MUNICIPAL UTILITIES AUTHORITY (HTMUA) SERVICE CONTRACT

WHEREAS, the Authority and HTMUA entered into a certain Service Contract providing for the acceptance and treatment of sewage originating from the HTMUA dated January 15, 1987; and

WHEREAS, the Service Contract was amended on October 15, 2003 by which Wallkill Valley Regional High School pursuant to a duly adopted Resolution agreed to transfer to the HTMUA sewage treatment capacity allocation in the amount of 25,000 gallons per day, revising HTMUA sewage treatment capacity to 390,000 GPD; and

WHEREAS, the Borough of Franklin and the HTMUA agreed to transfer up to 125,000 GPD of sewage treatment capacity allocation pursuant to a 1999 Reservation Agreement; and

WHEREAS, the HTMUA and Borough of Franklin have both executed Amendments to their respective Service Agreement providing for the transfer of 125,000 GPD sewage treatment capacity allocation from the Borough of Franklin to the HTMUA.

NOW, THEREFORE, it is resolved by the Sussex County Municipal Utilities Authority, upon the acknowledgement, consent and agreement of the HTMUA that Section 303 of the Service Agreement between the Authority and the HTMUA is hereby amended so as to increase the HTMUA's sewage treatment capacity allocation by 125,000 gallons to an allocation not to exceed 515,000 GPD.

BE IT FURTHER RESOLVED that all terms and conditions of the original Service Agreement between the Authority and the HTMUA, as originally entered into on January 15, 1987 and as amended subsequent thereto, is hereby reaffirmed and acknowledged by the Authority and the HTMUA as being in full force and effect.

Certified as a true copy of the
Resolution adopted by the Authority
at their regular meeting held on
Wednesday, September 1, 2004.

Andrea Cocula

Andrea Cocula, Secretary

tk\resol\HTMUAamend2

AMENDMENT

TO

1987 SERVICE CONTRACT

BETWEEN

THE SUSSEX COUNTY MUNICIPAL UTILITIES AUTHORITY

AND

THE HARDYSTON TOWNSHIP MUNICIPAL UTILITIES AUTHORITY

Dated as of January 15, 1987
Amendment Dated as of October 15, 2003
Amendment Dated as of September 1, 2004
Amendment Dated as of September 1, 2010

AGREEMENT

This amendment made and dated as of 1st day of Sept. 2010 between the Sussex County Municipal Utilities Authority (hereinafter referred to as the "Authority" or "SCMUA"), a public body politic and corporate of the State of New Jersey, and the Hardyston Township Municipal Utilities Authority (hereinafter referred to as the "HTMUA"), a public body politic and corporate of the State of New Jersey, situated in the County of Sussex, New Jersey;

W I T N E S S E T H

WHEREAS, the Authority and the HTMUA entered into a certain Service Contract providing for the acceptance and treatment of sewage originating within the HTMUA Service Area, dated January 15, 1987, said Contract being previously amended on October 15, 2003 and, subsequently, September 1, 2004; and

WHEREAS, pursuant to an Agreement between HTMUA and the Township of Wantage and an Agreement between HTMUA and the Township of Sparta, HTMUA has agreed to transfer sewage treatment capacity allocation and assigned minimum flow to each of these municipalities; and

WHEREAS, the Township of Wantage and the Township of Sparta have duly executed a Service Contract Amendment with the SCMUA to accept the sewage treatment capacity allocation and assigned minimum flow from the HTMUA; and

WHEREAS, the HTMUA has requested that the Service Agreement between the SCMUA and HTMUA be amended to reduce their sewage treatment capacity allocation by 63,000 gpd.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth and of the undertakings of each party to the other, the parties hereto, each binding itself, its successors and assigns, do mutually covenant, promise and agree as follows:

The first paragraph of the present Section 303 of the Service Contract and amendments thereto, shall be deleted in its entirety, and replaced with the following Section 303:

"**Section 303. Sewage to be Accepted for Discharge into Upper Wallkill System.** The Authority hereby agrees to accept and treat, from the HTMUA, sewage (including domestic, commercial, institutional and industrial sewage, plus associated infiltration, as provided by Authority Rules and Regulations) of a volume up to 452,000 gallons per day (annual average), provided the strength and characteristics of such sewage comply with Authority Rules and Regulations as set forth in Section 501 hereof and N.J.S.A. 40:14B-20(12). Nothwithstanding the provisions of Section 301 hereof or any other Section hereof, the HTMUA shall not have the right under this Agreement to deliver and discharge into the Upper Wallkill System any sewage or other waste except either (1) sewage originating within the territorial boundaries of the HTMUA up to a maximum of 452,000 gallons per day (annual average) as outlined above; and (2) any other sewage delivered and discharged into the Upper Wallkill System by the HTMUA with the written consent of the Authority."

"Schedule A. Assigned Minimum Flow of Wastewater" shall be deleted and replaced with the attached "Schedule A."

All the remaining portions of the original Service Contract, as amended, between the Authority and the HTMUA are hereby reaffirmed as being in full force and effect.

IN WITNESS WHEREOF, the Authority and the HTMUA have caused their respective corporate seals to be hereunto affixed and attested and these presents to be signed by the respective officers thereunder duly authorized and this Agreement to be dated as of the day and year first above written.

(SEAL)

THE SUSSEX COUNTY MUNICIPAL UTILITIES AUTHORITY

BY: _____
Ronald Petillo, Chairman

ATTEST:

Andrea Cocula, Secretary

(SEAL)

HARDYSTON TOWNSHIP MUNICIPAL UTILITIES AUTHORITY

BY: _____
Chairman

ATTEST:

Secretary

SCHEDULE A

HTMUA

ASSIGNED MINIMUM FLOW OF WASTEWATER IN GALLONS PER DAY

General Charges:

For the purposes of General Charges (Debt Service), the HTMUA shall be charged a minimum of 151,000 gallons per day, exclusive of all flow from the Wallkill Valley Regional High School and 8,000 gallons per day from the Hardyston YMCA.

Operating Charges:

For the purposes of Operating Charges (operation and maintenance expenses), the HTMUA shall be charged a minimum of 302,000 gallons per day, exclusive of all flow from the Wallkill Valley Regional High School and 8,000 gallons per day from the Hardyston YMCA.

Note: General Charges and Operating Charges for all flow from the Wallkill Valley Regional High School and up to 8,000 gallons per day from the Hardyston YMCA shall be calculated and billed to HTMUA based on actual flows from each. Such charges shall be in addition to the charges for the remaining HTMUA service area, which shall reflect actual flow volume therefrom, but not less than the Assigned Minimum Flow charges listed above.

CERTIFICATE OF CONSULTING ENGINEER

Peter F. Cerenzio, P.E., Consulting Engineer under the General Bond Resolution of the Sussex County Municipal Utilities Authority, HEREBY CERTIFIES AS FOLLOWS:

In my opinion, modifications or amendments to the Service Contracts between the Sussex County Municipal Utilities Authority and the HTMUA, and between the Sussex County Municipal Utilities Authority and the Township of Sparta, and the Sussex County Municipal Utilities Authority and the Township of Wantage which reflect the aggregate transfer of 63,000 gpd of capacity allocation and the proportionate assigned minimum flow from the Hardyston Township Municipal Utilities Authority to the Townships of Sparta and Wantage, will not effect a reduction in the Revenues of the Authority.

_____

Peter F. Cerenzio, P.E.
Cerenzio & Panaro, P.C., Consulting Engineers
No. 24 GE02415200

_____ **, 2010**
Date

G:\Tara\CONTRACTS\HTMUA revised service contract 2010.doc

95-66197 D-2074-091

DEVELOPER'S AGREEMENT 1995
SEWER SYSTEM

THIS AGREEMENT Made this 10th day of May, 1995, by and between **HARDYSTON TOWNSHIP MUNICIPAL UTILITIES AUTHORITY**, a municipal utility authority of the State of New Jersey, with offices at the Municipal Building, 29 Stockholm-Vernon Road, Stockholm, N.J. hereinafter referred to as "HTMUA or Authority", and **C.S. ACQUISITION**, a general partnership of New Jersey, consisting of **CRYSTAL SPRINGS ACQUISITION, LLC.** of 355 Madison Avenue, Morristown, N.J. 07960 and **R.N.G. REALTY, LLC.** of 530 South Avenue East, Cranford, N.J. 07016, hereinafter referred to individually and collectively as "Developer".

W I T N E S S E T H

WHEREAS, Developer C.S. Acquisition is the owner of certain lands and premises (except for dwelling units previously conveyed to third party purchasers) in the Township of Hardyston, County of Sussex, State of New Jersey, formerly known as Block 16, Lots 6.01, 15, 17.01, 18, 19, 20, 27.01, 27.02, and 31 and Block 17, Lots 11 and 12.01 and now designated on the official Tax Map of the Township of Hardyston as Block 16, Lots 1, 1.03, 33, 34 and 35, Block 16.01, Lots 1.01 and 1.02, Block 16.02, Lot 1, Block 16.03, Lots 1 through 28, Block 17, Lot 1, Block 17.01, Lots 1 through 16, and 57 through 63, Block 17.02, Lots 1.02, 28 through 31 and 36 through 67 and Block 17.03, Lots 1.01 and 1.02, and

WHEREAS, Developer's predecessors in title received preliminary site plan approval for a development known as Crystal Springs to contain a total of 970 dwelling units, of which final approval has been granted by the Planning Board for four sections, and

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WHEREAS, said preliminary site plan approval included the requirement that Developer construct a sewer system which would be transferred to the Authority for operation, and

WHEREAS, Developer's predecessor was allotted a sewer flow allocation of 202,500 g.p.d., and

WHEREAS, Developer is the successor to the original Developer, Swedeland Development Group, a partnership, which entered into a Developer's Agreement with the Authority on January 14, 1987, and the parties hereto desire to clarify and reconfirm the provisions of said prior agreement and amendments thereto,

NOW THEREFORE, in consideration of the mutual promises, covenants and representations herein contained, the parties hereto for themselves, their heirs, successors and assigns hereby agree as follows:

I. SEWAGE SYSTEM CONSTRUCTION.

1. Developer agrees to complete the installation at its sole cost and expense of the sanitary sewerage collection system consisting of collection lines, service lines (house laterals), manholes and other appurtenances and stubs not heretofore constructed, all as set forth on the plans and specifications heretofore approved or to be approved by the Authority and by the Sussex County Municipal Utilities Authority (hereafter "SCMUA"), in connection with this development.

2. All of the construction of the sanitary sewerage collection system shall be in accordance with plans and specifications submitted to and approved by the Authority, the SCMUA and the New Jersey Department of Environmental Protection (hereinafter N.J. DEP).

3. The Authority shall inspect and monitor the construction of the installation of the facilities in order to assure itself that the same is in accordance with the plans and specifications as approved by the Authority. The SCMUA shall inspect and monitor and approve the construction of any connections to its facilities.

4. The sanitary sewerage collection system above mentioned, except for that portion which has already been conveyed to the Authority, shall, upon completion thereof and demonstration of satisfactory performance, be conveyed to the Authority together with all necessary easements shown or to be shown upon plans approved by the Authority, and the Authority upon certification as to the proper installation and operation of the system by its authorized engineer, which certification will not be unreasonably withheld or delayed, agrees to accept said system. Developer covenants and agrees that it will not object to this transfer of ownership in any court or administrative agency of the State of New Jersey or elsewhere.

5. The Developer shall convey said sewerage system, together with any pumping stations or other appurtenances, together with easements of access to said system of sufficient width not less than twenty (20) feet in width as to mains and service connections and twenty (20) feet from the exterior housing of all pumping stations or other structures which are part of the system, as reasonably determined by the Authority, so as to enable the Authority to enter upon the lands and premises to make repairs or replacement of the system or portions of the system. All such easements shall be free and clear of all liens and other encumbrances and the Developer shall provide a title binder in favor of the Authority indicating that the Developer

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has clear and marketable title to the property free and clear of all liens and encumbrances and free of easements except those which are conveyed to the Authority for its benefit or which will not unreasonably interfere with the easements granted to the Authority. Prior to the issuance of any Certificate of Occupancy within any section of the development, Developer shall tender to the Authority a bill of sale for the sewer improvements within that section, and an easement allowing the Authority to access such improvements. At its next regularly scheduled meeting following Developer's tender of these documents, the Authority shall accept the dedicated improvements, or inform Developer in writing as to what additional items need to be supplied before acceptance will be given. In no event shall acceptance be delayed beyond the date on which the final Certificate of Occupancy is issued for such section.

6. At such time as any additional part of the sewerage system or any portion thereof becomes operable and is conveying sewage flow to the Authority, all revenues, fees and other charges thereafter derived therefrom shall belong to the Authority.

7. It is understood and agreed that the dedication of additional portions of the sewerage collection system constructed by Developer as hereinabove mentioned shall not become effective until the Authority, by formal resolution, accepts the same. Developer shall furnish "as-built" plans acceptable to the Authority within thirty (30) days of issuance of the first Certificate of Occupancy in any section.

II. GENERAL REQUIREMENTS.

1. The Developer shall not be entitled to contribution from any other person, firm or corporation who hereafter develops property in the Township of Hardyston, and connects the sanitary sewer system with the system to be constructed by the Developer arising from the fact that Developer herein has paid for or installed the facility being taken over by the Authority or paid any fees therefor pursuant to this Agreement.

2. The maximum total sewer flow allocation heretofore allotted to Swedeland Development Group was 202,500 g.p.d.; this allocation of gallonage (which includes gallonage used by unit purchasers) is transferred to Developer for development of the project now or formerly known as Crystal Springs now located on Block 16, Lots 1, 1.03, 33, 34 and 35, Block 16.01, Lots 1.01 and 1.02, Block 16.02, Lot 1, Block 16.03, Lots 1 through 28, Block 17, Lot 1, Block 17.01, Lots 1 through 16, and 57 through 63, Block 17.02, Lots 1.02, 28 through 31 and 36 through 67 and Block 17.03, Lots 1.01 and 1.02, on the official Tax Map of the Township of Hardyston.

3. Any easements which may be needed by Developer in order to properly operate the sewerage system shall be obtained by the Developer at its sole cost and expense and conveyed to the Authority. The taking of such easement shall not be construed as the exercise of dominion and/or control by the Authority over any facilities located within said easement until such time as the Authority formally accepts the facilities as provided herein.

4. Developer shall pay to the Authority all reasonable expenses incurred by the Authority in connection with the review, approval, inspection and construction of the system and ultimate conveyance of the system and easements appurtenant thereto to the Authority. The Developer shall pay the appropriate inspection

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fee established by the Authority. These costs shall include all staff review time, out-of-pocket expenses, attorney's fees, engineering fees and any other requisite fees or expenses that the Authority incurs in connection with the project. The HTMUA will waive all connection fees; but developer will be responsible to pay all connection fees imposed by SCMUA and Hamburg.

In order to effectuate and guarantee all required payments, the Developer shall, upon execution of this Agreement, pay to the Authority the sum of Five Thousand Dollars ($5,000) which shall be placed in a separate account by the Authority and drawn upon periodically to pay for all fees, costs and expenses incurred by the Authority as set forth herein. In the event that said Fund is depleted below One Thousand Dollars ($1,000), the Developer shall replenish it with an amount as directed by the Authority within ten (10) days. In the event that such Fund is not replenished to meet the Authority's obligations under this Agreement, then all work on the project shall immediately cease. Funds shall not be withdrawn from this account except on vouchers describing the services performed. Copies shall be sent to the developer.

5. Recognizing that there are operating and maintenance costs of the Authority which must be subsidized, which costs are directly related to Developer's specific project as well as other administration costs, such as payments for insurance coverage, salary of employees, amounts to independent contractors for billing, and portions of charges from professionals such as the auditor, attorney and engineer, it is agreed by Developer to pay its proportionate share of all operating, maintenance and administration costs until completion of the project. Developer and the owner of the project known as Indian Field at Hardyston

and Forest Hill Estates and the development owned by Anton Pilz shall be obligated to pay such costs in the proportion that their respective approved flows as set forth in their approved CP-1 application forms bear to the total of such costs and expenses. Each developer shall receive a credit in an amount equal to the water and sewer rents or charges received from unit owners in their respective developments. It is further agreed that if any Developer advances more than his, her or its pro-rata share, such Developer shall be entitled to contribution from the others of the excess amount so paid, said adjustment to be made by the Authority in the form of a charge to the other developer or developers. Developer agrees to pay such charges designed to equalize the contributions among the Developers. No Developer shall be entitled to contribution from any other person, firm or corporation contracting with the Authority for sewer service.

If either this Agreement or any Agreement with either of the other Developers is annulled or terminated for any reason, the remaining Developer or Developers shall pay all such charges and contributions as set forth above, but the obligation to make payments shall be reduced pro tanto by the amount of service charges and other revenues received from customers.

6. Developer shall install the collection system and mains in accordance with the plans approved by the Authority and in accordance with the regulations of all other governmental entities having jurisdiction, approvals for which shall be obtained in writing and filed with the HTMUA.

7. Any application by Developer before the Hardyston Township Planning Board or Zoning Board of Adjustment as the case may be and all maps on file, construction plans, detailed maps, state laws, county ordinances, municipal ordinances, Authority

rules and regulations, and Planning Board rules and regulations are hereby incorporated by reference herein as if set forth at length, including any amendments thereto, heretofore or hereafter enacted.

8. Developer shall be responsible for obtaining all approvals at its sole cost and expense from the Authority, the SCMUA and the N.J. DEP and any other governmental entity having jurisdiction thereof and for the payment of all fees and costs in connection therewith. The Authority agrees to be designated as the formal applicant on any sewerage system extension permit application and on any and all other documents or applications relating to the facility which the Authority is to assume under the terms of this Agreement.

9. In the event the Authority determines there is a violation in the installation of the sanitary sewer system set forth herein, or a violation of the terms and conditions of this Agreement or any rules and regulations of the Authority or other applicable requirements, the Authority may issue a stop work order pursuant to its powers until such violation is corrected.

10. All construction rules and regulations of SCMUA or N.J. DEP or this Authority shall be complied with by Developer at the time of commencement of construction. Developer shall comply with all rules and regulations relating to operations as same may be revised from time to time, amended or readopted.

11. The Developer covenants and agrees to indemnify and save harmless, the Authority, its officers and servants and each and every one of them against and from any and all liabilities, suits and costs of every name and description and from all damages to which said Authority or any of its officers, agents or servants may be put with respect to any personal or other injury,

loss or property damage which the Authority may suffer as a result of the carelessness in the performance of said work or through the negligence of said Developer or through any improper or defective machinery, implements or appliances used by the Developer in the aforesaid work, or through any act of omission or commission on the part of the Developer, its agent or agents, or as a result of any claim, demand, cost or judgment that may be made against it arising out of this contract for the performance of the obligation thereof, unless the said liability, loss or damage is caused by, or arises out of, the negligence of the Authority, its officers, agents or employees.

The Developer shall take all reasonable precautions for the safety of all employees on the work site and shall comply with all of the provisions of the federal, state, municipal and Authority regulations and building codes to prevent accidents or injuries to persons on or about or adjacent to the premises where the work is being performed.

12. The Developer agrees to procure and keep in force liability insurance prior to initiation of any construction for public personal injury liability and property damage liability including contingent liability and contractual liability which might result from the performance of the work contemplated by this Agreement and shall provide the Authority with a Certificate of Insurance designating the Authority as an additional insured under each said policy and which insurance coverage shall be in at least the following amounts.

One person in any one occurrence - $500,000
Two or more persons in any one occurrence - $1,000,000
Property damage in any one occurrence, - $100,000
Aggregate property damage limit - $500,000

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Developer further covenants and agrees to provide prior to initiation of any construction, vehicle liability and property damage insurance coverage and provide the Authority with a Certificate of Insurance designating the Authority as an additional insured under said policy, which insurance coverage shall be in at least the following amounts:

Bodily injury per person	- $500,000
Bodily injury per occurrence	- $1,000,000
Property damage	- $500,000

The Developer further covenants and agrees that it will provide, prior to initiation of construction, worker's compensation insurance coverage for employees and will require evidence that such coverage is to be supplied by any subcontractor who may be employed to perform work contemplated by this Agreement.

13. Whenever any payment is due the Authority from the Developer and remains unpaid for a period of thirty (30) days, a penalty shall be assessed in accordance with the rules and regulations of the Authority; should any such payment remain unpaid after sixty (60) days from its due date, the Authority in accordance with its rules and regulations may revoke the sewer flow allocation herein made to Developer. Such revocation shall be effected by a duly adopted resolution of the Authority at a regular meeting of the Authority, at least five (5) days notice of which has been sent to Developer by certified and regular mail to the address hereinabove set forth or to such other address as may have been furnished by Developer to the Authority in writing.

14. Developer shall provide to the Authority a two year maintenance guarantee in an amount equal to fifteen percent (15%) of the actual cost of such portion of the system, which amount shall be determined by the Authority. Ten percent (10%) of such

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guarantee shall be in the form of cash with the remainder in the form of an Irrevocable Letter of Credit or other collateral acceptable to the Authority.

15. Developer herein certifies that it is the owner of record of the property as specifically set forth in the preamble of this Agreement except such dwelling units as have been conveyed to third party purchaser, which is the subject matter of this Agreement and agrees to furnish forthwith to the Authority a copy of a title policy covering the title to the property affected by this Agreement.

16. The Developer represents that neither the Developer nor any person owning five percent (5%) or more of the stock or equity interest in Developer's business has beer convicted of any offense under N.J.S.A. 2C:27-2, 4 & 6; 2C:27-7; 2C:29-4; 2C:30-2 and 2C:30-3 pursuant to P.L. 1981, c.356.

17. It is understood that C.S. Acquisition has applied for subdivision approval from the Planning Board of the Township of Hardyston to convey a portion of the property referred to hereinabove to Crystal Spring Acquisition, LLC., and R.N.G. Realty, LLC. At the time of any conveyances to effect such subdivision, the allocations to each respective party shall be agreed upon between the parties and the Authority before recording of any deed of transfer in the County Recording Office.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed by the proper corporate officers and their proper corporate seals to be affixed hereto the day and year as

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indicated on the acknowledgments attached hereto and made a part hereof.

HARDYSTON TOWNSHIP MUNICIPAL UTILITIES AUTHORITY

ATTEST:

Wayne Ricker
Wayne Ricker Secretary

By: Russell Sorge
Russell Sorge Chairman

C.S. ACQUISITION, a general partnership of New Jersey.
By: CRYSTAL SPRINGS ACQUISITION, LLC., partner
By: Gail Mulcahy
INITIAL

ATTEST:

Mary Ann Livingston
ASSISTANT Secretary

By: R.N.G. REALTY, LLC., Partner
By: Robert J. Bauer
Shirley M. Vella

CRYSTAL SPRINGS ACQUISITION, LLC.
BY: Gail Mulcahy
INITIAL

ATTEST:

Nancy Rechsteiner

R.N.G. REALTY, LLC.,

ATTEST:

Mary Ann Livingston

By: Shirley M. Vella
Robert J. Bauer
Shirley M. Vella

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WITNESS OR ATTEST:

C.S. ACQUISITION, a general partnership of New Jersey,

By: CRYSTAL SPRINGS ACQUISITION, L.L.C., partner

Dale E. Pierson

By: _____
Andrew Mulvihill, Manager

WITNESS OR ATTEST:

CRYSTAL SPRINGS ACQUISITION, L.L.C.

Dale E. Pierson

By: _____
Andrew Mulvihill, Manager

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STATE OF NEW JERSEY:
SS
COUNTY OF SUSSEX:

I CERTIFY that on May 10, 1995, Wayne Ricker personally came before me and this person acknowledged under oath, to my satisfaction, that:

(a) this person is the Secretary of Hardyston Township Municipal Utilities Authority, the corporation named in the attached document;

(b) this person is the attesting witness to the signing of this document by the proper corporate officer who is Russell Sorge the Chairman of the corporation;

(c) this document was signed and delivered by the corporation as its voluntary act duly authorized by a proper resolution of its Board of Directors;

(d) this person knows the proper seal of the corporation which was affixed to this document; and

(e) this person signed this proof to attest to the truth of these facts.

Wayne Ricker

Sworn to and subscribed before me this 10th day of May, 1995.

Karen M. Sorell
Attorney at Law of New Jersey

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INITIAL

STATE OF NEW JERSEY:
SS
COUNTY OF SUSSEX:

I CERTIFY that on April 20, 1995, Gail Mulvihill personally came before me and this person acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

(a) is named in and personally signed the attached document; and

(b) signed, sealed and delivered this document as his or her act and deed, and as the act and deed of Crystal Springs Acquisition, LLC., both as a general partner of CS Acquisition, and in its own capacity as a limited liability company.

A Notary Public of New Jersey
MAUREEN J. KOSMINSKY
A Notary Public of New Jersey
My Commission Expires July 7, 1998

STATE OF NEW JERSEY:
UNION SS
COUNTY OF SUSSEX:

I CERTIFY that on APRIL 21, 1995, SHIRLEY M. VELLA personally came before me and this person acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):
SHIRLEY M. VELLA

(a) is named in and personally signed the attached document; and

(b) signed, sealed and delivered this document as his or her act and deed, and as the act and deed of R.N.G. Realty, LLC., both as a general partner of CS Acquisition, and in its own capacity as a limited liability company.

A Notary Public of New Jersey
JOSEPHINE LEO
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires April 28, 1998

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STATE OF NEW JERSEY:
SS:
COUNTY OF Sussex :

I CERTIFY that on April 3rd, 1995, ANDREW MULVIHILL personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

(a) is named in and personally signed the attached document; and

(b) signed, sealed and delivered this document as the act and deed of Crystal Springs Acquisition, L.L.C., both as a general partner of CS Acquisition, and in its own capacity as a limited liability company.

Dale E. Pierson
A Notary Public of New Jersey

DALE E. PIERSON
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Aug. 24, 1998

Box D 53 Springs

To be continued 18. 1

RECORDED
AM 8:02
ERMAN
TY CLERK
N.J.

RESOLUTION
of the
HARDYSTON TOWNSHIP MUNICIPAL UTILITIES AUTHORITY ("HTMUA")
regarding
ASSIGNMENT OF SEWERAGE AGREEMENT
TO CRYSTAL SPRINGS SITE DEVELOPMENT, INC. ("Developer")

WHEREAS, the HTMUA authorized a Sewerage Agreement with Crystal Springs Builders, L.L.C. by way of HTMUA approval dated December 2, 2013; and

WHEREAS, Crystal Springs Builders, L.L.C. has requested that it be permitted to assign its rights in said Sewerage Agreement to the corporation, "Crystal Springs Site Development, Inc."; and

WHEREAS, the HTMUA Commissioners discussed this assignment request at its regularly scheduled meeting of March 3, 2014 and found no impediment to granting permission for said assignment on the attached form, which was approved by the HTMUA attorney;

NOW, THEREFORE, BE IT RESOLVED by the Commissioners of the HTMUA as follows:

1. The HTMUA Chairman is authorized to execute and enter into an Assignment of Agreement in the attached form approved by the HTMUA Attorney and negotiated with the Developer.

Certified as a true copy of the Resolution adopted by the Hardyston Township Municipal Utilities Authority at its regular meeting held on March 3, 2014

Approving:	5
Opposing:	0
Abstaining:	0
Recusing:	0

Gail C. Hensal, Secretary

ASSIGNMENT OF AGREEMENT

This Assignment of Agreement is made effective as of March 6, 2014 by and between Hardyston Township Municipal Utilities Authority and Crystal Springs Builders, LLC.

Crystal Springs Builders, LLC named as Developer in the Sewer Agreement by and between Hardyston Township Municipal Utilities Authority and Crystal Springs Builders, LLC, dated March 6, 2014, for good and valuable consideration, does hereby assign, sell and transfer to Crystal Springs Site Development, Inc. and/or its affiliates, subordinates, owners, successors and/or assigns and/or all person and/or entities vested with the lands further identified in the agreement, all of its right, title and interest in the named agreement.

Crystal Springs Site Development, Inc. by virtue of this assignment, accepts the terms of the agreement.

Witness:

Dale E. Pierson

Dale E. Pierson

CRYSTAL SPRINGS BUILDERS, LLC

By: Andrew J. Mulvihill, Manager
Date: 3-6-14

Witness:

Dale E. Pierson

Dale E. Pierson

CRYSTAL SPRINGS SITE DEVELOPMENT, INC.

By: Andrew Mulvihill, President
Date: 3-6-14
Tax ID: 04-3733241

Witness:

Mark J. Hontz
Attorney at Law of New Jersey
STATUTORY AUTHORITY
Oaths, Affirmations & Affidavits N.J.S. 41:2-1
Acknowledgements of Deeds etc. N.J.S. 46:14-6.1 et seq.

HARDYSTON TOWNSHIP MUNICIPAL UTILITIES AUTHORITY

Frank Ciervale

By: Chairman
Date: 4/7/2014

RESOLUTION
of the
HARDYSTON TOWNSHIP MUNICIPAL UTILITIES AUTHORITY ("HTMUA")
regarding
SEWERAGE AGREEMENT WITH CRYSTAL SPRINGS BUILDERS, L.L.C.
("Developer")

WHEREAS, Developer was the winning bidder of Lots A through E at a September 5, 2013 public auction of reserved sewerage allocation owned by the HTMUA. Said Lots A through E together comprise the reservation of 8,000 gallons per day ("gpd") of sewer allocation at the Upper Wallkill Valley Water Pollution Control Facilities of the Sussex County Municipal Utilities Authority ("SCMUA") through the HTMUA.

WHEREAS, Developer is subject to the terms and conditions of said September 5, 2013 public auction, which included the following:

> 5. Each successful bidder who is the owner of real property within the Hardyston Township sewer service area shall enter into a Developer's Agreement with the HTMUA within NINETY (90) days of the end of the auction. Each successful bidder who is an existing sewerage system user / Participant of the Upper Wallkill System of the SCMUA shall work with the HTMUA to secure service contract amendments with the SCMUA within 90 days of the end of the auction.

WHEREAS, Developer seeks to fulfill the aforementioned auction condition by entering into a Developer's Agreement with the HTMUA in the form prepared by the HTMUA Attorney and reviewed by the HTMUA's professionals.

NOW, THEREFORE, BE IT RESOLVED by the Commissioners of the HTMUA as follows:

1. The HTMUA Chairman is authorized to execute and enter into a Sewerage Agreement with Crystal Springs Builders, L.L.C. in the form prepared by the HTMUA Attorney and negotiated with the Developer.

Certified as a true copy of the Resolution adopted by the Hardyston Township Municipal Utilities Authority at its regular meeting held on December 2, 2013

Approving:	4
Opposing:	0
Abstaining:	0
Recusing:	0

Gail C. Hensal, Secretary

SEWERAGE AGREEMENT
between
HARDYSTON TOWNSHIP MUNICIPAL UTILITIES AUTHORITY
and
CRYSTAL SPRINGS BUILDERS, L.L.C.

THIS AGREEMENT is effective as of the date last signed below, by and between the **Hardyston Township Municipal Utilities Authority**, a municipal utilities authority of the State of New Jersey, with offices at the Hardyston Township Municipal Building, 149 Wheatsworth Road, Suite A, Hardyston, New Jersey 07419 (hereinafter referred to as "HTMUA") and **Crystal Springs Builders, L.L.C.**, with offices located at 50 Sugar Maple Lane, Hamburg, New Jersey 07419 and/or its affiliates, subordinates, owners, successors and/or assigns and/or all persons and/or entities vested with title to lands further identified below in the Township of Hardyston Township, Sussex County, New Jersey (said entity hereinafter referred to as the "Developer").

WHEREAS, Developer is in the process of developing land in Hardyston Township within the Hardyston Township sewer service area. This land is identified as including, but is not limited to, the following lots on the official tax map of Hardyston Township:

Block 14, Lots 22.01, 24.01, 24.02, 24.04;
Block 16, Lots 8.03, 8.01, 3.05, 3.06, 3.07;
Block 16.27, Lot 1;
Block 16.28, Lot 1;
Block 16.29, Lot 1;
Block 16.32, Lot 1; and
Block 16.33, Lot 1.

These lots are within the Crystal Spring General Development Plan and are hereinafter collectively referred to as the "Premises"); and

WHEREAS, Developer was the winning bidder of Lots A through E at a public auction held on September 5, 2013. Said Lots A through E together comprise the reservation of 8,000 gallons per day ("gpd") of sewer allocation at the Upper Wallkill Valley Water Pollution Control Facilities of the Sussex County Municipal Utilities Authority ("SCMUA") through the HTMUA.

