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173-20
September 22, 2020

RESOLUTION OF THE TOWNSHIP OF WEST ORANGE, IN THE COUNTY OF ESSEX, NEW JERSEY, DETERMINING THE FORM AND OTHER DETAILS OF ITS "NOTE RELATING TO THE WATER BANK CONSTRUCTION FINANCING PROGRAM OF THE NEW JERSEY INFRASTRUCTURE BANK", TO BE ISSUED IN THE PRINCIPAL AMOUNT OF UP TO $3,170,000, AND PROVIDING FOR THE ISSUANCE AND SALE OF SUCH NOTE TO THE NEW JERSEY INFRASTRUCTURE BANK, AND AUTHORIZING THE EXECUTION AND DELIVERY OF SUCH NOTE BY THE TOWNSHIP IN FAVOR OF THE NEW JERSEY INFRASTRUCTURE BANK, ALL PURSUANT TO THE NEW JERSEY INFRASTRUCTURE BANK WATER BANK CONSTRUCTION FINANCING PROGRAM.

WHEREAS, the Township of West Orange (the "Local Unit"), in the County of Essex, State of New Jersey (the "State"), is a participant in the Joint Meeting of Essex and Union Counties, constituting a joint meeting of various municipalities located in the Counties of Essex and Union in the State (the "Joint Meeting"), which Joint Meeting is organized pursuant to N.J.S.A. 40:63-68 *et seq.* as a public body corporate and politic, duly created and validly existing pursuant to the laws of the State;

WHEREAS, the Joint Meeting is not statutorily authorized to incur debt obligations for any purpose, including, without limitation, in order to finance any capital improvements thereof and, therefore, any capital improvements that are undertaken by the Joint Meeting must be financed by its member municipalities and other participating municipalities, including, without limitation, the Local Unit, through the incurrence of debt thereby or otherwise;

WHEREAS, the Joint Meeting has determined that there exists a need to, as applicable, acquire, construct, renovate or install a project of the Joint Meeting consisting of (a) Phase I of the Joint Meeting's Flood Mitigation Facilities Project consisting of the construction of an Effluent Pumping Station, which will be connected to the existing twin outfall channels to the Arthur Kill, and (b) Phase II of the Joint Meeting's Flood Mitigation Facilities Project consisting of upgrades to the Co-Generation Facility, which upgrades include, but are not limited to, as applicable, the installation of two (2) additional co-generation engines in the existing Co-Generation Facility, the installation of electrical and instrumentation equipment for the new generator engines, integration of the new engines into the existing Co-Generation Facility, connection of the Biosolids Facilities to the Co-Generation electrical transmission lines, and upgrades to the substations at the Biosolids Facilities and all improvements shall include, as applicable, all work, materials, equipment, engineering services and design, architectural services and designs, surveying, environmental consulting work, environmental remediation, preparation of plans and specifications, governmental permits, bid documents, conducting and preparation of reports, plans, analysis, and studies, equipment rental, labor and appurtenances necessary therefore or incidental thereto (the "Joint Meeting Project");

WHEREAS, it is the desire of the Local Unit to obtain financing for its allocable share of the Joint Meeting Project (such allocable share being referred to herein as the "Project") through participation in the environmental infrastructure financing program (the "New Jersey Water Bank") of the New Jersey Infrastructure Bank (the "I-Bank");

WHEREAS, the Local Unit has determined to temporarily finance, as applicable, the acquisition, construction, renovation or installation of the Project prior to long-term bond financing through the New Jersey Water Bank, and to undertake such temporary financing with the proceeds of a short-term loan to be made by the I-Bank (the "Construction Loan") to the Local Unit, pursuant to the Water Bank Construction Financing Program of the I-Bank (the "Construction Financing Program");

WHEREAS, the United States Federal Emergency Management Agency ("FEMA") has approved the scope of Phase 1 of the Project and, consequently, has agreed to fund up to 90% of the costs of planning and constructing the Project; and

WHEREAS, after receipt of the FEMA reimbursements, the Local Unit will finance the costs of the Project via (i) the issuance of long-term bonds, (ii) the payment of cash, or (iii) a combination thereof; and

WHEREAS, in order to (i) evidence and secure the repayment obligation of the Local Unit to the I-Bank with respect to the Construction Loan and (ii) satisfy the requirements of the Construction Financing Program, it is the desire of the Local Unit to issue and sell to the I-Bank its "Note Relating to the Water Bank Construction Financing Program of the New Jersey Infrastructure Bank" in an aggregate principal amount of up to $3,170,000 (the "Note");

WHEREAS, it is the desire of the Local Unit to authorize, execute, attest and deliver the Note to the I-Bank pursuant to the terms of the Local Bond Law of the State of New Jersey, constituting Chapter 2 of Title 40A of the Revised Statutes of the State of New Jersey (the "Local Bond Law"), and other applicable law;

WHEREAS, Section 28 of the Local Bond Law allows for the sale of the Note to the I-Bank, without any public offering, and N.J.S.A. 58:11B-9 allows for the sale of the Note to the I-Bank without any public offering, all under the terms and conditions set forth therein; and

WHEREAS, in connection with its participation in the Joint Meeting and the issuance of its Note for the purpose of financing the costs of the Project, the Local Unit desires to enter into that certain Project Financing Agreement (the "Agreement"), by and between the Joint Meeting and the Local Unit, and acknowledged and agreed to by the I-Bank, in substantially the form on file with the Local Unit Clerk.

NOW, THEREFORE, BE IT RESOLVED by the governing body of the Local Unit as follows:

Section 1. In accordance with Section 28 of the Local Bond Law and N.J.S.A. 58:11B-9, the Local Unit hereby authorizes the issuance, sale and award of the Note in

accordance with the provisions hereof. The obligation represented by the Note has been appropriated and authorized by bond ordinance #2604-20 of the Local Unit, which bond ordinance is entitled "Bond Ordinance Providing for the Local Units Allocable Share of the Flood Mitigation Facilities Project of the Joint Meeting of Essex and Union Counties, by and in the Township of West Orange, in the County of Essex, State of New Jersey (the "Local Unit"); Appropriating $3,170,000 Therefor and Authorizing the Issuance of $3,170,000 Bonds or Notes to Finance the Cost Thereof" and was finally adopted by the Local Unit at a meeting duly called and held on June 23, 2020, at which time a quorum was present and acted throughout, all pursuant to the terms of the Local Bond Law and other applicable law.

