

CPTSA
1035

CARNEYS POINT TOWNSHIP SEWERAGE AUTHORITY

RESOLUTION 2022 - 01

Resolution Authorizing Reservation of Sewer Capacity Agreement

WHEREAS, DPIF3 NJ6 Game Creek Road Urban Renewal, LLC, a New Jersey limited liability company with offices at 1776 On The Green, 67 Park Place East, Suite 540, Morristown, NJ 07960 (hereinafter referred to as “DPIF3”) would like to construct a warehouse distribution (the “Project”) center at 30 North Game Creek Road (Block 247, Lots 12 and 12.02) in Carneys Point Township (the “Property”); and

WHEREAS, DPIF3 has been conditionally designated as the Redeveloper of the Property by the Township of Carneys Point (“Township”) and Redeveloper and the Township have entered into an Interim Cost and Conditional Designation Agreement regarding same; and

WHEREAS, the Carneys Point Township Sewerage Authority (the “CPTSA”) is advised that the Township and DPIF3 have negotiated, *inter alia*, a Redevelopment Agreement and that a Resolution authorizing the execution of same is to be considered by the Township Committee at an upcoming public meeting; and

WHEREAS, in the interim, DPIF3 has requested to enter into a Reservation of Sewer Capacity Agreement with CPTSA, which sewer capacity would serve the Project; and

WHEREAS, the CPTSA Engineer has reviewed this matter and has determined that the Project will require sanitary sewer capacity in the amount of 105 service units per day and that the total connection fee will be \$466,725.00, which is set forth in the CPTSA Engineer letter dated _____, a copy of which is on file at the CPTSA facility; ; and

WHEREAS, according to the CPTSA Rules and Regulations, DPIF3 must post 50% of the total connection fee (i.e. \$233,362.50) in order to reserve the required sewer service capacity and such payment will reserve the capacity for two (2) years.

NOW, THEREFORE BE IT RESOLVED, by the CPTSA that the sewer capacity reservation and connection fee set forth in the CPTSA Engineer's letter are approved, subject to the parties entering into a Reservation of Sewer Capacity Agreement in substantially the form attached hereto as **Exhibit A** ("Reservation Agreement"), the authorization for which is hereby conditioned upon the Township and DPIF3 entering into a Redevelopment Agreement for the Project. If a Redevelopment Agreement for the Project is not authorized by Resolution of the Township Committee for any reason and/or if a Redevelopment Agreement is not duly executed by the Township and DPIF3 within thirty (30) days of the adoption of this Resolution by CPTSA for any reason, then the approval and authorization granted hereunder be automatically deemed expired and void without the necessity for any further action by CPTSA.


Anthony Rullo, Authority Chairman

Date of Adoption: January 18, 2022

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

CARNEYS POINT TOWNSHIP SEWERAGE AUTHORITY
RESERVATION OF SEWER CAPACITY AGREEMENT

THIS AGREEMENT, made this 18 day of January, 2022, 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 **DPIF3 NJ6 GAME CREEK ROAD URBAN RENEWAL, LLC.**, a New Jersey limited liability company with offices at 1776 On The Green, 67 Park Place East, Suite 540, Morristown, NJ 07960 (hereinafter referred to as “Developer”).

WITNESSETH:

WHEREAS, the Authority provides sanitary sewer service to portions of Carneys Point Township located in Salem County, New Jersey;

WHEREAS, the Developer’s affiliate is the contract purchaser for land currently designated on the Official Tax Map of the Township of Carneys Point as Block 247, Lots 12 and 12.02 (the “Property”);

WHEREAS, Developer proposes the development of a warehouse complex on the Property that will consist of containing two (2) warehouse structures comprising approximately 587,570 sq. ft. collectively, along with associated passenger car and trailer parking spaces, loading berths and related site improvements (the “Project”) as depicted on the development plan entitled, *30 North Game Creek Road, Block 247, Lots 12 & 12.02, Township of Carney’s Point, Salem County, New Jersey, Preliminary and Final Site Plans* prepared by Jesse D. Dougherty, P.C. of Marathon Engineering, dated 10/02/2020, last revised 01/07/2022, consisting of thirty-seven (37) sheet, attached hereto as **Exhibit A**;