WHEREAS, Developer is subject to the terms and conditions of said September 5, 2013

public auction, which included the following:

> 1. A bidder must be: (a) the owner of real property located within the Hardyston Township sewer service area; and/or (b) one of eight other sewerage system users, i.e. a "Participant," of the Upper Wallkill System of the Sussex County Municipal Utilities Authority ("SCMUA").
>
> ....
>
> 5. Each successful bidder who is the owner of real property within the Hardyston Township sewer service area shall enter into a Developer's Agreement with the HTMUA within NINETY (90) days of the end of the auction. Each successful bidder who is an existing sewerage system user / Participant of the Upper Wallkill System of the SCMUA shall work with the HTMUA to secure service contract amendments with the SCMUA within 90 days of the end of the auction.
>
> 6. All gpd of sewer allocation are subject to certain contractual obligations existing between the HTMUA and the SCMUA, including, but not limited to guaranteed minimum flow and rights of revocation for nonpayment or other contractual breach.
>
> 7. All payments to the HTMUA shall be by certified bank check, bank treasurer's check or similar, certified, cash equivalent.
>
> 8. The winning bidder and its successfully-bid gpds are subject to the Rules and Regulations of the HTMUA and the SCMUA. Such rules and regulations include but not limited to restrictions on the composition of sewage.
>
> 9. Bidders bid at their own risk. The HTMUA makes no promises, guaranties or warranties that a successful bidder will be able to utilize the purchased gpd for the bidder's intended use. It is not a condition of sale that the bidder will be able to utilize the purchased gpd for the bidder's intended use.
>
> 10. Each successful bidder is solely responsible, at its own cost, risk and expense, for pursuing and acquiring such agreements, approvals and/or amendments that would enable said bidder to utilize the purchased allocation for said bidder's intended use. Such agreements, approvals and/or amendments could include, but are not be limited to: means of transmission to Upper Wallkill Plant, other agency approvals, land use approvals, sewer service plan amendments. It is not a condition of sale that the bidder is able to obtain any and/or all such agreements, approvals and/or amendments.

WHEREAS, Developer seeks to fulfill a condition said auction by entering into this agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants and representations contained herein, the parties hereto for themselves, their heirs, successors and

assigns hereby agree as follows:

1. **Sewer System Construction.** Developer agrees to complete, at its sole cost and expense, the installation of the sanitary sewage collection system consisting of collection lines, service lines (house laterals), manholes and other appurtenances and stubs not heretofore constructed, all as set forth in the plans and specifications heretofore approved or to be approved by the HTMUA and the Sussex County Municipal Utilities Authority (hereinafter referred to as "SCMUA"), in connection with this development. All of the construction of the sanitary sewage collection system shall be in accordance with plans and specifications submitted to and approved by the HTMUA, the SCMUA and the New Jersey Department of Environmental Protection. The HTMUA shall have the right, but not the obligation, to maintain and inspect all improvements completed by the Developer under this agreement and pursuant to the Developer's relevant approvals from applicable land use boards. In the event the Developer fails to make repairs within a reasonable period of time, the HTMUA shall have the authority to undertake the necessary repairs and receive complete reimbursement from the Developer for the cost of said repairs.

2. **Inspection.** The HTMUA shall inspect and monitor the construction of the installation of the facilities in order to assure itself that all is in accordance with the plans and specifications as approved by the HTMUA. The SCMUA shall inspect and monitor and approve the construction of any connections to its facilities.

3. **Transfer of Sewer System.** The sanitary sewage collection system mentioned above, together will all appurtenances and pumping stations, except for that portion which has already been conveyed to the HTMUA, shall, upon completion thereof and demonstration of satisfactory performance, be conveyed to the HTMUA together with all necessary easements shown or to be shown upon the plans approved by the HTMUA. The HTMUA, upon certification as to the proper installation and operation of the system by its authorized engineer, which certification shall not be unreasonably withheld or delayed, agrees to accept said system. Developer covenants and agrees that it will not object to this transfer of ownership in any court or administrative agency of the State of New Jersey or elsewhere.

4. **Grant of Access Easements.** Along with the sewer system and its appurtenances and pumping stations, Developer shall convey easements of access to said system of sufficient width, as reasonably determined by the HTMUA, as to enable the HTMUA to enter upon the lands and premises to make repairs and replacement of the system or portions of the system. The width of said easements shall not be less than twenty (20) feet in width as to mains and service connections nor less than twenty (20) feet from the exterior housing of all pumping stations or other structures which are part of the system. All such easements shall be free and clear of all liens and other encumbrances. Developer shall provide a title binder in favor of the HTMUA indicating that Developer has clear and marketable title to the property, free and clear of all liens and encumbrances, and free of other easements which could reasonably interfere with the easements granted to the HTMUA.

5. **Acceptance of System and Easements by Section.** After the completion of the sewer system within any section of the development, Developer shall tender to the HTMUA a bill of sale for the sewer improvements within that section and an easement allowing the HTMUA to access such improvements. Developer shall also present to the HTMUA details regarding the cost of the system and an inventory of all assets of the system. Within forty-five (45) days following Developer's tender of these documents, the HTMUA shall either accept the dedicated improvements or inform the Developer in writing as to what additional items must be supplied before acceptance will be given. Dedication of any portion of the sewer system shall not become effective until the HTMUA, by formal resolution, accepts the same.

6. **Sewage Flow and Revenue Flow.** At such time as any part of the sewer system or any portion thereof becomes operable and is conveying sewage flow to the HTMUA, all revenues, fees and other income-producing charges thereafter derived therefrom shall belong to the HTMUA.

7. **"As-Built" Plans.** Developer shall furnish "as-built" plans for the sewer improvement, acceptable to the HTMUA, within thirty (30) days of issuance of any Certificate of Occupancy for the Premises.

8. **No Third Party Contributions.** The Developer shall not be entitled to contribution from any other person, firm or corporation who hereafter develops property in the Township of

Hardyston and connects the sanitary sewer system with the system to be constructed by the Developer arising from the fact that Developer herein has paid for or installed the facility being taken over by the HTMUA or paid any fees therefor pursuant to this agreement.

9. **Operational Easements.** Any easements which might be needed by the HTMUA in order to properly operate the sewerage system shall be obtained by the Developer at its sole cost and expense and conveyed to the HTMUA. The taking of such easement shall not be construed as the exercise of dominion and/or control by the HTMUA over any facilities located within said easement until such time as the HTMUA formally accepts the facilities, as provided herein.

10. **HTMUA Expenses**. Developer shall pay to the HTMUA all reasonable expenses incurred by the HTMUA in connection with the review, approval, inspection and construction of the system and ultimate conveyance of the system and easements appurtenant thereto to the HTMUA. The Developer shall pay the appropriate inspection fee established by the HTMUA. Such costs shall include all staff review time, out-of-pocket expenses, attorney's fees, engineering fees and any other requisite fees or expenses that the HTMUA incurs in connection with the project. The HTMUA will waive all connection fees, but Developer will be responsible to pay all connection and other applicable fees imposed by the SCMUA.

11. **Escrow Fees.** In order to effectuate and guarantee all required payments, the Developer shall, upon execution of this agreement, pay to the HTMUA the sum of FIVE THOUSAND and 00/100 ($5,000.00) DOLLARS, which shall be placed in a separate account by the HTMUA and drawn upon periodically to pay for all fees, costs and expenses incurred by the HTMUA set forth herein. In the event that said fund is depleted below One Thousand and 00/100 ($1,000.00) Dollars, the Developer shall replenish it with an amount as directed by the HTMUA within ten (10) days. In the event that such fund is not replenished to meet the HTMUA's obligations of this agreement, then all work in the project shall immediately cease. Funds shall not be withdrawn from this account except on vouchers describing the services performed. Copies shall be sent to the Developer.

12. **HTMUA Operating and Maintenance Costs.** The Developer recognizes that there are operating and maintenance costs of the HTMUA which must be subsidized, which costs

are directly related to Developer's specific project. These costs include, but are not limited to payments for insurance coverage, salary of employees, amounts to independent contractors for billing and portions of charges from professionals such as the auditor, attorney and engineer. Developer agrees to pay its proportionate share of all operating, maintenance and administration costs until the completion of the project. At the time of the execution of this agreement, it is estimated that Developer's proportionate share is TWO AND NINE HUNDREDTHS PER CENT (2.09%) of the HTMUA's operating and maintenance costs. In the event that Developer advances more than its proportionate share, the Developer shall be entitled to contribution from others in the excess amount paid, which shall be adjusted by the HTMUA in the form of an assessment. Developer agrees to pay any such assessment designed to equalize the contributions between other developers with the HTMUA. No developer shall be entitled to contribution among any other person, firm or corporation contracting with the HTMUA for sewer service. In the event that this agreement or any agreement with either of the other developers with the HTMUA is at all terminated for any reason, the remaining developer or developers shall pay all such assessments and contributions as set forth above, but the obligation to make payments shall be reduced pro tanto by the amount of service charges and other revenues received from customers. Developer's proportionate share shall be reduced by sewer rents or charges received from Unit owners in the project that is utilizing the reserved capacity, which utilization shall be as determined by the HTMUA.

13. **Incorporation of Rules, Regulations and Applications.** Any application by Developer before the Hardyston Township Planning Board or Zoning Board of Adjustment, all maps on file, construction plans, detailed maps, state laws, county and municipal ordinances, HTMUA rules and regulations and Planning Board rates, rules and regulations are hereby incorporated by reference herein as if set forth at length, including any amendments thereto, heretofore or hereafter enacted.

14. **Other Governmental Approvals.** Developer shall be responsible for obtaining all approvals at its sole cost and expense from the HTMUA, the SCMUA, the New Jersey Department of Environmental Protection and any other governmental entity properly vested with jurisdiction in this matter. The HTMUA agrees to be designated as the formal

applicant under any sewerage system extension permit application and on any and all other documents or applications relating to the facility which the HTMUA is to assume under the terms of this agreement. The HTMUA shall use all reasonable efforts to assist and cooperate in the filing and processing of any application for approvals, permits and/or extensions.

15. **Stop Work Order.** In the event the HTMUA determines that there is a violation in the installation of the sanitary sewer system set forth herein, or a violation of the terms and conditions in this agreement or any other rules and regulations of the HTMUA or other applicable requirements, the HTMUA may issue a stop work order pursuant to its powers until such violation is corrected.

16. **Compliance with Rules and Regulations.** Developer shall comply with all rules and regulations of SCMUA, New Jersey Department of Environmental Protection and/or the HTMUA relating to operations, as same may be revised from time to time, amended, or re-adopted.

17. **Recital Clauses.** The recital clauses, as set forth hereinabove, are an integral part of this agreement and are hereby incorporated in this agreement.

18. **Renewal and Replacement Fund.** As a result of constant aging and deterioration of sewer system components, the HTMUA may, from time to time, establish reasonable engineering estimates for the renewal and replacement of aging sewer system components. The Developer specifically agrees to pay and shall pay a calculated share of the cost for the renewal and replacement of aging sewer system components each year. The values assigned to his formula shall be adopted by the HTMUA, in its sole and reasonable discretion. The Developer's annual contribution may, in the sole discretion of the HTMUA, be made due and payable in quarterly installments, or in such other installment methods as set forth the HTMUA's rule and regulations. Developer's proportionate share of this contribution for renewal and replacement shall be reduced by similar contributions received from Unit owners and/or HTMUA customers in the project that is utilizing the reserved capacity, which utilization shall be determined by the HTMUA. The HTMUA, in its sole discretion, shall utilize such funds as it deems proper for the renewal and replacement of sewer system components. Developer shall not be entitled to any refund

for any such funds remaining unspent by the HTMUA at the time the HTMUA takes ownership of the system. Any such funds paid by Developer pursuant to this paragraph shall be held in such accounts as the HTMUA, in its sole discretion, deems proper. The Developer specifically agrees to be bound by this provision and recognizes the HTMUA's authority to charge this contribution through its statutorily-granted power to enter into agreements. The Developer acknowledges that certain peculiarities of the subject development, such as a relatively small number of HTMUA sewer customers, render this contribution by the Developer proper, proportional and equitable. The HTMUA likewise acknowledges that it also collects renewal and replacement charges from the users of the other subject sewer system as a means of prudent fiscal planning for the payment of inevitable, costly repairs that will be conducted on the subject sewer system as it ages.

19. **Reservation of Allocation Fee.** Developer shall pay to HTMUA such reservation of sewer allocation fees as are charged to the HTMUA by the SCMUA for reservation of sewer flow capacity and/or transmission fees. With this agreement, Developer reserves EIGHT THOUSAND (8,000) gallons per day of sewer allocation with the SCMUA through the HTMUA. Developer shall be responsible for all costs and fees and financial obligations incurred by the HTMUA for the acquisition and provision of sewer allocation for the Developer.

20. **Capacity Assurance**. When the committed sewer flow from the subject development exceeds EIGHTY PER CENT (80%) of the Developer's reserved allocation, the Developer shall submit to the HTMUA for review and approval a program that will be implemented in order to prevent the Developer from exceeding its reserved allocation. The Developer acknowledges that until such capacity assurances are provided to and accepted by the HTMUA, in the exercise of its sole and reasonable discretion, the HTMUA may impose a sewer connection ban. As part of any such sewer connection ban, the HTMUA shall notify the Building Department to cease issuance of building permits.

21. **Default.** Failure of a Developer to perform under the terms of this agreement should not only constitute a breach of this agreement but may also compel HTMUA to breach its obligations to SCMUA or to other third parties. The Developer agrees to indemnify HTMUA and hold HTMUA harmless for any breach of HTMUA's obligations to any other

party resulting from Developer's failure to perform under this agreement. The HTMUA may pursue any and all remedies for such default, including but not limited to revocation of sewage allocation following the procedure set forth in paragraph 25, below.

22. **Indemnification.** Developer covenants and agrees to indemnify and save harmless the HTMUA, its officers and servants and each and every one of them against and from any and all liabilities, suits and costs of every name and description and from all damages to which the HTMUA or any of its officers, agents or servants may be put with respect to any personal or other injury, loss or property damage which the HTMUA may suffer as a result of the carelessness in performance of Developer's work or through the negligence of the Developer or through any improper or defective machinery, implements or appliances used by Developer in the aforesaid work, or through any act or omission or commission on the part of the Developer, its agent or agents, or as a result of any claim, demand, cost or judgment that may be made against it arising out of this agreement for the performance of the obligation thereof, unless the said liability, loss or damage is caused by, or arises out of, the negligence of the HTMUA, its officers, agents or employees.

23. **Work Site Safety.** Developer shall take all reasonable precautions for the safety of all employees on the work site and shall comply with all of the provisions of the Federal, State, Municipal and HTMUA regulations and building codes to prevent accidents or injuries to persons on or about or adjacent to the premises where the work is being performed.

24. **Insurance.** Developer agrees to procure and keep in force liability insurance prior to and throughout all construction for public personal injury liability and property damage liability, including contingent liability and contractual liability which might result from the performance of the work contemplated by this agreement and shall provide the HTMUA with a Certificate of Insurance designating the HTMUA as an additional insured under each said policy. Said insurance coverage shall be in at least the following amounts:

- One person in any one occurrence: $500,000.00;
- Two or more persons in any one occurrence: $1,000,000.00;
- Property damage in any one occurrence: $100,000.00;
- Aggregate property damage: $500,000.00.

Developer further covenants and agrees to provide prior to and throughout construction, insurance coverage for vehicle liability and property damage. Developer shall provide the HTMUA with a Certificate of Insurance designating the HTMUA as an additional insured under said policy, which insurance coverage shall be in at least the following amounts:

- Bodily injury per person: $500,000.00;
- Bodily injury per occurrence: $1,000,000.00;
- Property damage: $500,000.00.

The Developer further covenants and agrees that it will provide prior to and throughout construction, workers' compensation insurance coverage for its employees. Developer shall require evidence that such coverage is to be supplied by any subcontractor who may be employed to perform work contemplated by this agreement.

25. **Timely Payment, Late Payment and Revocation.** All payments due by the Developer to the HTMUA pursuant to this agreement shall be paid on a quarterly basis with specific due dates or on such other basis as the HTMUA adopts, providing at least thirty (30) days prior notice to the Developer of any change in scheduled payments. Whenever any payment is due the HTMUA from the Developer and remains unpaid for a period of thirty (30) days, a penalty shall be assessed in accordance with the rules and regulations of the HTMUA. Should any such payment remain unpaid after sixty (60) days from its due date, the HTMUA may revoke the sewer flow allocation herein made to the Developer. Such revocation shall be effected by a duly adopted resolution of the HTMUA at a regular meeting of the HTMUA, at least five (5) days' notice of which has been sent to Developer by certified and regular mail to the address herein above set forth or to such other addresses as may have been furnished by Developer to the HTMUA in writing. At the time of the execution of this agreement, the Developer has no prior, unpaid obligations to the HTMUA.

26. **Maintenance Guarantee.** At the time the Developer transfers and the HTMUA accepts ownership of any portion of the sewer system, Developer shall provide to the HTMUA a two year maintenance agreement in an amount equal to Fifteen (15%) Percent of the actual cost of such portion of the system, which amount shall be determined by the HTMUA. Ten (10%) Percent of such guarantee shall be in the form of cash with the remainder in the

form of an irrevocable letter of credit or other collateral or form acceptable to the HTMUA.

27. **Criminal Conviction.** Developer represents that neither the Developer nor any person owning five (5%) percent or more of the stock or equity interest in Developer's business has been convicted of any offense under N.J.S.A. 2C:27-2, 4 and 6; 2C:27-7; 2: 2C:29-4; 2C:30-2; and/or 2C:30-3.

28. **No Partnership.** Except as specifically provided herein, nothing in this agreement shall create a partnership or joint venture between the parties.

29. **Successors Bound.** This agreement shall be binding upon and shall inure to the benefit of the Developer, HTMUA, their successors and all those who succeed to their rights, title or interest. This agreement may be recorded.

30. **Reduction of Developer's Payment Obligations.** In the event that actual customers begin to use and pay for HTMUA services, using a portion of Developer's sewer allocation for actual flow, Developer's payment obligations pursuant to this agreement shall be reduced annually on a pro tanto basis.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed by the proper corporate officers and their proper corporate seals to be affixed hereto the day and year as indicated on the acknowledgments attached hereto and made a part hereof.

HARDYSTON TOWNSHIP MUNICIPAL UTILITIES AUTHORITY

ATTEST:

Date: 4/7/2014

Secretary

Mark J. Hontz
Attorney at Law of New Jersey
STATUTORY AUTHORITY
Oaths, Affirmations & Affidavits N.J.S. 41:2-1
Acknowledgements of Deeds etc. N.J.S. 46:14-6.1 et seq.

By: Frank Cicerale

Chairman

22 2764669

HTMUA Tax I.D. Number

On the 7th day of April, 2014, before me, a Notary Public and Attorney at Law of the State of New Jersey in and for said state, personally appeared FRANK CICERALE, Chairman of the Hardyston Township Municipal Utilities Authority, known to me to be the person who executed the within agreement on behalf of said entity with due authorization and with acknowledgment that he executed the same for the purposes stated herein.

Mark J. Hontz, Esq.
Attorney at Law of the State of New Jersey

CRYSTAL SPRINGS BUILDERS, LLC

ATTEST:

Date:

By: Andrew Mulvihill

22-3385606

Crystal Springs Builders, LLC Tax I.D. No.

On the 6th day of March 2014, ~~2013~~, before me, a Notary Public of the State of New Jersey in and for said state, personally appeared Andrew Mulvihill, who is the Manager of Crystal Springs Builders, LLC, known to me to be the person who executed the within agreement on behalf of said entity with due authorization and with acknowledgment that he executed the same for the purposes stated herein.

DALE E. PIERSON
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires August 24, 2018

AGREEMENT

AMONG

**THE METROPOLITAN YMCA OF THE ORANGES, INC.,
WALLKILL VALLEY REGIONAL HIGH SCHOOL BOARD OF EDUCATION,
HARDYSTON TOWNSHIP MUNICIPAL UTILITIES AUTHORITY,
BOROUGH OF FRANKLIN,
SUSSEX COUNTY MUNICIPAL UTILITIES AUTHORITY,
and the WALLKILL SEWER COMPANY**

Dated: August , 2003

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I. General Understandings and Agreement of the Parties.

1.01 The Parties. The parties to this agreement are as follows:

a. Metropolitan YMCA of the Oranges, Inc. (hereinafter referred to as "**YMCA**"), a not-for-profit corporation of the State of New Jersey, bearing an address of 139 East McClellan Avenue, Livingston, New Jersey 07039; and

b. Wallkill Valley Regional High School Board of Education (hereinafter referred to as "**Wallkill Valley**"), a regional high school board of education recognized by the New Jersey Department of Education, located in the County of Sussex and State of New Jersey, and having a mailing address of 9 Grumm Road, Hamburg, New Jersey 07419; and

c. Hardyston Township Municipal Utilities Authority (hereinafter referred to as "**HTMUA**"), a municipal utilities authority of the State of New Jersey, with offices at the Hardyston Township Municipal Building, 29 Stockholm-Vernon Road, Stockholm, New Jersey 07460; and

d. Borough of Franklin (hereinafter referred to as "**Franklin**"), a municipal corporation of the State of New Jersey, situate in the County of Sussex, New Jersey, and having an address of 46 Main Street, P.O. Box 397, Franklin, New Jersey 07416; and

e. Sussex County Municipal Utilities Authority (hereinafter referred to as "**SCMUA**"), a public body politic and corporate of the State of New Jersey, organized pursuant to N.J.S.A. 40:14B-1, et seq., as the agency responsible to provide for the collection, treatment, purification or disposal of sewage or other wastes in and for Sussex County, maintaining an address of 34 South Route 94, Lafayette, New Jersey 07848.

f. The **Wallkill Sewer Company**, owner and operator of a local sewerage system that transmits sewage to the SCMUA's Upper Wallkill System, maintaining an address of 3331 Route 94 South, Hamburg, New Jersey 07419.

1.02 **The 1991 Agreement**. The parties acknowledge that on February 26, 1991 an Agreement was entered into between Wallkill Valley, the SCMUA, Franklin and HTMUA for the disposition of wastewater emanating from the Wallkill Valley Regional High School plant located on Grumm Road, Hardyston Township, Sussex County, New Jersey (hereinafter referred to as the "**1991 Agreement**"). The 1991 Agreement, the terms of which speak for themselves, established the rights, rules and regulations whereby Franklin would transfer the wastewater allocation for 25,000 gallons per day to Wallkill Valley, with corresponding obligations from Wallkill Valley to Franklin, the HTMUA and the SCMUA. It is the intent and action of the parties with this present agreement to supplant and supercede the terms of the 1991 Agreement with the terms of the present

agreement. The present agreement in all forms and applications supercedes and supplants the terms of the 1991 Agreement.

1.03 **Allocation Transfer Concept**. The parties hereby agree and acknowledge that the following model accurately sets forth the intentions of the parties related to an adjustment of sewage capacity allocation. As a result of the 1991 Agreement, Wallkill Valley was assigned a sewage capacity allocation of 25,000 gallons per day by Franklin. With the present Agreement, Wallkill Valley will assign the aforementioned 25,000 gallons per day sewage capacity allocation to the HTMUA. The HTMUA will thereafter allocate said capacity as follows: 8,000 gallons per day to YMCA; and 17,000 gallons per day to Wallkill Valley. The HTMUA shall make required payments to Franklin and the SCMUA in order to satisfy Franklin's remaining charges for its earlier allocation to Wallkill Valley and in order to satisfy the SCMUA's ongoing annual charge, respectively. The HTMUA shall, correspondingly, collect the SCMUA annual charge and required payments to Franklin from the YMCA and from Wallkill Valley. In addition to said charges, the HTMUA may charge its own proportional fees and expenses.

1.04 **Assumptions**. The parties acknowledge and agree that the following factual assertions are material to the form and substance of this Agreement and are incorporated in this Agreement:

(a) The SCMUA maintains and operates an interceptor sewer system and sewage treatment plant for the transmission, treatment and disposal of certain sanitary sewage and other waste, as generally described in the Facilities Plan for the Upper Wallkill Basin, certified by the New Jersey Department of Environmental Protection and the United States Environmental Protection Agency (hereinafter referred to as the **"Upper Wallkill System"**), within which service area Wallkill Valley maintains its high school facility and within which service area the YMCA will be operating its facility, all within the Township of Hardyston, Sussex County, New Jersey;

(b) The HTMUA is vested with the authority, regulation and control of wastewater disposal within the municipal boundaries of Hardyston Township, and, pursuant to service agreements with the SCMUA, is permitted to transmit sewage flow to the SCMUA's Upper Wallkill System;

(c) The Wallkill Sewer Company owns and operates a local sewerage system that transmits sewage flow to the Upper Wallkill System;

(d) The YMCA intends to construct a local sewerage collection and conveyance system to serve the proposed YMCA facility. The YMCA has obtained permission from the Wallkill Sewer Company to connect the YMCA's collection and conveyance system to the Wallkill Sewer Company's collection and conveyance system in order to convey YMCA sewage to the Upper Wallkill System.

(e) All parties hereto deem it necessary and for the best interests of their respective citizenry and/or clientele and the users of the Upper Wallkill System to enter into this Agreement, thereby satisfying the intended purpose of the allocation service agreements between the participating municipalities within the said Upper Wallkill Basin, and thereby providing Wallkill Valley and the YMCA with a permanent method of disposal of wastewater emanating from their facilities.

(f) Pursuant to state statute, and in further accordance with existing service agreements, the SCMUA, the HTMUA and Franklin have the right and authority to enter into an agreement providing for or relating to the treatment and disposal of wastewater originating within said municipalities or originating outside thereof with the written consent of said parties.

(g) The HTMUA expressly reserves its right to withdraw the allocation to the YMCA anytime before the connection between the YMCA and SCMUA collection system is complete in the event that the SCMUA, the New Jersey Department of Environmental Protection or any other superceding governmental authority reduces said allocation.

(h) Each party individually represents that it has voluntarily entered into this Agreement and has not executed this Agreement under duress, coercion or other pressure imposed by any other party, its representatives or agents. Accordingly, YMCA and Wallkill Valley covenant that they will not bring any action in law or equity against Franklin, the SCMUA and/or the HTMUA with respect to the obligations assumed by the parties hereunder or the terms and conditions hereof, which have been mutually negotiated by and agreed to by and among the parties. This covenant does not apply to actions for either breach or specific performance under this Agreement.

(i) Each of the parties by the execution hereof agrees to sign the requisite consents to any application required to obtain permits for the sewer extension to the YMCA and approval of the increase in the HTMUA's sewer allocation and to authorize any required amendments to local Wastewater Management Plans, Sussex County 208 Water Quality Management Plan or other plans as required. YMCA agrees to satisfy directly or reimburse the SCMUA, Franklin and/or the HTMUA for any and all expenses incidental to consultant review and preparation of any such amendments and of securing approvals for the same.

(j) Franklin, the SCMUA and the HTMUA agree to adopt ordinances and/or resolutions as required to authorize the execution and implementation of this agreement, as required by statue. This agreement may be executed in identical counterparts.

1.05 **Recording.** This agreement shall be recorded with the Sussex County Clerk at the YMCA's expense.

1.06 **Lien on Property of YMCA**. The indebtedness of the YMCA to the HTMUA set forth in this agreement shall constitute a lien against the real property of the YMCA until such time as the YMCA indebtedness is paid in full.

1.07 **Execution.** This agreement may be executed in identical counterparts.

II. AGREEMENT BETWEEN THE SCMUA AND THE HTMUA.

2.01 **Allocation Transfer**. The SCMUA and the HTMUA hereby agree to effect an increase in the HTMUA's sewage capacity allocation in the volume of 25,000 gallons per day. This volume is the same volume previously transferred from Franklin to Wallkill Valley pursuant to the 1991 Agreement. Franklin and Wallkill Valley expressly consent to this reallocation to the HTMUA. The SCMUA and the HTMUA shall memorialize this increase in the HTMUA's sewage capacity allocation in the form of a service contract amendment within 90 days of the execution of this agreement.

2.02 **User Charges**. User fees applicable to wastewater discharged directly to the Upper Wallkill System of the SCMUA by Wallkill Valley and the YMCA pursuant to this Agreement shall be the same as that charged by SCMUA to the HTMUA pursuant to those parties' sewer service contract, as amended. In all cases, the SCMUA charge for operations and maintenance costs shall be based on only actual flows, as further set forth in the service contract amendment between the SCMUA and the HTMUA. The SCMUA shall bill the HTMUA directly for all debt service, operating and maintenance charges for the treatment of wastewater delivered to it and the HTMUA shall be responsible to satisfy the same.

2.03 **Metering**. The HTMUA shall ensure the provision and installation of meters to measure the volume of wastewater delivered to SCMUA for treatment from both the YMCA and from Wallkill Valley. Said meters shall be subject to the prior, express, written approval of the SCMUA as to make, model and location prior to installation. The HTMUA shall ensure that said meters shall be calibrated, at least annually, so that the SCMUA may utilize the same or other devices to determine the quantity and quality of all sewage which shall be delivered and discharged to the Upper Wallkill System by Wallkill Valley and the YMCA.

III. CONSENT OF FRANKLIN TO AGREEMENT

3.01 **Consent to Agreement.** Franklin hereby expresses its consent to the terms of this Agreement.

3.02 **Abrogation of 1991 Agreement.** With its consent to this Agreement, Franklin abrogates all of its rights and responsibilities pursuant to the 1991 Agreement. With further specificity, Franklin agrees to waive and/or abandon all ownership interest in the aforementioned 25,000 gallons per day allocation, including any rights of reclamation, reversion or recision, except as provided for in this agreement. Franklin agrees to release Wallkill Valley from its prior payment obligations pursuant to the 1991 Agreement in exchange for the remuneration obligations set forth in this Agreement.

3.03 **Remuneration.** For its consent to the terms of this agreement, the HTMUA shall make payments to Franklin on a quarterly basis in the amounts and on the dates set forth in Schedule A, attached hereto, until Franklin is paid in full.

3.04 **Late Payments.** Whenever any payment, fee or other charge due to Franklin from the HTMUA remains unpaid for a period of thirty (30) days, a penalty of 1.5% per month, or other such lower a limit as may be set by statute, may be assessed by Franklin. Should any such payment remain unpaid after sixty (60) days from its due date, Franklin may revoke the balance of any unused sewer flow allocation herein made to the HTMUA under the terms of this agreement. Such revocation shall be effected a duly adopted Resolution of Franklin adopted at a regular meeting of Franklin, at least ten (10) days notice of which has been sent to the HTMUA by certified and regular mail to the address hereinabove set forth or to such other address as may have been furnished by the HTMUA to Franklin in writing. The HTMUA shall be entitled to seek a stay of the revocation before a court of competent jurisdiction during any appeal of the revocation. In the event that any or all of the aforementioned sewer capacity allocation is revoked from the HTMUA by Franklin, the HTMUA shall have no further payment obligations to Franklin for the revoked allocation and Franklin shall have no right of action against the HTMUA for any unpaid balance. The HTMUA shall remain responsible for paying for the unrevoked allocation. The amount of unused allocation that has been revoked shall be determined by taking the average sewer flow for Wallkill Valley and/or the YMCA for the prior three months and subtracting that from the 25,000 gallons of allocation that the HTMUA is receiving pursuant to this agreement. The debt to Franklin shall be reduced by taking the number of unused gallons of allocation and multiplying it by the Franklin Borough sewer allocation transfer fee of TWELVE DOLLARS ($12.00) per gallon. This amount shall be pro-rated to reflect the number of years left for the payments to be made by the HTMUA to Franklin under this agreement, and such amount shall be subtracted from the balance owed to Franklin.

3.05 **Prepayment**. There shall be no penalty for prepayment. The HTMUA's obligations to Franklin pursuant to this agreement shall cease upon payment of the full balance that is owed, as reflected in Schedule A. In the event the HTMUA transfers any allocation to a third party and the HTMUA is paid in full for the allocation, the payments received by the HTMUA shall first be utilized to reduce the debt owed under this agreement to Franklin. Payment shall be made to Franklin within 20 days of receipt of the payment by the

HTMUA.

3.06 **Indemnification.** Wallkill Valley and the YMCA covenant and agree to indemnify and defend, with counsel of Franklin's choosing, and hold harmless Franklin, its officers, employees, agents, servants and each and every one of them against and from any and all liability, suits and costs of every name and description, and from all damages to which Franklin or any of its officers, agents, servants and each and every one of them may be put with respect to this agreement or any work contemplated under this agreement, regardless of whether it is an act or omission or commission on the part of Wallkill Valley and/or the YMCA, its officers, employees, agents or servants as a result of any claim, demand, cost or judgment that may be made against Franklin arising out of this agreement for the performance of the obligations thereof. The indemnification provided for in this agreement shall be construed as broadly as possible in favor of Franklin.