Section 2. The Chief Financial Officer of the Local Unit (the "Chief Financial Officer") is hereby authorized to determine, in accordance with the Local Bond Law and pursuant to the terms and conditions hereof, (i) the final principal amount of the Note (subject to the maximum limitation set forth in Section 4(a) hereof), and (ii) the dated date of the Note.

Section 3. Any determination made by the Chief Financial Officer pursuant to the terms hereof shall be conclusively evidenced by the execution and attestation of the Note by the parties authorized pursuant to Section 4(h) hereof.

Section 4. The Local Unit hereby determines that certain terms of the Note shall be as follows:

(a) the principal amount of the Note to be issued shall be an amount not to exceed $3,170,000;
(b) the maturity of the Note shall be as determined by the I-Bank;
(c) the interest rate of the Note shall be as determined by the I-Bank;
(d) the purchase price for the Note shall be par;
(e) the Note shall be subject to prepayment prior to its stated maturity in accordance with the terms and conditions of the Note;
(f) the Note shall be issued in a single denomination and shall be numbered "NJWB - CFP-2020-1-JM-FEMA";
(g) the Note shall be issued in fully registered form and shall be payable to the registered owner thereof as to both principal and interest in lawful money of the United States of America; and
(h) the Note shall be executed by the manual or facsimile signatures of the Mayor and the Chief Financial Officer (collectively, the "Authorized Officers") under official seal or facsimile thereof affixed, printed, engraved or reproduced thereon and attested by the manual signature of the Local Unit Clerk.

Section 5. The Note shall be substantially in the form on file with the Local Unit Clerk.

Section 6. The law firm of McManimon, Scotland & Baumann, LLC is hereby authorized to arrange for the printing of the Note, which law firm may authorize McCarter & English, LLP, bond counsel to the I-Bank for the Construction Financing Program, to arrange for same.

Section 7. The Agreement, in substantially the form attached hereto as Exhibit B with such additions, deletions, and omissions as may be recommended by the Chief Financial Officer of the Local Unit, upon the advice of bond counsel, general counsel, and/or the municipal advisor to the Local Unit, be and is hereby approved. The Mayor or Chief Financial Officer of the Local Unit is hereby authorized and directed on behalf of the Local Unit to enter into, execute and deliver, and consummate or perform any actions required under, the Agreement.

Section 8. The Authorized Officers of the Local Unit are hereby further severally authorized to (i) execute and deliver, and the Local Unit Clerk is hereby further authorized to attest to such execution and to affix the corporate seal of the Local Unit to, any document, instrument or closing certificate deemed necessary, desirable or convenient by the Authorized Officers of the Local Unit, in their respective sole discretion, after consultation with counsel and any advisors to the Local Unit and after further consultation with the I-Bank and its representatives, agents, counsel and advisors, to be executed in connection with the issuance and sale of the Note and the participation of the Local Unit in the Construction Financing Program, which determination shall be conclusively evidenced by the execution of each such certificate, instrument or other document by the party authorized hereunder to execute such certificate, instrument or other document, and (ii) perform such other actions as the Authorized Officers deem necessary, desirable or convenient in relation to the execution and delivery of the Note and the Agreement and the participation of the Local Unit in the Construction Financing Program.

Section 9. This resolution shall take effect immediately.

Section 10. Upon the adoption hereof, the Local Unit Clerk shall forward certified copies of this resolution to McManimon, Scotland & Baumann, LLC, bond counsel to the Local Unit, Everett M. Johnson, Esq., Wilentz, Goldman & Spitzer, P.A., bond counsel to the Joint Meeting, David Zimmer, Executive Director of the I-Bank, and Richard T. Nolan, Esq., McCarter & English, LLP, bond counsel to the I-Bank.

Karen J. Carnevale, R.M.C.	**Michelle Casalino**
Township Clerk	**Council President**

Adopted: September 22, 2020

TOWNSHIP OF WEST ORANGE
NOTE
RELATING TO:
THE WATER BANK CONSTRUCTION FINANCING PROGRAM
OF THE NEW JERSEY INFRASTRUCTURE BANK

$_____ **_____, 202_**

NJWB - CFP-20-__ - JM-FEMA

FOR VALUE RECEIVED, the Township of West Orange, a municipal corporation duly created and validly existing pursuant to the laws of the State (as hereinafter defined), and its successors and assigns (the "Borrower"), hereby promises to pay to the order of the **NEW JERSEY INFRASTRUCTURE BANK**, a public body corporate and politic with corporate succession, duly created and validly existing under and by virtue of the Act (as hereinafter defined) (the "I-Bank"), the Principal (as hereinafter defined), together with all unpaid accrued Interest (as hereinafter defined), fees, late charges and other sums due hereunder, if any, in lawful money of the United States of America, on the Maturity Date (as hereinafter defined) or the date of any optional prepayment or acceleration in accordance with the provisions of this note (this "Note"); provided, however, that portions of the Interest may be due and payable earlier, at the time(s) and in the amount(s), as and to the extent provided in accordance with Section 4 hereof.

SECTION 1. Definitions. As used in this Note, unless the context requires otherwise, the following terms shall have the following meanings:

"Act" means the "New Jersey Infrastructure Trust Act", constituting Chapter 334 of the Pamphlet Laws of 1985 of the State (codified at N.J.S.A. 58:11B-1 *et seq.*), as the same has been, and in the future may from time to time be, amended and supplemented.

"Administrative Fee" means the "NJDEP Fee" as defined and calculated in Exhibit B hereto, which is an administrative fee that is payable by the Borrower to the NJDEP (at the time and in the amount as is established by the provisions of Section 4(b) hereof) as a portion of the Cost of the Project that has been incurred by the Borrower for engineering and environmental services provided to the Borrower by the NJDEP.

"Anticipated Financing Program" means the New Jersey Water Bank financing program of the I-Bank, pursuant to which the I-Bank will issue its I-Bank Bonds for the purpose of financing, on a long-term basis, the Project as well as other projects of certain qualifying borrowers.

"Anticipated Long-Term Loan" means the long-term loan made by the I-Bank to the Borrower from the proceeds of its I-Bank Bonds, as part of the Anticipated Financing Program.

"Authorized Officer" means any person authorized by the Joint Meeting, the Borrower or the I-Bank, as the case may be, to perform any act or execute any document relating to the Loan or this Note.