WHEREAS, the Project can generate up to 20,878 gallons per day of sanitary sewer wastewater;

WHEREAS, Developer desires to acquire from the Authority 105 service units of sanitary sewer capacity in order to provide adequate sanitary sewer service for the Project;

WHEREAS, the Authority presently has available capacity to serve the Project, but the available capacity is limited;

WHEREAS, the Authority will agree to provide Developer with 105 service units of sanitary sewer capacity, pending receipt of all local and state permits and approvals; and

WHEREAS, Developer desires to reserve 105 service units of capacity for utilization by the Project on the Property, and the Authority is willing to reserve that capacity for Developer, all of which shall be in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, intending to be bound and for other good and valuable consideration, the parties hereto agree as follows:

1. Recitals. The aforementioned recitals noted in this Agreement are deemed part of this Agreement and are incorporated into the terms and conditions of this Agreement.

2. Reservation of Capacity. The Authority agrees to reserve and make available to Developer an amount of 105 service units of sanitary sewer capacity to be utilized for the Project on the Property. The capacity being reserved pursuant to this Agreement may not be used at any other location and/or for any other purpose other than for the purposes set forth in this Agreement. The treatment capacity for the Project will be at the Carneys Point Township Sewerage Authority Treatment Plant ("WWTP"), owned and operated by the Authority.

3. Connection Fees. The parties acknowledge that the connection fee for the Project, consistent with the Authority's Sewer Use Rules and Regulations, prepared by Professional

Consulting Inc., originally adopted February 28, 2007, last amended December 17, 2013 (the "Regulations"), is fixed at \$4,445.00 per 200 gallon per day service unit of sewer wastewater for a total of \$466,725.00 (105 service units x \$4,445.00 per service unit = \$466,725.00) for the Project.

4. Sewer Use Rules and Regulations. In addition to the terms and conditions set forth in this Agreement, all rules and regulations set forth in the Regulations, in effect as of the date of the execution of this Agreement, shall be applicable to this Agreement as if fully set forth herein. This includes, but is not limited to, Chapter 13, Policy for Reserving Connection and Service.

5. Sewer Capacity Reservation Fee. Consistent with the Regulations, Developer agrees to pay to the Authority a Sewer Capacity Reservation Fee in the amount of \$233,362.50 (which represents 50% of the total connection fee) to reserve 105 service units of sanitary sewer capacity for the Project on the Property, as set forth in this Agreement. The Sewer Capacity Reservation Fee shall be credited towards the total Project sewer connection fee of \$466,725.00 at time of actual sewer connection of the Project to the Authority sewerage system resulting in a remaining sewer connection fee balance of \$233,362.50.

Furthermore, and only after the Project is completely and fully constructed, and fully operational with full tenant occupancy, the Authority Engineer may perform an analysis in consultation with Developer's project engineers to determine if Developer is actually utilizing or will be foreseeably utilizing the full amount of the its sanitary sewer capacity. If it is determined by the Authority Engineer that there is an unused portion of sewer capacity only after the Project is completely and fully constructed, and fully operational with full tenant occupancy, then the Authority will allow Developer to return any unused sewer capacity. If the Authority takes back

any unused sewer capacity, the Authority shall reimburse Developer for that amount of the Sewer Connection Fee representing the unused sewer capacity that is returned to the Authority.

6. Sewer Connection Fee. At time of actual connection of the Project to the Authority sewerage system, Developer shall pay a \$233,362.50 sewer connection fee to Authority in addition to the credit received for the \$233,362.50 Sewer Capacity Reservation Fee, for a total connection fee of \$466,725.00.

7. Force Majeure. Failure or delay of either the Authority or the Developer to perform any of their respective obligations under this Agreement by reason of the following events shall not constitute an event of default or other breach of this Agreement: labor disputes, strikes, picket lines, unavailability of materials, freight and delivery delays, energy shortages, boycott efforts, fires, floods, freezes, extreme weather conditions, accidents, war (whether or not declared), terrorism, riots, acts of God, acts (including, but not limited to, a delay in acting or a failure to act) of government (including without limitation any agency, subdivision or department of the United States of America or the State of New Jersey), denial of any governmental approval, provided that the Developer is diligently pursuing said approvals; acts or omissions of other third parties, including litigation by third parties (other than third parties for whom the party hereto asserting an excusable delay is responsible, such as contractors performing work for that party), a pandemic that results in a declaration of a state of emergency in New Jersey or other such causes which are beyond the reasonable control of the party asserting an excusable delay (the "Force Majeure").