3.07 **Reimbursement of Expenses.** The YMCA shall promptly reimburse Franklin for all costs and expenses it incurs related to this agreement, including, but not limited to attorneys fees. The YMCA shall reimburse Franklin within fourteen (14) days of the YMCA's receipt of an invoice for such services. It is anticipated that Franklin will provide an invoice upon execution of this agreement by all parties. In the event there are any future amendments to this agreement, the YMCA will remain responsible for reimbursing Franklin for its expenses, unless such amendment is requested by another party and that party agrees to reimburse Franklin for the expenses.

IV. AGREEMENT BETWEEN THE HTMUA AND WALLKILL VALLEY

4.01 **Reservation of Sewer Capacity Allocation.** The HTMUA shall reserve sewer capacity allocation into the SCMUA's Upper Wallkill System for Wallkill Valley's use in the volume of SEVENTEEN THOUSAND (17,000) gallons per day. Wallkill Valley shall become a customer of the HTMUA and shall fully comply with all applicable rules, regulations and policies of the HTMUA as well as the rules, regulations and policies of any other agency properly vested with jurisdiction over these matters.

4.02 **Remuneration**. Wallkill Valley shall make quarterly payments to the HTMUA in a sum represented by "F" in and calculated by the following formula: **A + B + C + D + E = F**, with the following assumptions:

A represents quarterly user fees applicable to wastewater discharged directly to the Upper Wallkill System of the SCMUA by Wallkill Valley, proportionate to the billing demand made upon the HTMUA by the SCMUA. This charge is a pass-through charge from the SCMUA through the HTMUA to Wallkill Valley, which includes in its calculation, but is not limited to, actual flow calculations as wells as debt service,

operating and maintenance charges of the SCMUA in accordance with the service contract amendment between the SCMUA and the HTMUA. Wallkill Valley agrees to pay its proportionate share of all such costs and charges.

B represents payment to the HTMUA ultimately intended to be paid by the HTMUA to Franklin, in accordance with Schedule A, attached hereto. This particular payment obligation of Wallkill Valley is more expressly set forth as follows:

Payment Due On or Before...	Amount Due
September 15, 2003	$29,252.74
January 15, 2004	$1,000.00
April 15, 2004	$1,000.00
July 15, 2004	$1,000.00
October 15, 2004	$1,000.00
...and thus forward on the same quarterly dates at $1,000.00 per quarter until the final payment on October 15, 2010:	. . . $1,000.00

The HTMUA reserves the right to modify the timing of the quarterly payments at its sole discretion upon providing sixty (60) days written notice to Wallkill Valley. This payment obligation to the HTMUA shall cease upon completion of the final quarterly payment on or before October 15, 2010 with all other payments having been made, or upon payment in full. There shall be no penalty for prepayment.

C represents payment to the HTMUA for operating and maintenance costs, which must be subsidized and which are directly related to Wallkill Valley's sewer system, as well as other administration costs, such as payments for insurance coverage, salary of employees, amounts to independent contractors for billing, and portions of charges for professionals such as the auditor, attorney and engineer. Wallkill Valley agrees to pay its proportionate share of all operating, maintenance and administration costs. This proportionate share shall be calculated as a percentage of all such costs and charges pursuant to the following equation: amount of approved sewer flow allocation of Wallkill Valley, as set forth in this Agreement, divided by the total of all combined flows of all developers and customers of the HTMUA. In the event that the HTMUA adopts a rate structure which differentiates between Wallkill Valley and other residential or residential developer rates, this new rate will supercede the aforementioned proportionate share calculation.

D represents payment to the HTMUA of surcharge fees in the event the discharge from Wallkill Valley's system exceeds the 17,000 gallons per day reserved for Wallkill Valley's use, pursuant to section 4.01 of this agreement. The amount of such surcharge shall be in accordance with the Annual Rate Schedule of the SCMUA then in effect.

E represents payment to the HTMUA for actual charges incurred in the replacement of Wallkill Valley's sewer system components, as calculated and/or predicted by the HTMUA. This charge will be effective only in the event that Wallkill Valley transfers ownership of its sewer system to the HTMUA.

4.03 Ownership, Operation and Maintenance. The ownership, operation and maintenance of Wallkill Valley's system shall remain the duty and responsibility of Wallkill Valley. Operation and maintenance shall, however, be subject to the review and monitoring of the HTMUA to the extent the HTMUA, in its sole discretion, deems reasonable and necessary. Wallkill Valley shall, at all times, operate and maintain its system in such a manner to prevent and exclude, to the greatest possible extent, infiltration, inflow and/or storm water inflow into its system. In the event of infiltration, inflow and/or storm water inflow deemed excessive by the HTMUA, in its sole discretion, Wallkill Valley shall promptly make all reasonable repairs and take all measures necessary to reduce the amount of volume of said infiltration to levels deemed normally acceptable by the HTMUA, the SCMUA and/or the New Jersey Department of Environmental Protection. Prior to making any expansions to its high school facility or system or connections to or extension of its system, Wallkill Valley shall submit plans to the HTMUA for the HTMUA's review and approval.

4.04 Metering. Wallkill Valley shall maintain a master meter to record sewage flows from its existing sewer system, as well as from any additional systems it may construct. Said meter shall be subject to the prior, express written approval of the SCMUA and the HTMUA as to make, model and location. Wallkill Valley shall ensure that said meter shall be calibrated, at least annually, so that the SCMUA and/or the HTMUA may utilize the same or other devices to determine the quantity and quality of all sewage which shall ultimately be delivered and discharged to the Upper Wallkill System by Wallkill Valley. Wallkill Valley shall make and keep permanent records of the volume and; when ascertained, the quality and other characteristics of sewage delivered and discharged from its system. Wallkill Valley shall, within seven (7) days of the end of each month, submit daily flow data to the HTMUA and the SCMUA.

4.05 No Third Party Contribution. Notwithstanding the fact that Wallkill Valley has paid for or installed a sanitary sewerage collection system, or that said system may in the future be owned by the HTMUA, or that Wallkill Valley has paid any fees therefor pursuant to this Agreement, Wallkill Valley shall not be entitled to contribution from any other person, firm or corporation, which hereafter develops property in the Township of Hardyston and connects the sanitary sewer system with the system installed by Wallkill Valley.

4.06 Non-Transferability. This allocation of gallonage is transferred to Wallkill Valley solely for educational uses directly controlled by Wallkill Valley for existing educational facilities, or other such future educational facilities as may be approved by

Wallkill Valley. This allocation of gallonage may not be transferred to any person, firm or corporation other than the HTMUA, which shall have the right to re-purchase said allocation or any part thereof at the appropriately pro-rated cost of payment from Wallkill Valley through the HTMUA to Franklin, pursuant to the "B" charge set forth in paragraph 4.02 of this Agreement. This provision becomes null and void upon payment in full by Wallkill Valley to the HTMUA.

4.07 **Easements**. Any easements which may be needed by Wallkill Valley in order to properly operate its sewerage system or to expand its sewerage system shall be obtained by Wallkill Valley at its sole cost and expense and, if required by the HTMUA, be conveyed to the HTMUA. The taking of such easements shall not be construed as the exercise of dominion and/or control by the HTMUA over any facilities located within said easements until such time as the HTMUA formally accepts the facilities.

4.08 **Conveyance.** Said sanitary sewerage collection system of Wallkill Valley shall, if agreed upon between the HTMUA and Wallkill Valley and permitted by applicable legal authority, be conveyed to the HTMUA together with the necessary easements shown or to be shown upon plans approved by the HTMUA, and the HTMUA agrees to accept said system, upon certification as to the proper installation and operation of the system by its authorized engineer, which certification will not be unreasonably withheld. Wallkill Valley covenants and agrees that it will not object to this transfer or ownership in any court or administrative agency of the State of New Jersey or elsewhere. If required by the HTMUA, the developer shall convey said sewerage system, together with any pumping stations or other appurtenances to the HTMUA. In order to enable the HTMUA to enter upon the lands and premises to make repairs or replacement of the system or portions of the system, Wallkill Valley shall also convey said sewerage system with easements of access to said system not less than twenty (20) feet in width as to mains, service connections and structures and twenty (20) feet around the exterior housing of all pumping stations or other structures which are part of the system, as reasonably determined by the HTMUA. All such easements shall be free and clear of all liens and other encumbrances, and Wallkill Valley shall provide a title binder in favor of the HTMUA indicating that Wallkill Valley has clear and marketable title to the property free and clear of all liens and encumbrances and free of easements except those which are conveyed to the HTMUA for its benefit or which will not unreasonably interfere with the easements granted to the HTMUA. Maintenance of any improvements and of the sewerage system are the obligation of Wallkill Valley until such time as said system and/or improvements are accepted by the HTMUA. It is understood and agreed that the conveyance of the sewerage collection system constructed by Wallkill Valley as hereinabove mentioned shall not become effective until the HTMUA, by formal resolution, accepts the same.

4.09 **Escrow**. Wallkill Valley shall, upon demand of the HTMUA, pay to the HTMUA the sum of $5,000.00, which shall be placed in a separate account by the HTMUA and drawn

upon periodically to pay for all fees, costs and expenses incurred by the HTMUA directly related to Wallkill Valley. In the event that said fund is depleted below $1,000.00, Wallkill Valley shall replenish it with an amount as directed by the HTMUA within ten (10) days, but generally not to exceed $5,000.00 at a time. Funds shall not be withdrawn from this account except on vouchers describing the services performed. Copies shall be sent to Wallkill Valley, and Wallkill Valley shall have the right to contest these charges.

4.10 **Indemnification**. Wallkill Valley covenants and agrees to indemnify and save harmless the HTMUA, its officers, agents or servants, and each and every one of them, against and from any and all liabilities, suits and costs of every name and description and from all damage to which the HTMUA or any of its officers, agents or servants may be put with respect to any personal or other injury, loss or property damage which the HTMUA may suffer as a result of Wallkill Valley's carelessness in the performance of any work, or through any act of omission or commission on the part of Wallkill Valley, its agent or agents, or as a result of any claim, demand, cost or judgment that may be made against the HTMUA arising out of this agreement, unless said liability, loss or damage is caused by, or arises out of the negligence of the HTMUA, its officers, agents or employees.

4.11 **Late Payment**. Whenever any payment, fee or other charge is due to the HTMUA from Wallkill Valley remains unpaid for a period of thirty (30) days, a penalty of 1.5% per month, or other such lower a limit as may be set by statute, shall be assessed in accordance with the rules and regulations of the HTMUA. In the event that any such payment fee or other charge remains unpaid for a period of sixty (60) days, the HTMUA may revoke the unused sewer flow allocation reserved for Wallkill Valley. Said revocation shall be effected by a duly adopted resolution of the HTMUA at a regularly scheduled meeting of the HTMUA, at least five (5) days' notice of which is to be sent to Wallkill Valley by certified and regular mail to the address hereinabove set forth or to such other address as may have been furnished by Wallkill Valley to the HTMUA in writing. Wallkill Valley shall be entitled to seek a stay of the revocation before a court of competent jurisdiction during any appeal of the revocation.

V. AGREEMENT BETWEEN THE HTMUA AND YMCA

5.01 **Reservation of Sewer Capacity Allocation**. The HTMUA shall reserve sewer capacity allocation into the SCMUA's Upper Wallkill System for YMCA's use in the volume of EIGHT THOUSAND (8,000) gallons per day. YMCA shall become a customer of the HTMUA and shall fully comply with all applicable rules, regulations and policies of the HTMUA as well as the rules, regulations and policies of any other agency properly vested with jurisdiction over these matters.

5.02 **Remuneration**. YMCA shall make quarterly payments to the HTMUA in a sum

represented by "F" in and calculated by the following formula: A + B + C + D + E = F, with the following assumptions:

A represents quarterly user fees applicable to wastewater discharged directly to the Upper Wallkill System of the SCMUA by YMCA, proportionate to the billing demand made upon the HTMUA by the SCMUA. This charge is a pass-through charge from the SCMUA through the HTMUA to YMCA, which is includes in its calculation, but is not limited to, actual flow calculations as wells as debt service, operating and maintenance charges of the SCMUA. YMCA agrees to pay its proportionate share of all such costs and charges. This proportionate share should be calculated as a percentage of all such costs and charges pursuant to the following equation: amount of actual sewage flow of YMCA divided by the total of all flows from all development projects administered by the HTMUA, in accordance with the service agreement amendment between the SCMUA and the HTMUA.

B represents payment to the HTMUA ultimately intended to be paid by the HTMUA to Franklin, in accordance with Schedule A, attached hereto. This particular payment is more expressly set forth as follows:

Payment Due On or Before...	Amount Due
January 15, 2004	$6,315.55
April 15, 2004	$6,315.55
July 15, 2004	$6,315.55
October 15, 2004	$6,315.55
...and thus forward on the same quarterly dates at the following payment per quarter for the following years:	. . .
2005 (quarterly)	$6,293.29
2006 (quarterly)	$6,324.70
2007 (quarterly)	$6,322.79
2008 (quarterly)	$6,292.30
2009 (quarterly)	$6,309.45
2010 (quarterly)	$6,292.30

The HTMUA reserves the right to modify the timing of the quarterly payments at its sole discretion upon providing sixty (60) days written notice to YMCA. This payment obligation to the HTMUA shall cease upon completion of the final quarterly payment on or before October 15, 2010 with all other payments having been made, or upon payment in full. There shall be no penalty for prepayment.

C represents payment to the HTMUA for operating and maintenance costs, which must be subsidized and which are directly related to YMCA's sewer system, as well as other administration costs, such as payments for insurance coverage, salary of

employees, amounts to independent contractors for billing, and portions of charges for professionals such as the auditor, attorney, and engineer. YMCA agrees to pay its proportionate share of all operating, maintenance and administration costs. This proportionate share shall be calculated as a percentage of all such costs and charges pursuant to the following equation: amount of approved sewer flow allocation of YMCA, as set forth in this Agreement, divided by the total of all combined flows of all developers and customers of the HTMUA. In the event that the HTMUA adopts a rate structure which differentiates between YMCA and other residential or residential developer rates, this new rate will supercede the aforementioned proportionate share calculation.

D represents payment to the HTMUA of surcharge fees in the event the flow from the YMCA system exceeds the 8,000 gallons per day reserved for YMCA's use, pursuant to section 5.01 of this agreement. The amount of such surcharge shall be in accordance with the Annual Rate Schedule of the SCMUA then in effect.

E represents payment to the HTMUA for actual charges incurred in the replacement of YMCA's sewer system components, as calculated and/or predicted by the HTMUA. This charge will be effective only in the event that YMCA transfers ownership of its sewer system to the HTMUA.

5.03 **Sewage System Construction**. After the YMCA has obtained approvals from the Hardyston Planning Board and/or such other land development approvals as must be necessary, and upon the HTMUA's obtaining its increased sewer allocation pursuant to this Agreement, and upon YMCA's determination to proceed with its project, YMCA agrees to promptly complete at its sole cost and expense the sanitary sewage collection system consisting of collection lines, service lines, man holes and other appurtenances and stubs as set forth on plans and specifications to be approved by the HTMUA, the SCMUA and by the Department of Environmental Protection. The construction of the sanitary sewerage collection system shall be in strict accordance with the plans and specifications submitted to and approved by the HTMUA, subject to, however, to such field changes as may be authorized by the HTMUA Engineer during the course of construction. The HTMUA shall inspect and monitor the construction of the installation of the facilities in order to assure itself that the same is in accordance with the plans and specifications as approved by the HTMUA. The SCMUA shall inspect and monitor the construction of connections to its facilities, if any. The YMCA shall pay connection fees to SCMUA prior to the issuance of a certificate of occupancy. The YMCA shall prepare and submit as-built plans to the HTMUA to the satisfaction of the HTMUA's Engineer.

5.04 **Ownership, Operation and Maintenance.** The ownership, operation and maintenance of YMCA's system shall remain the duty and responsibility of YMCA. Operation and maintenance shall, however, be subject to the review and monitoring of the HTMUA to the extent the HTMUA, in its sole discretion, deems reasonable and necessary. YMCA shall, at all times, operate and maintain its system in such a manner to prevent and

exclude, to the greatest possible extent, infiltration, inflow and/or storm water inflow into its system. In the event of infiltration, inflow and/or storm water inflow deemed excessive by the HTMUA, in the HTMUA's sole discretion, YMCA shall promptly make all reasonable repairs and take all measures necessary to reduce the amount of volume of said infiltration to levels deemed normally acceptable by the HTMUA, the SCMUA and/or the New Jersey Department of Environmental Protection. Prior to making any expansions to its system or connections to or extension of its system, YMCA shall submit plans to the HTMUA for the HTMUA's review and approval.

5.05 **Conveyance.** Said sanitary sewerage collection system of the YMCA shall, if required by the HTMUA in the HTMUA's sole exercise of its discretion, be conveyed to the HTMUA together with the necessary easements shown or to be shown upon plans approved by the HTMUA, and the HTMUA agrees to accept said system, upon certification as to the proper installation and operation of the system by its authorized engineer, which certification will not be unreasonably withheld. YMCA covenants and agrees that it will not object to this transfer or ownership in any court or administrative agency of the State of New Jersey or elsewhere. If required by the HTMUA, the developer shall convey said sewerage system, together with any pumping stations or other appurtenances to the HTMUA. In order to enable the HTMUA to enter upon the lands and premises to make repairs or replacement of the system or portions of the system, YMCA shall also convey said sewerage system with easements of access to said system not less than twenty (20) feet in width as to mains, service connections and structures and twenty (20) feet around the exterior housing of all pumping stations or other structures which are part of the system, as reasonably determined by the HTMUA. All such easements shall be free and clear of all liens and other encumbrances, and YMCA shall provide a title binder in favor of the HTMUA indicating that YMCA has clear and marketable title to the property free and clear of all liens and encumbrances and free of easements except those which are conveyed to the HTMUA for its benefit or which will not unreasonably interfere with the easements granted to the HTMUA. Maintenance of any improvements and of the sewerage system are the obligation of the YMCA until such time as said system and/or improvements are accepted by the HTMUA. It is understood and agreed that the conveyance of the sewerage collection system constructed by YMCA as hereinabove mentioned shall not become effective until the HTMUA, by formal resolution, accepts the same.

5.06 **Metering.** YMCA shall maintain a master meter to record sewage flows from its existing sewer system, as well as from any additional systems it may construct. Said meter shall be subject to prior, express, written approval of the SCMUA and the HTMUA as to make, model and location. YMCA shall ensure that said meter shall be calibrated, at least annually, so that the SCMUA and/or the HTMUA may utilize the same or other devices to determine the quantity and quality of all sewage which shall ultimately be delivered and discharged to the Upper Wallkill System. The YMCA shall make and keep permanent records of the volume and, when ascertained, the quality and other

characteristics of sewage delivered and discharged from its system. YMCA shall, within seven (7) days of the end of each month, submit daily flow data to the HTMUA and the SCMUA.

5.07 **No Third Party Contribution**. Notwithstanding the fact that YMCA has paid for or installed a sanitary sewerage system, or that said system may in the future be owned by the HTMUA, or that YMCA has paid any fees therefor pursuant to this Agreement, YMCA shall not be entitled to contribution from any other person, firm or corporation, which hereafter develops property in the Township of Hardyston and connects the sanitary sewer system with the system installed by YMCA.

5.08 **Non-Transferability**. This allocation of gallonage is transferred to YMCA solely for development of the YMCA project proposed to be developed on the premises identified in the official Tax Map of the Township of Hardyston as Block 67, Lot 2.11 and approved by the Hardyston Township Planning Board for subdivision on March 22, 2001, and for site plan on August 23, 2001, as extended by resolution on May 22, 2003, or on such other project as may be approved by the HTMUA, which approval shall not be unreasonably withheld, and which has been or will be submitted to the Hardyston Township Planning Board and to all other agencies properly vested with jurisdiction, for the purposes of obtaining approval of said project. This allocation of gallonage may not be transferred, without the express, written approval of the HTMUA, to any person, firm or corporation other than the HTMUA, which shall have the right to re-purchase said allocation or any part thereof at the cost, pro-rated, paid by the YMCA to the HTMUA and intended for Franklin pursuant to the "B" charge set forth in paragraph 5.02 of this Agreement. The above provision shall not prohibit transfer of gallonage to a purchaser of the lands hereinbefore designated, or to a related corporate entity such as a wholly owned subsidiary or parent organization of the YMCA, if first approved by the HTMUA, which approval shall not be unreasonably withheld, provided said transferee executes in recordable form an agreement to be bound by all terms and conditions of this Agreement. In the event the HTMUA provides express written approval for the transfer of this allocation by the YMCA to an unrelated third party, said party shall, in the sole discretion of the HTMUA, either be bound by all of the provisions of this agreement as a successor and/or assign of the YMCA, or shall enter into such other agreement incorporating the YMCA's outstanding obligations as the HTMUA shall direct.

5.09 **Easements**. Any easements which may be needed by YMCA in order to properly operate its sewerage system or to expand its sewerage system shall be obtained by YMCA at its sole cost and expense and, if required by the HTMUA, be conveyed to the HTMUA. The taking of such easements shall not be construed as the exercise of dominion as of actual control by the HTMUA over any facilities located within said easements until such time as the HTMUA formally accepts the facilities.

5.10 **Re-Purchase of Excess Flow**. The HTMUA grants sewer allocation to the YMCA with

the express reservation of right by the HTMUA to re-purchase at any time four (4) years after the date of this Agreement any "unused" portion of said allocation from the YMCA at the original cost, pro-rated, to the YMCA paid to the HTMUA and intended for Franklin pursuant to the "B" charge set forth in paragraph 5.02 of this Agreement. "Unused portion" shall mean the original flow allocation less:

(a) the flow originating from any completed structures; and

(b) the anticipated or projected sewer flows from any buildings from which any building permit has been issued by the Township of Hardyston based upon projected sewer flows established by the Department of Environmental Protection for the particular intended use.

Upon completion of the YMCA project hereinabove referenced, the amount of sewer flow allocation shall be reviewed by the HTMUA's Engineer, and if the HTMUA determines that the required sewer flow allocation is in excess of the needs of the YMCA project, the HTMUA shall have the right to re-purchase such excess allocation at the same cost, pro-rated, that the YMCA has paid to the HTMUA, intended for Franklin pursuant to the "B" charge set forth in Section 5.02 of this Agreement.

5.11 **Payment of Fees**. YMCA shall pay to the HTMUA all reasonable expenses incurred by the HTMUA in connection with:

(a) amendment of applicable wastewater management plans; and

(b) the review, approval, inspection or construction of the sewer system and ultimate conveyance of the system and easements appurtenant thereto, if required, to the HTMUA.

YMCA shall pay the appropriate inspection fees established by the HTMUA These costs shall include all staff review time, out-of-pocket expenses, attorney's fees, engineering fees and other requisite fees or expenses that the HTMUA incurs in connection with the project. The HTMUA will waive all connection fees, but YMCA will be responsible to pay any connection fee imposed by the SCMUA prior to physical connection.

5.12 **Escrow**. YMCA shall, upon demand of the HTMUA, pay to the HTMUA the sum of $5,000.00, which shall be placed in a separate account by the HTMUA and drawn upon periodically to pay for all fees, costs and expenses incurred by the HTMUA as set forth herein. In the event that said fund is depleted below $1,000.00, YMCA shall replenish it with an amount as directed by the HTMUA within ten (10) days, but generally not to exceed $5,000.00 at a time. Funds shall not be withdrawn from this account except on vouchers describing the services performed. Copies shall be sent to YMCA, and YMCA shall have the right to contest these charges.

5.13 **Approvals**. YMCA shall be responsible for obtaining all approvals at its sole cost and expense from the HTMUA, the SCMUA and the Department of Environmental Protection and any other governmental entity having jurisdiction, and for the payment of all fees and costs in connection therewith.

5.14 **Installation Violation**. In the event the HTMUA determines that there is a violation in the installation of the sanitary sewer system set forth herein, or a violation of the terms and conditions of this Agreement or any rules or regulations that the HTMUA or other applicable requirements, the HTMUA may issue a stop work order pursuant to its powers until such violations are corrected, subject to YMCA's right to appeal and/or contest any such determination.

5.15 **Compliance**. All construction rules and regulations of the SCMUA and the New Jersey Department of Environmental Protection and the HTMUA shall be complied with by YMCA at the time of commencement of construction. YMCA shall comply with all rules and regulations relating to operations, as same may be revised from time to time, amended or re-adopted.

5.16 **Indemnification**. YMCA covenants and agrees to indemnify and save harmless the HTMUA, its officers, agents or servants, and each and every one of them, against and from any and all liabilities, suits and costs of every name and description and from all damage to which the HTMUA or any of its officers, agents or servants may be put with respect to any personal or other injury, loss or property damage which the HTMUA may suffer as a result of YMCA's carelessness in the performance of any work, or through any act of omission or commission on the part of YMCA, its agent or agents, or as a result of any claim, demand, cost or judgment that may be made against the HTMUA arising out of this agreement, unless said liability, loss or damage is caused by, or arises out of the negligence of the HTMUA, its officers, agents or employees.

5.17 **Construction Safety**. YMCA shall take all reasonable precautions for the safety of all employees at the work site and shall comply with all the provisions of the Federal, State, municipal and HTMUA regulations and building codes to prevent accidents or injuries to persons on or about or adjacent to the premises where the work is being performed.

5.18 **Insurance**. YMCA agrees to procure and keep in force, prior to initiation of any construction, liability insurance for public, personal injury liability and property damage liability, including contingent liability and contractual liability which might result from the performance of the work contemplated by this Agreement. YMCA shall provide the HTMUA with a certificate of insurance designating the HTMUA as an additional insured under each said policy which insurance coverage shall be at least in the following amounts:

(a) one person in any one occurrence - $500,000;
(b) two or more persons in any one occurrence - $1,000,000;
(c) property damage in any one occurrence - $100,000; and
(d) aggregate property damage limit - $500,000.

YMCA further covenants and agrees to provide, prior to the initiation of any construction, vehicle liability and property damage insurance coverage and provide the HTMUA with a

certificate of insurance designating the HTMUA as an additional insured under said policy, which insurance coverage shall be at least in the following amounts:

(a) bodily injury per person - $500,000;

(b) bodily injury per occurrence - $1,000,000; and

(c) property damage - $500,000.

YMCA further covenants and agrees that it will provide, prior to the initiation of construction, workers' compensation insurance coverage for employees and/or require evidence of such coverage as to be supplied by any subcontractor who may be employed to perform work contemplated by this Agreement.

5.19 **Late Payment**. Whenever any payment, fee or other charge is due the HTMUA from YMCA remains unpaid for a period of thirty (30) days, a penalty of 1.5% per month, or other such lower a limit as may be set by statute, shall be assessed in accordance with the rules and regulations of the HTMUA. In the event that such payment remains unpaid for a period of sixty (60) days, the HTMUA shall have the right to revoke the unused sewer allocation reserved for YMCA. Said revocation shall be effected by a duly adopted resolution of the HTMUA at a regular meeting of the HTMUA, at least five (5) days' notice of which is to be sent to YMCA by certified and regular mail to the address hereinabove set forth or to such other address as may have been furnished by YMCA Valley to the HTMUA in writing. YMCA shall be entitled to seek a stay of the revocation before a court of competent jurisdiction during any appeal of the revocation.

5.20 **Guarantee**. In conjunction with any acceptance of the YMCA's system by the HTMUA, the YMCA shall provide to the HTMUA a two year maintenance guarantee in an amount equal to 15% of the actual cost of the system, which amount shall be determined by the HTMUA. 10% of such guarantee shall be in the form of cash with the remainder in the form of a irrevocable letter of credit or other collateral acceptable to the HTMUA.

5.21 **Ownership**. YMCA herein certifies that it is the owner of record of the property which is the subject matter of this Agreement and agrees to furnish forthwith to the HTMUA a copy of the title policy covering the title to the property affected by this Agreement.

VI. CONSENT OF WALLKILL SEWER COMPANY TO AGREEMENT

6.01 **Use of Wallkill Sewer Company System by YMCA.** The Wallkill Sewer Company hereby consents to the flow of sewage generated by YMCA will flow through the sewer system owned by Wallkill Sewer Company to the Upper Wallkill System.

6.02 **Hold-Harmless & Indemnification.** YMCA agrees to hold Wallkill Sewer Company harmless from any suits, claims or judgments arising out of the discharge of YMCA sewage through the Wallkill Sewer Company system and agrees to indemnify Wallkill

Sewer Company for any such fines, penalties and/or costs of defense incurred by Wallkill Sewer Company as a result of YMCA's sewage.

6.03 **Consent of Other Agencies.** Wallkill Sewer Company's consent, pursuant to section 6.01, above, is contingent upon YMCA's obtaining approval of all other governmental agencies properly vested with jurisdiction in this matter.

METROPOLITAN YMCA OF THE ORANGES, INC.

By: W. Daniel McCain

W. Daniel McCain

Attest:

Susan E. Carlson

Dated: 8-29-03

IN WITNESS WHEREOF, Metropolitan YMCA of the Oranges, Inc.; Wallkill Valley Regional High School Board of Education; Hardyston Township Municipal Utilities Authority; Borough of Franklin; Sussex County Municipal Utilities Authority; and Wallkill Sewer Company, have caused their respective corporate or municipal seals to be hereunto affixed and attested and these presents to be signed by the respective officers thereunder duly authorized and this Agreement to be dated as of the day and year first above written.

Witnessed/Attested:

Metropolitan YMCA of the Oranges, Inc.

_____ Secretary

_____ President

Wallkill Valley Regional High School Board of Education

Elizabeth Flatt, Secretary

Stanley V. Dabrowski, President

Hardyston Township Municipal Utilities Authority

_____ Secretary

_____ Chairman

Borough of Franklin

_____ Clerk

_____ Mayor

Sussex County Municipal Utilities Authority

_____ Secretary

_____ Chairman

Wallkill Sewer Company

_____ Secretary

_____ President

ATTEST:

HARDYSTON TOWNSHIP MUNICIPAL UTILITIES AUTHORITY:

SANTO VERRILLI, Secretary

KEN KIEVIT, Chairperson

STATE OF NEW JERSEY :
:SS
COUNTY OF SUSSEX :

I certify that on September 25, 2003, Santo Verrilli personally came before me and acknowledged under oath, to my satisfaction, that:

a. He is the Secretary of the Hardyston Township Municipal Utilities Authority;
b. He is the attesting witness to the signing of this document by Ken Kievit, who is the Chairperson of the Hardyston Township Municipal Utilties Authority;
c. This document was signed and delivered by the Hardyston Township Municipal Utilities Authority as its volutary act, duly authorized by a proper resolution of the Commissioners;
d. He knows the proper seal of the Authority, which is affixed to this document; and
e. He signed this proof to attest to the truth of these facts.

SANTO VERRILLI, Secretary

Signed and sworn to before me
this 25th day of September, 2003

Marianne Amish
Notary Public of the State of New Jersey

ATTEST:

Rachel Heath

Rachel Heath, Clerk/Administrator

BOROUGH OF FRANKLIN

By: _____

Edward W. Allen, Mayor

STATE OF NEW JERSEY, COUNTY OF SUSSEX SS:

I CERTIFY that on September 19, 2003, **Rachel Heath**, personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

(a) this person is the Municipal Clerk of the Borough of Franklin, the municipal corporation named in this document;

(b) this person is the attesting witness to the signing of this document by Edward W. Allen, who is the Mayor of the municipal corporation;

(c) this document was signed and delivered by the municipal corporation as its voluntary act duly authorized by a proper resolution of its Mayor and Council;

(d) this person knows the proper seal of the municipal corporation which was affixed to this document; and,

(e) this person signed this proof to attest to the truth of these facts.

Rachel Heath

Rachel Heath, Municipal Clerk

Signed and sworn to before
me on September 19, 2003.

Patricia A. Leasure

Notary Pubic of New Jersey

PATRICIA A. LEASURE
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires April 14, 2005

WALLKILL SEWER COMPANY

By: _____
Richard Demelo, Comptroller

Attest:

Dorothy Langdon

DOROTHY LANGDON
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES 2/20/07

Dated: 9-8-03

IN WITNESS WHEREOF, Metropolitan YMCA of the Oranges, Inc.; Wallkill Valley Regional High School Board of Education; Hardyston Township Municipal Utilities Authority; Borough of Franklin; Sussex County Municipal Utilities Authority; and Wallkill Sewer Company, have caused their respective corporate or municipal seals to be hereunto affixed and attested and these presents to be signed by the respective officers thereunder duly authorized and this Agreement to be dated as of the day and year first above written.

