

CARNEYS POINT TOWNSHIP SEWERAGE AUTHORITY

RESOLUTION 2022 - 34

Resolution Authorizing Sewer Capacity Reservation Agreement

WHEREAS, D2 Harding Highway, LLC ("D2") proposes the development of a logistics center on Block 191, Lots 1, 2, 3, 4 & 5 on the Official Carneys Point Township Tax Maps that will consist of a 587,000 +/- square foot warehouse / distribution building together with related site improvements (the "Project") as depicted on the development plan entitled, "295 Exit 4 Project, Block 191, Lots 1 Thru 5, Township of Carneys Point, Salem County, New Jersey, Overall Concept Plan," dated December 15, 2020 and prepared by Marathon Engineering and Environmental Services; and

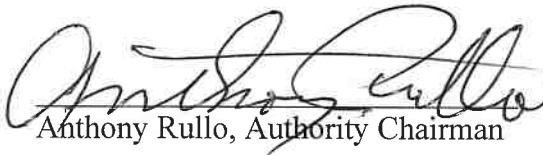
WHEREAS, D2 has requested a Sewer Capacity Reservation Agreement with the Carneys Point Township Sewerage Authority (the "CPTSA") in order to build the data center; and

WHEREAS, the CPTSA Engineer has reviewed this matter and determined D2 will need a capacity reservation of 14,700 gallons per day (74 service units) and that the connection fee will be \$328,930.00; and

WHEREAS, according to the CPTSA Rules and Regulations, D2 must post 50% of the connection fee in order to obtain the capacity reservation it requires; and

WHEREAS, a Sewer Capacity Reservation Agreement has been prepared and reviewed by the CPTSA.

NOW, THEREFORE BE IT RESOLVED, by the CPTSA that the Sewer Capacity Reservation Agreement is hereby approved and the Chairman is hereby authorized, on behalf of the CPTSA, to execute the Sewer Capacity Reservation Agreement.


Anthony Rullo, Authority Chairman

Date of Adoption: April 19, 2022

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

CARNEYS POINT TOWNSHIP SEWERAGE AUTHORITY

RESERVATION OF SEWER CAPACITY AGREEMENT

THIS AGREEMENT, made this 19 day of April, 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 **D2 HARDING HIGHWAY, LLC**, a Delaware limited liability company with an office located at 190 W. Germantown Pike, Suite 100, East Norriton, Pennsylvania 194013, (herein referred to as “D2”).

WITNESSETH:

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

WHEREAS, D2 is the contract purchaser of land located adjacent to Golfwood Avenue (County Route 601), Interstate Highway 295 (I-295) and N.J.S.H. Route 48 (Harding Highway) in Carneys Point Township, Salem County, New Jersey, and more particularly known as Block 191, Lots 1, 2, 3, 4 & 5 on the Official Carneys Point Township Tax Maps (the “Property”);

WHEREAS, D2 proposes the development of a logistics center on the Property that will consist of a 587,000 +/- square foot warehouse / distribution building together with related site improvements (the “Project”) as depicted on the development plan entitled, “295 Exit 4 Project, Block 191, Lots 1 Thru 5, Township of Carneys Point, Salem County, New Jersey, Overall Concept Plan,” dated December 15, 2020, prepared by Marathon Engineering and Environmental Services, consisting of one (1) sheet, attached hereto as **Exhibit A**;

WHEREAS, the Project can generate up to 14,700 gallons per day of sanitary sewer wastewater;

WHEREAS, D2 desires to acquire from the Authority 74 service units of sanitary sewer capacity (14,700 gallons / 200 gallons per service unit = 74 service units) 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 D2 with 74 service units of sanitary sewer capacity, pending receipt of all local and state permits and approvals; and

WHEREAS, D2 desires to reserve 74 service units of capacity for utilization by the Project on the Property, and the Authority is willing to reserve that capacity for D2, 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 D2 an amount of 74 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 Section 11, Paragraph 11 of 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 \$4,445.00 per 200 gallon per day service unit of sewer wastewater for a total of \$328,930.00 (74 service units x \$4,445.00 per service unit = \$328,930.00) 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, D2 agrees to pay to the Authority a Sewer Capacity Reservation Fee in the amount of \$164,465.00 to reserve 74 service units of sanitary sewer capacity for the Project on the Property, as set forth in this Agreement. The \$164,465.00 Sewer Capacity Reservation Fee shall be credited towards the total Project sewer connection fee at time of actual sewer connection of the Project to the Authority sewerage system. The total amount of the sewer connection fee (minus the credit for the Sewer Capacity Reservation Fee) at time of actual sewer connection of the Project to the Authority sewerage system, may increase or decrease, as the case may be based on the service unit fee amount depicted in Section 11, Paragraph 11 at the time of the Project sewer connection.

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 D2's project engineers to determine if D2 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 may request D2 to return any unused sewer capacity. If the Authority takes back any

unused sewer capacity, the Authority shall reimburse D2 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, D2 shall pay the sewer connection fee to Authority as calculated at time of actual sewer connection of the Project to the Authority sewerage system minus \$164,465.00 which has already been paid as the Sewer Capacity Reservation Fee.

7. Force Majeure. Failure or delay of either the Authority or the D2 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; 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 causes which are beyond the reasonable control of the party asserting an excusable delay (the "Force Majeure").

8. Time Limitation. The 74 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 both payment of the Capacity Reservation Fee and a copy of this Agreement fully executed by both the Authority

and D2 in accordance with the terms set forth herein. This Agreement is considered valid for twenty-four (24) months beginning on the date of the Authority's receipt of both payment of the Capacity Reservation Fee and a copy of this Agreement fully executed by both the Authority and D2 and may be renewed or extended for additional periods only upon mutual consent of both the Authority and D2.

The 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 month period shall remain tolled and shall not re-commence until one day after the conclusion of such Force Majeure event.

The twenty-four month period of this Agreement 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.

The Sewer Capacity Reservation Fee shall be forfeited by D2 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 as may be tolled, stopped or renewed and / or extended in writing by both the Authority and D2.

9. Approvals. D2 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 D2.

10. No Agency. D2 is not an agent of the Authority, nor is the Authority conducting a joint venture with D2, and D2 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. D2 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 D2. Any change to this Agreement shall be effective only if it is written and executed by both the Authority and D2.

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.

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IN WITNESS WHEREOF, the Authority and D2 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: 4/19/22

By:  _____

Attest: _____

**D2 HARDING HIGHWAY, LLC, a
Delaware limited liability company**

Dated: _____

By: _____

Attest: _____

IN WITNESS WHEREOF, the Authority and D2 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**

Date
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**D2 HARDING HIGHWAY, LLC, a
Delaware limited liability company**

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

Date
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**D2 HARDING HIGHWAY, LLC, a
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