"Code" means the Internal Revenue Code of 1986, as the same may from time to time be amended and supplemented, including any regulations promulgated thereunder, any successor code thereto and any administrative or judicial interpretations thereof.

"Cost" or **"Costs"** means those costs that are allocable to the Project, as shall be determined on a project-specific basis in accordance with the Regulations, as further set forth in Exhibit B hereto, (i) as such Exhibit B shall be supplemented by an Authorized Officer of the I-Bank by means of either a substitute Exhibit B or an additional Exhibit B, such supplement to be implemented concurrently with the supplement to Exhibit A-1 hereto (as provided in the definition of "Project" as set forth herein), and (ii) as the then-current Exhibit B may be amended by subsequent changes to eligible costs as evidenced by a certificate of an Authorized Officer of the I-Bank.

"Credit Policy" means the "New Jersey Infrastructure Bank Credit Policy," as adopted by the Board of Directors of the I-Bank and as further amended and supplemented from time to time.

"Environmental Infrastructure Facilities" means Wastewater Treatment Facilities, Stormwater Management Facilities or Water Supply Facilities (as such terms are defined in the Regulations).

"Environmental Infrastructure System" means the Environmental Infrastructure Facilities of the Joint Meeting, including the Project, for which the Borrower is receiving the Loan.

"Event of Default" means any occurrence or event specified in Section 6 hereof.

"Financial Plan" means the then-applicable Financial Plan, as prepared for the then-current State Fiscal Year and as submitted to the State Legislature by the I-Bank and the NJDEP, all pursuant to, and in satisfaction of the requirements of, sections 21, 21.1, 22 and 22.1 of the Act.

"I-Bank Bonds" means the revenue bonds of the I-Bank to be issued pursuant to, and as part of, the Anticipated Financing Program.

"Interest" means the interest that shall accrue on a daily basis with respect to Principal, to be calculated each day by applying the Interest Rate established for a State Fiscal Year divided by 360 to the Principal amount on that day.

"Interest Rate" means the rate of interest as shall be established by an Authorized Officer of the I-Bank in a manner consistent with the terms and provisions of the Financial Plan for each State Fiscal Year.

"Issue Date" means the date of issuance of this Note.

"Loan" means the loan of the Principal, made by the I-Bank to the Borrower to finance or refinance a portion of the Cost of the Project, as evidenced and secured by this Note.

"Loan Disbursement Requisition" means the requisition, to be executed by an Authorized Officer of the Joint Meeting and approved by the NJDEP, in a form to be determined by the I-Bank and the NJDEP.

"Maturity Date" means the Maturity Date as determined pursuant to clause (i), (ii) or (iii) of this definition, subject to being redetermined pursuant to clause (iv) or (v) of this definition, but subject, in all events, to the rights and remedies of the I-Bank pursuant to the provisions of Section 6 hereof and the provisions of Section 7 hereof in furtherance of the enforcement by the I-Bank of all covenants and obligations of the Borrower hereunder, including, without limitation and in particular, the covenants and obligations of the Borrower set forth in Section 3 hereof.

(i) If the construction contract relating to the Project has not been certified for funding pursuant to the Act by the date that is the second anniversary of the Issue Date, then the Maturity Date shall be the second anniversary of the Issue Date. If this clause (i) is applicable, then the Maturity Date shall be _____, being the second anniversary of the Issue Date.

(ii) If the construction contract relating to the Project has been certified for funding pursuant to the Act prior to the Issue Date, then the Maturity Date shall be June 30 of the third State Fiscal Year following the State Fiscal Year in which the Issue Date occurs, which is June 30, 2024. In the event that there is more than one construction contract relating to the Project, the determination under this clause (ii) shall be based on the first construction contract that has been certified for funding pursuant to the Act.

(iii) If the construction contract relating to the Project has been certified for funding pursuant to the Act after the Issue Date and on or before the date that is the second anniversary of the Issue Date, then the Maturity Date shall be June 30 of the third State Fiscal Year following the State Fiscal Year in which the construction contract relating to the Project has been certified for funding pursuant to the Act. In the event that there is more than one construction contract relating to the Project, the determination under this clause (iii) shall be based on the first construction contract that has been certified for funding pursuant to the Act. Thus:

(A) If this clause (iii) is applicable, and if the first construction contract relating to the Project has been certified for funding in the same State Fiscal Year as the State Fiscal Year during which the Issue Date occurs, then the Maturity Date shall be June 30, 2024, being June 30 of the third State Fiscal Year following the State Fiscal Year during which the Issue Date occurs.

(B) If this clause (iii) is applicable, and if the first construction contract relating to the Project has been certified for funding in the first State Fiscal Year following the State Fiscal Year during which the Issue Date occurs, then the Maturity Date shall be June 30, 2025, being June 30 of the third State Fiscal Year following the State Fiscal Year in which the construction contract has been certified for funding.

(C) If this clause (iii) is applicable, and if the first construction contract relating to the Project has been certified for funding in the second State Fiscal Year following the State Fiscal Year during which the Issue Date occurs (but on or before the second anniversary of the Issue Date), then the Maturity Date shall be June 30, 2026, being June 30 of the third State Fiscal Year following the State Fiscal Year in which the construction contract has been certified for funding.

(iv) Notwithstanding any of the forgoing, the Maturity Date shall be such earlier date as shall be determined by an Authorized Officer of the I-Bank in his or her sole discretion, which date shall be determined by such Authorized Officer of the I-Bank to be the date of the closing for the Anticipated Financing Program;

(v) Notwithstanding any of the forgoing, the Maturity Date shall be such later date (subject to the then-applicable limits of the Act) to be determined by an Authorized Officer of the I-Bank in his or her sole discretion, pursuant to a written certification thereof, as acknowledged and agreed by an Authorized Officer of the Borrower.

"New Jersey Water Bank" means the joint initiative of the I-Bank and the NJDEP to provide low-cost financing to qualified applicants with respect to water quality projects that are identified in the Act.

"NJDEP" means the New Jersey Department of Environmental Protection.

"Payment Date" means, as applicable: (i) the Maturity Date or (ii) with respect to any optional prepayment or acceleration of the Loan pursuant to the terms of this Note, the date of such optional prepayment or acceleration; provided, however, that in all cases, a portion of the Interest shall be payable by the Borrower to the I-Bank prior to the Maturity Date as provided in Section 4 hereof.