Witnessed/Attested:

Metropolitan YMCA of the Oranges, Inc.

_____ Secretary

_____ President

Wallkill Valley Regional High School Board of Education

_____ Secretary

_____ President

Hardyston Township Municipal Utilities Authority

_____ Secretary

_____ Chairman

Borough of Franklin

_____ Clerk

_____ Mayor

Sussex County Municipal Utilities Authority

Secretary

Chairman

Wallkill Sewer Company

_____ Secretary

_____ President

20110216010037560 1/12
02/16/2011 08:16:53 AM D AGREE
Bk: 3266 Pg: 601
Brian McNeilly, Acting County Clerk
Sussex County, NJ

AGREEMENT
between
METROPOLITAN YMCA OF THE ORANGES, INC.
and
HARDYSTON TOWNSHIP MUNICIPAL UTILITIES AUTHORITY,

Dated: 10/21, 2010

Table of Contents

Record and Return:
Mark J. Hontz, Esq.
Hollander, Strelzik, Pasculli, Pasculli, Hinkes, Gacquin, Vandenberg & Hontz, L.L.C.
40 Park Place - P.O. Box 99
Newton, NJ 07860

I. General Understandings and Agreement of the Parties.

1.01 **The Parties**. The parties to this agreement are as follows:

A. Metropolitan YMCA of the Oranges, Inc. (hereinafter referred to as A**YMCA**@), a not-for-profit corporation of the State of New Jersey, bearing an address of 139 East McClellan Avenue, Livingston, New Jersey 07039; and

B. Hardyston Township Municipal Utilities Authority (hereinafter referred to as A**HTMUA**@), a municipal utilities authority of the State of New Jersey, with offices at the Hardyston Township Municipal Building, 149 Wheatsworth Road, Hardyston, New Jersey 07419.

1.02 **The 2003 Agreement**. The parties acknowledge that on August 29, 2003 a six-party Agreement was entered into between YMCA, HTMUA and four other parties: Wallkill Valley Regional High School Board of Education; Borough of Franklin; Wallkill Sewer Company; and Sussex County Municipal Utilities Authority (hereinafter referred to as "**SCMUA**"). That six-party agreement is hereinafter referred to as the A**2003 Agreement**@. The 2003 Agreement, the terms of which speak for themselves, established the rights, rules and regulations of the respective parties for the provision, use, transmission and payment of sewage capacity allocation. Pursuant to the 2003 Agreement, HTMUA contracted for the provision of 8,000 gpd of sewage capacity allocation for the YMCA. The present Agreement in all forms and applications does not supersede and does not supplant the terms of the 2003 Agreement, all of which remain in full force and effect. The present Agreement provides supplementary sewage capacity allocation, with certain terms and conditions, to YMCA in addition to the sewage capacity allocation provided in the 2003 Agreement.

1.03 **Allocation Transfer Concept**. HTMUA holds a certain volume of sewage capacity allocation at the Upper Wallkill Valley Water Pollution Control Facilities of SCMUA. HTMUA reserves portions of said sewage capacity to certain third parties pursuant to contractual agreements with said third parties. In 2010, HTMUA revoked a quantity of sewage capacity allocation from one such third party developer within the Hardyston Township Sewer Service Area due to breach of its contractual obligations. The HTMUA auctioned a portion of the revoked sewage capacity allocation at public auction. YMCA was the winning bidder for "Lot A" at said auction and agreed to purchase 2,000 gallons per day of said sewage capacity allocation from HTMUA. This Agreement seeks to memorialize the terms of that purchase and set forth the rights and responsibilities of the parties. In order to utilize the sewage capacity allocation it has purchased, YMCA must fulfill its obligations pursuant to this Agreement. HTMUA shall, correspondingly, fulfill its contractual obligations with SCMUA in order to ensure the availability of said sewage capacity allocation.

1.04 **Assumptions**. The parties acknowledge and agree that the following factual assertions and statements are material to the form and substance of this Agreement and are incorporated in this Agreement:

A. The SCMUA maintains and operates an interceptor sewer system and sewage treatment plant for the transmission, treatment and disposal of certain sanitary sewage and other waste, as generally described in the Facilities Plan for the Upper Wallkill Basin, certified by the New Jersey Department of Environmental Protection and the United States Environmental Protection Agency (hereinafter referred to as the **AUpper Wallkill System@**), within which service area the YMCA operates its facility, all within the Township of Hardyston, Sussex County, New Jersey;

B. The HTMUA is vested with the authority, regulation and control of wastewater disposal within the municipal boundaries of Hardyston Township, and, pursuant to service agreements with the SCMUA, is permitted to transmit sewage flow to the SCMUA=s Upper Wallkill System;

C. The Wallkill Sewer Company owns and operates a local sewerage system that transmits sewage flow to the Upper Wallkill System;

D. The YMCA has obtained permission from the Wallkill Sewer Company to connect the YMCA=s collection and conveyance system to the Wallkill Sewer Company=s collection and conveyance system in order to convey YMCA sewage to the Upper Wallkill System.

E. All parties hereto deem it necessary and for the best interests of their respective citizenry and/or clientele and the users of the Upper Wallkill System to enter into this Agreement, thereby satisfying the intended purpose of the allocation service agreements between the participating municipalities within the said Upper Wallkill Basin, and thereby providing YMCA with a permanent method of disposal of wastewater emanating from their facilities.

F. Pursuant to state statute, and in further accordance with existing service agreements, HTMUA has the right and authority to enter into an agreement providing for or relating to the treatment and disposal of wastewater originating within Hardyston Township.

G. The HTMUA expressly reserves its right to withdraw the allocation to the YMCA anytime in the event that: (i) the SCMUA, the New Jersey Department of Environmental Protection or any other superseding governmental authority reduces said allocation; or (ii) said allocation is no longer available to YMCA as a result of court order or other legal requirement.

H. Each party individually represents that it has voluntarily entered into this Agreement and has not executed this Agreement under duress, coercion or other pressure imposed by any other party, its representatives or agents. Accordingly, YMCA covenants that it will not bring any action in law or equity against the HTMUA with

respect to the obligations assumed by the parties hereunder or the terms and conditions hereof, which have been mutually negotiated by and agreed to by and among the parties. This covenant does not apply to actions for either breach or specific performance under this Agreement.

I. Each of the parties by the execution hereof agrees to sign the requisite consents to any application required to obtain permits for the YMCA and approval of the increase in the HTMUA=s sewer allocation and to authorize any required amendments to local Wastewater Management Plans, Sussex County 208 Water Quality Management Plan or other plans as required. YMCA agrees to satisfy directly or reimburse the HTMUA for any and all expenses incidental to consultant review and preparation of any such amendments and of securing approvals for the same.

J. HTMUA agrees to adopt resolutions as required to authorize the execution and implementation of this agreement, as required by statue. This agreement may be executed in identical counterparts.

1.05 **Recording.** This agreement shall be recorded with the Sussex County Clerk at the YMCA=s expense.

1.06 **Lien on Property of YMCA**. Any indebtedness of the YMCA to the HTMUA set forth in this agreement shall constitute a lien against the real property of the YMCA until such time as the YMCA indebtedness is paid in full.

1.07 **Execution.** This agreement may be executed in identical counterparts.

II. SEWAGE CAPACITY ALLOCATION RIGHTS AND RESPONSIBILITIES.

2.01 **Reservation of Sewage Capacity Allocation**. The HTMUA shall reserve sewage capacity allocation into the SCMUA=s Upper Wallkill System for YMCA=s use in the volume of TWO THOUSAND (2,000) gallons per day. YMCA shall be a customer of the HTMUA and shall fully comply with all applicable rules, regulations and policies of the HTMUA as well as the rules, regulations and policies of any other agency properly vested with jurisdiction over these matters.

2.02 **Remuneration**. YMCA shall make quarterly payments to the HTMUA in a sum represented by AE@ in and calculated by the following formula: **A + B + C + D = E,** with the following assumptions:

A represents quarterly user fees applicable to wastewater discharged directly to the Upper Wallkill System of the SCMUA by YMCA, proportionate to the billing

demand made upon the HTMUA by the SCMUA. This charge is a pass-through charge from the SCMUA through the HTMUA to YMCA. The charge may include, but is not limited to, actual flow calculations, guaranteed minimum flow, debt service, operating and maintenance charges of the SCMUA. YMCA agrees to pay its proportionate share of all such costs and charges. This proportionate share should be calculated as a percentage of all such costs and charges pursuant to the following equation: amount of actual sewage flow of YMCA plus amount of guaranteed minimum flow divided by the total of all flows from all development projects administered by the HTMUA, in accordance with the service agreement between the SCMUA and the HTMUA. In the event that the HTMUA adopts a rate structure which differentiates between YMCA and other commercial, residential and/or residential developer rates, this new rate will supersede the aforementioned proportionate share calculation.

B represents payment to the HTMUA for operating and maintenance costs, which must be subsidized and which are directly related to YMCA=s sewer system, as well as other administration costs, such as payments for insurance coverage, salary of employees, amounts to independent contractors for billing, and portions of charges for professionals such as the auditor, attorney, and engineer. YMCA agrees to pay its proportionate share of all operating, maintenance and administration costs. This proportionate share shall be calculated as a percentage of all such costs and charges pursuant to the following equation: amount of approved sewage capacity allocation of YMCA, as set forth in this Agreement, divided by the total of all combined flows of all developers and customers of the HTMUA. In the event that the HTMUA adopts a rate structure which differentiates between YMCA and other commercial, residential and/or residential developer rates, this new rate will supersede the aforementioned proportionate share calculation.

C represents payment to the HTMUA of surcharge fees in the event the flow from the YMCA system exceeds the total of 10,000 gallons per day reserved for YMCA=s use, pursuant to section 2.01 of this agreement and pursuant to the 2003 Agreement. The amount of such surcharge shall be in accordance with the Annual Rate Schedule of the SCMUA then in effect.

D represents payment to the HTMUA for actual charges incurred in the replacement of YMCA=s sewer system components, as calculated and/or predicted by the HTMUA. This charge will be effective only in the event that YMCA transfers ownership of its sewer system to the HTMUA.

2.03 **Ownership, Operation and Maintenance of Sewage System.** The ownership, operation and maintenance of YMCA=s system shall remain the duty and responsibility of YMCA. Operation and maintenance shall, however, be subject to the review and monitoring of the HTMUA to the extent the HTMUA, in its sole discretion, deems reasonable and necessary. YMCA shall, at all times, operate and maintain its system in such a manner to prevent and exclude, to the greatest possible extent, infiltration, inflow

and/or storm water inflow into its system. In the event of infiltration, inflow and/or storm water inflow deemed excessive by the HTMUA, in the HTMUA=s sole discretion, YMCA shall promptly make all reasonable repairs and take all measures necessary to reduce the amount of volume of said infiltration to levels deemed normally acceptable by the HTMUA, the SCMUA and/or the New Jersey Department of Environmental Protection, or other governmental agency properly vested with jurisdiction therein. Prior to making any expansions to its system or connections to or extension of its system, YMCA shall submit plans to the HTMUA for the HTMUA=s review and approval.

2.04 **Conveyance.** Said sanitary sewerage collection system of the YMCA shall, if required by the HTMUA in the HTMUA=s sole exercise of its discretion, be conveyed to the HTMUA together with the necessary easements shown or to be shown upon plans approved by the HTMUA, and the HTMUA agrees to accept said system, upon certification as to the proper installation and operation of the system by its authorized engineer, which certification will not be unreasonably withheld. YMCA covenants and agrees that it will not object to this transfer or ownership in any court or administrative agency of the State of New Jersey or elsewhere. If required by the HTMUA, the developer shall convey said sewerage system, together with any pumping stations or other appurtenances to the HTMUA. In order to enable the HTMUA to enter upon the lands and premises to make repairs or replacement of the system or portions of the system, YMCA shall also convey said sewerage system with easements of access to said system not less than twenty (20) feet in width as to mains, service connections and structures and twenty (20) feet around the exterior housing of all pumping stations or other structures which are part of the system, as reasonably determined by the HTMUA. All such easements shall be free and clear of all liens and other encumbrances, and YMCA shall provide a title binder in favor of the HTMUA indicating that YMCA has clear and marketable title to the property free and clear of all liens and encumbrances and free of easements except those which are conveyed to the HTMUA for its benefit or which will not unreasonably interfere with the easements granted to the HTMUA. Maintenance of any improvements and of the sewerage system is the obligation of the YMCA until such time as said system and/or improvements are accepted by the HTMUA. It is understood and agreed that the conveyance of the sewerage collection system constructed by YMCA as hereinabove mentioned shall not become effective until the HTMUA, by formal resolution, accepts the same.

2.05 **Metering**. YMCA shall maintain a master meter to record sewage flows from its existing sewer system, as well as from any additional systems it may construct. Said meter shall be subject to prior, express, written approval of the SCMUA and the HTMUA as to make, model and location. YMCA shall ensure that said meter shall be calibrated, at least annually, so that the SCMUA and/or the HTMUA may utilize the same or other devices to determine the quantity and quality of all sewage which shall ultimately be delivered and discharged to the Upper Wallkill System. The YMCA shall make and keep permanent records of the volume and, when ascertained, the quality and other characteristics of sewage delivered and discharged from its system. YMCA shall, within

seven (7) days of the end of each month, submit daily flow data to the HTMUA and the SCMUA.

2.06 **No Third Party Contribution**. Notwithstanding the fact that YMCA has paid for or installed a sanitary sewerage system, or that said system may in the future be owned by the HTMUA, or that YMCA has paid any fees therefor pursuant to this Agreement, YMCA shall not be entitled to contribution from any other person, firm or corporation, which hereafter develops property in the Township of Hardyston and connects the sanitary sewer system with the system installed by YMCA.

2.07 **Non-Transferability**. This allocation of gallonage is transferred to YMCA solely for development of the YMCA project proposed to be developed on the premises identified in the official Tax Map of the Township of Hardyston as Block 67, Lot 2.11 and approved by the Hardyston Township Planning Board for subdivision on March 22, 2001, and for site plan on August 23, 2001, as extended by resolution on May 22, 2003, or on such other project as may be approved by the HTMUA, which approval shall not be unreasonably withheld, and which has been or will be submitted to the Hardyston Township Planning Board and to all other agencies properly vested with jurisdiction, for the purposes of obtaining approval of said project. This allocation of gallonage may not be transferred, without the express, written approval of the HTMUA, to any person, firm or corporation other than the HTMUA, whose actions will, in any event, be according to the HTMUA Rules and Regulations. The above provision shall not prohibit transfer of gallonage to a purchaser of the lands hereinbefore designated, or to a related corporate entity such as a wholly owned subsidiary or parent organization of the YMCA, if first approved by the HTMUA, which approval shall not be unreasonably withheld, provided said transferee executes in recordable form an agreement to be bound by all terms and conditions of this Agreement. In the event the HTMUA provides express written approval for the transfer of this allocation by the YMCA to an unrelated third party, said party shall, in the sole discretion of the HTMUA, either be bound by all of the provisions of this agreement as a successor and/or assign of the YMCA, or shall enter into such other agreement incorporating the YMCA=s outstanding obligations as the HTMUA shall direct.

2.08 **Easements**. Any easements which may be needed by YMCA in order to properly operate its sewerage system or to expand its sewerage system shall be obtained by YMCA at its sole cost and expense and, if required by the HTMUA, be conveyed to the HTMUA. The taking of such easements shall not be construed as the exercise of dominion as of actual control by the HTMUA over any facilities located within said easements until such time as the HTMUA formally accepts the facilities.

2.09 **Payment of Fees**. YMCA shall pay to the HTMUA all reasonable expenses incurred by the HTMUA in connection with:

(a) amendment of applicable wastewater management plans; and

(b) the review, approval, inspection or construction of the sewer system and

ultimate conveyance of the system and easements appurtenant thereto, if required, to the HTMUA.

YMCA shall pay the appropriate inspection fees established by the HTMUA These costs shall include all staff review time, out-of-pocket expenses, attorney=s fees, engineering fees and other requisite fees or expenses that the HTMUA incurs in connection with the project. The HTMUA will waive all connection fees, but YMCA will be responsible to pay any connection fee imposed by the SCMUA prior to physical connection.

2.10 **Escrow**. YMCA shall, upon demand of the HTMUA, pay to the HTMUA the sum of $5,000.00, which shall be placed in a separate account by the HTMUA and drawn upon periodically to pay for all fees, costs and expenses incurred by the HTMUA as set forth herein. In the event that said fund is depleted below $1,000.00, YMCA shall replenish it with an amount as directed by the HTMUA within ten (10) days, but generally not to exceed $5,000.00 at a time. Funds shall not be withdrawn from this account except on vouchers describing the services performed. Copies shall be sent to YMCA, and YMCA shall have the right to contest these charges. This account is the same as required by the 2003 Agreement. As between the 2003 Agreement and this Agreement, only one such account is required.

2.11 **Approvals**. YMCA shall be responsible for obtaining all approvals at its sole cost and expense from the HTMUA, the SCMUA and the Department of Environmental Protection and any other entity having jurisdiction, and for the payment of all fees and costs in connection therewith.

2.12 **Compliance**. All rules and regulations of the SCMUA and the New Jersey Department of Environmental Protection and the HTMUA shall be complied with by YMCA. YMCA shall comply with all rules and regulations relating to operations, as same may be revised from time to time, amended or re-adopted. YMCA's failure to abide by said rules may result in HTMUA's revocation of YMCA's sewer capacity allocation.

2.13 **Indemnification**. YMCA covenants and agrees to indemnify and save harmless the HTMUA, its officers, agents or servants, and each and every one of them, against and from any and all liabilities, suits and costs of every name and description and from all damage to which the HTMUA or any of its officers, agents or servants may be put with respect to any personal or other injury, loss or property damage which the HTMUA may suffer as a result of YMCA=s carelessness in the performance of any work, or through any act of omission or commission on the part of YMCA, its agent or agents, or as a result of any claim, demand, cost or judgment that may be made against the HTMUA arising out of this agreement, unless said liability, loss or damage is caused by, or arises out of the negligence of the HTMUA, its officers, agents or employees.

2.14 **Hold Harmless.** YMCA acknowledges that HTMUA acquired the sewage capacity allocation herein granted to YMCA from a third party. In the event that a Court of

competent jurisdiction makes a ruling or judgment that negates HTMUA's reacquisition from said third party or in the event HTMUA is unable to deliver the acquired sewage allocation capacity to YMCA for any reason, then this Agreement shall be null and void. YMCA accepts this sewage capacity allocation with full understanding and knowledge of this possibility. YMCA agrees to hold harmless HTMUA, its officers, agents and employees in such event. YMCA assumes this risk by entering into this Agreement and agrees not to seek damages from HTMUA in such event.

2.15 **Insurance.** YMCA agrees to procure and keep in force liability insurance for public, personal injury liability and property damage liability, including contingent liability and contractual liability. YMCA shall provide the HTMUA with a certificate of insurance designating the HTMUA as an additional insured under each said policy which insurance coverage shall be at least in the following amounts:

(a) one person in any one occurrence - $500,000;
(b) two or more persons in any one occurrence - $1,000,000;
(c) property damage in any one occurrence - $100,000; and
(d) aggregate property damage limit - $500,000.

YMCA further covenants and agrees to provide vehicle liability and property damage insurance coverage and provide the HTMUA with a certificate of insurance designating the HTMUA as an additional insured under said policy, which insurance coverage shall be at least in the following amounts:

(a) bodily injury per person - $500,000;
(b) bodily injury per occurrence - $1,000,000; and
(c) property damage - $500,000.

YMCA further covenants and agrees that it will provide, prior to the initiation of any construction, workers= compensation insurance coverage for employees and/or require evidence of such coverage as to be supplied.

2.16 **Late Payment**. Whenever any payment, fee or other charge due the HTMUA from YMCA remains unpaid for a period of thirty (30) days, a penalty of 1.5% per month, or other such lower a limit as may be set by statute, shall be assessed in accordance with the rules and regulations of the HTMUA. In the event that such payment remains unpaid for a period of sixty (60) days, the HTMUA shall have the right to revoke the sewage capacity allocation reserved for YMCA. Said revocation shall be effected by a duly adopted resolution of the HTMUA at a regular meeting of the HTMUA, at least five (5) days= notice of which is to be sent to YMCA by certified and regular mail to the address hereinabove set forth or to such other address as may have been furnished by YMCA to the HTMUA in writing.

2.17 **Guarantee**. In conjunction with any acceptance of the YMCA=s system by the HTMUA, the YMCA shall provide to the HTMUA a two year maintenance guarantee in an amount equal to 15% of the actual cost of the system, which amount shall be determined by the HTMUA. 10% of such guarantee shall be in the form of cash with the remainder in the form of an irrevocable letter of credit or other collateral acceptable to

the HTMUA.

2.18 **Ownership**. YMCA herein certifies that it is the owner of record of the property which is the subject matter of this Agreement and agrees to furnish forthwith to the HTMUA, upon request, a copy of the title policy covering the title to the property affected by this Agreement.

METROPOLITAN YMCA OF THE ORANGES, INC.

By: Larry Lev SR. VICE PRESIDENT **Date:** Oct. 21, 2010

LARRY ~~LEV~~
Sr. Vice President/COO

HARDYSTON TOWNSHIP MUNICIPAL UTILITIES AUTHORITY

By: Kenneth Kievit **Date:** Dec. 6, 2010

KENNETH KIEVIT
Chair

COUNTY OF SUSSEX :
:SS
STATE OF NEW JERSEY :

I, Mark Hontz, an Attorney at Law of the State of New Jersey, hereby certify that Kenneth Kievit signed this Agreement before me on the 6th day of December, 2010 and that he did so in his capacity as Chairman of the Hardyston Township Municipal Utilities Authority and that he was authorized to sign by resolution of the Hardyston Township Municipal Utilities Authority.

Mark J. Hontz, Esq.

Mark J. Hontz
Attorney at Law of New Jersey
STATUTORY AUTHORITY
Oaths, Affirmations & Affidavits N.J.S. 41:2-1
Acknowledgements of Deeds etc. N.J.S. 46:14-6.1 et seq.

COUNTY OF SUSSEX :

: SS

STATE OF NEW JERSEY:

I, Mary Rose Steinwand (name) Exec. Admin. Asst. (title), hereby certify that Larry Lev signed this Agreement on October 21, 2010 and that he did so in his capacity as Sr. Vice President/Chief Operating Officer of the Metropolitan YMCA of the Oranges, Inc. and that he was authorized to sign.

MARY ROSE STEINWAND
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 10/15/2014

95-64595 D-2068-215

DEVELOPER'S AGREEMENT 1995
SEWER SYSTEM

THIS AGREEMENT Made this 12th day of April, 1995, by and between HARDYSTON TOWNSHIP MUNICIPAL UTILITIES AUTHORITY, a municipal utility authority of the State of New Jersey, with offices at the Municipal Building, 29 Stockholm-Vernon Road, Stockholm, N.J. hereinafter referred to as "HTMUA or Authority", and HFH DEVELOPMENT CORP., of P. O. Box 300 Hamburg, New Jersey, hereinafter called "Developer".

W I T N E S S E T H

WHEREAS, Developer is the owner of certain lands and premises in the Township of Hardyston, County of Sussex, State of New Jersey, formerly known as Block 66, Lot 1 and Block 67, Lot 16.01, 18.01 and 19 and now designated on the official Tax Map of the Township of Hardyston as Block 67, Lots 1.01, 1.03, 16.03, 18.01 and 19, Block 67.03, Lots 1.01 through 1.43 and Block 67.04, Lots 1.01 through 1.65, and

WHEREAS, Developer's predecessors in title received preliminary site plan approval for a development then known as Forest Hill Village and Forest Hill Estates, and now known as Indian Field at Hardyston and Forest Hill Estates, to contain a total of 541 dwelling units, of which final approval has been granted by the Planning Board for two sections, and

WHEREAS, said preliminary site plan approval included the requirement that Developer construct a sewer system which would be transferred to the Authority for operation, and

WHEREAS, Developer's predecessor was allotted a sewer flow allocation of 152,500 g.p.d., and

WHEREAS, Developer is the successor to the original Developer, Hardyston Development Corp., which entered into a Developer's Agreement with the Authority on October 8, 1986, a

K&R Dolan & Dolan

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supplemented by agreements dated January 14, 1987, and February 24, 1989, and the parties hereto desire to clarify and reconfirm the provisions of said prior agreement and amendments thereto,

NOW THEREFORE, in consideration of the mutual promises, covenants and representations herein contained, the parties hereto for themselves, their heirs, successors and assigns hereby agree as follows:

I. SEWAGE SYSTEM CONSTRUCTION.

1. Developer agrees to complete the installation at its sole cost and expense of the sanitary sewerage collection system consisting of collection lines, service lines (house laterals), manholes and other appurtenances and stubs not heretofore constructed, all as set forth on the plans and specifications heretofore approved or to be approved by the Authority and by the Sussex County Municipal Utilities Authority (hereafter "SCMUA"), in connection with this development.

2. All of the construction of the sanitary sewerage collection system shall be in accordance with plans and specifications submitted to and approved by the Authority, the SCMUA and the New Jersey Department of Environmental Protection (hereinafter N.J. DEP).

3. The Authority shall inspect and monitor the construction of the installation of the facilities in order to assure itself that the same is in accordance with the plans and specifications as approved by the Authority. The SCMUA shall inspect and monitor and approve the construction of any connections to its facilities.

4. The sanitary sewerage collection system above mentioned, except for that portion which has already been conveyed to the Authority, shall, upon completion thereof and demonstration of

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satisfactory performance, be conveyed to the Authority together with all necessary easements shown or to be shown upon plans approved by the Authority, and the Authority upon certification as to the proper installation and operation of the system by its authorized engineer, which certification will not be unreasonably withheld or delayed, agrees to accept said system. Developer covenants and agrees that it will not object to this transfer of ownership in any court or administrative agency of the State of New Jersey or elsewhere.

5. The Developer shall convey said sewerage system, together with any pumping stations or other appurtenances, together with easements of access to said system of sufficient width not less than twenty (20) feet in width as to mains and service connections and twenty (20) feet from the exterior housing of all pumping stations or other structures which are part of the system as reasonably determined by the Authority so as to enable the Authority to enter upon the lands and premises to make repairs or replacement of the system or portions of the system. All such easements shall be free and clear of all liens and other encumbrances and the Developer shall provide a title binder in favor of the Authority indicating that the Developer has clear and marketable title to the property free and clear of all liens, and encumbrances and free of easements except those which are conveyed to the Authority for its benefit or which will not unreasonably interfere with the easements granted to the Authority, and thereafter furnish a title policy. Prior to the issuance of any Certificate of Occupancy within any section of the development, Developer shall tender to the Authority a bill of sale for the sewer improvements within that section, and an easement allowing the Authority to access such improvements. At

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its next regularly scheduled meeting following Developer's tender of these documents, the Authority shall accept the dedicated improvements, or inform Developer in writing as to what additional items need to be supplied before acceptance will be given. In no event shall acceptance be delayed beyond the date on which the final Certificate of Occupancy is issued for such section.

6. At such time as any additional part of the sewerage system or any portion thereof becomes operable and is conveying sewage flow to the Authority, all revenues, fees and other charges thereafter derived therefrom shall belong to the Authority.

7. It is understood and agreed that the dedication of additional portions of the sewerage collection system constructed by Developer as hereinabove mentioned shall not become effective until the Authority, by formal resolution, accepts the same. Developer shall furnish "as-built" plans acceptable to the Authority within thirty (30) days of issuance of the first Certificate of Occupancy in any section.

II. GENERAL REQUIREMENTS.

1. The Developer shall not be entitled to contribution from any other person, firm or corporation who hereafter develops property in the Township of Hardyston, and connects the sanitary sewer system with the system to be constructed by the Developer arising from the fact that Developer herein has paid for or installed the facility being taken over by the Authority or paid any fees therefor pursuant to this Agreement.

2. The maximum total sewer flow allocation heretofore allotted to Hardyston Development Corp., developer's predecessor in title, was 152,500 g.p.d.; this allocation of gallonage (which

includes gallonage used by unit purchasers) is transferred to Developer for development of the project now known as Indian Field at Hardyston and Forest Hill Village located on Block 67, Lots 1.01, 1.03, 16.03, 18.01 and 19, Block 67.03, Lots 1.01 through 1.42 and Block 67.04, Lots 1.01 through 1.65, on the official Tax Map of the Township of Hardyston.

3. Any easements which may be needed by Developer in order to properly operate the sewerage system shall be obtained by the Developer at its sole cost and expense and conveyed to the Authority. The taking of such easement shall not be construed as the exercise of dominion and/or control by the Authority over any facilities located within said easement until such time as the Authority formally accepts the facilities as provided herein.

4. Developer shall pay to the Authority all reasonable expenses incurred by the Authority in connection with the review, approval, inspection and construction of the system and ultimate conveyance of the system and easements appurtenant thereto to the Authority. The Developer shall pay the appropriate inspection fee established by the Authority. These costs shall include all staff review time, out-of-pocket expenses, attorney's fees, engineering fees and any other requisite fees or expenses that the Authority incurs in connection with the project. The HTMUA will waive all connection fees; but developer will be responsible to pay all connection fees imposed by SCMUA.

In order to effectuate and guarantee all required payments, the Developer shall, upon execution of this Agreement, pay to the Authority the sum of Five Thousand Dollars ($5,000) which shall be placed in a separate account by the Authority and drawn upon periodically to pay for all fees, costs and expenses incurred by the Authority as set forth herein. In the event that said Fund

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is depleted below One Thousand Dollars ($1,000), the Developer shall replenish it with an amount as directed by the Authority within ten (10) days. In the event that such Fund is not replenished to meet the Authority's obligations under this Agreement, then all work on the project shall immediately cease. Funds shall not be withdrawn from this account except on vouchers describing the services performed. Copies shall be sent to the developer.

5. Recognizing that there are operating and maintenance costs of the Authority which must be subsidized, which costs are directly related to Developer's specific project, as well as other administration costs, such as payments for insurance coverage, salary of employees, amounts to independent contractors for billing, and portions of charges from professionals such as the auditor, attorney and engineer, it is agreed by Developer to pay its proportionate share of all operating, maintenance and administration costs until completion of the project. Developer and the owner or owners of the project formerly known as Crystal Springs and the development owned by Anton Pilz shall be obligated to pay such costs in the proportion that their respective approved flows as set forth in their approved CP-1 application form bear to the total of such costs and expenses, less the revenues in the form of water and sewer rents or charges received from unit owners in the project known as Indian Field at Hardyston and Forest Hill Estates. It is further agreed that if any Developer advances more than his, her or its pro-rata share, such Developer shall be entitled to contribution from the others of the excess amount so paid, said adjustment to be made by the Authority in the form of an assessment. Developer agrees to pay any such assessment designed to equalize the contributions

between the Developers. No Developer shall be entitled to contribution among any other person, firm or corporation contracting with the Authority for sewer service.

If either this Agreement or any Agreement with either of the other Developers is annulled or terminated for any reason, the remaining Developer or Developers shall pay all such assessments and contributions as set forth above, but the obligation to make payments shall be reduced pro tanto by the amount of service charges and other revenues received from customers.

6. Developer shall install the collection system and mains in accordance with the plans approved by the Authority and in accordance with the regulations of all other governmental entities having jurisdiction, approvals for which shall be obtained in writing and filed with the HTMUA.

7. Any application by Developer before the Hardyston Township Planning Board or Zoning Board of Adjustment as the case may be and all maps on file, construction plans, detailed maps, state laws, county ordinances, municipal ordinances, Authority rules and regulations, and Planning Board rules and regulations are hereby incorporated by reference herein as if set forth at length, including any amendments thereto, heretofore or hereafter enacted.

8. Developer shall be responsible for obtaining all approvals at its sole cost and expense from the Authority, the SCMUA and the N.J. DEP and any other governmental entity having jurisdiction thereof and for the payment of all fees and costs in connection therewith. The Authority agrees to be designated as the formal applicant on any sewerage system extension permit

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application and on any and all other documents or applications relating to the facility which the Authority is to assume under the terms of this Agreement.

9. In the event the Authority determines there is a violation in the installation of the sanitary sewer system set forth herein, or a violation of the terms and conditions of this Agreement or any rules and regulations of the Authority or other applicable requirements, the Authority may issue a stop work order pursuant to its powers until such violation is corrected.

10. All construction rules and regulations of SCMUA or N.J. DEP or this Authority shall be complied with by Developer at the time of commencement of construction. Developer shall comply with all rules and regulations relating to operations as same may be revised from time to time, amended or readopted.