8. Time Limitation. The 105 service units of sanitary sewer capacity, referenced in Paragraph 2 above, shall be reserved by the Authority and exclusively held for the Project for a twenty-four (24) month period beginning on the date of the Authority's receipt of payment in connection with the execution of this Agreement by both the Authority and Developer

("Reservation Period Commencement Date"), in accordance with the terms set forth herein. This Agreement is considered valid for twenty-four (24) months from the Reservation Period Commencement Date and may be renewed or extended for additional periods only upon written mutual consent of both the Authority and Developer.

The (24) twenty-four month period shall automatically toll and stop upon the occurrence of any Force Majeure event described in Paragraph 7 above, and the 24 twenty-four month period shall remain tolled and shall not re-commence until one day after the conclusion of such Force Majeure event.

The twenty-four (24) month period shall automatically toll and stop should the Authority lack the infrastructure or actual capacity to provide sewer service to the Developer and will remain tolled and stopped until such time that Authority can provide the Developer with sewer service. In the event that the Authority reasonably anticipates that it will lack the infrastructure or actual capacity to be able to provide sewer service to the Developer within the twenty-four (24) month period of this Agreement, the Authority shall promptly provide written notice to the Developer and the Developer's Attorney at the addresses set forth below, accordingly and providing an estimated date as to when the infrastructure or actual capacity will be available.

DPIF3 NJ6 Game Creek Road Urban Renewal, LLC
1776 On The Green
67 East Park Place Suite 540
Morristown, New Jersey 07960
Attn: James Mascaro

With a copy to:

Dermody Properties, LLC
5500 Equity Avenue
Reno, Nevada 89502
Attn: C. Douglas Lanning

With a copy to:

Emily K. Givens, Esq.
Maley Givens, PC
Suite 210
1150 Haddon Avenue
Collingswood, New Jersey 08108

The Sewer Capacity Reservation Fee shall be forfeited by Developer to the Authority should it not be applied as a credit for the Project sewer connection fee during the twenty-four (24) month period of this Agreement unless tolled by a Force Majeure event or lack of sewer infrastructure or sewer capacity, or as may be renewed or extended in writing by both the Authority and Developer.

9. Approvals. Developer agrees to proceed expeditiously with the securing of any and all approvals necessary to develop the Project, which shall be accomplished at the sole cost and expense of Developer.

10. No Agency. Developer is not an agent of the Authority, nor is the Authority conducting a joint venture with Developer, and Developer will not represent to the contrary at any time.

11. Miscellaneous. This Agreement shall be interpreted in accordance with the laws of the State of New Jersey and shall be binding upon the respective parties, their successors, heirs and assigns. It is understood and agreed that this Agreement constitutes all of the terms and conditions that have been agreed upon by the parties and this Agreement may only be modified by a written document executed by both parties hereto. Developer can assign this Agreement to another developer with the Authority's written consent.

12. Entire Agreement. This Agreement contains the entire agreement of the Authority and Developer. Any change to this Agreement shall be effective only if it is written and executed by both the Authority and Developer.

13. Severability. If any provision of this Agreement or the application hereof to any person or circumstances shall be found to be invalid by a Court of competent jurisdiction in the State of New Jersey, the remainder of the provisions of the Agreement and the application hereof to the other persons or circumstances shall not be affected thereby.

14. Effective Date. The date of this Agreement is the date on which it is executed by the last party to do so.

Signatures appear on the following page.

IN WITNESS WHEREOF, the Authority and Developer have caused this Agreement to be executed by their appropriate representatives, all of whom have been duly authorized to do so, on the date set opposite their respective names.

**CARNEYS POINT TOWNSHIP
SEWERAGE AUTHORITY, a New Jersey
municipal authority**

Dated: _____

By:  _____

Attest: _____

DEVELOPER

Dated: _____

By: _____

Attest: _____