"Principal" means the principal amount of the Loan, at any time being the lesser of (i) _____ Dollars ($_____), or (ii) the amount set forth in clause (i) of this definition, minus (a) any amounts in respect of the principal amount of the Loan that have not been made available for disbursements by the I-Bank to the Borrower, and (b) any amounts in respect of the principal amount of the Loan prepaid by the Borrower, which Principal shall be payable by the Borrower to the I-Bank (i) on the Maturity Date or (ii) with respect to any optional prepayment or acceleration of the Loan pursuant to the terms of this Note, on the date of such optional prepayment or acceleration, as the case may be.

"Project" means the Environmental Infrastructure System which constitutes a project for which the I-Bank is making the Loan to the Borrower, as further described in Exhibit A-1 hereto; provided, however, that the description of the Project, as set forth in Exhibit A-1 attached hereto,

may be supplemented by means of either (i) the substitution of a revised and updated Exhibit A-1 for the current Exhibit A-1 or (ii) the inclusion of an additional Exhibit A-1, in either case, promptly following the certification for funding by the NJDEP of the remaining components of the Project, as applicable, such supplement to be undertaken by an Authorized Officer of the I-Bank.

"Regulations" means the rules and regulations, as applicable, now or hereafter promulgated pursuant to N.J.A.C. 7:22-3 *et seq.*, 7:22-4 *et seq.*, 7:22-5 *et seq.*, 7:22-6 *et seq.*, 7:22-7 *et seq.*, 7:22-8 *et seq.*, 7:22-9 *et seq.* and 7:22-10 *et seq.*, as the same may from time to time be amended and supplemented.

"State" means the State of New Jersey.

SECTION 2. Representations of the Borrower. The Borrower hereby represents and warrants to the I-Bank, as follows:

(a) Organization. The Borrower: (i) is a municipal corporation duly created and validly existing under and pursuant to the Constitution and laws of the State; (ii) has full legal right and authority to execute, attest, issue and deliver this Note, to sell this Note to the I-Bank, and to perform its obligations hereunder; and (iii) has duly authorized, approved and consented to all necessary action to be taken by the Borrower for: (A) the issuance of this Note, the sale thereof to the I-Bank and the due performance of its obligations hereunder and (B) the execution, delivery and due performance of all certificates and other instruments that may be required to be executed, delivered and performed by the Borrower in order to carry out and give effect to this Note.

(b) Participant in the Joint Meeting. The Borrower is a participant in the Joint Meeting of _____, constituting a joint meeting of various municipalities located in the Count[y][ies] of _____ in the State (the "Joint Meeting"), which Joint Meeting is organized pursuant to N.J.S.A. 40:63-68 *et seq*. as a public body corporate and politic, duly created and validly existing pursuant to the laws of the State. The Joint Meeting is not statutorily authorized to incur debt obligations for any purpose, including, without limitation, in order to finance the Project and, therefore, any capital improvements that are undertaken by the Joint Meeting must be financed by its member municipalities and other participating municipalities, including, without limitation, the Borrower, through the incurrence of debt thereby or otherwise. The Joint Meeting has determined that there exists a need to acquire, construct, renovate or install, as applicable, a capital improvement project of the Joint Meeting, the Borrower's allocable share of which shall constitute the Project that is being financed by the Borrower through the issuance of this Note. In connection with its participation in the Joint Meeting and the issuance of this Note for the purpose of financing the Costs of the Project, the Borrower has entered into that certain Project Financing Agreement, dated the date hereof (the "Agreement"), by and between the Joint Meeting and the Borrower, and acknowledged and agreed to by the I-Bank, which Agreement is attached hereto as Exhibit H and made a part hereof.

(c) Authority. This Note has been duly authorized by the Borrower and duly executed, attested and delivered to the I-Bank by Authorized Officers of the Borrower. This

Note has been duly issued by the Borrower and duly sold by the Borrower to the I-Bank and constitutes a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms, except as the enforcement thereof may be affected by bankruptcy, insolvency or other similar laws or the application by a court of legal or equitable principles affecting creditors' rights.

(d) Pending Litigation. There are no proceedings pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower that, if adversely determined, would adversely affect (i) the condition (financial or otherwise) of the Borrower, (ii) the ability of the Borrower to satisfy all of its Loan repayment obligations hereunder, (iii) the authorization, execution, attestation or delivery of this Note, (iv) the issuance of this Note and the sale thereof to the I-Bank, and (v) the Borrower's ability otherwise to observe and perform its duties, covenants, obligations and agreements under this Note, including, without limitation, the undertaking and completion of the Project.

(e) Compliance with Existing Laws and Agreements; Governmental Consent. (i) The due authorization, execution, attestation and delivery of this Note by the Borrower and the issuance and sale of this Note to the I-Bank, (ii) the observation and performance by the Borrower of its duties, covenants, obligations and agreements hereunder, including, without limitation, the repayment of the Loan and all other amounts due hereunder, and (iii) the undertaking and completion of the Project, will not (A) other than the lien, charge or encumbrance created by this Note and by any other outstanding debt obligations of the Borrower that are at parity with this Note as to lien on, and source and security for payment thereon from, the general tax revenues of the Borrower, result in the creation or imposition of any lien, charge or encumbrance upon any properties or assets of the Borrower pursuant to, (B) result in any breach of any of the terms, conditions or provisions of, or (C) constitute a default under, any existing ordinance or resolution, outstanding debt or lease obligation, trust agreement, indenture, mortgage, deed of trust, loan agreement or other instrument to which the Borrower is a party or by which the Borrower, the Environmental Infrastructure System or any of its properties or assets may be bound, nor will such action result in any violation of the provisions of the charter, applicable law or other document pursuant to which the Borrower was established or any laws, ordinances, injunctions, judgments, decrees, rules, regulations or existing orders of any court or governmental or administrative agency, authority or person to which the Borrower, the Environmental Infrastructure System or its properties or operations are subject. The Borrower (or the Joint Meeting on behalf of the Borrower, as applicable) has obtained all permits and approvals required to date by any governmental body or officer for the authorization, execution, attestation and delivery of this Note, for the issuance and sale of this Note to the I-Bank, for the making, observance and performance by the Borrower of its duties, covenants, obligations and agreements under this Note, including, without limitation, the undertaking and completion of the Project (provided that, with respect to the undertaking and completion of the Project, such permits and approvals are obtainable by the Borrower (or the Joint Meeting on behalf of the Borrower, as applicable) as of the date hereof).