11. The Developer covenants and agrees to indemnify and save harmless, the Authority, its officers and servants and each and every one of them against and from any and all liabilities, suits and costs of every name and description and from all damages to which said Authority or any of its officers, agents or servants may be put with respect to any personal or other injury, loss or property damage which the Authority may suffer as a result of the carelessness in the performance of said work or through the negligence of said Developer or through any improper or defective machinery, implements or appliances used by the Developer in the aforesaid work, or through any act of omission or commission on the part of the Developer, its agent or agents, or as a result of any claim, demand, cost or judgment that may be made against it arising out of this contract for the performance

of the obligation thereof, unless the said liability, loss or damage is caused by, or arises out of, the negligence of the Authority, its officers, agents or employees.

The Developer shall take all reasonable precautions for the safety of all employees on the work site and shall comply with all of the provisions of the federal, state, municipal and Authority regulations and building codes to prevent accidents or injuries to persons on or about or adjacent to the premises where the work is being performed.

12. The Developer agrees to procure and keep in force liability insurance prior to initiation of any construction for public personal injury liability and property damage liability including contingent liability and contractual liability which might result from the performance of the work contemplated by this Agreement and shall provide the Authority with a Certificate of Insurance designating the Authority as an additional insured under each said policy and which insurance coverage shall be in at least the following amounts.

One person in any one occurrence - $500,000
Two or more persons in any one occurrence - $1,000,000
Property damage in any one occurrence, - $100,000
Aggregate property damage limit - $500,000

Developer further covenants and agrees to provide prior to initiation of any construction, vehicle liability and property damage insurance coverage and provide the Authority with a Certificate of Insurance designating the Authority as an additional insured under said policy, which insurance coverage shall be in at least the following amounts:

Bodily injury per person	- $500,000
Bodily injury per occurrence	- $1,000,000
Property damage	- $500,000

The Developer further covenants and agrees that it will provide, prior to initiation of construction, worker's compensation insurance coverage for employees and will require evidence that such coverage is to be supplied by any subcontractor who may be employed to perform work contemplated by this Agreement.

13. Whenever any payment is due the Authority from the Developer and remains unpaid for a period of thirty (30) days, a penalty shall be assessed in accordance with the rules and regulations of the Authority; should any such payment remain unpaid after sixty (60) days from its due date, the Authority may revoke the sewer flow allocation herein made to Developer. Such revocation shall be effected by a duly adopted resolution of the Authority at a regular meeting of the Authority, at least five (5) days notice of which has been sent to Developer by certified and regular mail to the address hereinabove set forth or to such other address as may have been furnished by Developer to the Authority in writing.

14. Developer shall provide to the Authority a two year maintenance guarantee in an amount equal to fifteen per cent (15%) of the actual cost of such portion of the system, which amount shall be determined by the Authority. Ten percent (10%) of such guarantee shall be in the form of cash with the remainder in the form of an Irrevocable Letter of Credit or other collateral acceptable to the Authority.

15. Developer herein certifies that it is the owner of record of the property as specifically set forth in the preamble of this Agreement which is the subject matter of this Agreement

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and agrees to furnish forthwith to the Authority a copy of a title policy covering the title to the property affected by this Agreement.

16. The Developer represents that neither the Developer nor any person owning five percent (5%) or more of the stock or equity interest in Developer's business has beer convicted of any offense under N.J.S.A. 2C:27-2, 4 & 6; 2C:27-7; 2C:29-4; 2C:30-2 and 2C:30-3 pursuant to P.L. 1981, c. 356.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed by the proper corporate officers and their proper corporate seals to be affixed hereto the day and year as indicated on the acknowledgments attached heretc and made a part hereof.

HARDYSTON TOWNSHIP MUNICIPAL UTILITIES AUTHORITY

ATTEST:

Wayne Ricker
WAYNE RICKER Secretary

By: Russell Sorge
RUSSELL SORGE Chairman

HFH DEVELOPMENT CORP.

ATTEST:

Kenneth Nann
Assistant Secretary
KENNETH NANN

By: Edward Nann
EDWARD NANN President

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FILED & RECORDED
95 APR 17 AM 9:40
SUSSEX COUNTY CLERK
NEWTON, N.J.

STATE OF NEW JERSEY:
SS
COUNTY OF SUSSEX:

I CERTIFY that on April 12 1995,

personally came before me and this person acknowledged under oath, to my satisfaction, that: WAYNE RICKER

(a) this person is the Secretary of Hardyston Township Municipal Utilities Authority, the corporation named in the attached document;
(b) this person is the attesting witness to the signing of this document by the proper corporate officer who is the Chairman of the corporation;
(c) this document was signed and delivered by the corporation as its voluntary act duly authorized by a proper resolution of its Board of Directors;
(d) this person knows the proper seal of the corporation which was affixed to this document; and
(e) this person signed this proof to attest to the truth of these facts.

Wayne Ricker
WAYNE RICKER

Sworn to and subscribed
before me this 12th
day of April, 1995.

Karen M. Sorkeen
KAREN M. SORKEEN
Attorney-At-Law
State of New Jersey

STATE OF NEW JERSEY:
SS
COUNTY OF SUSSEX:

I CERTIFY that on April 10 1995,

personally came before me and this person acknowledged under oath, to my satisfaction, that: KENNETH NINN

(a) this person is the Assistant Secretary of HFH Development Corp., the corporation named in the attached document;
(b) this person is the attesting witness to the signing of this document by the proper corporate officer who is Edward Nunn the President of the corporation;
(c) this document was signed and delivered by the corporation as its voluntary act duly authorized by a proper resolution of its Board of Directors;
(d) this person knows the proper seal of the corporation which was affixed to this document; and
(e) this person signed this proof to attest to the truth of these facts.

Kenneth Ninn
KENNETH NINN

Sworn to and subscribed
before me this 10
day of April, 1995.

Lewis Goldshore
LEWIS GOLDSHORE
ATTORNEY AT LAW
STATE OF NEW JERSEY

APPENDIX B

ORDINANCE #2026-05

AN ORDINANCE OF THE TOWNSHIP OF HARDYSTON, COUNTY OF SUSSEX, STATE OF NEW JERSEY, AMENDING CHAPTER 185, ZONING ORDINANCE OF THE TOWNSHIP OF HARDYSTON, TO ESTABLISH A NEW "AH-1 AFFORDABLE HOUSING OVERLAY-DISTRICT" FOR THE PROPERTY IDENTIFIED AS BLOCK 67 LOT 2.08 AND BLOCK 67.29 LOT 1 IN THE TOWNSHIP.

WHEREAS, the Township of Hardyston Joint Land Use Board has adopted, and the Township Council of the Township of Hardyston has endorsed, an Amended Housing Element & Fair Share Plan addressing the Township's Fourth Round affordable housing obligation; and

WHEREAS, the Amended Housing Element & Fair Share Plan recommends the establishment of an affordable housing overlay zone on the parcels located at Block 67, Lot 2.08 and Block 67.29, Lot 1 in the Township, as identified on Township's current tax records on file in the Office of the Township Tax Assessor, to be otherwise known as the "AH-1 Affordable Housing Overlay-District"; and

WHEREAS, consistent with the provisions of the Municipal Land Use Law, including N.J.S.A. 40:55D-26 and 40:55D-64, prior to the hearing on the adoption of the amendment to the Zoning Ordinance, the Township Council of the Township of Hardyston has referred to the Hardyston Joint Land Use Board the proposed amendments to the Zoning Ordinance for review, comment and recommendation.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Township Council of the Township of Hardyston, County of Sussex, State of New Jersey, as follows:

SECTION 1. Chapter 185, Zoning is hereby amended and supplemented to establish the "AH-1 Affordable Housing Overlay District" at Article XXX, and to set forth the following:

Article XXX AH-1 Affordable Housing Overlay-District

§185-140. Purpose and Applicability

A. Purpose. The purpose of the AH-1 Affordable Housing Overlay District is to provide a realistic opportunity for the development of affordable housing for households of low-and moderate-income as required by South Burlington County NAACP v. Township of Mount Laurel, 92 N.J. 158 (1983)("Mount Laurel II") and the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, et seq., ("FHA"). These regulations are intended to implement the recommendations set forth in the Township of Hardyston Planning Board's Master Plan Reexamination Report adopted on July 25, 2019, and the Township's Housing Element and Fair Share Plan for the purpose of addressing a portion of the Township's Fourth Round prospective need obligation. Specifically, the AH-1 Affordable Housing Overlay-Zone is established as an incentive for the development of affordable housing by allowing for the development of new multi-family inclusionary dwelling units and which will also address a portion of the Township's fourth round affordable housing obligation. The AH-1 Affordable Housing Overlay-District is designed to enable the property within the Overlay District to be developed in the manner set forth herein as an alternative to the underlying MIDD-3 and R-4 zoning district and development standards that are, and shall remain in force, except for the property located at Block 67, Lot 2.08 and Block 67.29, Lot 1. The dwelling units permitted in the AH-1 Affordable Housing Overlay-District shall comply with the standards set forth herein and include a mandatory affordable housing set-aside as provided in this subsection.

B. Applicability. The provisions set forth herein pertaining to the AH-1 Affordable Housing Overlay-District shall apply exclusively and solely to the properties designated and known as Block 67, Lot 2.08 and Block 67.29, Lot 1on the Township's current official Tax Maps of record on file in the office of the Township of Hardyston Tax Assessor, which is otherwise known as the "YMCA Front Tract" and "Indian Field Phase 5".

§ 185-141. Use regulations.

A. Principal uses. The following principal uses shall be permitted in the AH-1 District:

(1) Attached single-family dwellings.

(2) Quadraplex dwellings.

B. Accessory uses. The following accessory uses shall be permitted in the AH-1 District:

(1) Required off-street parking spaces.

(2) Private garages and private patios and decks, as defined in this chapter.

(3) Signs as permitted by Article XIX.

(4) Community swimming pools, tennis courts and clubhouses and gyms not to exceed 25 feet in height.

(5) Stormwater management structures.

(6) Rental/management office.

(7) Maintenance/storage buildings.

(8) Any other use which the applicable Board determines is customarily incidental to the principal permitted use on the premises.

§ 185-142. Bulk requirements and other conditions.

A. Maximum number of residential units per acre in the district shall be 6.

B. Maximum building coverage in the district shall be 20%.

C. Minimum perimeter setback to the zone boundary is 25 feet.

D. Minimum distance from a townhouse unit and a quadraplex unit is 80 feet.

E. Attached single-family dwellings and quadraplex dwellings: See § 185-143 (Schedule of Bulk Requirements below).

F. Accessory structures: all accessory structures shall meet the bulk and other requirements of the underlying zone except as may otherwise be specifically provided in § 185-143.

G. All required off-street parking shall conform to the Residential Site Improvement Standards (RSIS).

H. Recreation amenities shall be constructed throughout the entire tract consistent with the amenities which have already been constructed and shall include both passive and active amenities including but not limited to walking paths, tot lots, open space, athletic fields and park/picnic areas.

I. Mandatory affordable housing provisions.

(1) Within the AH-1 Affordable Housing Overlay-District, at least 20% of the total residential dwelling units constructed, rounded up to the next whole dwelling unit, shall be restricted for "very-low income housing," "low-income housing" and "moderate-income housing," as these terms are defined in the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, et seq., ("FHA"). All affordable units shall be constructed on site and in accordance with the provisions of the FHA, the Uniform Housing Affordability Controls set forth at N.J.A.C. 5:80-26.1 et seq. (UHAC), and the Township's Affordable Housing regulations set forth at §185-90.1.

(2) At least fifty (50) percent of the total number of all affordable dwelling units shall be restricted to person(s) qualifying for low-income housing, of which no less than 13% shall be restricted for persons qualifying for "very-low income housing" as this term is defined in the FHA. The remaining balance of the total number of affordable dwelling units may be restricted for persons qualifying for moderate-income housing. In no event shall the total number of moderate-income housing units exceed fifty (50) percent of the total number of affordable dwelling units.

(3) All affordable dwelling units shall be deed restricted for occupancy in accordance with the terms and conditions of the Township's affordable housing deed restriction. The purchaser of any affordable dwelling unit offered for sale or resale shall also be required to execute an individual Township approved affordable housing unit deed restriction along with a Township approved recapture mortgage lien and recapture note.

(4) The length of the affordability control period set forth in any affordable housing deed restriction for each affordable dwelling unit sold or offered for sale or resale shall be for a minimum period of time of at least forty (40) years from the later of the date the first affordable household occupies the unit or the date the first certificate of occupancy is issued for the respective affordable unit. Each deed restriction shall include a reservation of the Township's right and option to extend the initial affordability control period for an additional period of time in accordance with the provisions of the FHA, the UHAC and the Township's Affordable Housing regulations set forth at §185-90.1.

(5) The length of the affordability control period set forth in any affordable housing deed restriction for each affordable dwelling unit to be rented or offered for rent shall be for a minimum period of time of at least forty (40) years from the later of the date the first affordable household occupies the respective unit or the date the first certificate of occupancy is issued for the respective affordable unit. The affordable housing deed restriction shall include a reservation of the Township's right and option to extend the initial affordability control period for an additional period of time in accordance with the provisions of the FHA, the UHAC and the Township's Affordable Housing regulations set forth at §185-90.1.

(6) All affordable dwelling units shall be constructed, affirmatively marketed, sold or rented, and occupied in accordance with the provisions of the FHA, the UHAC and the Township's Affordable Housing regulations set forth at §185-90.1.

(7) Affordability Averages. The range of affordability, minimum and maximum pricing for the sale and/or rental of affordable dwelling units and affordability average requirements shall meet all requirements of the FHA, the UHAC and the Township's Affordable Housing regulations set forth at §185-90.1.

(8) Affordable Dwelling Bedroom Distribution; Construction Phasing. The bedroom distribution of all affordable dwelling units, and construction phasing of the affordable dwelling units with the market rate dwelling units to be developed on the tract shall meet the requirements of the FHA and the UHAC.

(9) Unless otherwise permitted by the Township, the Township's Municipal Housing Liaison and Affordable Housing Administrative Agent shall be responsible to affirmatively market, administer and certify each household for any for sale or rental affordable unit, with all administrative costs to be paid by the developer/owner of the property.

(10) The developer/owner shall provide the Joint Land Use Board with appropriate documentation at the time of application for preliminary site plan approval to demonstrate compliance with the requirements for the low-and moderate-income units as set forth in this subsection.

185-143. Attached single-family house and quadraplex dwellings in the AH-1 Affordable Housing Overlay-District

Schedule of Bulk Requirements

Development Standard	Attached Single-Family	Quadraplex Dwellings
Maximum number of units per structure	6	4
Maximum length of structure	200 feet	100 feet
Maximum number of single units served by a single common entrance	1	1
Minimum number of entrance/exits per unit	2	1
Maximum height [1]	35 feet	35 feet
Minimum distance between groups of structures:		
End to end	35 feet	15 feet
Rear to rear	60 feet	25 feet
Front to rear	75 feet	75 feet
Front to front	75 feet	75 feet
Front to side (except that buildings may join at corners)	50 feet	50 feet
Minimum distance to public road	65 feet	65 feet
Minimum distance to private road	25 feet	25 feet
Minimum lot width at street	12 feet	N/A
Minimum lot width at building front line	18 feet	N/A
Minimum distance to side property line	25 feet	N/A
Minimum distance to rear property line	25 feet	N/A
Minimum front yard	25 feet	N/A
Required off-set	Minimum of 4 feet every 50 feet	Minimum of 4 feet every 50 feet [2]
Required off-street parking spaces	Per Residential Site Improvement Standards	Per Residential Site Improvement Standards
Patios and decks	Permitted in rear yard but not within 15 feet of a rear property line	Permitted within the rear yard but not within 25 feet of another building [3]

Notes:

1 Accessory structures shall not exceed 25 feet in height.

2 Applies only to the front (street-facing) facade of the building.

3 Patios and/or decks attached to the rear of one building shall be setback the following minimum distance from a patio and/or deck attached to the rear of another building: when facing rear to rear, 25 feet; when facing side to side, 15 feet.

SECTION 2. Zoning Map. Pursuant to N.J.S.A. 40A:12A-7(c), the Township's Zoning Map is hereby amended to identify AH-1 Affordable Housing Overlay-District and the properties described above.

SECTION 3. If any article, section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance and they shall remain in full force and effect.

SECTION 4. In the event of any inconsistencies between the provisions of this Ordinance and any prior ordinance of the Township of Hardyston, the provisions hereof shall be determined to govern. All other parts, portions and provisions of the Code of the Township of Hardyston are hereby ratified and confirmed, except where inconsistent with the terms hereof.

SECTION 5. The Township Clerk is directed to give notice at least ten (10) days prior to a hearing on the adoption of this ordinance to the Sussex County Planning Board and to all other persons entitled thereto pursuant to N.J.S.A. 40:55D-15, and N.J.S.A. 40:55D-63 (if required).

SECTION 6. After introduction, the Township Clerk is hereby directed to submit a copy of the within Ordinance to the Joint Land Use Board of the Township of Hardyston for its review in accordance with N.J.S.A. 40:55D-26 and N.J.S.A. 40:55D-64. The Joint Land Use Board is directed to make and transmit to the Township Council, within 35 days after referral, a report including identification of any provisions in the proposed ordinance which are inconsistent with the master plan and recommendations concerning any inconsistencies and any other matter as the Board deems appropriate.

SECTION 8. This Ordinance shall take effect immediately upon (1) adoption; (2) publication in accordance with the laws of the State of New Jersey; and (3) filing of the final form of adopted ordinance by the Clerk with (a) the Sussex County Planning Board pursuant to N.J.S.A. 40:55D-16, and (b) the Township Tax Assessor as required by N.J.S.A. 40:49-2.1.

Introduced:

Adopted:

Effective Date:

TOWNSHIP OF HARDYSTON

_____

Stanley Kula, Mayor

Attest:

Jane Bakalarczyk Township Clerk

ORDINANCE #2026-06

AN ORDINANCE OF THE TOWNSHIP OF HARDYSTON, COUNTY OF SUSSEX, STATE OF NEW JERSEY, AMENDING CHAPTER 185, ZONING ORDINANCE OF THE TOWNSHIP OF HARDYSTON, TO ESTABLISH A NEW "AH-2 AFFORDABLE HOUSING OVERLAY-DISTRICT" FOR THE PROPERTY IDENTIFIED AS BLOCK 67 LOT 16.03 AND BLOCK 67.05 LOT 1 IN THE TOWNSHIP.

WHEREAS, the Township of Hardyston Joint Land Use Board has adopted, and the Township Council of the Township of Hardyston has endorsed, an Amended Housing Element & Fair Share Plan addressing the Township's Fourth Round affordable housing obligation; and

WHEREAS, the Amended Housing Element & Fair Share Plan recommends the establishment of an affordable housing overlay zone on the parcels located at Block 67, Lot 16.03 and Block 67.05, Lot 1 in the Township, as identified on Township's current tax records on file in the Office of the Township Tax Assessor, to be otherwise known as the "AH-2 Affordable Housing Overlay-District"; and

WHEREAS, consistent with the provisions of the Municipal Land Use Law, including N.J.S.A. 40:55D-26 and 40:55D-64, prior to the hearing on the adoption of the amendment to the Zoning Ordinance, the Township Council of the Township of Hardyston has referred to the Hardyston Joint Land Use Board the proposed amendments to the Zoning Ordinance for review, comment and recommendation.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Township Council of the Township of Hardyston, County of Sussex, State of New Jersey, as follows:

SECTION 1. Chapter 185, Zoning is hereby amended and supplemented to establish the "AH-2 Affordable Housing Overlay District" at Article XXXI, and to set forth the following:

Article XXXI AH-2 Affordable Housing Overlay-District

§185-145. Purpose and Applicability

A. Purpose. The purpose of the AH-2 Affordable Housing Overlay District is to provide a realistic opportunity for the development of affordable housing for households of low- and moderate-income as required by South Burlington County NAACP v. Township of Mount Laurel, 92 N.J. 158 (1983)("Mount Laurel II") and the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, et seq., ("FHA"). These regulations are intended to implement the recommendations set forth in the Township of Hardyston Planning Board's Master Plan Reexamination Report adopted on July 25, 2019, and the Township's Housing Element and Fair Share Plan for the purpose of addressing a portion of the Township's Fourth Round prospective need obligation. Specifically, the AH-2 Affordable Housing Overlay-Zone is established as an incentive for the development of affordable housing by allowing for the development of new multi-family inclusionary dwelling units and which will also address a portion of the Township's fourth round affordable housing obligation. The AH-2 Affordable Housing Overlay-District is designed to enable the property within the Overlay District to be developed in the manner set forth herein as an alternative to the underlying B-1 zoning district and development standards that are, and shall remain in force, except for the

property located at Block 67, Lot 16.03 and Block 67.05, Lot 1. The multi-family inclusionary dwelling units may be mixed with the underlying zone district development standards. The dwelling units permitted in the AH-2 Affordable Housing Overlay-District shall comply with the standards set forth herein and include a mandatory affordable housing set-aside as provided in this subsection.

B. Applicability. The provisions set forth herein pertaining to the AH-2 Affordable Housing Overlay-District shall apply exclusively and solely to the properties designated and known as Block 67, Lot 16.03 and Block 67.05, Lot 1 on the Township's current official Tax Maps of record on file in the office of the Township of Hardyston Tax Assessor, which is otherwise known as "Indian Field Commercial".

§ 185-146. Use regulations.

A. Principal uses. The following principal uses shall be permitted in the AH-2 District:

(1) Mixed-use development consisting of a combination of any B-1 zone district permitted principal, accessory or conditional use and affordable inclusionary multi-family dwelling units.

(2) Affordable inclusionary multi-family dwelling units may be developed in residential buildings or above ground floor non-residential space (mixed use building), or any combination thereof.

(3) Affordable inclusionary multi-family dwelling and mixed use buildings: See § 185-143 (Schedule of Bulk Requirements below).

B. Accessory uses. The following accessory uses for affordable inclusionary multi-family dwelling units shall be permitted in the AH-2 District:

(1) Required off-street parking spaces.

(2) Private garages and private patios and decks, as defined in this chapter.

(3) Signs as permitted by Article XIX.

(4) Stormwater management structures.

(5) Rental/management office.

(6) Maintenance/storage buildings.

(7) Any other use which the applicable Board determines is customarily incidental to the principal permitted use on the premises.

§ 185-147. Bulk requirements and other conditions.

A. Maximum number of residential units per acre in the district shall be 6.

B. Minimum floor area ratio of non-residential development applied to residential development shall 0.3

C. Accessory structures: all accessory structures shall meet the bulk and other requirements of the underlying zone except as may otherwise be specifically

provided in § 185-148.

D. All required residential off-street parking shall conform to the Residential Site Improvement Standards (RSIS).

E. Recreation amenities and open space shall be constructed throughout the entire tract consistent with the amenities which have already been constructed and shall include both passive and active amenities.

F. Mandatory affordable housing provisions.

(1) Within the AH-2 Affordable Housing Overlay-District, at least 20% of the total residential dwelling units constructed, rounded up to the next whole dwelling unit, shall be restricted for "very-low income housing," "low-income housing" and "moderate-income housing," as these terms are defined in the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, et seq., ("FHA"). All affordable units shall be constructed on site and in accordance with the provisions of the FHA, the Uniform Housing Affordability Controls set forth at N.J.A.C. 5:80-26.1 et seq. (UHAC), and the Township's Affordable Housing regulations set forth at §185-90.1.

(2) At least fifty (50) percent of the total number of all affordable dwelling units shall be restricted to person(s) qualifying for low-income housing, of which no less than 13% shall be restricted for persons qualifying for "very-low income housing" as this term is defined in the FHA. The remaining balance of the total number of affordable dwelling units may be restricted for persons qualifying for moderate-income housing. In no event shall the total number of moderate-income housing units exceed fifty (50) percent of the total number of affordable dwelling units.

(3) All affordable dwelling units shall be deed restricted for occupancy in accordance with the terms and conditions of the Township's affordable housing deed restriction. The purchaser of any affordable dwelling unit offered for sale or resale shall also be required to execute an individual Township approved affordable housing unit deed restriction along with a Township approved recapture mortgage lien and recapture note.

(4) The length of the affordability control period set forth in any affordable housing deed restriction for each affordable dwelling unit sold or offered for sale or resale shall be for a minimum period of time of at least forty (40) years from the later of the date the first affordable household occupies the unit or the date the first certificate of occupancy is issued for the respective affordable unit. Each deed restriction shall include a reservation of the Township's right and option to extend the initial affordability control period for an additional period of time in accordance with the provisions of the FHA, the UHAC and the Township's Affordable Housing regulations set forth at §185-90.1.

(5) The length of the affordability control period set forth in any affordable housing deed restriction for each affordable dwelling unit to be rented or offered for rent shall be for a minimum period of time of at least forty (40) years from the later of the date the first affordable household occupies the respective unit or the date the

first certificate of occupancy is issued for the respective affordable unit. The affordable housing deed restriction shall include a reservation of the Township's right and option to extend the initial affordability control period for an additional period of time in accordance with the provisions of the FHA, the UHAC and the Township's Affordable Housing regulations set forth at §185-90.1.

(6) All affordable dwelling units shall be constructed, affirmatively marketed, sold or rented, and occupied in accordance with the provisions of the FHA, the UHAC and the Township's Affordable Housing regulations set forth at §185-90.1.

(7) Affordability Averages. The range of affordability, minimum and maximum pricing for the sale and/or rental of affordable dwelling units and affordability average requirements shall meet all requirements of the FHA, the UHAC and the Township's Affordable Housing regulations set forth at §185-90.1.

(8) Affordable Dwelling Bedroom Distribution; Construction Phasing. The bedroom distribution of all affordable dwelling units, and construction phasing of the affordable dwelling units with the market rate dwelling units to be developed on the tract shall meet the requirements of the FHA and the UHAC.

(9) Unless otherwise permitted by the Township, the Township's Municipal Housing Liaison and Affordable Housing Administrative Agent shall be responsible to affirmatively market, administer and certify each household for any for sale or rental affordable unit, with all administrative costs to be paid by the developer/owner of the property.

(10) The developer/owner shall provide the Joint Land Use Board with appropriate documentation at the time of application for preliminary site plan approval to demonstrate compliance with the requirements for the low-and moderate-income units as set forth in this subsection.

185-148. Multi-family dwelling and mixed use buildings in the AH-2 Affordable Housing Overlay-District

Schedule of Bulk Requirements

Development Standard	Apartment Building and Garden Apartments	Attached Single-Family	Multi-Level Housing
Maximum number of dwelling units/ structures	12	8	16
Maximum length of structure	200 feet	200 feet	175 feet
Maximum building coverage	20%	20%	30%
Maximum number of single units served by single common entrance	2	1	1
Minimum number of entrance/ exits per unit	2	1	1
Maximum height	50 feet for apartment buildings; 35 feet for garden apartment	35 feet	35 feet
Minimum distance between groups of structures:			
End to end	35 feet	35 feet	35 feet
Rear to rear	60 feet	60 feet	60 feet
Front to back	75 feet	75 feet	75 feet
Front to front	75 feet	75 feet	75 feet
Front to side (except that buildings may join at corners)	50 feet	50 feet	50 feet

Minimum distance to road	65 feet	50 feet	50 feet
Minimum distance internal road	45 feet	25 feet	25 feet
Minimum distance to side property line	75 feet	25 feet	25 feet
Minimum distance to rear property line	75 feet	25 feet	25 feet
Required off-set	Minimum of 4 feet every 50 feet	N/A	Minimum of 4 feet every 50 feet
Patios and decks	Not allowed outside the permitted building envelope	Permitted in the rear yard but not within 15 feet of the rear property line	Not allowed outside the permitted building envelope

SECTION 2. Zoning Map. Pursuant to N.J.S.A. 40A:12A-7(c), the Township's Zoning Map is hereby amended to identify AH-2 Affordable Housing Overlay-District and the properties described above.

SECTION 3. If any article, section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance and they shall remain in full force and effect.

SECTION 4. In the event of any inconsistencies between the provisions of this Ordinance and any prior ordinance of the Township of Hardyston, the provisions hereof shall be determined to govern. All other parts, portions and provisions of the Code of the Township of Hardyston are hereby ratified and confirmed, except where inconsistent with the terms hereof.

SECTION 5. The Township Clerk is directed to give notice at least ten (10) days prior to a hearing on the adoption of this ordinance to the Sussex County Planning Board and to all other persons entitled thereto pursuant to N.J.S.A. 40:55D-15, and N.J.S.A. 40:55D-63 (if required).

SECTION 6. After introduction, the Township Clerk is hereby directed to submit a copy of the within Ordinance to the Joint Land Use Board of the Township of Hardyston for its review in accordance with N.J.S.A. 40:55D-26 and N.J.S.A. 40:55D-64. The Joint Land Use Board is directed to make and transmit to the Township Council, within 35 days after referral, a report including identification of any provisions in the proposed ordinance which are inconsistent with

the master plan and recommendations concerning any inconsistencies and any other matter as the Board deems appropriate.

SECTION 9. This Ordinance shall take effect immediately upon (1) adoption; (2) publication in accordance with the laws of the State of New Jersey; and (3) filing of the final form of adopted ordinance by the Clerk with (a) the Sussex County Planning Board pursuant to N.J.S.A. 40:55D-16, and (b) the Township Tax Assessor as required by N.J.S.A. 40:49-2.1.

Introduced:

Adopted:

Effective Date:

TOWNSHIP OF HARDYSTON

_____

Stanley Kula, Mayor

Attest:

_____

Jane Bakalarczyk Township Clerk

APPENDIX C

TOWNSHIP OF HARDYSTON
ORDINANCE #2026-04

AN ORDINANCE OF THE COUNCIL OF THE TOWNSHIP OF HARDYSTON AMENDING CHAPTER 185 ENTITLED 'ZONING' OF THE CODE OF THE TOWNSHIP OF HARDYSTON TO DELETE THE EXISTING SECTION 185-90.1 ENTITLED VERY-LOW, LOW AND MODERATE INCOME HOUSING' AND TO REPLACE IT IN ITS ENTIRETY WITH A NEW SECTION 185-90.1 ENTITLED "AFFORDABLE HOUSING" AND TO MAKE OTHER AMENDMENTS

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Township of the Hardyston as follows:

Section 1: Chapter 185 entitled "Zoning" is hereby amended to delete the existing section 185-90.1} entitled "Very-low, low- and moderate-income housing" and to replace it in its entirety with the following section 185-90.1 entitled "Affordable Housing."

185-90.1 Affordable Housing

A. Introduction & Applicability

1. This section of the Code sets forth regulations regarding the very low-, low- and moderate-income housing units in Hardyston consistent with the provisions outlined in P.L 2024, Chapter 2, including the amended Fair Housing Act ("FHA") at N.J.S.A. 52:27D-301 et seq., as well as the Department of Community Affairs, Division of Local Planning Services ("LPS") at N.J.A.C. 5:99 et seq., statutorily upheld existing regulations of the now-defunct Council on Affordable Housing ("COAH") at N.J.A.C. 5:93 and 5:97, the Uniform Housing Affordability Controls ("UHAC") at N.J.A.C. 5:80-26.1 et seq., and as reflected in the adopted municipal Fourth Round Housing Element and Fair Share Plan ("HEFSP").

2. This Ordinance is intended to ensure that very low-, low- and moderate-income units ("affordable units") are created with controls on affordability over time and that very low-, low- and moderate-income households shall occupy these units pursuant to statutory requirements. This Ordinance shall apply to all inclusionary developments, individual affordable units, and 100% affordable housing developments except where inconsistent with applicable law. Low-Income Housing Tax Credit financed developments shall adhere to the provisions set forth below in item 5.c. below.

3. The Hardyston Joint Land Use Board has adopted a HEFSP pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq. The Fair Share Plan describes the ways the municipality shall address its fair share of very low-, low- and moderate-income housing as approved by the Superior Court and documented in the Housing Element.

4. This Ordinance implements and incorporates the relevant provisions of the HEFSP and addresses the requirements of P.L 2024, Chapter 2, the FHA, N.J.A.C. 5:99, NJ Supreme Court

upheld COAH regulations at N.J.A.C. 5:93 and 5:97, and UHAC at N.J.A.C. 5:80-26.1, as may be amended and supplemented.

