

**RESOLUTION 2012-087**

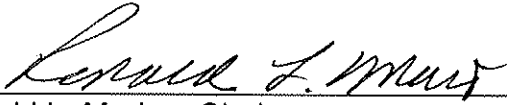
**RESOLUTION APPROVING  
DEFERRED CONNECTION FEE AGREEMENT  
FOR PHASE 1A ONLY OF  
BORDENTOWN WATERFRONT COMMUNITY**

BE IT RESOLVED by The Bordentown Sewerage Authority this 19<sup>th</sup> day of November, 2012, that the following Agreement by and between THE BORDENTOWN SEWERAGE AUTHORITY and RIVERGATE URBAN RENEWAL COMPANY, LLC be and the same is hereby approved in the form on file in the Authority office:


**DEFERRED CONNECTION FEE AGREEMENT  
FOR PHASE 1A ONLY OF  
BORDENTOWN WATERFRONT COMMUNITY**

BE IT FURTHER RESOLVED that the Chairman and Secretary be and the same are hereby authorized and directed to execute and deliver the aforesaid Agreement on behalf of the Authority.

THE BORDENTOWN SEWERAGE AUTHORITY

By:   
Ronald L. Marino, Chairman

Attest:

  
Nancy A. Liberman, Secretary

**DEFERRED CONNECTION FEE AGREEMENT  
FOR PHASE 1A ONLY OF  
BORDENTOWN WATERFRONT COMMUNITY**

This Agreement is made as of the 19<sup>th</sup> day of November, 2012 by and between THE BORDENTOWN SEWERAGE AUTHORITY, 954 Farnsworth Avenue, Bordentown, NJ 08505 (the "Authority") and RIVERGATE URBAN RENEWAL COMPANY, LLC, 19 Longview Drive, Princeton, NJ 08540-5636 (the "Applicant").

WHEREAS, the Applicant has submitted an application to the Authority for sanitary sewer service for Phase 1A of "Bordentown Waterfront Community", Route 130, Bordentown, NJ 08505; Phase 1A also known as Block 140, Proposed Lot 5.01 on the Tax Map of the Township of Bordentown (the "Project"); and

WHEREAS, the Applicant has represented to the Authority that the Project will consist solely of the following four (4) apartment buildings, plus attached Clubhouse and swimming pool, known and designated on the plans as:

Building 1	73,000 SF +/-	51 apartment units
Buildings 2 & 3 (combined)	99,000 SF +/-	72 apartment units
Building 2 & 3 Clubhouse	2,445 SF	245 gpd
Building 4	44,000 SF +/-	36 apartment units
Swimming Pool	Backwash:	43 gpd

WHEREAS, each apartment unit is considered as one Class 1 Residential Unit for connection fee purposes under the Authority's Rate Schedule; and

WHEREAS, the Authority imposes an additional connection fee for the common areas of an apartment building, based upon estimated usage from the common areas, including common kitchens, restaurants, taverns, laundries, offices, convention or meeting rooms, sport or athletic facilities, restrooms and other common uses, under the Authority's Rate Schedule at the Class 3 Non-Residential per gallon per day rate; and

WHEREAS, the Clubhouse, which is a part of Building 2 & 3, is considered as a Class 3 Non-Residential use for connection fee purposes under the Authority's Rate Schedule and its connection fee is based upon its projected usage as determined by the Authority's projected flow figures; and

WHEREAS, the Applicant has represented to the Authority that the Clubhouse will not contain any common kitchens, restaurants, taverns, laundries, showers or other uses for which the projected sewage flows would be greater; and

WHEREAS, the projected flow from the backwash of the swimming pool has been calculated to be 43 gallons per day and is considered as a Class 3 Non-Residential use for connection fee purposes; and

WHEREAS, the Applicant has represented that the Project shall only consist of the 159 apartment units contained in Buildings 1, 2 & 3 (combined) and 4 plus the Clubhouse and swimming pool, as specified above, and that there will not be any other common uses within any of the buildings comprising the Project; and