(f) I-Bank Credit Policy. The Borrower is in full compliance with the applicable requirements of the Credit Policy as in effect on the date hereof.

(g) Reliance. The Borrower hereby acknowledges that the I-Bank is making the Loan to the Borrower pursuant to the terms hereof in reliance upon (i) each of the representations of the Borrower set forth in this Section 2, and (ii) each of the representations of the Joint Meeting set forth in the Agreement.

(h) Borrower Reliance. The representations of the Borrower set forth in this Section 2, as and to the extent that such representations relate to the Project (as set forth in clause (e)) and the Environmental Infrastructure System (as set forth in clause (e)), have been made by the Borrower exclusively in reliance upon the representations of the Joint Meeting as set forth in the Agreement, and the Borrower has made no independent inquiry as to the accuracy of such representations by the Joint Meeting.

(i) FEMA Reimbursement. The Borrower expects that a portion of the costs of the Project will be reimbursed to the Joint Meeting by the United States Federal Emergency Management Agency, which reimbursement shall thereupon be disbursed by the Joint Meeting to the I-Bank on behalf of the Borrower, as provided by the terms of the Agreement, for purposes of prepaying or repaying all or a portion of the Loan obligation of the Borrower hereunder in accordance with the terms and provisions of this Note.

SECTION 3. Covenants of the Borrower.

(a) Participation in the Anticipated Financing Program. The Borrower covenants and agrees that it shall undertake and complete in a timely manner all conditions precedent identified by the I-Bank relating to (i) the participation by the Borrower in the Anticipated Financing Program and (ii) the qualification by the Borrower for receipt of the Anticipated Long Term Loan.

(b) Full Faith and Credit Pledge. To secure the repayment obligation of the Borrower with respect to this Note, and all other amounts due under this Note (including, without limitation, the payment of the Administrative Fee in the amount and at the time as required by the provisions of Section 4(b) hereof), the Borrower unconditionally and irrevocably pledges its full faith and credit and covenants to exercise its unlimited taxing powers for the punctual payment of any and all obligations and amounts due under this Note. The Borrower acknowledges that, to assure the continued operation and solvency of the I-Bank, the I-Bank may, pursuant to and in accordance with Section 12a of the Act, require that if the Borrower fails or is unable to pay promptly to the I-Bank in full any Loan repayments, any Interest or any other amounts due pursuant to this Note, an amount sufficient to satisfy such deficiency shall be paid by the State Treasurer to the I-Bank from State-aid otherwise payable to the Borrower.

(c) Disposition of Environmental Infrastructure System. The Borrower covenants and agrees that it shall not sell, lease, abandon or otherwise dispose of all, substantially all or any essential component (other than for obsolescence) of the Environmental Infrastructure System without the express written consent of the I-Bank, which consent may or may not be granted by the I-Bank in its sole discretion.

(d) Financing With Tax-Exempt Bonds. The Borrower acknowledges, covenants and agrees that it is the intention of the Borrower to finance the Project, in whole or in part, on a long-term basis with proceeds of I-Bank Bonds now or hereinafter issued, the interest on which is excluded from gross income for purposes of federal income taxation pursuant to Section 103(a) of the Code ("tax-exempt bonds"). In furtherance of such long-term financing with tax-exempt bonds, the Borrower covenants that, except to the extent expressly permitted in writing by the I-Bank, in its sole discretion, the Borrower will not take any action or permit any action to be taken which would result in any of the proceeds of the Loan being used (directly or indirectly) (i) in any "private business use" within the meaning of Section 141(b)(6) of the Code, (ii) to make or finance loans to persons other than the Borrower, or (iii) to acquire any "nongovernmental output property" within the meaning of Section 141(d)(2) of the Code. In addition, the Borrower covenants and agrees that no portion of the Project will be investment property, within the meaning of Section 148(b) of the Code. The Borrower covenants and agrees that any Costs of the Borrower's Project to be paid or reimbursed with proceeds of the Loan will result in the expenditure of proceeds under Treasury Regulations §1.148-6(d) and Treasury Regulations §1.150-2.

(e) Operation and Maintenance of Environmental Infrastructure System. The Borrower covenants and agrees that it shall maintain the Environmental Infrastructure System in good repair, working order and operating condition, and make all necessary and proper repairs and improvements with respect thereto.

(f) Records and Accounts; Inspections. The Borrower covenants and agrees that it shall keep accurate records and accounts for the Environmental Infrastructure System, separate and distinct from its other records and accounts, which shall be audited annually by an independent registered municipal accountant and shall be made available for inspection by the I-Bank upon prior written notice. The Borrower covenants and agrees that it shall permit the I-Bank (and any party designated thereby to act on its behalf or to assist it, including, without limitation, its professional advisors), at any and all reasonable times during construction of the Project and, thereafter, upon prior written notice, (i) to visit, inspect and examine the property constituting the Project and the site on which the Project is located, and (ii) to inspect (and make and retain copies of) any Borrower accounts, books, records, correspondence and files, including, without limitation, Borrower records regarding contracts, receipts, disbursements, investments and the overall financial standing of the Borrower, and any other matters related to the Borrower, the Project and the forgoing list of deliverables. In furtherance of the intent of this subsection, the Borrower covenants and agrees that it shall promptly prepare and provide such written reports and informational summaries as the I-Bank may reasonably require.

(g) Insurance. The Borrower covenants and agrees that it shall maintain insurance policies providing against risk of direct physical loss, damage or destruction of the Environmental Infrastructure System, in an amount that will satisfy all applicable regulatory requirements. The Borrower covenants and agrees that it shall include, or cause to be included, the I-Bank as an additional "named insured" on any certificate of liability insurance procured by the Borrower and by any contractor or subcontractor for the Project.

(h) Exhibits. The Borrower covenants and agrees that it shall comply with the terms, procedures and requirements as set forth in each of the Exhibits attached hereto, which are made a part hereof.

(i) I-Bank Reliance. The Borrower hereby acknowledges that the I-Bank is making the Loan to the Borrower pursuant to the terms hereof in reliance upon (i) each of the covenants of the Borrower set forth in this Section 3, and (ii) each of the covenants of the Joint Meeting set forth in the Agreement.

