

CARNEYS POINT TOWNSHIP SEWERAGE AUTHORITY

RESOLUTION 2021-31

Resolution Authorizing Escrow Agreement

WHEREAS, The Carneys Point Township Sewerage Authority (“CPTSA”) would like its professional staff to prepare an engineering design for the proposed Route 40 & Courses Landing Road Sanitary Force Main Extension; and

WHEREAS, Rockefeller Group Development Corporation, as contract purchaser of Block 254, Lots 2, 3, 4, 4.01, 4.03, 5, & 7; and Block 255, Lots 5 & 5.02 as shown on the Carneys Point Township Tax Map, would like to post \$40,000 with the CPTSA for use by the CPTSA in order to conduct the aforementioned work; and

WHEREAS, an escrow agreement has been prepared with regard to the posting of the money by Rockefeller Group Development Corporation and the CPTSA has read and reviewed the escrow agreement.

NOW THEREFORE, BE IT RESOLVED by the CPTSA that the escrow agreement with Rockefeller Group Development Corporation is hereby approved and that the Chairman is hereby authorized to execute the escrow agreement on behalf of the CPTSA.


Anthony Rullo, Authority Chairman

Date of Adoption: May 18, 2021

Committee	Moved	Seconded	Y	N	Abstain	Absent
Dr. Racite	✓		✓			
Mr. Basile		✓	✓			
Mr. Brown			✓			
Mr. Newton			✓			
Mr. Rullo			✓			

ESCROW AGREEMENT

THIS AGREEMENT (the "Agreement") is entered into this 18 day of May, 2021, by and between the **CARNEYS POINT TOWNSHIP SEWERAGE AUTHORITY**, a New Jersey municipal authority maintaining a principal place of business at 303 Harding Highway, Carneys Point Township, New Jersey 08069 (hereinafter referred to as "Authority") and **ROCKEFELLER GROUP DEVELOPMENT CORPORATION**, a New York corporation (hereinafter referred to as "Developer") with offices at 92 Headquarters Plaza North Tower, 9th Floor, Morristown, New Jersey 07960-6834 (this "Agreement").

1. **Purpose.** The Developer is the contract purchaser for land currently designated on the Official Tax Map of the Township of Carneys Point as Block 254, Lots 2, 3, 4, 4.01, 4.03, 5, & 7; and Block 255, Lots 5 & 5.02 (the "Property"). Subject to a funded escrow in accordance with this Agreement, the Authority authorizes its professional staff to prepare an engineering design for the proposed Route 40 & Courses Landing Road Sanitary Force Main Extension. The Authority is entitled to reimbursement from Developer for all reasonable costs and fees incurred by its professional staff through the use of an escrow deposit account maintained on behalf of and funded by Developer consistent with the provisions of this Agreement. Authority professionals' staff time shall be charged at the then prevailing hourly rate of the staff person assigned to the matter. The work may include document, map, and plan review; coordination with and reporting to the Authority and their consultants; site visits as required to evaluate existing conditions; field survey; preparation of base plans; preparation of engineering design plans, details, and specifications; and coordination with funding agencies and regulatory bodies. The escrow funded by the Developer is with the understanding that the Authority does not guarantee that the proposed Route 40 & Courses Landing Road Sanitary Force Main Extension will be constructed or operational or that

any third party will connect into the Route 40 & Courses Landing Road Sanitary Force Main Extension if said Force Main is constructed.

2. **Power of Authority.** Consistent with the New Jersey Sewerage Authorities Law, specifically N.J.S.A. 40:14A-7(13), Authority is authorized to enter into this Escrow Agreement to carry out the Purpose described in Paragraph 1 above.

3. **Escrow Established.** Consistent with the New Jersey Sewerage Authorities Law, specifically N.J.S.A. 40:14A-7.3, the Authority and Developer in accordance with the provisions of this Agreement, hereby create a separate interest-bearing escrow deposit account to be established with the designated financial officer of the Authority.

3.1 **Escrow Funded.** The Developer, by execution of this Agreement, shall deposit with the Authority an amount of \$40,000.00 to be placed in the depository referred to in Paragraph 3 immediately above. The Authority shall provide Developer with invoice(s) setting forth the itemized professional fees and costs incurred by the Authority which have been drawn down from the escrowed funds. Developer may object to the payment of any invoice or fee incurred by informing the Authority, in writing, within fifteen (15) days of Developer's receipt of an invoice, of such objection and the basis therefore. Unless the Authority receives an objection from Developer to the payment of any such invoice in writing within fifteen (15) days of Developer's receipt of the invoice, the Authority may pay the invoice from the escrowed funds. If Developer makes a timely written objection to payment, the undisputed portion of the invoice shall be paid.

In the event that Developer timely disputes an invoice or any portion thereof, a copy of such notice shall be sent simultaneously to the professional(s) whose charges are the subject of the dispute. The Authority, the professional(s) whose charges are the subject of the dispute,

and Developer shall seek to resolve any such objection within fourteen (14) days of its receipt by the Authority and the professional(s) whose charges are the subject of the dispute. Any of the Authority's professional staff and consultants may determine to stop all work and not proceed until the disputed charge is resolved to the satisfaction of the professional consultant, the Authority and the Developer.

4. **Increase in Escrow Amount Deposited.** If, during the existence of this Agreement, the funds deposited into said escrow account are insufficient to cover any voucher or bill submitted by the Authority's professional staff; Developer shall, within thirty (30) days of receipt of a notice from the Authority that a deficiency in the Developer's escrow exists, deposit an additional deposit of \$10,000.00 to fund the deficit as well as to pay for projected costs and fees associated with ongoing professional reviews, permitting, inspections and studies pursuant to applicable Authority regulations. Any funds remaining in the escrow account, upon termination of this Agreement, shall be refunded to Developer.