5. Applicability

a. The provisions of this Ordinance shall apply to all affordable housing developments and affordable housing units that currently exist and that are proposed to be created pursuant to the municipality's most recently adopted HEFSP.
b. This Ordinance shall apply to all developments that contain very low-, low- and moderate-income housing units included in the Municipal HEFSP, including any unanticipated future developments that will provide very low-, low- and moderate-income housing units.
c. Projects receiving federal Low Income Housing Tax Credit financing and are proposed for credit shall comply with the low/moderate split and bedroom distribution requirements, maximum initial rents and sales prices requirements, affirmative fair marketing requirements of UHAC at N.J.A.C. 5:80-26.16 and the length of the affordability controls applicable to such projects shall be not less than a 30-year compliance period plus a 15-year extended-use period, for a total of not less than 45 years.

B. Definitions

As used herein the following terms shall have the following meanings:

"Accessory apartments" means a residential dwelling unit that provides complete independent living facilities with a private entrance for one or more persons, consisting of provisions for living, sleeping, eating, sanitation, and cooking, including a stove and refrigerator, and is located within a proposed preexisting primary dwelling, within an existing or proposed structure that is an accessory to a dwelling on the same lot, constructed in whole or part as an extension to a proposed or existing primary dwelling, or constructed as a separate detached structure on the same lot as the existing or proposed primary dwelling. Accessory apartments are also referred to as "accessory dwelling units."

"Act" means the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq.

"Adaptable" means constructed in compliance with the technical design standards of the barrier free subcode adopted by the Commissioner of Community Affairs pursuant to the "State Uniform Construction Code Act," P.L.1975, c. 217 (C.52:27D-119 et seq.) and in accordance with the provisions of section 5 of P.L.2005, c. 350 (C.52:27D-123.15).

"Administrative agent" means the entity approved by the Division responsible for the administration of affordable units, in accordance with N.J.A.C. 5:99-7, and UHAC at N.J.A.C. 5:80-26.15.

"Affirmative marketing" means a regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-26.16.

"Affirmative Marketing Plan" means the municipally adopted plan of strategies from which the administrative agent will choose to implement as part of the Affirmative Marketing requirements.

"Affirmative Marketing Process" or "Program" means the actual undertaking of Affirmative Marketing activities in furtherance of each project with very low- low- and moderate-income units.

"Affordability assistance" means the use of funds to render housing units more affordable to low- and moderate-income households and includes, but is not limited to, down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowner's association or condominium fees and special assessments, common maintenance expenses, and assistance with emergency repairs and rehabilitation to bring deed-restricted units up to code, pursuant to N.J.A.C. 5:99-2.5.

"Affordability average" means an average of the percentage of regional median income at which restricted units in an affordable development are affordable to low- and moderate-income households.

"Affordable" means, in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth at N.J.A.C. 5:80-26.7 and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth at N.J.A.C. 5:80-26.13.

"Affordable housing development" means a development included in a municipality's housing element and fair share plan, and includes, but is not limited to, an inclusionary development, a municipally sponsored affordable housing project, or a 100 percent affordable development. This includes developments with affordable units on-site, off-site, or provided as a payment in-lieu of construction only if such a payment-in-lieu option has been previously approved by the Program or Superior Court as part of the HEFSP. Payments in lieu of construction were invalidated per P.L. 2024, c.2.

"Affordable Housing Dispute Resolution Program" or "the Program" refers to the dispute resolution program established pursuant to N.J.S.A. 52:27D-313.2.

"Affordable Housing Monitoring System" or "AHMS" means the Department's cloud-based software application, which shall be the central repository for municipalities to use for reporting detailed information regarding affordable housing developments, affordable housing unit completions, and the collection and expenditures of funds deposited into the municipal affordable housing trust fund.

"Affordable Housing Trust Fund" or "AHTF" means that non-lapsing, revolving trust fund established in DCA pursuant to N.J.S.A. 52:27D-320 and N.J.A.C. 5:43 to be the repository of all State funds appropriated for affordable housing purposes. All references to the "Neighborhood Preservation Non-lapsing Revolving Fund" and "Balanced Housing" mean the AHTF.

"Affordable unit" means a housing unit proposed or developed pursuant to the Act, including units created with municipal affordable housing trust funds.

"Age-restricted housing" means a housing unit that is designed to meet the needs of, and is exclusively for, an age-restricted segment of the population such that: 1. All the residents of the development where the unit is situated are 62 years or older; 2. At least 80 percent of the units are occupied by one person that is 55 years or older; or 3. The development has been designated by the Secretary of HUD as "housing for older persons" as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

"Agency" means the New Jersey Housing and Mortgage Finance Agency established by P.L.1983, c. 530 (C.55:14K-1 et seq.).

"Assisted living residence" means a facility licensed by the New Jersey Department of Health to provide apartment-style housing and congregate dining and to ensure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor. Apartment units must offer, at a minimum, one unfurnished room, a private bathroom, a kitchenette, and a lockable door on the unit entrance.

"Barrier-free escrow" means the holding of funds collected to adapt affordable unit entrances to be accessible in accordance with N.J.S.A. 52:27D-311a et seq. Such funds shall be held in a municipal affordable housing trust fund pursuant to N.J.A.C. 5:99-2.6.

"Builder's remedy" means court-imposed site-specific relief for a litigant who seeks to build affordable housing for which the court requires a municipality to utilize zoning techniques, such as mandatory set-asides or density bonuses, including techniques which provide for the economic viability of a residential development by including housing that is not for low- and moderate-income households.

"Certified household" means a household that has been certified by an administrative agent as a very-low-income household, a low-income household, or a moderate-income household.
"CHOICE" means the no-longer-active Choices in Homeownership Incentives for Everyone Program, as it was authorized by the Agency.

"COAH" or the "Council" means the Council on Affordable Housing established in, but not of, DCA pursuant to the Act and that was abolished effective March 20, 2024, pursuant to section 3 at P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.1).

"Commissioner" means the Commissioner of the Department of Community Affairs.

"Compliance certification" means the certification obtained by a municipality pursuant to section 3 of P.L.2024, c. 2 (C.52:27D-304.1), that protects the municipality from exclusionary zoning litigation during the current round of present and prospective need and through July 1 of the year the next round begins, which is also known as a "judgment of compliance" or

"judgment of repose." The term "compliance certification" shall include a judgment of repose granted in an action filed pursuant to section 13 of P.L.1985, c. 222 (C.52:27D-313).

"Construction" means new construction and additions, but does not include alterations, reconstruction, renovations, conversion, relocation, or repairs, as those terms are defined in the State Uniform Construction Code promulgated pursuant to the State Uniform Construction Code Act, P.L. 1975, c. 217(N.J.S.A. 52:27D-119 et seq.).

"County-level housing judge" means a judge appointed pursuant to section 5 at P.L. 2024, c. 2, to resolve disputes over the compliance of municipal fair share affordable housing obligations and municipal Fair Share plans and housing elements with the Act.

"DCA" and "Department" mean the State of New Jersey Department of Community Affairs.

"Deficient housing unit" means a housing unit with health and safety code violations that require the repair or replacement of a major system. A major system includes weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and/or load bearing structural systems.

"Department" means the New Jersey Department of Community Affairs.

"Developer" means the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.

"Development" means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure, or of any mining, excavation, or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

"Development fee" means money paid by a developer for the improvement of residential and non-residential property as permitted pursuant to N.J.S.A. 52:27D-329.2 and 40:55D-8.1 through 40:55D-8.7 and N.J.A.C. 5:99-3.

"Dispute Resolution Program" means the Affordable Housing Dispute Resolution Program, established pursuant to section 5 at P.L. 2024, c. 2 (N.J.S.A. 52:27D-313.2).

"Division" means the Division of Local Planning Services within the Department of Community Affairs.

"Emergent opportunity" means a circumstance that has arisen whereby affordable housing will be able to be produced through a delivery mechanism not originally contemplated by or included in a fair share plan that has been the subject of a compliance certification.

"Equalized assessed value" or "EAV" means the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5, and 6 at P.L. 1973, c. 123 (N.J.S.A. 54:1-35a, 54:1-35b, and 54:1-35c). Estimates at the time of building permit may be obtained by the tax assessor using construction cost estimates. Final EAV shall be determined at project completion by the municipal assessor.

"Equity share amount" means the product of the price differential and the equity share, with the equity share being the whole number of years that have elapsed since the last non-exempt sale of a restricted ownership unit, divided by 100, except that the equity share may not be less than five percent and may not exceed 30 percent.

"Exit sale" means the first authorized non-exempt sale of a restricted unit following the end of the control period, which sale terminates the affordability controls on the unit.

"Exclusionary zoning litigation" means litigation challenging the fair share plan, housing element, ordinances, or resolutions that implement the fair share plan or housing element of a municipality based on alleged noncompliance with the Act or the Mount Laurel doctrine, which litigation shall include, but shall not be limited to, litigation seeking a builder's remedy.

"Extension of expiring controls" means extending the deed restriction period on units where the controls will expire in the current round of a housing obligation, so that the total years of a deed restriction is at least 60 years.

"Fair share obligation" means the total of the present need and prospective need, including prior rounds, as determined by the Affordable Housing Dispute Resolution Program, or a court of competent jurisdiction.

"Fair share plan" means the plan or proposal, with accompanying ordinances and resolutions, by which a municipality proposes to satisfy its constitutional obligation to create a realistic opportunity to meet its fair share of low- and moderate-income housing needs of its region and which details the affirmative measures the municipality proposes to undertake to achieve its fair share of low - and moderate-income housing, as provided in the municipal housing element, and which addresses the development regulations necessary to implement the housing element, including, but not limited to, inclusionary requirements and development fees, and the elimination of unnecessary housing cost-generating features from the municipal land use ordinances and regulations.

"FHA" means the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq.

"Green Building Strategies" means the strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

"HMFA" or "the Agency" means the New Jersey Housing and Mortgage Finance Agency established pursuant to P.L. 1983, c. 530 (N.J.S.A. 55:14K-1 et seq.).

"Household income" means a household's gross annual income calculated in a manner consistent with the determination of annual income pursuant to section 8 of the United States Housing Act of 1937 (Section 8), not in accordance with the determination of gross income for Federal income tax liability.

"Housing element" means the portion of a municipality's master plan adopted in accordance with the Municipal Land Use Law (MLUL) at N.J.S.A. 40:55D-28.b(3) and the Act consisting of reports, statements proposals, maps, diagrams, and text designed to meet the municipality's fair share of its region's present and prospective housing needs, particularly with regard to low- and moderate-income housing, which shall include the municipal present and prospective obligation for affordable housing, determined pursuant to subsection f. at N.J.S.A. 52:27D-304.1.

"Housing region" means a geographic area established pursuant to N.J.S.A. 52:27D-304.2b.

"Inclusionary development" means a residential housing development in which a substantial percentage of the housing units are provided for a reasonable income range of low- and moderate- income households.

"Judgment of compliance" or "judgment for repose" means a determination issued by the Superior Court approving a municipality's fair share plan to satisfy its affordable housing obligation for a particular 10-year round.

"Low-income household" means a household with a household income equal to 50 percent or less of the regional median income.

"Low-income unit" means a restricted unit that is affordable to a low-income household.

"Major system" means the primary structural, mechanical, plumbing, electrical, fire protection, or occupant service components of a building which include but are not limited to, weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement or load bearing structural systems.

"Mixed use development" means any development that includes both a non-residential development component and a residential development component, and shall include developments for which: (1)there is a common developer for both the residential development component and the non-residential development component, provided that for purposes of this definition, multiple persons and entities maybe considered a common developer if there is a contractual relationship among them obligating each entity to develop at least a portion of the residential or non-residential development, or both, or otherwise to contribute resources to the development; and (2) the residential and non-residential developments are located on the same

lot or adjoining lots, including, but not limited to, lots separated by a street, a river, or another geographical feature.

"Moderate-income household" means a household with a household income in excess of 50 percent but less than 80 percent of the regional median income.

"Moderate-income unit" means a restricted unit that is affordable to a moderate-income household.

"MONI" means the no-longer-active Market Oriented Neighborhood Investment Program, as it was authorized by the Agency.

"Municipal housing liaison" or "MHL" means an appointed municipal employee who is, pursuant to N.J.A.C. 5:99-6, responsible for oversight and/or administration of the affordable units created within the municipality.

"Municipal affordable housing trust fund" means a separate, interest-bearing account held by a municipality for the deposit of development fees, payments in lieu of constructing affordable units on sites zoned for affordable housing previously approved prior to March 20, 2024 (per P.L. 2024, c.2), barrier-free escrow funds, recapture funds, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, enforcement fines, unexpended RCA funds remaining from a completed RCA project, application fees, and any other funds collected by the municipality in connection with its affordable housing programs, which shall be used to address municipal low- and moderate-income housing obligations within the time frames established by the Legislature and this chapter.

"Municipal development fee ordinance" means an ordinance adopted by the governing body of a municipality that authorizes the collection of development fees.

"New construction" means the creation of a new housing unit under regulation by a code enforcement official regardless of the means by which the unit is created. Newly constructed units are evidenced by the issuance of a certificate of occupancy and may include new residences created through additions and alterations, adaptive reuse, subdivision, or conversion of existing space, and moving a structure from one location to another.

"New Jersey Affordable Housing Trust Fund" means an account established pursuant to N.J.S.A. 52:27D-320.

"New Jersey Housing Resource Center" or "Housing Resource Center" means the online affordable housing listing portal, or its successor, overseen by the Agency pursuant to N.J.S.A. 52:27D-321.3 et seq.

"95/5 restriction" means a deed restriction governing a restricted ownership unit that is part of a housing element that received substantive certification from COAH pursuant to N.J.A.C. 5:93, as it was in effect at the time of the receipt of substantive certification, before October 1,

2001, or any other deed restriction governing a restricted ownership unit with a seller repayment option requiring 95 percent of the price differential to be paid to the municipality or an instrument of the municipality at the closing of a sale at market price.

"Non-exempt sale" means any sale or transfer of ownership of a restricted unit to one's self or to another individual other than the transfer of ownership between spouses or civil union partners; the transfer of ownership between former spouses or civil union partners ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor's deed to a class A beneficiary; and the transfer of ownership by court order.

"Nonprofit" means an organization granted nonprofit status in accordance with section 501(c)(3) of the Internal Revenue Code.

"Non-residential development" means:

Any building or structure, or portion thereof, including, but not limited to, any appurtenant improvements, which is designated to a use group other than a residential use group according to the State Uniform Construction Code, N.J.A.C. 5:23, promulgated to effectuate the State uniform Construction Code Act, N.J.S.A. 52:27D-119 et seq., including any subsequent amendments or revisions thereto;

Hotels, motels, vacation timeshares, and child-care facilities; and

The entirety of all continuing care facilities within a continuing care retirement community which is subject to the Continuing Care Retirement Community Regulation and Financial Disclosure Act, N.J.S.A.52:27D-330 et seq.

"Non-residential development fee" means the fee authorized to be imposed pursuant to N.J.S.A. 40:55D-8.1 through 40:55D-8.7.

"Order for repose" means the protection a municipality has from a builder's remedy lawsuit for a period of time from the entry of a judgment of compliance by the Superior Court. A judgment of compliance often results in an order for repose.

"Payment in lieu of constructing affordable units" means the prior approval of the payment of funds to the municipality by a developer when affordable units are were not produced on a site zoned for an inclusionary development. The statutory permission for payments in lieu of constructing affordable units was eliminated per P.L. 2024, c.2.

"Prospective need" means a projection of housing needs based on development and growth which is reasonably likely to occur in a region or a municipality, as the case may be, as a result of actual determination of public and private entities. Prospective need shall be determined by the methodology set forth pursuant to sections 6 and 7 of P.L.2024, c. 2 (C.52:27D-304.2 and C.52:27D-304.3) for the fourth round and all future rounds of housing obligations.

"Qualified Urban Aid Municipality" means a municipality that meets the criteria established pursuant to N.J.S.A. 52:27D-304.3.c(1).

"Person with a disability" means a person with a physical disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, aging, or illness including epilepsy and other seizure disorders, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impairment, deafness or hearing impairment, the inability to speak or a speech impairment, or physical reliance on a service animal, wheelchair, or other remedial appliance or device.

"Price differential" means the difference between the controlled sale price of a restricted unit and the contract price at the exit sale of the unit, determined as of the date of a proposed contract of sale for the unit. If there is no proposed contract of sale, the price differential is the difference between the controlled sale price of a restricted unit and the appraised value of the unit as if it were not subject to UHAC, determined as of the date of the appraisal. If the controlled sale price exceeds the contract price or, in the absence of a contract price, the appraised value, the price differential is zero dollars.

"Prior round unit" means a housing unit that addresses a municipality's fair share obligation from a round prior to the fourth round of affordable housing obligations, including any unit that: (1) received substantive certification from COAH; (2) is part of a third-round settlement agreement or judgment of compliance approved by a court of competent jurisdiction, inclusive of units created pursuant to a zoning designation adopted as part of the settlement agreement or judgment of compliance to create a realistic opportunity for development; (3) is subject to a grant agreement or other contract with either the State or a political subdivision thereof entered into prior to July 1, 2025, pursuant to either item (1) or (2) above; or (4) otherwise addresses a municipality's fair share obligation from a round prior to the fourth round of affordable housing obligations. A unit created after the enactment of P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.1) on March 20, 2024, is not a prior round unit unless: (1) it is created pursuant to a prior round development plan or zoning designation that received COAH or court approval on or before the cutoff date of June 30, 2025, or the date that the municipality adopts the implementing ordinances and resolutions for the fourth round of affordable housing obligations, whichever occurs sooner; and (2) its siting and creation are consistent with the form of the prior round development plan or zoning designation in effect as of the cutoff date, without any amendment or variance.

"Program" means the Affordable Housing Dispute Resolution Program, established pursuant to section 5 of P.L.2024, c. 2 (C.52:27D-313.2).

"Random selection process" means a lottery process by which currently income-eligible applicant-households are selected, at random, for placement in affordable housing units such that no preference is given to one applicant over another, except in the case of a veterans' preference where such an agreement exists; for purposes of matching household income and size with an appropriately priced and sized affordable unit; or another purpose allowed

pursuant to N.J.A.C. 5:80-26.7(k)3. This definition excludes any practices that would allow affordable housing units to be leased or sold on a first-come, first-served basis.

"RCA administrator" means an appointed municipal employee who is responsible for oversight and/or administration of affordable units and associated revenues and expenditures within the municipality that were funded through regional contribution agreements.

"RCA project plan" means a past application, submitted by a receiving municipality in an RCA, delineating the manner in which the receiving municipality intended to create or rehabilitate low- and moderate-income housing.

"Receiving municipality" means, for the purposes of an RCA, a municipality that contractually agreed to assume a portion of another municipality's fair share obligation.

"Reconstruction" means any project where the extent and nature of the work is such that the work area cannot be occupied while the work is in progress and where a new certificate of occupancy is required before the work area can be reoccupied, pursuant to the Rehabilitation Subcode of the uniform Construction Code, N.J.A.C. 5:23-6. Reconstruction shall not include projects comprised only of floor finish replacement, painting or wallpapering, or the replacement of equipment or furnishings. Asbestos hazard abatement and lead hazard abatement projects shall not be classified as reconstruction solely because occupancy of the work area is not permitted.

"Recreational facilities and community centers" means any indoor or outdoor buildings, spaces, structures, or improvements intended for active or passive recreation, including, but not limited to, ballfields, meeting halls, and classrooms, accommodating either organized or informal activity.

"Regional contribution agreement" or "RCA" means a contractual agreement, pursuant to the Act, into which two municipalities voluntarily entered into and was approved by COAH and/or Superior Court prior to July 18, 2008, to transfer a portion of a municipality's affordable housing obligation to another municipality within its housing region.

"Regional median income" means the median income by household size for an applicable housing region, as calculated annually in accordance with N.J.A.C. 5:80-26.3.

"Rehabilitation" means the repair, renovation, alteration, or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.

"Rent" means the gross monthly cost of a rental unit to the tenant, including the rent paid to the landlord, as well as an allowance for tenant-paid utilities computed in accordance with allowances published by DCA for its Section 8 program. With respect to units in assisted living residences, rent does not include charges for food and services.

"Residential development fee" means money paid by a developer for the improvement of residential property as permitted pursuant to N.J.S.A. 52:27D-329.2 and N.J.A.C. 5:99-3.2.

"Restricted unit" means a dwelling unit, whether a rental unit or ownership unit, that is subject to the affordability controls of this subchapter but does not include a market-rate unit that was financed pursuant to UHORP, MONI, or CHOICE.

"Spending plan" means a method of allocating funds contained in an affordable housing trust fund account, which includes, but is not limited to, development fees collected and to be collected pursuant to an approved municipal development fee ordinance, or pursuant to N.J.S.A. 52:27D-329.1 et seq., for the purpose of meeting the housing needs of low- and moderate-income individuals.

"State Development and Redevelopment Plan" or "State Plan" means the plan prepared pursuant to sections 1 through 12 of the "State Planning Act," P.L.1985, c. 398 (C.52:18A-196 et al.), designed to represent a balance of development and conservation objectives best suited to meet the needs of the State, and for the purpose of coordinating planning activities and establishing Statewide planning objectives in the areas of land use, housing, economic development, transportation, natural resource conservation, agriculture and farmland retention, recreation, urban and suburban redevelopment, historic preservation, public facilities and services, and intergovernmental coordination pursuant to subsection f. of section 5 of P.L.1985, c. 398 (C.52:18A-200).

"Supportive housing household" means a very low-, low- or moderate-income household certified as income eligible by an administrative agent in accordance with N.J.A.C. 5:80-26.14, in which at least one member is an individual who requires supportive services to maintain housing stability and independent living and who is part of a population identified by federal or state statute, regulation, or program guidance as eligible for supportive or special needs housing. Such populations include, but are not limited to: persons with intellectual or developmental disabilities, persons with serious mental illness, person with head injuries (as defined in Section 2 of P.L. 1977), persons with physical disabilities or chronic health conditions, persons who are homeless as defined by the U.S. Department of Housing and Urban Development at 24 C.F.R. Part 578, survivors of domestic violence, youth aging out of foster care, and other special needs populations recognized under programs administered by the U.S. Department of Housing and Urban Development, the Low-Income Housing Tax Credit Program, the McKinney–Vento Act, or the New Jersey Department of Human Services. A supportive housing household may include family members, unrelated individuals, or live-in aides, provided that the household meets the income eligibility requirements of this subchapter, except that in the case of unrelated individuals not operating as a family unit, income eligibility shall be tested on an individual basis rather than in the aggregate; the unit is leased or sold subject to the affordability controls established herein; and the supportive services available to the household are designed to promote housing stability, independent living, and community integration. The determination of whether unrelated individuals are operating as a family unit shall be made based on the applicant's self-identification of household members on the affordable housing application.

"Supportive housing sponsoring program" means grant or loan program which provided financial assistance to the development of the unit.

"Supportive housing unit" means a restricted rental unit, as defined by N.J.S.A. 34:1B-21.24, that is affordable to very low-, low- or moderate-income households and is reserved for occupancy by a supportive housing household. Supportive housing units are also referred to as permanent supportive housing units.

"Transitional housing" means temporary housing that: (1) includes, but is not limited to, single-room occupancy housing or shared living and supportive living arrangements; (2) provides access to on-site or off-site supportive services for very low-income households who have recently been homeless or lack stable housing; (3) is licensed by the department; and (4) allows households to remain for a minimum of six months.

"Treasurer" means the Treasurer of the State of New Jersey.

"UHAC" means the Uniform Housing Affordability Controls set forth at N.J.A.C. 5:80-26.

"UHORP" means the Agency's Urban Homeownership Recovery Program, as it was authorized by the Agency Board.

"Unit type" means type of dwelling unit with various building standards including but not limited to single-family detached, single-family attached/townhouse, stacked townhouse (attached building containing 2 units each with separate entrances), duplex (detached building containing 2 units each with separate entrances), triplex (3 units each with separate entrance), quadplex (4 units each with separate entrance), multifamily / flat (2 or more units with a shared entrance). Inclusion of a garage, or not, shall not define the unit type.

"Very-low-income household" means a household with a household income less than or equal to 30 percent of the regional median income.

"Very-low-income housing" means housing affordable according to the Federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 30 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located.

"Very-low-income unit" means a restricted unit that is affordable to a very-low-income household.

"Veteran" means a veteran as defined at N.J.S.A. 54:4-8.10.

"Veterans' preference" means the agreement between a municipality and a developer or residential development owner that allows for low- to moderate-income veterans to be given preference for up to 50 percent of rental units in relevant projects, as provided for at N.J.S.A. 52:27D-311.j.

"Weatherization" means building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors and is considered a major system for rehabilitation.

C. Monitoring and Reporting Requirements

1. The municipality shall comply with the following monitoring and reporting requirements regarding the status of the implementation of its court-approved Housing Element and Fair Share Plan:

a. The municipality shall provide electronic monitoring data with the Department pursuant to P.L 2024, Chapter 2 and N.J.A.C. 5:99 through the Affordable Housing Monitoring System (AHMS). All monitoring information required to be made public by the FHA shall be available to the public on the Department's website at https://www.nj.gov/dca/dlps/hss/MuniStatusReporting.shtml.

b. On or before February 15 of each year, the municipality shall provide annual reporting of its municipal Affordable Housing Trust Fund activity to the Department on the AHMS portal. The reporting shall include an accounting of all municipal Affordable Housing Trust Fund activity, including the sources and amounts of funds collected and the amounts and purposes for which any funds have been expended, for the previous year from January 1st to December 31st.

c. On or before February 15 of each year, the annual reporting of the status of all affordable housing activity shall be provided to the Department on the AHMS portal, for the previous year from January 1st to December 31st.

D. Municipality-wide Mandatory Set-Aside

1. A development, other than single-family family detached, providing a minimum of five new housing units created through any municipal rezoning or Zoning Board action, use or density variance, redevelopment plan, or rehabilitation plan that provides for densities at or above six units per acre, is required to include an affordable housing set-aside of 20%.

2. Any affordable units generated through such mandatory set-aside shall be subject to all other provisions of this ordinance.

3. All such affordable units shall be governed by this ordinance for the controls on affordability, including bedroom distribution, and affirmatively marketed to the housing region in conformance with UHAC at N.J.A.C. 5:80-26.1 et seq., any successor regulation, and all other applicable laws.

4. No subdivision shall be permitted or approved for the purpose of avoiding compliance with this requirement. Developers cannot, for example, subdivide a project into two lots and then make each of them a number of units just below the threshold.

5. The mandatory set-aside requirements of this section do not give any developer the right to any rezoning, variance or other relief, or establish any obligation on the part of the municipality to grant such rezoning, variance or other relief.

6. This municipality-wide mandatory set-aside requirement does not apply to any sites or specific zones otherwise identified in the HEFSP, for which density and set-aside requirements shall be governed by the specific standards as set forth therein.

7. In the event that the inclusionary set-aside of 20% of the total number of residential units does not result in a full integer, the developer shall round the set-aside upward to construct a whole additional affordable unit.

E. New Construction (per N.J.A.C. 5:93 as may be updated per various sections in N.J.A.C. 5:97 and N.J.S.A. 52:27D-301 et seq.). Per the definition of "New Construction," this section governs the creation of new affordable housing units regardless of the means by which the units are created. Newly constructed units may include new residences constructed or created through other means.

1. The following requirements shall apply to all new or planned developments that contain very low-, low- and moderate-income housing units. To the extent possible, details related to the adherence to the requirements below shall be outlined in the resolution granting municipal subdivision or site plan approval of the project to assist municipal representatives, developers and Administrative Agents.

2. Completion Schedule (previously known as phasing). Final site plan or subdivision approval shall be contingent upon the affordable housing development meeting the following completion schedule for very low-, low- and moderate-income units whether developed in a single-phase development, or in a multi-phase development:

Maximum Percentage of Market-Rate Units Issued a Temporary or Final Certificate of Occupancy	Minimum Percentage of Affordable Units Issued a Temporary or Final Certificate of Occupancy
25+1	10
50	50
75	75
90	100

3. Design. The following design requirements apply to affordable housing developments, excluding prior round units.

a. Design of 100 percent affordable developments:

ii. Restricted units must meet the minimum square footage required for the number of inhabitants for which the unit is marketed and the minimum square footage required for each bedroom, as set forth in the Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4.

iii. Each bedroom in each restricted unit must have at least one window.

iv. Restricted units must include adequate air conditioning and heating.

b. Design of developments comprising market-rate rental units and restricted rental units. The following does not apply to prior round units, unless stated otherwise.

i. Restricted units must use the same building materials and architectural design elements (for example, plumbing, insulation, or siding) as market-rate units of the same unit type (for example, flat or townhome) within the same development, except that restricted units and market-rate units may use different interior finishes. This shall apply to prior round units.

ii. Restricted units and market-rate units within the same affordable development must be sited such that restricted units are not concentrated in less desirable locations.

iii. Restricted units may not be physically clustered so as to segregate restricted and market-rate units within the same development or within the same building, but must be interspersed throughout the development, except that age-restricted and supportive housing units may be physically clustered if the clustering facilitates the provision of on-site medical services or on-site social services. Prior round affordable units shall be integrated with market rate units to the extent feasible.

iv. Residents of restricted units must be offered the same access to communal amenities as residents of market-rate units within the same affordable development. Examples of communal amenities include, but are not limited to, community pools, fitness and recreation centers, playgrounds, common rooms and outdoor spaces, and building entrances and exits. This shall apply to prior round units.

v. Restricted units must include adequate air conditioning and heating and must use the same type of cooling and heating sources as market-rate units of the same unit type. This shall apply to prior round units.

vi. Each bedroom in each restricted unit must have at least one window.

vii. Restricted units must be of the same unit type as market-rate units within the same building.

viii. Restricted units and bedrooms must be no less than 90 percent of the minimum size prescribed by the Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4.

c. Design of developments containing for-sale units, including those with a mix of rental and for-sale units. Restricted rental units shall meet the requirements of section b above. Restricted sale units shall comply with the below:

i. Restricted units must use the same building standards as market-rate units of the same unit type (for example, flat, townhome, or single-family home), except that restricted units and market-rate units may use different interior finishes. This shall apply to prior round units.

ii. Restricted units may be clustered, provided that the buildings or housing product types containing the restricted units are integrated throughout the development and are not concentrated in an undesirable location or in undesirable locations. Prior round affordable units shall be integrated with market rate units to the extent feasible.

iii. Restricted units may be of different unit housing product types than market-rate units, provided that there is a restricted option available for each market rate housing type. Developments containing market-rate duplexes, townhomes, and/or single-family homes shall offer restricted housing options that also include duplexes, townhomes, and/or single-family homes. Penthouses and higher priced end townhouses *may* be exempt from this requirement. The proper ratio for restricted to market-rate unit type shall be subject to municipal ordinance or, if not specified, shall be determined at the time of site plan approval.

iv. Restricted units must meet the minimum square footage required for the number of inhabitants for which the unit is marketed and the minimum square footage required for each bedroom, as set forth in

the Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4.

v. Penthouse and end units may be reserved for market-rate sale, provided that the overall number, value, and distribution of affordable units across the development is not negatively impacted by such reservation(s).

vi. Residents of restricted units must be offered the same access to communal amenities as residents of market-rate units within the same affordable development. Examples of communal amenities include, but are not limited to, community pools, fitness and recreation centers, playgrounds, common rooms and outdoor spaces, and building entrances and exits. This shall apply to prior round units.

vii. Each bedroom in each restricted unit must have at least one window; and

ix. Restricted units must include adequate air conditioning and heating.

4. Utilities.

a. Affordable units shall utilize the same type of cooling and heating source as market-rate units within the affordable housing development.

b. Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance in accordance with N.J.AC 5:80-26.13(e).

5. Low/moderate split and bedroom distribution.

a. Affordable units shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low-income unit.

b. In each affordable housing development, at least 50% of the restricted units within each bedroom distribution rounded up to the nearest whole number shall be very low- or low-income units.

c. Within rental developments, of the total number of affordable rental units, at least 13%, rounded up to the nearest whole number, shall be affordable to very low-income households. The very low-income units shall be distributed between each bedroom count as proportionally as possible, to the nearest whole unit, to the total number of restricted units within each

bedroom count and counted as part of the required number of low-income units within the development.

d. Affordable housing developments that are not age-restricted or supportive housing shall be structured such that:

i. At a minimum, the number of bedrooms within the restricted units equals twice the number of restricted units;

ii. Two-bedroom and/or three-bedroom units compose at least 50 percent of all restricted units;

iii. The combined number of efficiency and one-bedroom units shall be no greater than 20% of the total number of low- and moderate-income units. The municipality has chosen not to allow rounding.

iv. At least 30% of all low- and moderate-income units, rounded up, shall be two-bedroom units. The municipality has chosen not to allow rounding.

v. At least 20% of all low- and moderate-income units, rounded up shall be three-bedroom units. The municipality has chosen not to allow rounding.

vi. The remaining units may be allocated among two- and three-bedroom units at the discretion of the developer.

e. Affordable housing developments that are age-restricted or supportive housing, except those supportive housing units whose sponsoring program determines the unit arrangements, shall be structured such that, at a minimum, the number of bedrooms shall equal the number of age-restricted or supportive housing low- and moderate-income units within the inclusionary development. Supportive housing units whose sponsoring program determines the unit arrangement shall comply with all requirements of the sponsoring program. The standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit. In affordable housing developments with 20 or more restricted units that are age-restricted or supportive housing, two-bedroom units must comprise at least 5% of those restricted units.