(j) Borrower Reliance. The covenants of the Borrower, set forth in this Section 3, as and to the extent that such covenant obligations relate to the Project (as set forth in clauses (c), (e), (f), (g) and (h)), the Environmental Infrastructure System (as set forth in clauses (c), (e), (f), (g) and (h)) and the financing of the Project with the proceeds of tax-exempt bonds (as set forth in clause (d)), have been made by the Borrower exclusively in reliance upon the covenants of the Joint Meeting as set forth in the Agreement.

(k) Application of FEMA Reimbursement. The Borrower acknowledges and agrees that the Joint Meeting shall cause all amounts payable to the Joint Meeting by the United States Federal Emergency Management Agency with respect to the Project, that relate to costs thereof financed through the Water Bank Construction Financing Program of the I-Bank with proceeds of this Note, to be disbursed by the Joint Meeting to the I-Bank, in compliance with the terms of the Agreement, which funds shall be applied by the I-Bank immediately upon receipt thereof to the prepayment or repayment of all or a portion of the Loan obligation of the Borrower hereunder. The Borrower shall undertake and complete all actions necessary and appropriate in order to facilitate and implement the provisions of this subsection.

SECTION 4. Disbursement of the Loan Proceeds; Amounts Payable; Prepayment; and Late Fee.

(a) The I-Bank shall effectuate the Loan to the Borrower by making one or more disbursements to the Borrower promptly after receipt by the I-Bank of a Loan Disbursement Requisition and the approval of such Loan Disbursement Requisition by an Authorized Officer of the I-Bank, or a designee thereof, each such disbursement and the date thereof to be recorded and maintained by an Authorized Officer of the I-Bank, or a designee thereof, in the records of the I-Bank with respect to the Loan; provided, however, that the approval by the I-Bank of any Loan Disbursement Requisition for disbursement pursuant to the terms hereof shall be subject to the terms, conditions and limitations as set forth in Section 4(d) of this Note. It is expected that the proceeds of the Loan will be disbursed to the Borrower in accordance with the schedule set forth in Exhibit C hereto, as Exhibit C shall be supplemented by an Authorized Officer of the I-Bank by means of either a substitute Exhibit C or an additional Exhibit C, such supplement to be implemented concurrently with the supplement to Exhibit A-1 hereto (as provided in the definition of "Project" as set forth herein). The latest date upon which the Borrower may submit to the I-Bank a Loan Disbursement Requisition is the business day immediately preceding the date fixed by the I-Bank for the sale of its I-Bank Bonds in connection with the Anticipated Financing Program, or such alternative date as shall be identified by the I-Bank for the Borrower in writing.

(b) Notwithstanding the provisions of Section 4(a) to the contrary, the Borrower hereby acknowledges and agrees, as follows: (i) to the extent that all or a portion of the Interest is funded by the Loan (as provided pursuant to Exhibit B hereto, as Exhibit B may hereafter be amended or supplemented as provided by the provisions hereof), payment of such Interest shall be made to the I-Bank via one or more disbursements by the I-Bank hereunder, at the times and in the amounts, as and to the extent provided in one or more written notices provided to the Borrower pursuant to the terms hereof by an Authorized Officer of the I-Bank, or a designee thereof, and each such disbursement shall be recorded by an Authorized Officer of the I-Bank or a designee thereof, and maintained in the records of the I-Bank with respect to the Loan; and (ii) on the date of issuance of this Note, a disbursement shall be made and shall be recorded and maintained by an Authorized Officer of the I-Bank, or a designee thereof, in the records of the I-Bank with respect to the Loan for the purpose of funding fifty percent (50%) of the Administrative Fee identified in Exhibit B hereto, with such disbursement (and any subsequent and supplemental disbursements made pursuant to Exhibit B hereto, as Exhibit B may hereafter be amended or supplemented as provided by the provisions hereof) being made by the I-Bank on behalf of the Borrower directly to the NJDEP. The Borrower further acknowledges and agrees that the remaining unpaid balance of the Administrative Fee shall be due and payable on the Maturity Date or as otherwise established by the I-Bank pursuant to the terms of the Anticipated Financing Program.

(c) On the Maturity Date or, with respect to the payment of all or a portion of the Interest, on the applicable Payment Date(s) as and to the extent provided herein, the Borrower shall repay the Loan to the I-Bank in an amount equal to: (i) the Principal; (ii) the Interest then due and owing pursuant to the provisions of this Note; and (iii) any other amounts then due and owing pursuant to the provisions of this Note. The Borrower (i) may prepay the Loan obligations hereunder, in whole or in part, upon receipt of the prior written consent of an Authorized Officer of the I-Bank, and (ii) shall facilitate and cause to be prepaid by the Joint Meeting all or a portion of the Loan obligation hereunder (A) to the extent of the reimbursement payments by the United States Federal Emergency Management Agency to the Joint Meeting, with respect to the Project, and (B) upon the disbursement of such reimbursement payments by the Joint Meeting to the I-Bank, on behalf of the Borrower and in compliance with the requirements of the Agreement. Each payment made to the I-Bank shall be applied to the payment of, first, the Interest then due and payable, second, the Principal, third, any late charges, and, finally, any other amount then due and payable pursuant to the provisions of this Note. In the event that the repayment obligation set forth in this Note is received by the I-Bank later than the Maturity Date or the Payment Date, as the case may be, a late fee shall be payable to the I-Bank in an amount equal to the greater of twelve percent (12%) per annum or the prime rate as published in the Wall Street Journal on the Maturity Date or the Payment Date, as the case may be, plus one half of one percent per annum on such late payment from the Maturity Date or the Payment Date, as the case may be, to the date it is actually paid; provided, however, that any late payment charges incurred hereunder shall not exceed the maximum interest rate permitted by law.

(d) Notwithstanding the provisions of this Note to the contrary with respect to the funding, pursuant to Section 4(a) hereof, of any Loan Disbursement Requisition relating to all or any portion of the Project, the Borrower hereby acknowledges and agrees, as follows: (i) the I-

Bank shall not, and shall not be required to, commit funds, pursuant to the Water Bank Construction Financing Program of the I-Bank, to any portion of the Project until such time as the particular portion of the Project in question has been certified for funding by the NJDEP; (ii) no Loan Disbursement Requisition shall be approved by the I-Bank for disbursement pursuant to Section 4(a) hereof unless and until the portion of the Project to which such Loan Disbursement Requisition relates has been certified for funding by the NJDEP; and (iii) the I-Bank has no obligation pursuant to this Note to make all or any portion of any Loan Disbursement Requisition disbursement pursuant to the provisions of Section 4(a) hereof if the Borrower lacks the authority to pay interest on this Note in an amount equal to the Interest Rate.