5. **Termination.** Upon completion of the Authority professionals' work described in Paragraph 1 above, or in the event this Agreement is terminated in writing by mutual consent by both the Authority and Developer, the Authority shall draw down upon the escrowed funds in order to pay all invoices for its professionals' fees incurred up to and through the date of such termination. Within thirty (30) days from the date of termination, the Authority shall return any remaining funds held in escrow to Developer.

6. **Design Pro Rata Contributions.** Although there is no guarantee that the Route 40 & Courses Landing Road Sanitary Force Main will be constructed, in the event the Route 40 & Courses Landing Road Sanitary Force Main Extension is fully constructed and operational and in cases where any third-party developers or third-party controlled properties, outside of and apart

from the Developer's proposed improvement of the Property, connect to the Route 40 & Courses Landing Sanitary Force Main Extension, the Authority and Developer agree that such third-party developers or third-party controlled properties shall reimburse Developer on a pro-rata basis for the Developer's costs of the study, inspection, planning, design and permitting listed in Paragraph 1 of this Agreement. It also understood, by Developer and Authority, that the Authority will be responsible to assess the pro-rata contribution amount to, and collect from, any such third-party developers or third-party controlled properties that connect to the Route 40 & Courses Landing Road Sanitary Force Main Extension, if it is fully constructed and operational and then pay those pro-rata collected funds as reimbursement to Developer for the Developer's costs of the study, inspection, planning, design and permitting listed in Paragraph 1 of this Agreement (the "Design Pro-Rata Contribution"). It is also understood that the Authority has yet to amend its regulations to assess the Design Pro-Rata Contribution amount to, and collect from, any such connected third-party developers or third-party controlled properties. Authority agrees that, within four (4) months following the date of this Agreement, it will adopt regulations addressing Design Pro-Rata Contribution including the determination of the proportionate share of such costs assessed to and collected from third-party developers or third-party controlled properties. Developer and Authority agree that, following the Authority's adoption of any regulations addressing the Design Pro-Rata Contribution, this Agreement shall be amended to incorporate by reference those pro-rata contribution regulations.

7. **Release.** Developer, its successor and assigns, hereby irrevocably and unconditionally releases and forever discharges the Authority, its members/participants, its Board Members, officials, employees, agents, advisors, consultants and contractors (the "Released Parties") against all liabilities, judgments, costs, damages, liabilities, interest, expenses and

attorneys' fees for loss, damage or injury to person or property resulting from the actions or omissions of the Released Parties for any failure of the Released Parties to collect the correct amount of the Design Pro-Rata Contribution from third-party developers or third-party controlled properties when due, in the event that the Route 40 & Courses Landing Road Sanitary Force Main Extension is constructed and operational and any third party connects into the Route 40 & Courses Landing Road Sanitary Force Main Extension. In the event, however, that the Authority does not collect the correct amount of the Design Pro-Rata Contribution from said third-party developers or third-party controlled properties when due, the Developer, its successor or assigns shall notify the Authority and the Authority shall thereafter collect the Design Pro-Rata Contribution in accordance with its regulations. In addition, the Authority shall provide Developer with written notice of any and all applications submitted to Authority by third-party developers or third-party controlled properties to connect to the Route 40 & Courses Landing Road Sanitary Force Main Extension within five (5) business days of its receipt of any such connection application.

8. **No Guarantee.** This Agreement shall not be construed as: (1) an obligation for the construction and operation of the Route 40 & Courses Landing Road Sanitary Force Main Extension; (2) a guarantee for the redevelopment of the Property in accordance with the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.; (3) a guarantee of any land use approval for either the development or redevelopment of the Property; (4) a guarantee that the Developer, its successor and assigns, will recover or otherwise be reimbursed for any of the funds deposited into escrow pursuant to this Agreement; (5) a guarantee that sufficient sewer capacity will be available to Developer, its successors and assigns, for its use of the Property.

9. **Governing Law.** This Agreement shall be construed in accordance with, and governed by, the laws of the State of New Jersey.

10. **Assignment.** This Agreement shall not be assigned by any party without the written consent of both the Authority and Developer.

11. **Survival.** The provisions of this Agreement that relate to the enforcement of rights and obligations accruing before the end of the term of this Agreement shall survive termination of this Agreement to the extent necessary to enforce such rights and obligations.

12. **Severability of Invalid Provision.** If any one or more of the covenants or agreements provided in this Agreement 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 this Agreement.

13. **Execution in Counterparts and Electronic Signatures.** This Agreement may be executed in any number of counterparts and all of which shall be regarded for all purposes as one original and shall constitute and be but one and the same. The execution and delivery of this Agreement may be conducted by electronic means in accordance with the Uniform Electronic Transmissions Act, N.J.S.A. 12A:12-1.


14. **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, agreements and understandings with respect thereto.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, all as of the date first above written.

Sworn and subscribed to before

me this 1st day
of May, 2021


JENNIFER KOETURIUS
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires June 30, 2025

**CARNEYS POINT TOWNSHIP SEWERAGE
AUTHORITY**


By: 
Print Name & Title: Anthony Rullo, Chairman Carneys Point Township Sewerage Authority

Sworn and subscribed to before

me this 19th day
of May, 2021


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**ROCKEFELLER GROUP DEVELOPMENT
CORPORATION, a New York corporation**

By: 
Print Name & Title: Heath Abramsohn, Vice President

Janet Shillitani

Notary Public of New Jersey

My Commission Expires June 15, 2024