6. Accessibility requirements.

a. Any new construction shall be adaptable; however, elevators shall not be required in any building or within any dwelling unit for the purpose of compliance with this section. In buildings without elevator service, only ground floor dwelling units shall be required to be constructed to conform with the

technical design standards of the barrier free subcode. "Ground floor" means the first floor with a dwelling unit or portion of a dwelling unit, regardless of whether that floor is at grade. A building may have more than one ground floor.

b. Notwithstanding the exemption for townhouse dwelling units in the barrier free subcode, the first floor of all townhouse dwelling units and of all other multi-floor dwelling units that are attached to at least one other dwelling unit shall be subject to the technical design standards of the barrier free subcode and shall include the following features:

ii. An adaptable toilet and bathing facility on the first floor;

iii. An adaptable kitchen on the first floor;

iv. An interior accessible route of travel however an interior accessible route of travel shall not be required between stories;

v. An adaptable room that can be used as a bedroom, with a door, or the casing for the installation of a door that is compliant with the Barrier Free Subcode, on the first floor;

vi. If not all of the foregoing requirements in b.i. through b.iv. can be satisfied, then an interior accessible route of travel shall be provided between stories within an individual unit; and

a. An accessible entranceway as set forth in P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7, or evidence that the municipality has collected funds from the developer sufficient to make 10% of the adaptable entrances in the development accessible:

b. Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.

c. To this end, the builder of restricted units shall deposit funds within the Affordable Housing Trust Fund sufficient to install accessible entrances in 10% of the affordable units that have been constructed with adaptable entrances.

d. The funds deposited shall be expended for the sole purpose of making the adaptable entrance of an affordable unit accessible when requested to do so by a person with a

disability who occupies or intends to occupy the unit and requires an accessible entrance.

e. The developer of the restricted units shall submit to the Construction Official a design plan and cost estimate for the conversion from adaptable to accessible entrances.

f. Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meets the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7, and that the cost estimate of such conversion is reasonable, payment shall be made to the Affordable Housing Trust Fund and earmarked appropriately.

vii. Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is "site-impracticable" to meet the requirements. If full compliance with this section would be site impracticable, compliance with this section for any portion of the dwelling shall be required to the extent that it is not site impracticable. Determinations of site impracticability shall comply with the Barrier Free Subcode at N.J.A.C. 5:23-7.

F. Affordable Housing Programs

1. Pursuant to amended UHAC regulations at N.J.A.C. 5:80-26.1 et seq. and, in addition, pursuant to P.L. 2024, c.2 and specifically to the amended FHA at N.J.S.A. 52:27D-311.m, "All parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by the Council on Affordable Housing unless those regulations are contradicted by statute, including but not limited to P.L. 2024, c.2, or binding court decisions." The following are many of the main provisions of the COAH regulations at either N.J.A.C. 5:93 or 5:97 that have been upheld by the NJ Supreme Court. Municipalities should consult the cited full COAH regulations when preparing the HEFSP for required documentation, etc. Additional compliance details may also be included in the specific municipal program manual.

2. Rehabilitation Programs (per N.J.A.C. 5:93-5.2 with updated provisions herein per N.J.A.C. 5:97-6.2 related to credit towards a municipal present need obligation).

a. The rehabilitation program shall be designed to renovate deficient housing units occupied or intended to be occupied by very low-, low- and moderate-income households such that, after rehabilitation, these units will comply with the New Jersey State Housing Code pursuant to N.J.A.C. 5:28-1.1 et seq or the Rehabilitation Subcode, N.J.A.C. 5:23-6 to the extent applicable.

b. Both ownership and rental units shall be eligible for rehabilitation funds.

c. All rehabilitated units shall remain affordable to very low-, low- and moderate-income households for a period of 10 years (the control period). For owner-occupied units, the control period shall be enforced with a mortgage and note and for renter-occupied units the control period will be enforced with a deed restriction.

d. The municipality shall dedicate a minimum average hard cost of $10,000 for each unit to be rehabilitated through this program and in addition shall dedicate associated rehabilitation program soft costs such as case management, inspection fees and work write-ups.

e. The municipality shall designate, subject to the approval of the Department, one or more Administrative Agents to administer the rehabilitation program in accordance with P.L 2024, Chapter 2. The Administrative Agent(s) shall provide rehabilitation manuals for ownership and rental rehabilitation programs. Manuals shall be adopted by resolution of the governing body. Both rehabilitation manuals shall be available for public inspection in the Office of the Municipal Clerk and on the municipal affordable housing web page.

f. Households determined to be very low-, low-, or moderate-income may participate in a rehabilitation program. Rehabilitated units shall be exempt from the very low-income requirements, low/mod split, and bedroom distribution requirements of UHAC, but shall be administered in accordance with the following:

    i. If a unit is vacant at the time of rehabilitation, or if a rehabilitated unit becomes vacant and is re-rented before the expiration of the affordability controls, the deed restriction shall require that the unit be rented to a low- or moderate-income household at an affordable rent.

    ii. If a rental unit is occupied by a tenant at the time rehabilitation is completed, the rent charged after rehabilitation shall not exceed the lesser of the tenant's current rent or the maximum rent permitted under UHAC.

    iii. Rents in rehabilitated units may increase annually based on the standards in UHAC.

    iv. At the time of application, applicant households and/or tenant households shall be subject to income eligibility determinations in accordance with UHAC.

3. Extension of Controls Program (for ownership units per N.J.A.C. 5:97-6.14 and UHAC at N.J.A.C. 5:80-26.6(h) through (k) and (m); and for rental units per N.J.A.C. 5:97-6.14 and N.J.A.C. 5:80-26.12(h) through (k)).

   a. An extension of affordability controls program is established to maintain and extend the affordability of deed restricted units scheduled to come out of their affordability control period, subject to N.J.A.C. 5:97-6.14 and UHAC, including the following:

      i. The affordable unit meets the criteria for prior cycle (April 1, 1980 - December 15, 1986) or post December 15, 1986 credits set forth in N.J.A.C. 5:97.

      ii. The affordability controls for the unit are scheduled to expire in the current round; or in the next round of housing obligations if the municipal election to extend controls is made no earlier than one year before the end of the current round;

      iii. The municipality shall obtain a continuing certificate of occupancy or a certified statement from the municipal building inspector stating that the restricted unit meets all code standards.

      iv. If a unit requires repair and/or rehabilitation work in order to receive a continuing certificate of occupancy or certified statement from the municipal building inspector, the municipality shall fund and complete the work.

      v. The municipality shall adhere to the process for extending controls pursuant to UHAC for extending ownership units and rental units, either inclusionary or 100% affordable developments.

      vi. The deed restriction for the extended control period shall be filed with the County Clerk.

4. Assisted Living Residence (per N.J.A.C. 5:97-6.11).

   a. An assisted living residence is a facility licensed by the New Jersey Department of Health to provide apartment-style housing and congregate dining and to assure that assisted living services are available. All or a designated number of apartments in the facility shall be restricted to low- and moderate-income households.

   b. The unit of credit shall be the apartment. However, a two-bedroom apartment shall be eligible for two units of credit if it is restricted to two unrelated individuals.

c. A recipient of a Medicaid waiver shall automatically qualify as a low- or moderate-income household.

d. Assisted living units are considered age-restricted housing in a HEFSP and shall be included with the maximum number of units that may be age-restricted.

e. Low- and moderate-income residents cannot be charged any upfront fees.

f. The units shall comply with UHAC with the following exceptions:

i. Affirmative marketing (N.J.A.C. 5:80-26.16); provided that the units are restricted to recipients of Medicaid waivers;

ii. The deed restriction may be on the facility, rather than individual apartments or rooms;

iii. Low/moderate income split and affordability average (N.J.A.C. 5:80-26.4); only if all of the affordable units are affordable to households at a maximum of 60 percent of median income; and

g. Tenant income eligibility (N.J.A.C. 5:80-26.14); up to 80 percent of an applicant's gross income may be used for rent, food and services based on occupancy type and the affordable unit must receive the same basic services as required by the Agency's underwriting guidelines and financing policies. The cost of non-housing related services shall not exceed one and two-thirds times the rent established for each unit.

5. Supportive Housing and Group Homes (per N.J.A.C. 5:97-6.10).

a. The following provisions shall apply to group homes, residential health care facilities, and supportive shared living housing:

i. Units are subject to Affirmative Marketing requirements, household certification, and administrative agent oversight; and may, with the approval of the municipal housing liaison and the administrative agent, be leased either by the bedroom or to a single household in the case of multi-bedroom configurations, provided such arrangement is consistent with the Federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968).

ii. Units may, with the approval of the administrative agent, be subject to a master lease by an approved supportive housing operator, provided that all subleases are to be certified supportive housing households and remain fully subject to the affordability controls of

this subchapter. Rents for supportive housing units shall not exceed the rent standards established and published by the New Jersey Department of Human Services.

iii. The unit of credit shall be the bedroom. However, the unit of credit shall be the unit if occupied by a single person or household.

iv. Housing that is age-restricted shall be included with the maximum number of units that may be age-restricted pursuant to the Act.

v. Occupancy shall not be restricted to youth under 18 years of age.

vi. In affordable developments with 20 or more restricted units that are supportive housing, two-bedroom units must compose at least five percent of those restricted units.

vii. The bedrooms and/or units shall comply with UHAC with the following exceptions:

a) Affirmative marketing; however, group homes, residential health care facilities, permanent supportive housing, and supportive shared living housing shall be affirmatively marketed to broadest possible population of qualified individuals with special needs in accordance with a plan approved by the sponsoring program;
b) Affordability average and bedroom distribution (N.J.A.C. 5:80-26.4).

ii. With the exception of units established with capital funding through a 20-year operating contract with the Department of Human Services, Division of Developmental Disabilities, group homes, residential health care facilities, supportive shared living housing and permanent supportive housing shall have the appropriate controls on affordability in accordance with the Act. In the event that a supportive housing provider is unable to record or execute a long-term deed restriction, the units shall be subject to annual recertification by the Municipal Housing Liaison to confirm continued occupancy and compliance with this Section.

iii. Objective standards shall be applied in the selection of tenants for supportive housing units and shall be designed to ensure that individuals are not excluded in an arbitrary or capricious manner.

x. The following documentation shall be submitted by the sponsor to the municipality prior to marketing the completed units or facility:

a) An Affirmative Marketing Plan in accordance with D1 above; and

b) If applicable, proof that the supportive and/or special needs housing is regulated by the New Jersey Department of Health and Senior Services, the New Jersey Department of Human Services or another State agency in accordance with the requirements of this section, which includes validation of the number of bedrooms or units in which low- or moderate-income occupants reside.

xi. The sponsor/owner shall complete annual monitoring as directed by the MHL.

G. Regional Income Limits.

1. Administrative agents shall use the current regional income limits for the purpose of pricing affordable units and determining income eligibility of households.

2. Regional income limits are based on regional median income, which is established by a regional weighted average of the "median family incomes" published by HUD. The procedure for computing the regional median income is detailed in N.J.A.C. 5:80-26.3.

3. Updated regional income limits are effective as of the effective date of the regional Section 8 income limits for the year, as published by HUD, or 45 days after HUD publishes the regional Section 8 income limits for the year, whichever comes later. The new income limits may not be less than those of the previous year.

H. Maximum Initial Rents and Sales Prices.

1. In establishing rents and sales prices of affordable housing units, the Administrative Agent shall follow the procedures set forth in UHAC N.J.A.C. 5:80-26.4.

2. The average rent for all restricted units within each affordable housing development shall be affordable to households earning no more than 52 percent of regional median income.

3. The maximum rent for restricted rental units within each affordable housing development shall be affordable to households earning no more than 60% of regional median income. *The maximum rent may be increased to no more than 70 percent of regional median income for moderate-income units within affordable developments where very-low-income units compose at least 13 percent of the restricted units; however, the number of units with rent affordable to households earning 70 percent of regional median income may not exceed the number of very-low-income units in excess of 13 percent rounded up of the restricted units.)*

4. The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units, provided that at least 13% of all low- and moderate-income rental units shall be affordable to households earning no more than 30% of median income. These very low-income units shall be part of the low-income requirement and very-low-income units should be distributed between each bedroom count as proportionally as possible, to the nearest whole unit, to the total number of restricted units within each bedroom count.

5. The maximum sales price of restricted ownership units within each affordable housing development shall be affordable to households earning no more than 70% of median income, and each affordable housing development must achieve an affordability average that does not exceed 55% for all restricted ownership units. In achieving this affordability average, moderate-income ownership units must be available for at least three different prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type when the number of low- and moderate-income units permits.

6. The master deeds and declarations of covenants and restrictions for affordable developments may not distinguish between restricted units and market-rate units in the calculation of any condominium or homeowner association fees and special assessments to be paid by low- and moderate-income purchasers and those to be paid by market-rate purchasers. Notwithstanding the foregoing sentence, condominium units subject to a municipal ordinance adopted before December 20, 2004, which ordinance provides for condominium or homeowner association fees and/or assessments different from those provided for in this subsection are governed by the ordinance.

7. In determining the initial sales prices and rents for compliance with the average affordability requirements for restricted family units, the following standards shall be met:

    a. A studio or efficiency unit shall be affordable to a one-person household;

    b. A one-bedroom unit shall be affordable to a one and one-half person household;

    c. A two-bedroom unit shall be affordable to a three-person household;

    d. A three-bedroom unit shall be affordable to a four and one-half person household; and

    e. A four-bedroom unit shall be affordable to a six-person household.

8. In determining the initial rents and sales prices for compliance with the affordability average requirements for restricted units in assisted living facilities and age-restricted and special needs and supportive housing developments, the following standards shall be met:

   a. A studio or efficiency unit shall be affordable to a one-person household;

   b. A one-bedroom unit shall be affordable to a one- and one-half-person household; and

   c. A two-bedroom unit shall be affordable to a two-person household or to two one-person households. Where pricing is based on two one-person households, the developer shall provide a list of units so priced to the Municipal Housing Liaison and the Administrative Agent.

9. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95 percent of the purchase price and the Freddie Mac 30-Year Fixed Rate-Mortgage rate of interest), property taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 30 percent of the eligible monthly income of the appropriate size household as determined pursuant to N.J.A.C. 5:80-26.7, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.4, as may be amended and supplemented.

10. The initial rent for a restricted rental unit shall be calculated so that the total monthly housing expense, including an allowance for tenant-paid utilities, does not exceed 30 percent of the gross monthly income of a household of the appropriate size whose income is targeted to the applicable percentage of median income for the unit, as determined pursuant to N.J.A.C. 5:80-26.3, as may be amended and supplemented. The rent shall also comply with the average affordability requirement of N.J.A.C. 5:80-26.4, as may be amended and supplemented. The initial rent for a restricted rental unit shall be calculated so the eligible monthly housing expenses/income, including an allowance for tenant-paid utilities, does not exceed 30 percent of gross income of and the appropriate household size as determined pursuant to N.J.A.C. 5:80-26.3, as may be amended and supplemented.

11. At the anniversary date of the tenancy of the certified household occupying a restricted rental unit, following proper notice provided to the occupant household pursuant to N.J.S.A. 2A:18-61.1.f, the rent may be increased to an amount commensurate with the annual percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U), specifically U.S. Bureau of Labor Statistics Series CUUR0100SAH, titled “Housing in Northeast urban, all urban consumers, not seasonally adjusted.” Rent increases for units constructed pursuant to Low-Income Housing Tax Credit regulations shall be indexed pursuant to the regulations governing Low-Income Housing Tax Credits.

I. Affirmative Marketing.

1. The municipality shall adopt, by resolution, an Affirmative Marketing Plan, subject to approval of the Superior Court, compliant with N.J.A.C. 5:80-26.16, as may be amended and supplemented.

2. The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age, or number of children, to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The Affirmative Marketing Plan is intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward Housing Region 1 and is required to be followed throughout the period of deed restriction.

3. The Affirmative Marketing Plan provides the following preferences, provided that units that remain unoccupied after these preferences are exhausted may be offered to households without regard to these preferences.

    a. Where the municipality has entered into an agreement with a developer or residential development owner to provide a preference for very-low-,low-, and moderate-income veterans who served in time of war or other emergency, pursuant to N.J.S.A. 52:27D-311.j, there shall be a preference for veterans for up to 50 percent of the restricted rental units in a particular project.

    b. There shall be a regional preference for all households that live and/or work in Housing Region 1 comprising Counties.

    c. Subordinate to the regional preference, there shall be a preference for households that live and/or work in New Jersey.

    d. With respect to existing restricted units undergoing approved rehabilitation for the purpose of preservation or to restricted units newly created to replace existing restricted units undergoing demolition, a preference for the very-low-, low, and moderate-income households that are displaced by the rehabilitation or demolition and replacement.

4. The municipality has the ultimate responsibility for adopting the Affirmative Marketing Plan and for the proper administration of the Affirmative Marketing Process, including the marketing of initial sales and rentals and resales and re-rentals. The Administrative Agent designated by the municipality shall implement the Affirmative Marketing Process to ensure the Affirmative Marketing of all

affordable units, with the exception of affordable programs that are exempt from Affirmative Marketing as noted herein.

5. The Affirmative Marketing Process shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the Affirmative Marketing Process, the Administrative Agent shall consider the use of language translations where appropriate.

6. Applications for affordable housing or notices thereof, if offered online, shall be available in several locations, including, at a minimum, the County Administration Building and/or the County Library for each county within the housing region; the municipal administration building and municipal library in the municipality in which the units are located; and the developer's rental or sales office. The developer shall mail applications to prospective applicants upon request and shall make applications available through a secure online website address.

7. In addition to other Affirmative Marketing strategies, the Administrative Agent shall provide specific notice of the availability of affordable housing units on the New Jersey Housing Resource Center website. Any other entities, including developers or persons or companies retained to implement the Affirmative Marketing Process, shall comply with this paragraph.

8. In implementing the Affirmative Marketing Process, the Administrative Agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.

9. The Affirmative Marketing Process for available affordable units shall begin at least four months (120 days) prior to the expected date of occupancy.

10. The cost to affirmatively market the affordable units shall be the responsibility of the developer, sponsor or owner, with the exception of Affirmative Marketing for resales.

J. Selection of Occupants of Affordable Housing Units.

1. The Administrative Agent shall use a random selection process to select occupants of very low-, low- and moderate-income housing.

2. A pool of interested households will be maintained in accordance with the provisions of N.J.A.C. 5:80-26.16.

K. Occupancy Standards.

1. In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the Administrative Agent shall strive to:

    a. Ensure each bedroom is occupied by at least one person, except for age-restricted and supportive and special needs housing units;

    b. Provide a bedroom for every two adult occupants;

    c. With regard to occupants under the age of 18, accommodate the household's requested arrangement, except that such arrangement may not result in more than two occupants under the age of 18 occupying any bedroom; and

    d. Avoid placing a one-person household into a unit with more than one bedroom.

L. Control Periods for Restricted Ownership Units and Enforcement Mechanisms.

1. Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80- 26.6, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the controls on affordability for a period of at least 30 years subject to the requirements of N.J.A.C. 5:80-26.6, as may be amended and supplemented.

2. Rehabilitated housing units that are improved to code standards shall be subject to affordability controls for a period of not less than 10 years (crediting towards present need only).

3. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit. The date of commencement shall be identified in the deed restriction.

4. If existing affordability controls are being extended, the extended control period for a restricted ownership unit commences on the effective date of the extension, which is the end of the original control period.

5. After the end of any control period, the restricted ownership unit remains subject to the affordability controls set forth in this subchapter until the owner gives notice of their intent to make an exit sale, at which point:

    a. If the municipality exercises the right to extend the affordability controls on the unit, no exit sale occurs and a new control period commences; or

    b. If the municipality does not exercise the right to extend the affordability controls on the unit, the affordability controls terminate following the exit sale.

6. Prior to the issuance of any building permit for the construction/rehabilitation of restricted ownership units, the developer/owner and the municipality shall record a preliminary instrument provided by the Administrative Agent.

7. Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the Administrative Agent shall determine the restricted price for the unit and shall also determine the nonrestricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value without the restrictions in place.

8. At the time of the initial sale of the unit and upon each successive price-restricted sale, the initial purchaser shall execute and deliver to the Administrative Agent a recapture note obliging the purchaser, as well as the purchaser's heirs, successors, and assigns, to repay, upon the first non-exempt sale after the unit's release from the restrictions set forth in this Ordinance, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.

9. The affordability controls set forth in this Ordinance shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to price-restricted ownership units.

M. Price Restrictions for Restricted Ownership Units and Resale Prices.

1. Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.7, as may be amended and supplemented, including:

   a. The initial purchase price and affordability percentage for a restricted ownership unit shall be set by the Administrative Agent.

   b. The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the standards set forth in N.J.A.C 5:80-26.7.

      i. If the resale occurs prior to the one-year anniversary of the date on which title to the unit was transferred to a certified household, the maximum resale price for a is the most recent non-exempt purchase price.

      ii. If the resale occurs on or after such anniversary date, the maximum resale price is the most recent non-exempt purchase price increased to reflect the cumulative annual percentage increases to the regional median income, effective as of the same date as the regional median income calculated pursuant to N.J.A.C. 5:80-26.3

c. The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of anticipated capital improvements. Eligible capital improvements shall be:

i. those that render the unit suitable for a larger household or the addition of a bathroom.

ii. The maximum resale price may be further increased by an amount up to the cumulative dollar value of approved capital improvements made after the last non-exempt sale for improvements and/or upgrades to the unit, excluding capital improvements paid for by the entity favored on the recapture note and recapture lien described at N.J.A.C. 5:80-26.6(d);

d. No increase for capital improvements is permitted if the maximum resale price prior to adjusting for capital improvements already exceeds whatever initial purchase price the unit would have if it were being offered for purchase for the first time at the initial affordability percentage. All adjustments for capital improvements are subject to 10-year, straight-line depreciation.

2. Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting) shall be included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the Administrative Agent at the time of the signing of the agreement to purchase but shall be separate and apart from any contract of sale for the underlying real estate. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale provided the price of the air conditioning equipment, which shall be subject to 10-year, straight-line depreciation, has been approved by the Administrative Agent. Unless otherwise approved by the Administrative Agent, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The seller and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at the time of or as a condition of resale.

N. Buyer Income Eligibility.

1. Buyer income eligibility for restricted ownership units shall be established pursuant to N.J.A.C. 5:80-26.17, as may be amended and supplemented, such that very low-income ownership units shall be reserved for occupancy by households with a gross household income less than or equal to 30% of median income, low-income ownership units shall be reserved for occupancy by households with a gross

household income less than or equal to 50% of median income and moderate-income ownership units shall be reserved for occupancy by households with a gross household income less than 80% of median income.

2. Notwithstanding the foregoing, the Administrative Agent may, upon approval by the municipality, and subject to the Division's approval, permit a moderate-income purchaser to buy a low-income unit if and only if the Administrative Agent can demonstrate that there is an insufficient number of eligible low-income purchasers in the housing region to permit prompt occupancy of the unit and all other reasonable efforts to attract a low-income purchaser, including pricing and financing incentives, have failed. Any such low-income unit that is sold to a moderate-income household shall retain the required pricing and pricing restrictions for a low-income unit. Similarly, the administrative agent may permit low-income purchasers to buy very-low-income units in housing markets where, as determined by the Division, units are reserved for very-low-income purchasers, but there is an insufficient number of very-low-income purchasers to permit prompt occupancy of the units. In such instances, the purchased unit must be maintained as a very-low-income unit and sold at a very-low-income price point such that on the next resale the unit will still be affordable to very-low-income households and able to be purchased by a very-low-income household. A very-low-income unit that is seeking bonus credit pursuant to N.J.S.A. 52:27D-311.k(9) must first be advertised exclusively as a very-low-income unit according to the Affirmative Marketing requirements at N.J.A.C. 5:80-26.16, then advertised as a very-low-income or low-income unit for at least 30 additional days prior to referring any low-income household to the unit.

3. A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the Administrative Agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to another certified household for a period not to exceed one year.

4. The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, property taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 35 percent of the household's eligible monthly income; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:

    a. The household currently pays more than 35% (40% for households eligible for age-restricted units) of its gross household income for housing expenses, and the proposed housing expenses will reduce its housing costs;

b. The household has consistently paid more than 35% (40% for households eligible for age-restricted units) of eligible monthly income for housing expenses in the past and has proven its ability to pay; or

c. The household is currently in substandard or overcrowded living conditions;

d. The household documents the existence of assets, within the asset limitation otherwise applicable, with which the household proposes to supplement the rent payments

O. Limitations on Indebtedness Secured by Ownership Unit; Subordination.

1. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the owner shall apply to the Administrative Agent for a determination in writing that the proposed indebtedness complies with the provisions of this Section, and the Administrative Agent shall issue such determination prior to the owner incurring such indebtedness.

2. With the exception of original purchase money mortgages, neither an owner nor a lender shall at any time during the control period cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95% of the maximum allowable resale price of that unit, as such price is determined by the Administrative Agent in accordance with N.J.A.C. 5:80-26.7(c).

P. Control Periods for Restricted Rental Units.

1. Control periods for units that meet the definition of prior round units shall be pursuant to the 2001 UHAC rules originally adopted October 1, 2001, 33 N.J.R. 3432, and amended December 20, 2004, 36 N.J.R. 5713 and shall remain subject to the requirements of this ordinance for a period of at least 30 years as applicable unless otherwise indicated.

2. Other than for prior round units, control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.12, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this Ordinance for a period of at least 40 years. Restricted rental units created as part of developments receiving 9% Low-Income Housing Tax Credits must comply with a control period of not less than a 30-year compliance period plus a 15-year extended use period for a total of 45 years.

3. The affordability control period for a restricted rental unit shall commence on the first date that a unit is issued a certificate of occupancy following the execution of the deed restriction or, if affordability controls are being extended, on the effective date of the extension, which is the end of the original control period.

4. Rehabilitated renter-occupied housing units that are improved to code standards shall be subject to affordability controls for a period of not less than 10 years.

5. Prior to the issuance of any building permit for the construction/rehabilitation of restricted rental units, the developer/owner and the municipality shall record a preliminary instrument provided by the Administrative Agent.

6. Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property. The deed restriction shall be recorded by the developer with the county records office, and provided as filed and recorded, to the Administrative Agent within 30 days of the receipt of a certificate of occupancy.

7. A restricted rental unit shall remain subject to the affordability controls of this Ordinance despite the occurrence of any of the following events:

    a. Sublease or assignment of the lease of the unit;

    b. Sale or other voluntary transfer of the ownership of the unit;

    c. The entry and enforcement of any judgment of foreclosure on the property containing the unit; or

    d. The end of the control period, until the occupant household vacates the unit, or is certified as over-income and the controls are released in accordance with UHAC.

Q. Rent Restrictions for Rental Units; Leases and Fees.

1. The initial rent for a restricted rental unit shall be set by the Administrative Agent.

2. A written lease shall be required for all restricted rental units, except for units in an assisted living residence, and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be retained on file by the Administrative Agent.

3. No additional fees, operating costs, or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.

    a. Operating costs, for the purposes of this section, include certificate of occupancy fees, move-in fees, move-out fees, mandatory internet fees, mandatory cable fees, mandatory utility submetering fees, and for developments with more than one and a half off-street parking spaces per unit, parking fees for one parking space per household.

4. Any fee structure that would remove or limit affordable unit occupant access to any amenities or services that are required or included for market-rate unit occupants is prohibited. Application fees (including the charge for any credit check) shall not exceed 5% of the monthly rent of the applicable restricted unit to be applied to the costs of administering the controls applicable to the unit as set forth in this Ordinance.

5. Fees for unit-specific, non-communal items that are charged to market-rate unit tenants on an optional basis, such as pet fees for tenants with pets, storage spaces, bicycle-share programs, or one-time rentals of party or media rooms, may also be charged to affordable unit tenants, if applicable.

6. Pet fees may not exceed $30.00 per month and associated one-time payments for optional fees pertaining to pets, such as a pet cleaning fee, are prohibited.

7. Fees charged to affordable unit tenants for other optional, unit-specific, non-communal items shall not exceed the amounts charged to market-rate tenants.

8. For any prior round rental unit leased before December 20, 2024, elements of the existing fee structure that are consistent with prior rules, but inconsistent with 5:80-26.13(c)1, may continue until the occupant household's current lease term expires or that occupant household vacates the unit, whichever occurs later.

R. Tenant Income Eligibility.

1. Tenant income eligibility shall be determined pursuant to N.J.A.C. 5:80-26.14, as may be amended and supplemented, and shall be determined as follows:
   a. Very low-income rental units shall be reserved for households with a gross household income less than or equal to 30% of the regional median income by household size.

   b. Low-income rental units shall be reserved for households with a gross household income less than or equal to 50% of the regional median income by household size.

   c. Moderate-income rental units shall be reserved for households with a gross household income less than 80% of the regional median income by household size.

2. The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income, low-income or moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35% (40% for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.17, as may be amended and

supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:

a. The household currently pays more than 35% (40% for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;

b. The household has consistently paid more than 35% (40% for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;

c. The household is currently in substandard or overcrowded living conditions;

d. The household documents the existence of assets with which the household proposes to supplement the rent payments; or

e. The household documents reliable anticipated third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.

3. The applicant shall file documentation sufficient to establish the existence of any of the circumstances in 2.a. through 2.e. above with the Administrative Agent, who shall counsel the household on budgeting.

S. Municipal Housing Liaison.

1. The Municipal Housing Liaison shall be approved by municipal resolution.

2. The Municipal Housing Liaison shall be approved by the Division, or is in the process of getting approval, and fully or conditionally meets the requirements for qualifications, including initial and periodic training as set forth in in N.J.A.C. 5:99-1 et seq.

3. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program, including the following responsibilities, which may not be contracted out to the Administrative Agent:

a. Serving as the primary point of contact for all inquiries from the Affordable Housing Dispute Resolution Program, the State, affordable housing providers, administrative agents and interested households.

b. The oversight of the Affirmative Marketing Plan and affordability controls.

c. When applicable, overseeing and monitoring any contracting Administrative Agent.

d. Overseeing the monitoring of the status of all restricted units listed in the Fair Share Plan.

e. Verifying, certifying and providing annual information within AHMS at such time and in such form as required by the Division.

f. Coordinating meetings with affordable housing providers and administrative agents, as needed.

g. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the Division.

h. Overseeing the recording of a preliminary instrument in the form set forth at N.J.A.C. 5:80-26.1 for each affordable housing development.

i. Coordinating with the Administrative Agent, municipal attorney and municipal Construction Code Official to ensure that permits are not issued unless the document required in C.8. above has been duly recorded.

j. Listing on the municipal website contact information for the MHL and Administrative Agents.

T. Administrative Agent.

1. All municipalities that have created or will create affordable housing programs and/or affordable units shall designate or approve, for each project within its HEFSP, an administrative agent to administer the affordable housing program and/or affordable housing units in accordance with the requirements of the FHA, NJAC 5:99-1 et seq. and UHAC.

2. The fees for administrative agents shall be paid as follows:

a. Administrative agent fees related to rental units shall be paid by the developer/owner.

b. Administrative agent fees related to initial sale of units shall be paid by the developer.

c. Administrative agent fees related to resales shall be paid by the seller of the affordable home.

d. Administrative agent fees related to ongoing administration and enforcement shall be paid by the municipality.

3. An Operating Manual for each affordable housing program shall be provided by the Administrative Agent(s). The Operating Manual(s) shall be available for public inspection in the Office of the Clerk and in the office(s) of the Administrative Agent(s). Operating manuals shall be adopted by resolution of the Governing Body.