(e) Notwithstanding any provision of Section 4(a) hereof to the contrary, the Borrower hereby acknowledges and agrees that the submission of Loan Disbursement Requisitions to the I-Bank, as required by the terms and provisions of Section 4(a) hereof, shall be the obligation of the Joint Meeting, acting for and on behalf of the Borrower, pursuant to the Agreement, in furtherance of the undertaking and completion of the Project, and (ii) all proceeds of the Loan shall be disbursed, as provided by the terms and provisions of Section 4(a) hereof, by the I-Bank to the Joint Meeting, acting for and on behalf of the Borrower, pursuant to the Agreement, in furtherance of the undertaking and completion of the Project. Further, pursuant to the terms of the Agreement, the Joint Meeting has acknowledged and agreed to each of the terms, provisions, conditions and limitations set forth in Section 4(d) hereof with respect to disbursements of the Loan.

SECTION 5. Unconditional Obligations. The direct, general obligation of the Borrower to make the Loan repayments and all other payments required hereunder and the obligation to perform and observe the other duties, covenants, obligations and agreements on its part contained herein shall be absolute and unconditional, and shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner whatsoever while any Loan repayments, or any other payments due hereunder, remain unpaid, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project or Environmental Infrastructure System, commercial frustration of the purpose, any change in the laws of the United States of America or of the State or any political subdivision of either or in the rules or regulations of any governmental authority, any failure of the I-Bank to perform and observe any agreement or any duty, liability or obligation arising out of this Note, or any rights of set-off, recoupment, abatement or counterclaim that the Borrower might have against the I-Bank or any other party; provided, however, that payments hereunder shall not constitute a waiver of any such rights.

SECTION 6. Events of Default. The following events shall constitute an "Event of Default" hereunder: (i) failure by the Borrower to pay, when due, any and all of its Loan repayment obligations hereunder, and any other payment obligations due hereunder; (ii) failure by the Borrower to observe and perform any duty, covenant, obligation or agreement on its part to be observed or performed pursuant to the terms of this Note, including, without limitation, pursuant to Section 3(k) hereof; (iii) any representation made by the Borrower contained in this Note or in any instrument furnished in compliance with or with reference to this Note is false or

misleading in any material respect; (iv) an "Event of Default" as defined in the Agreement shall occur; and (v) a petition is filed by or against the Borrower under any federal or state bankruptcy or insolvency law or other similar law in effect on the date of this Note or thereafter enacted, unless in the case of any such petition filed against the Borrower such petition shall be dismissed within thirty (30) days after such filing and such dismissal shall be final and not subject to appeal, or the Borrower shall become insolvent or bankrupt or shall make an assignment for the benefit of its creditors, or a custodian of the Borrower or any of its property shall be appointed by court order or take possession of the Borrower or its property or assets if such order remains in effect or such possession continues for more than thirty (30) days.

SECTION 7. Remedies upon Event of Default. Whenever an Event of Default shall have occurred and be continuing pursuant to the terms hereof, the Borrower hereby acknowledges and agrees to the rights of the I-Bank to take any action permitted or required at law or in equity to collect the amounts then due and thereafter to become due hereunder or to enforce the observance and performance of any duty, covenant, obligation or agreement of the Borrower hereunder. If an Event of Default shall have occurred, the Borrower hereby acknowledges and agrees that the I-Bank shall have the right to (i) immediately cease disbursements of the proceeds of the Loan, and/or (ii) declare all Loan repayments and all other amounts due hereunder to be due and payable immediately without further notice or demand. The Borrower hereby acknowledges and agrees that no remedy herein is intended to be exclusive, and every remedy shall be cumulative and in addition to every other remedy given under this Note or now or hereafter existing at law or in equity. The Borrower hereby further acknowledges and agrees that no delay or omission by the I-Bank to exercise any remedy or right accruing upon any Event of Default shall impair any such remedy or right or shall be construed to be a waiver thereof, but any such remedy or right may be exercised as often as may be deemed expedient. The Borrower hereby further acknowledges and agrees that, pursuant to the I-Bank's Credit Policy, during such time as an Event of Default has occurred and is continuing hereunder, the Borrower shall be ineligible for additional financial assistance from the I-Bank (including, without limitation, long-term financing through the Anticipated Financing Program), in addition to certain other consequences set forth in the Credit Policy. The Borrower hereby agrees that upon demand it shall pay to the I-Bank the reasonable fees and expenses of attorneys and other reasonable expenses (including, without limitation, the reasonably allocated costs of in-house counsel and legal staff) incurred in the collection of Loan repayments or any sum due hereunder or in the enforcement of the observation or performance of any obligations or agreements of the Borrower upon an Event of Default. Any moneys collected by the I-Bank pursuant to this Section 7 shall be applied first to pay any attorneys' fees or other fees and expenses owed by the Borrower.

SECTION 8. Certain Miscellaneous Provisions. The Borrower hereby acknowledges and agrees as follows: (a) all notices hereunder shall be deemed given when hand delivered or when mailed by registered or certified mail, postage prepaid, to the Borrower at the following address: [Name and Address of Borrower, Attention: Name of Authorized Officer]; and to the I-Bank at the following address: New Jersey Infrastructure Bank, 3131 Princeton Pike, Building 4, Suite 216, Lawrenceville, New Jersey 08648-2201, Attention: Executive Director; (b) this Note shall be binding upon the Borrower and its successors and assigns; (c) in the event any provision of this Note is held illegal, invalid or unenforceable by any court of competent

jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof; (d) the obligations of the Borrower pursuant to the terms of this Note may not be assigned by the Borrower for any reason, unless the I-Bank shall have approved said assignment in writing; (e) this Note may not be amended, supplemented or modified without the prior written consent of the I-Bank; (f) this Note shall be governed by and construed in accordance with the laws of the State; (g) the Borrower shall, at the request of the I-Bank, execute and deliver such further instruments as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Note; (h) whenever the Borrower is required to obtain the determination, approval or consent of the I-Bank pursuant to the terms hereof, such determination, approval or consent may be either granted or withheld by the I-Bank in its sole and absolute discretion; and (i) consistent with the provisions of N.J.S.A. 58:11B-13, neither the directors of the I-Bank nor any officers of the I-Bank taking any action with respect to this Loan shall be liable personally with respect to the Loan or any matters or transactions related thereto.