WHEREAS, based upon the representations of the Applicant and the Rate Schedule of the Authority, the sewer connection fees for the Project would be based upon 159 Class 1 Residential Units, 2,445 SF of general commercial use and 43 gpd of swimming pool backwash; and

WHEREAS, the sewer connection fees for the Project would increase if the size of the Project were increased so as to contain additional apartment units, or if uses within the Project were added or changed to other uses for which the projected sewage flows would be greater; and

WHEREAS, the Authority has the legal ability to impose connection fees based upon the maximum potential projected sewage flows from each building in the Project; and

WHEREAS, the Applicant has requested that the Authority impose preliminary connection fees only for the size and uses that are currently planned for the Project, to defer the payment of the balance of the connection fees based on the maximum potential projected sewage flows from each building in the Project until such time as a currently known or planned use is changed in the future to a size or use that will generate additional projected flows, and to permit the preliminary connection fee for the Project to be paid out over time; and

WHEREAS, in reliance of the promise of the Applicant to pay the connection fees for the Project in the future as may be determined by the Authority in accordance with the terms of this Agreement, its Rate Schedule and its Rules and Regulations, the Authority has agreed to defer payment of the balance of the full amount of the connection fees that would otherwise be due for the Project at this time.

NOW THEREFORE, for the consideration of \$1.00 and other mutual promises and covenants contained herein, including, but not limited to the agreement of the Authority to defer the payment of the connection fees that are due for each building in the Project until such time as provided herein, and the promise of the Applicant to pay the connection fees for each building in the Project in the future as may be determined by the Authority in accordance with the terms of this Agreement, its Rate Schedule and its Rules and Regulations, the parties do hereby agree as follows:

I. DEFERRAL OF CONNECTION FEES

1.01 The Authority shall impose and the Applicant agrees to pay preliminary connections fees for each building and use within the Project based upon the uses and number of units that are currently known and planned for the Project, based upon the following current proposed uses and number of units in the Project:

Building 1	73,000 SF +/-	51 apartment units
Buildings 2 & 3 (combined)	99,000 SF +/-	72 apartment units
Building 2 & 3 Clubhouse	2,445 SF	245 gpd
Building 4	44,000 SF +/-	36 apartment units
Swimming Pool	Backwash:	43 gpd

1.02 The preliminary connection fees to be charged for each building within the Project shall be based upon the connection fee rate then prevailing in the Authority's Rate Schedule at the time that a proper and complete application for an S-4 sewer connection permit for the building is presented to the Authority. The Clubhouse and swimming pool shall be considered as part of Building 2 & 3 for connection fee purposes.

1.03 Payment by the Applicant of the preliminary connection fees for the uses and number of units referred to herein shall not constitute payment in full for all connection fees that are due for the Project or for any building within the Project.

1.04 In the event that there is any increase in the projected flow from any current or future building within the Project based upon a change in size, uses or number of units, or a physical or operational change not involving a change in size or use for which a building permit, site plan, subdivision or other municipal approval is required, the Applicant agrees to pay the remaining connection fees for the building to the Authority.

Any remaining connection fees that are due hereunder shall be based upon the connection fee rate then prevailing in the Authority rate schedule, multiplied by the projected additional flows for the building, as determined by NJDEP projected flow figures or Authority projected flow figures, if established, or in the absence thereof, by the Authority in its reasonable discretion.

1.05 The Applicant shall be obligated to notify the Authority of any change of size, uses or number of units, or a physical or operational change, of any building within the Project in order that the Authority may determine whether any remaining connection fees are due, as provided herein.