4. Subject to the role of the Administrative Agent(s), the duties and responsibilities as are set forth in N.J.A.C. 5:99-7and which are described in full detail in the Operating Manual, including those set forth in UHAC, include:

    a. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the Division;

    b. Affirmative marketing:

        i. Conducting an outreach process to affirmatively market affordable housing units in accordance with the Affirmative Marketing Plan of the municipality and the provisions of N.J.A.C. 5:80-26.16.

        ii. Providing counseling, or contracting to provide counseling services, to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements; and landlord/tenant law.

    c. Household certification.

        i. Soliciting, scheduling, conducting and following up on interviews with interested households.

        ii. Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low- or moderate-income unit;

        iii. Providing written notification to each applicant as to the determination of eligibility or non-eligibility within 5 days of the determination thereof.

        iv. Requiring that all certified applicants for restricted units execute a certificate substantially in the firm, as applicable, of either the ownership or rental certificates set forth in the Appendices J and K of N.J.A.C. 5:80-26.1 et seq.

        v. Creating and maintaining a referral list of eligible applicant households living in the housing region, and eligible applicant households with members working in the housing region, where the units are located.

vi. Employing a random selection process as provided in the Affirmative Marketing Plan when referring households for certification to affordable units.

d. Affordability controls.

i. Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for the recording at the time of conveyance of title of each restricted unit.

ii. Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and filed properly with the County Register of Deeds or County Clerk's office after the termination of the affordability controls for each restricted unit in accordance with UHAC.

iii. Communicating with lenders and the Municipal Housing Liaison regarding foreclosures.

iv. Ensuring the issuance of Continuing Certificates of Occupancy or certifications pursuant to N.J.A.C. 5:80-26.11.

e. Records retention.

i. Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded recapture mortgage, and note, as appropriate.

ii. Records received, retained, retrieved, or transmitted in furtherance of crediting affordable units of a municipality constitute public records of the municipality as defined by N.J.S.A. 47:3-16, and are legal property of the municipality.

f. Resales and re-rentals.

i. Instituting and maintaining an effective means of communicating information between owners and the Administrative Agent regarding the availability of restricted units for resale or re-rental.

ii. Instituting and maintaining an effective means of communicating information to very low-, low-, or moderate-income households regarding the availability of restricted units for resale or re-rental.

g. Processing requests from unit owners.

i. Reviewing and approving requests from owners of restricted units who wish to refinance or take out home equity loans during the term of their ownership to determine that the amount of indebtedness to be incurred will not violate the terms of this ordinance.

ii. Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the depreciated cost of central air conditioning systems.

iii. Notifying the municipality of an owner's intent to sell a restricted unit.

iv. Making determinations on requests by owners of restricted units for hardship waivers.

h. Enforcement.

i. Securing annually from the municipality a list of all affordable ownership units for which property tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;

ii. Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgement of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the Administrative Agent;

iii. Sending annual mailings to all owners of affordable dwelling units reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.19(d)4;

iv. Establishing a program for diverting unlawful rent payments to the municipal Affordable Housing Trust Fund; and

v. Creating and publishing a written operating manual for each affordable housing program administered by the Administrative Agent setting forth procedures for administering the affordability controls.

i. The Administrative Agent(s) shall, as delegated by the municipality, have the authority to take all actions necessary and appropriate to carry out its/their responsibilities, herein.

U. Responsibilities of The Owner of a development containing affordable units.

1. The owner of all developments containing affordable units subject to this subchapter or the assigned management company thereof shall provide to the administrative agent:

a. Site plan, architectural plan, or other plan that identifies the location of each affordable unit, if subject to the site plan approval, settlement agreement, or other applicable document regulating the location of affordable units. The administrative agent shall determine the location of affordable units if not set forth in the site plan approval, settlement agreement, or other applicable document.

b. The total number of units in the project and the number of affordable units.

c. The breakdown of the affordable units by or identification of affordable unit locations by bedroom count and income level, including street addresses/ unit numbers, if subject to the site plan approval, settlement agreement, or other applicable document regulating the breakdown of affordable units. The administrative agent shall determine the bedroom and income distribution if not set forth in the site plan approval, settlement agreement, or other applicable document.

d. Floor plans of all affordable units, including complete and accurate identification of all rooms and the dimensions thereof.

e. A projected construction schedule.

f. The location of any common areas and elevators.

g. The name of the person who will be responsible for official contact with the administrative agent for the duration of the project, which must be updated if the contact changes.

2. In addition to A above, the owner of rental developments containing affordable rental units subject to this subchapter or the assigned management company thereof shall:

a. Send to all current tenants in all restricted rental units an annual mailing containing a notice as to the maximum permitted rent and a reminder of the requirement that the unit must remain their principal place of residence, which is defined as residing in the unit at least 260 days out of each calendar

year, together with the telephone number, mailing address, and email address of the administrative agent to whom complaints of excess rent can be issued.

b. Provide to the administrative agent a description of any applicable fees.

c. Provide to the administrative agent a description of the types of utilities and which utilities will be included in the rent.

d. Agree and ensure that the utility configuration established at the start of the rent-up process not be altered at any time throughout the restricted period.

e. Provide to the administrative agent a proposed form of lease for any rental units.

f. Ensure that the tenant selection criteria for the applicants for affordable units not be more restrictive that the tenant selection criteria for applicants for non-restricted units.

g. Strive to maintain the continued occupancy of the affordable units during the entire restricted period.

3. In addition to A, above, the owner of affordable for-sale developments containing affordable for-sale units subject to this subchapter or the assigned management company thereof shall provide the administrative agent:

a. Proposed pricing for all units, including any purchaser options and add-on items.

b. Condominium or homeowner association fees and any other applicable fees.

c. Estimated real property taxes.

d. Sewer, water, trash disposal, and any other utility assessments.

e. Flood insurance requirement, if applicable.

f. The State-approved planned real estate development public offering statement and/or master deed, where applicable, as well as the full build-out budget.

V. Enforcement of Affordable Housing Regulations

1. Upon the occurrence of a breach of any of the regulations governing the affordable unit by an owner, developer or tenant, the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction,

municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.

2. After providing written notice of a violation to an owner, developer or tenant of an affordable unit and advising the owner, developer or tenant of the penalties for such violations, the municipality may take the following action against the owner, developer or tenant for any violation that remains uncured for a period of 60 days after service of the written notice:

    a. The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation, or violations, of the regulations governing the affordable housing unit. If the owner, developer or tenant is found by the Court to have violated any provision of the regulations governing affordable housing units the owner, developer or tenant shall be subject to one or more of the following penalties, at the discretion of the Court:

        i. A fine of not more than $1,000 or imprisonment for a period not to exceed 90 days, or both, unless otherwise specified below, provided that each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not a continuation of the initial offense;

        ii. In the case of an owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Affordable Housing Trust Fund of the gross amount of rent illegally collected;

        iii. In the case of an owner who has rented his or her affordable unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the Court.

3. The municipality shall have the authority to levy fines against the owner of the development for instances of noncompliance with NJHRC advertising requirements (N.J.S.A. 52:27D-321.6.e.(2)), following written notice to the owner. The fine for the first offense of noncompliance shall be $5,000, the fine for the second offense of noncompliance shall be $10,000, and the fine for each subsequent offense of noncompliance shall be $15,000.

4. The municipality may file a court action in the Superior Court seeking a judgment, which would result in the termination of the owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if the same were a judgment of default of the first purchase money mortgage and shall constitute a lien against the low- or moderate-income unit.

a. Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the affordable unit of the violating owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any first purchase money mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality , including attorney's fees. The violating owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.

b. The proceeds of the Sheriff's sale shall first be applied to satisfy the first purchase money mortgage lien and any prior liens upon the low- or moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating owner shall be personally responsible for the full extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus shall be placed in escrow by the municipality for the owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the owner shall make a claim with the municipality for such. Failure of the owner to claim such balance within the two year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the owner or forfeited to the municipality.

c. Foreclosure due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as they apply to the low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.

d. If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the first purchase money mortgage and any prior liens, the municipality may acquire title to the affordable unit by satisfying the first purchase money mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the first purchase money mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which

the affordable unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess that would have been realized from an actual sale as previously described.

e. Failure of the low- or moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the owner to accept an offer to purchase from any qualified purchaser that may be referred to the owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- or moderate-income unit as permitted by the regulations governing affordable housing units.

f. The affordable unit owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the owner.

5. It is the responsibility of the municipal housing liaison and the administrative agent(s) to ensure that affordable housing units are administered properly. All affordable units must be occupied within a reasonable amount of time and be re-leased within a reasonable amount of time upon the vacating of the unit by a tenant. If an administrative agent or municipal housing liaison becomes aware of or suspects that a developer, landlord, or property manager has not complied with these regulations, it shall report this activity to the Division. The Division must notify the developer, landlord, or property manager, in writing, of any violation of these regulations and provide a 30-day cure period. If, after the 30-day cure period, the developer, landlord, or property manager remains in violation of any terms of this subchapter, including by keeping a unit vacant, the developer, landlord, or property manager may be fined up to the amount required to construct a comparable affordable unit of the same size and the deed-restricted control period will be extended for the length of the time the unit was out of compliance, in addition to the remedies provided for in this section. For the purposes of this subsection, a reasonable amount of time shall presumptively be 60 days, unless a longer period of time is required due to demonstrable market conditions and/or failure of the municipal housing liaison or the administrative agent to refer a certified tenant.

6. Banks and other lending institutions are prohibited from issuing any loan secured by owner occupied real property subject to the affordability controls set forth in this subchapter if such loan would be in excess of amounts permitted by the restriction documents recorded in the deed or mortgage book in the county in which the property is located. Any loan issued in violation of this subsection is void as against public policy.

7. The Agency and the Department hereby reserve, for themselves and for each administrative agent appointed pursuant to this subchapter, all of the rights and remedies available at law and in equity for the enforcement of this subchapter,

including, but not limited to, fines, evictions, and foreclosures as approved by a county-level housing judge.

8. Appeals

a. Appeals from all decisions of an administrative agent appointed pursuant to this subchapter must be filed, in writing, with the municipal housing liaison. A decision by the municipal housing liaison may be appealed to the Division. A written decision of the Division Director upholding, modifying, or reversing an administrative agent's decision is a final administrative action.

W. Development Fees.

1. Purpose

a. This section establishes standards for the collection, maintenance, and expenditure of development fees that are consistent with the amended Fair Housing Act (P.L.2024, c.2), N.J.A.C. 5:99, and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7). Fees collected pursuant to this Ordinance shall be used for the sole purpose of providing very low-, low- and moderate-income housing in accordance with a Court-approved Spending Plan.

2. Basic Requirements

a. The municipality previously adopted a development fee ordinance, which established the Municipal Affordable Housing Trust Fund.

b. The municipality shall not spend development fees until the court has approved a plan for spending such fees.

3. Residential Development Fees

a. Imposed fees

i. Residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of 1.5% of the equalized assessed value for residential development, provided no increased density is permitted. Development fees shall also be imposed and collected when an additional dwelling unit is added to an existing residential structure; in such cases, the fee shall be calculated based on the increase in the equalized assessed value of the property due to the additional dwelling unit.

ii. When an increase in residential density is permitted pursuant to a "d" variance granted under N.J.S.A. 40:55D-70d(5), developers shall be required to pay a "bonus" development fee of 6.0% of the equalized assessed value for each additional unit that may be realized, except that this provision shall not be applicable to a development that will include affordable housing. If the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal 1.5% of the equalized assessed value on the first two units; and the specified higher percentage of 6% of the equalized assessed value for the two additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

b. Eligible exactions, ineligible exactions and exemptions for residential development

i. Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the municipality, and developments where the developer has made an eligible payment in lieu of on-site construction of affordable units, if permitted by ordinance, or by agreement with the municipality and if approved by a municipality prior to the statutory elimination of payments in-lieu on March 20, 2024 per P.L.2024, c.2, shall be exempt from development fees.

ii. Developments that have received preliminary or final site plan approval prior to the adoption of this ordinance and any preceding ordinance permitting the collection of development fees shall be exempt from the payment of development fees, unless the developer seeks a substantial change in the original approval. Where a site plan approval does not apply, the issuance of a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for the purpose of determining the right to an exemption. In all cases, the applicable fee percentage shall be determined based upon the development fee ordinance in effect on the date that the construction permit is issued.

iii. Development fees shall not be imposed and collected when an existing single family residential structure undergoes a change to a

more intense use, is demolished and replaced, or is expanded, if the expansion is not otherwise exempt from the development fee requirement.

iv. No development fee shall be collected for the demolition and replacement of a residential building resulting from a fire or natural disaster.

4. Non-Residential Development Fees

a. Imposition of fees

i. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to 2.5% of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.

ii. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to 2.5% of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.

iii. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of 2.5% shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvements and the equalized assessed value of the newly improved structure; i.e., land and improvements; and such calculation shall be made at the time a final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.

b. Eligible exactions, ineligible exactions and exemptions for non-residential development

i. The non-residential portion of a mixed-use inclusionary or market-rate development shall be subject to a 2.5% development fee, unless otherwise exempted below.

ii. The 2.5% fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.

c. Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7), as specified in Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption." Any exemption claimed by a developer shall be substantiated by that developer.

d. A developer of a non-residential development exempted from the non-residential development fee pursuant to the Statewide Non-Residential Development Fee Act shall be subject to the fee at such time as the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.

e. If a property that was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the municipality as a lien against the real property of the owner.

5. Collection Procedures

a. Upon the granting of a preliminary, final or other applicable approval for a development, the applicable approving authority shall direct its staff to notify the construction official responsible for the issuance of a building permit.

b. For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF, "State of New Jersey Non-Residential Development Certification/Exemption," to be completed by the developer as per the instructions provided in the Form N-RDF. The construction official shall verify the information submitted by the non-residential developer as per the instructions provided on Form N-RDF. The tax assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.

c. The construction official responsible for the issuance of a building permit shall notify the tax assessor of the issuance of the first construction permit for a development that is subject to a development fee.

d. Within 90 days of receipt of that notice, the tax assessor shall provide an estimate, based on the plans filed, of the equalized assessed value of the development.

e. The construction official responsible for the issuance of a final certificate of occupancy shall notify the tax assessor of any and all requests for the scheduling of a final inspection on property that is subject to a development fee.

f. Within 10 business days of a request for the scheduling of a final inspection, the tax assessor shall confirm or modify the previously estimated equalized assessed value of the improvements associated with the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.

g. Should the municipality fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in Subsection b. of section 37 of P.L.2008, c.46 (N.J.S.A. 40:55D-8.6).

h. Fifty percent (50%) of the development fee shall be collected at the time of issuance of the construction permit. The remaining portion shall be collected at the time of issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at the time of issuance of the construction permit and that determined at the time of issuance of certificate of occupancy.

6. Appeal of development fees

a. A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by that board, collected fees shall be placed in an interest-bearing escrow account by the municipality. Appeals from a determination of the board may be made to the Tax Court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

b. A developer may challenge non-residential development fees imposed by filing a challenge with the director of the Division of Taxation. Pending a review and determination by the director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest-bearing escrow account by the municipality. Appeals from a determination of the director may be made to the Tax Court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

7. Affordable Housing Trust Fund

a. A separate, interest-bearing Municipal Affordable Housing Trust Fund shall be maintained by the chief financial officer of the municipality for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.

b. The following additional funds shall be deposited in the Municipal Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:

i. Payments in lieu of on-site construction of an affordable unit, where previously permitted by ordinance or by agreement with the municipality and if approved by a municipality prior to the statutory elimination of payments in-lieu on March 20, 2024 per P.L.2024, c.2;

ii. Funds contributed by developers to make 10% of the adaptable entrances in a townhouse or other multistory attached dwelling unit development accessible;

iii. Rental income from municipally operated units;

iv. Repayments from affordable housing program loans;

v. Recapture funds;

vi. Proceeds from the sale of affordable units; and

vii. Any other funds collected in connection with the municipal affordable housing program including but not limited to interest earned on fund deposits.

c. The municipality shall provide the Division with written authorization, in the form of a tri-party escrow agreement(s) between the municipality, the Division and the financial institution in which the municipal affordable housing trust fund has been established to permit the Division to direct the disbursement of the funds as provided for in N.J.A.C. 5:99-2.1 et seq.

d. Occurrence of any of the following deficiencies may result in the Division requiring the forfeiture of all or a portion of the funds in the municipal Affordable Housing Trust Fund:

i. Failure to meet deadlines for information required by the Division in its review of a development fee ordinance;

ii. Failure to commit or expend development fees within four years of the date of collection in accordance with N.J.A.C. 5:99-5.5;

iii. Failure to comply with the requirements of the Non-Residential Development Fee Act and N.J.A.C. 5:99-3;

iv. Failure to submit accurate monitoring reports pursuant to this subchapter within the time limits imposed by the Act, this chapter, and/or the Division;

v. Expenditure of funds on activities not approved by the Superior Court or otherwise permitted by law;

vi. Revocation of compliance certification or a judgment of compliance and repose;

vii. Failure of a municipal housing liaison or administrative agent to comply with the requirements set forth at N.J.A.C. 5:99-6, 7, and 8;

viii. Other good cause demonstrating that municipal affordable housing funds are not being used for an approved purpose.

e. All interest accrued in the housing trust fund shall only be used on eligible affordable housing purposes approved by the Court.

8. Use of Funds

a. The expenditure of all funds shall conform to a Spending Plan approved by Superior Court. Funds deposited in the municipal Affordable Housing Trust Fund may be used for any activity approved by the Court to address the fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls; housing rehabilitation; new construction of affordable housing units and related costs; accessory apartments; a market-to-affordable program; conversion of existing non-residential buildings to create new affordable units; green building strategies designed to be cost-saving and in accordance with accepted national or state standards; purchase of land for affordable housing; improvement of land to be used for affordable housing; extensions or improvements of roads and infrastructure to affordable housing sites; financial assistance designed to increase affordability; administration necessary for implementation of the Housing Element and Fair Share Plan; and/or any other activity permitted by Superior Court and specified in the approved Spending Plan.

b. Funds shall not be expended to reimburse the municipality or activities that occurred prior to the authorization of a municipality to collect development fees.

c. At least a portion of all development fees collected and interest earned shall be used to provide affordability assistance to very low-, low- and moderate-income households in affordable units included in the municipal Fair Share Plan. A portion of the development fees which provide affordability assistance shall be used to provide affordability assistance to very low-income households.

   i. Affordability assistance programs may include down payment assistance, security deposit assistance, low-interest loans, rental assistance, assistance with homeowners association or condominium fees and special assessments, infrastructure assistance, and assistance with emergency repairs. The specific programs to be used for affordability assistance shall be identified and described within the Spending Plan.

   ii. Affordability assistance for very low income households may include producing very low-income units or buying down the cost of low- or moderate-income units in the municipal Fair Share Plan to make them affordable to households earning 30% or less of median income.

d. No more than 20% of all affordable housing trust funds, exclusive of those collected to fund an RCA prior to July 17, 2008, shall be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultants' fees necessary to develop or implement a new construction program, prepare and implement a Housing Element and Fair Share Plan, administer an Affirmative Marketing Program and for compliance with the Superior Court and the Program including the costs to the municipality of resolving a challenge.

9. Monitoring

a. On or before February 15 of each year, the municipality shall provide annual electronic data reporting of trust fund activity for the previous year from January 1st to December 31st through the AHMS Reporting System. This reporting shall include an accounting of all Municipal Affordable Housing Trust Fund activity, including the sources and amounts of all funds collected and the amounts and purposes for which any funds have been expended. Such reporting shall include an accounting of development fees collected from residential and non-residential developers, previously eligible payments in lieu of constructing affordable units on site (if permitted by ordinance or by agreement with the municipality prior to the March 20,

2024 statutory elimination per P.L. 2024, c.4), funds from the sale of units with extinguished controls, barrier-free escrow funds, rental income from municipally-owned affordable housing units, repayments from affordable housing program loans, interest and any other funds collected in connection with municipal housing programs, as well as an accounting of the expenditures of revenues and implementation of the Spending Plan approved by the Court.

10. Ongoing Collection of Fees

    a. The ability to impose, collect and expend development fees shall continue so long as the municipality retains authorization from the Court in the form of Compliance Certification or the good faith effort to obtain it.

    b. If the municipality fails to renew its ability to impose and collect development fees prior to the expiration of its Judgment of Compliance, it may be subject to forfeiture of any or all funds remaining within its Affordable Housing Trust Fund. Any funds so forfeited shall be deposited into the New Jersey Affordable Housing Trust Fund established pursuant to section 20 of P.L.1985, c.222 (C. 52:27D-320).

11. Emergent Affordable Housing Opportunities. Requests to expend affordable housing trust funds on emergent affordable housing opportunities not included in the municipal fair share plan shall be made to the Division and shall be in the form of a governing body resolution. Any request shall be consistent with N.J.A.C. 5:99-4.1.

Section 2. Repealer
All ordinances or code provisions or parts thereof inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

Section 3, Severability
If any section, subsection, paragraph, sentence or any other part of this Ordinance is adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this Ordinance.

Section 4. Effective Date

This ordinance shall take effect as provided by law.

APPENDIX D

Ordinance #2026-07

An Ordinance of the Township of Hardyston, County of Sussex and State of New Jersey Adopting Certain Amendments to the Redevelopment Plan Identified as the Route 94 Redevelopment Plan for Block 16 Lot 8.01 & Block 14 Lot 24.01

WHEREAS, the Mayor and Council of the Township of Hardyston, by Ordinance #2024-09 adopted on August 28, 2024, adopted the Route 94 Redevelopment Plan for Block 16 Lot 8.01 & Block 14 Lot 24.01;

WHEREAS, said Redevelopment Plan complied with the requirements of all applicable State and Federal statutes and regulations promulgated thereunder;

WHEREAS, it has become necessary to amend the redevelopment plan further;

WHEREAS, the Joint Land Use Board of the Township of Hardyston has submitted to the Mayor and Township Council its recommendations regarding the amendments to the Redevelopment Plan for the Area and the Mayor and Township Council duly considered the Joint Land Use Board's recommendations concerning same;

WHEREAS, the Township Council of the Township of Hardyston, as the Redevelopment Entity under the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., has reviewed and considered the recommended amendments to the Redevelopment Plan from the Joint Land Use Board;

WHEREAS, the Township Council of the Township of Hardyston, as the Redevelopment Entity under the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., has reviewed the certain proposed amendments to the Redevelopment Plan, approved by the Hardyston Township Joint Land Use Board, and wish to adopt these amendments as referenced in Exhibit "A" to this Ordinance, attached hereto and made a part hereof this Ordinance; and

WHEREAS, the Township Council of the Township of Hardyston has determined that approving the proposed amendments to the Redevelopment Plan will be in the best interest of the residents of the Township of Hardyston; and

NOW THEREFORE, BE IT ORDAINED by the Mayor and Township Council of the Township of Hardyston, County of Sussex and State of New Jersey that:

Section 1. That the proposed amendments to the Redevelopment Plan, as referenced in Exhibit "A" to this Ordinance, attached hereto and made a part hereof this Ordinance, hereby are adopted as amendments to Ordinance #2024-09 and any and all subsequent revisions to this Ordinance; and

Section 2. It is hereby found and determined that the Amended Redevelopment Plan conforms to the Master Plan of the Township of Hardyston;

Section 3. It is hereby found and determined that the Amended Redevelopment Plan gives due consideration of the provision of appropriate allowable uses of the areas as is desirable for mixed use residential development, with special consideration for the health, safety and welfare of the residents of the area and the Township of Hardyston;

Section 4. It is hereby found and determined that the amendments to the Redevelopment Plan will afford maximum opportunity, consistent with the sound needs of the locality as a whole, for the redevelopment of the area;

Section 5. In order to facilitate the implementation of the Redevelopment Plan and the amendments thereto, it is hereby found and determined that this action must be taken by this Township Council to amend this Section of the Redevelopment Plan in order to facilitate the rehabilitation and redevelopment of the property;

Section 6. Development activity pursuant to the Redevelopment Plan and its amendments shall only be related to the area and any analysis of surrounding area contained in the Redevelopment Plan and its amendments shall not be construed to mean that the Township of Hardyston intends to develop such surrounding areas.

Section 7. The Redevelopment Plan for the area and its amendments, having been duly reviewed and considered, is hereby approved, and the Township Clerk is hereby directed to file a copy of the Redevelopment Plan with the minutes of this meeting.

Section 8. All Ordinances contrary to the provisions of this section of the Ordinance are hereby repealed to the extent that they are inconsistent herewith.

Section 9. This Ordinance shall take effect upon final passage and publication in accordance with
law.

ATTEST: TOWNSHIP OF HARDYSTON

_____ _____

Jane Bakalarczyk, RMC, Township Clerk By: Stanley Kula, Mayor

Amendment to Route 94 Redevelopment Plan

for Block 16 Lot 8.01 & Block 14 Lot 24.01

Hardyston Township

Sussex County, New Jersey

Prepared by
Carrine Piccolo-Kaufer, P.P.
Township Planner
NJ PP LICENSE #33LI00613500

(Addition of text in bold; deletion noted in strikethrough)

Section 1. Amend Paragraph 1 of Property Description & Location to read as follows:

PROPERTY DESCRIPTION & LOCATION

The Redevelopment Area is located in the north-central portion of the Township adjacent to the Hamburg Borough municipal border along Route 94 and consists of two undeveloped properties: Block 14, Lot 24.01 **(referred to hereinafter as "Village Center North")** and Block 16, Lot 8.01 **(referred to hereinafter as "Village Center South")**. The properties are not contiguous, but are adjacent to each other, separated by rights-of-way. Block 16, Lot 8.01 has frontage along the southern side of Route 94. Block 14, Lot 24.01 is located on the northern side of Route 94, across from Block 16, Lot 8.01.

Section 2. Amend Paragraph 2 of Objectives of the Plan to read as follows:

OBJECTIVES OF THE PLAN

The purpose of the Route 94 Redevelopment Plan is to amend the Village Center Ordinance in order to provide additional flexibility for the proposed development of the sites while maintaining the overall original vision for the Village Center. The market has changed quite dramatically since the ordinance was first adopted in 2007. Rather than create a retail-oriented Village Center area, the Plan is to create a resort-oriented commercial services and recreation-oriented Village Center. Thus, the focus on non-residential development in the center would be on activities both indoor and outdoor to enhance the character of the area. The Plan is to allow for more recreation-oriented uses as has been the case in the Crystal Springs development over

the past several years. **The Plan allows for designation of different redevelopers for the redevelopment of Village Center South and Village Center North properties (which redevelopers, in the event of such designation, are referred to collectively as "redeveloper" in this Plan).**

Section 3. Amend Section 185-119 Tract Standards, Subsection D, Requirements, Sub-Area 3.

(3) Maximum residential units: In no instance shall there be more than 1,056 units, which includes any on-site affordable units. The maximum number of residential units in the village center and the adjacent Commercial Recreation Zone shall not exceed a total of 2,738 units. Beds/units in assisted living facilities, nursing homes and hospice care shall count as units for the purposes of this section.

Village Center South: In no instance shall there be more than 634 units, which includes any on-site affordable units, located in Village Center South.

Village Center North: In no instance shall the be more than 422 units, which includes any on-site affordable units, located in Village Center North.

Section 4. Amend Section 185-119 Tract Standards, Subsection D, Requirements, Sub-Area 11, Minimum Affordable Housing.

Sec 185-119 D (11)

(11) Minimum affordable housing:

(a) ~~The Village Center South will provide 143 rental units~~. **The redeveloper of Village Center South will provide for affordable rental units and/or for-sale units totaling twenty-percent (20%) of the total market-rate units in accordance with Uniform Housing Affordability Controls phasing requirements and requirements of the Township's Affordable Housing Ordinance established by Chapter 185, Article XXI, Subsection 90.1 and determined based solely on the actual development within Village Center South. The redeveloper of Village Center North will provide for affordable rental units and/or for-sale units totaling twenty-percent (20%) of the total market rate residential unit in accordance with Uniform Housing Affordability Controls phasing requirements and requirements of the Township's Affordable Housing Ordinance established by Chapter 185, Article XXI, Subsection 90.1 and determined based solely on the actual development within Village Center North.** All proposed

affordable units shall be constructed according to Uniform Housing Affordability Controls (N.J.A.C. 5:80-26.1 et seq.). In addition, 13% of the total units shall be very-low income.

~~(b) The affordable housing obligation shall be provided pursuant to an affordable housing developer's agreement with the Township Council. Affordable units may be located throughout the development. The Commercial Recreation (CR) Zone is also hereby amended to confirm that § 185-90.1 of the Township Code does not apply in the CR District, excluding the Village Center South and Grand Cascades Lodge, and developer fees shall be paid for all development in the CR District outside of the Village Center South.~~

(b) ~~(c)~~ If assisted living facilities are constructed pursuant to the long-term care residence option, then creditworthy assisted living beds/units may be credited against the required affordable rental units, of which no more than 1/3 of the total number of affordable units shall be age-restricted. Assisted living facilities may have up to 10% of the total units as affordable.

Section 5. Amend Section 185-20, Permitted Uses.

§ 185-120 Permitted uses.

[Repeal Section 185, Attachment 11: Permitted Uses]

A. The following uses shall be permitted in the Mixed-Used Village Center zone located **in Village Center South:**

(1) Retail sales and services (exclusive of auto-related uses);

(2) Restaurants and eating establishments (including curbside pickup and outdoor dining);

(3) Banks and financial institutions;

(4) Theatres;

(5) Health clubs, spas, saunas, wellness centers;

(6) Urgent-care centers and surgical centers (nonretail uses);

(7) Offices;

(8) Indoor recreational uses and clubhouses (exclusive of adult entertainment uses);

(9) Pubs, taverns, bars, brew pubs, breweries, distilleries, wineries including retail sales and tasting;

(10) Art schools and cooking schools;

(11) Hotels;

(12) Resort recreation activities both indoor and outdoor including, but not limited to axe throwing, zip lines, indoor and outdoor pools and water parks, pickle ball, paddle tennis and tennis, mini-golf, and arcades; and

(13) Recording studios.

(14) Long-term resident care

(15) ~~Townhouses.~~ **Resort Oriented Housing to include; single-family detached dwellings, single-family detached dwellings with zero-lot-lines, single-family attached (duplex) dwellings with zero-lot-lines, townhouse dwelling units, multilevel housing units, multistory, common entrance condominium buildings, and age-restricted housing;**

(16) Multi-family; including multi-story, common-entrance ~~condominium or~~ apartment buildings

(17) Short-term rentals ~~south of Route 94~~ in the Mixed-Use Village **Center South** Zone.

(18) Public and quasi- public uses such as museums or civic space;

(19) Hotel condominiums only if operated in connection with a full-service hotel developed in the village center;

(20) Low and moderate affordable housing, affordable units may be located on the ground level provided they do not front on Main Street;

(21) Meeting rooms and conference facilities;

(22) Golf villa units;

(23) Mixed-use with nonresidential uses on the ground level and residential uses above.

B. The following uses shall be permitted in the Village Center North:

(1) Resort Oriented Housing to include; single-family detached dwellings, single-family detached dwellings with zero-lot-lines, single-family attached (duplex) dwellings with zero-lot-lines, townhouse dwelling units, multilevel housing units, multistory, common entrance condominium buildings, and age-restricted housing;

(2) Multi-family; including multi-story, common-entrance apartment buildings.

Section 6. Amend Section 185-21, Additional standards and accessory uses.

§ 185-121 Additional standards and accessory uses.

[Repeal Section 185, Attachment 12: Additional Standards and Accessory Uses]

A. The following accessory uses shall be permitted in the Mixed-Use Village Center zone **located in Village Center South:**

(1) Parking;

(2) Signage;

(3) Outdoor dining;

(4) Public spaces/plazas/open space;

(5) Merry-go-rounds;

(6) Miniature trains;

(7) Glockenspiels;

(8) Amphitheaters;

(9) Holiday markets, festivals and events;

(10) Farmers markets and petting zoos;

(11) Outdoor recreation classes, i.e., Goat Yoga;

(12) Hiking paths, activity trails; Bandstands, gazebos, outdoor pavilions; and

(13) Other accessory uses and structures customary and incidental to the principal permitted uses.

B. The following accessory uses shall be permitted in Village Center North:

(1) Parking;

(2) Signage;

(3) Public spaces/plazas/open space;

(4) Hiking paths, activity trails, bandstands, gazebos, outdoor pavilions; and

(5) Other accessory uses and structures customary and incidental to the principal permitted uses.

Section 7. Amend Administrative and Procedural Requirements, Redevelopment Entity to read as follows:

ADMINISTRATIVE AND PROCEDURAL REQUIREMENTS

REDEVELOPMENT ENTITY

The Governing Body of Hardyston Township shall serve as the Redevelopment Entity to implement this Redevelopment Plan. The Redevelopment Entity must designate or conditionally designate a redeveloper prior to the submission of an application to the Planning Board for any approval based on the standards of this Redevelopment Plan to the Planning Board. **The Redevelopment Entity may designate different redevelopers for Village Center South and Village Center North.**