## II. PAYMENT SCHEDULE FOR PRELIMINARY CONNECTION FEES

2.01 The Authority shall permit the Applicant to pay the preliminary connection fee that is due for each building in the following manner:

- a.) The Applicant shall pay forty (40%) percent of the preliminary connection fee for each building to the Authority at the time that an S-4 Sewer Permit is requested from the Authority for that building. Upon receipt of such payment and subsequent approval by the Authority, the Authority shall issue a revocable S-4 Sewer Connection Permit for the building. The Applicant acknowledges and agrees that it must obtain an S-4 Sewer Connection Permit for a building from the Authority prior to the submission of an application for a construction permit for that building.

- b.) The remaining balance of sixty (60%) percent of the preliminary connection fee for each building shall be paid by the Applicant to the Authority in twelve (12) equal and consecutive monthly installments, plus interest calculated at the rate of one (1% per) percent per month on the unpaid balance of the connection fee, commencing thirty (30) days following the issuance of the revocable S-4 Sewer Permit.
  
- c.) Notwithstanding anything contained in this Agreement, the connection fee for each building shall be paid in full prior to the issuance of a Certificate of Occupancy for the building and in no event shall the Applicant be entitled to extend any payment past the date that a Certificate of Occupancy for the building is requested. In the event that a Certificate of Occupancy is requested by the Applicant prior to the date that final payment of the connection fee, plus interest, is made, the entire unpaid balance of the connection fee, plus interest shall be immediately due and payable to the Authority.

### III. GENERAL REQUIREMENTS

3.01 All sizes, uses and number of units referred to herein are subject to field verification by the Authority and any variances shall be adjusted accordingly in the calculation of connection fees due hereunder.

3.02 In the event that the Applicant fails to make any payment at the time or in the manner required herein, the Authority shall be entitled to a.) immediately revoke the S-4 Sewer Connection Permit; b.) request the Construction Official to issue a "stop-work"

order for the building; c.) declare the entire unpaid balance of the initial sewer connection fee for the building immediately due and payable; d.) withhold approval of the issuance of a Certificate of Occupancy for the building; e.) terminate water and sewer service to the building; f.) place a lien upon the building; g.) commence an action for the payment of the unpaid balance of the sewer connection fees, plus interest and costs, and if the Authority is successful in whole or in part, the Applicant shall reimburse the Authority for all reasonable attorneys fees and litigation expenses in the prosecution of such action; and h.) take whatever other enforcement action that may be available to the Authority in any manner allowed by law.

3.03 The Applicant agrees to comply with the provisions of the Authority's Rate Schedule and Rules and Regulations governing connections fees and connection permits, and agrees that any connection permits issued by the Authority shall be valid only for the number of buildings, units, uses and flows actually paid for by the Applicant, and only for the period of time as provided by the Rules and Regulations.

3.04 This Agreement shall run with the land and shall be binding upon the Applicant's heirs, successors, assigns or to those who succeed to Applicant's interest in title in whole or in part (collectively "Successor"). The Applicant shall be under a duty to notify a Successor of this Agreement, but the failure of the Applicant to do so shall not relieve a Successor of the obligations contained herein.

3.04 The Applicant represents that the person signing this Agreement on its behalf has been duly authorized to execute this Agreement on behalf of the Applicant.

***Signatures follow on succeeding page.***



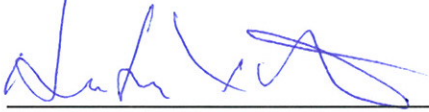
IN WITNESS WHEREOF, the parties have set their hands and seals on the date and year first written above.

RIVERGATE URBAN RENEWAL COMPANY, LLC

By PB RIVERGATE PARTNERS, LLC

By:   
Jeffrey B. Albert, Member

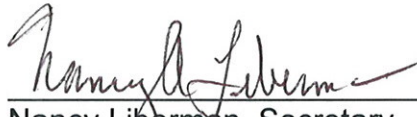
Witness:

  
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THE BORDENTOWN SEWERAGE AUTHORITY

By:   
Ronald L. Marino, Chairman

Attest:

  
Nancy Liberman, Secretary