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IN WITNESS WHEREOF, the Borrower has caused this Note to be duly executed, sealed and delivered on the date first above written.

TOWNSHIP OF WEST ORANGE

[SEAL]

By:_____
Mayor

ATTEST:

_____
Clerk

By:_____
Chief Financial Officer

PROJECT FINANCING AGREEMENT

This **PROJECT FINANCING AGREEMENT**, dated _____, 2020 (as the same may be modified, amended, supplemented, replaced, renewed or extended from time to time in accordance with the terms hereof, the "Agreement"), by and between the **JOINT MEETING OF ESSEX AND UNION COUNTIES** (the "Joint Meeting"), constituting a joint meeting of various municipalities located in the Counties of Essex and Union in the State of New Jersey (the "State"), and the **TOWNSHIP OF WEST ORANGE**, a municipal corporation duly created and validly existing under and pursuant to the Constitution and laws of the State (the "Local Unit") (capitalized terms used herein but not defined herein shall have the meanings ascribed to them in the hereinafter defined Note).

WITNESSETH:

WHEREAS, the Joint Meeting has determined that there exists a need to acquire, construct, renovate or install, as applicable, a project consisting of the Local Unit's allocable share of a capital improvement project that is being undertaken by the Joint Meeting (such allocable share being referred to herein as the "Project"), all as more specifically defined and described in the Note; and

WHEREAS, the Joint Meeting is not statutorily authorized to incur debt obligations for any purpose, including, without limitation, in order to finance the Project, and, therefore, any capital improvements that are undertaken by the Joint Meeting must be financed by its member municipalities and other participating municipalities, including the Local Unit, through the incurrence of debt thereby or otherwise; and

WHEREAS, it is the desire of the Local Unit to finance the Project through the issuance of debt and by its participation in the environmental infrastructure financing program of the New Jersey Infrastructure Bank (the "I-Bank"); and

WHEREAS, the Local Unit has determined to temporarily finance the Project with the proceeds of a short-term loan to be made by the I-Bank (the "Loan") to the Local Unit, pursuant to the Construction Financing Loan Program of the I-Bank (the "Construction Financing Loan Program"); and

WHEREAS, in order to (i) evidence the Loan by the I-Bank to the Local Unit, (ii) evidence and secure the repayment obligation of the Local Unit to the I-Bank with respect to the Loan and (iii) satisfy the requirements of the Construction Financing Loan Program relating to the Loan, the Local Unit shall issue and sell to the I-Bank its "Note Relating to the Construction Financing Loan Program of the New Jersey Infrastructure Bank" in an aggregate principal amount of up to $[_],000 (the "Note"); and

WHEREAS, pursuant to the terms of this Agreement, the Joint Meeting shall covenant and agree to certain terms and conditions, *inter alia*, relating to the undertaking and completion of the Project and the maintenance and operation of the Environmental Infrastructure System (as defined in the Note); and

WHEREAS, (i) in furtherance of the undertaking and completion of the Project and the financing thereof with the proceeds of the Loan and the issuance of the Note by the Local Unit, and (ii) in satisfaction of the requirements of the Construction Financing Loan Program, the Joint Meeting and the I-Bank have entered into that certain Memorandum of Agreement, dated _____, 2020 (the "MOA"), by and between the Joint Meeting and the I-Bank; and

WHEREAS, the Local Unit and Joint Meeting desire to enter into this Agreement in order to define and confirm the Joint Meeting's obligations with respect to the Project and the ownership, operation and maintenance of the Environmental Infrastructure System and, therefore, satisfy the conditions precedent of the Construction Financing Loan Program to the making of the Loan by the I-Bank to the Local Unit.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants herein contained, and intending to be legally bound, hereby agree as follows:

1. REPRESENTATIONS OF THE JOINT MEETING. The Joint Meeting hereby represents for the benefit of the Local Unit and the I-Bank, as follows.

.1. Project. The Joint Meeting has determined that there exists a need to acquire, construct, renovate or install, as applicable, a capital improvement project of the Joint Meeting, the Local Unit's allocable share of which shall constitute the Project that is being financed by the Local Unit through its issuance of its Note to the I-Bank, and the Joint Meeting intends to undertake and complete the Project in a manner consistent with the terms of the Note, including, without limitation, the Exhibits to the Note.

.2. Organization. The Joint Meeting: (i) is a joint meeting of various municipalities located in the Counties of Essex and Union in the State, organized pursuant to N.J.S.A. 40:63-68 *et seq.*, and is duly created and validly existing under and pursuant to the Constitution and laws of the State, (ii) has full legal right and authority to execute, attest and deliver this Agreement and to perform its obligations hereunder, and (iii) has duly authorized, approved and consented to all necessary action to be taken by the Joint Meeting for: (A) the due performance of its obligations hereunder and (B) the execution, delivery and due performance of all certificates and other instruments that may be required to be executed, delivered and performed by the Joint Meeting in order to carry out and give effect to this Agreement.

.3. Authority. This Agreement has been duly authorized by the Joint Meeting and duly executed, attested and delivered by authorized officers of the Joint Meeting. This Agreement constitutes a legal, valid and binding obligation of the Joint Meeting, enforceable against the Joint Meeting in accordance with its terms, except as the enforcement thereof may be affected by bankruptcy, insolvency or other laws or the application by a court of legal or equitable principles affecting creditors' rights.

.4. Pending Litigation. There are no proceedings pending or, to the knowledge of the Joint Meeting, threatened against or affecting the Joint Meeting that, if adversely determined, would adversely affect (i) the condition (financial or otherwise) of the Joint Meeting, (ii) the

authorization, execution, attestation or delivery of this Agreement, and (iii) the ability of the Joint Meeting to otherwise observe and perform its duties, covenants, obligations and agreements under this Agreement, including, without limitation, the undertaking and completion of the Project.

.5. Compliance with Existing Laws and Agreements; Governmental Consent. The observation and performance by the Joint Meeting of its duties, covenants, obligations and agreements hereunder, including, without limitation, the undertaking and completion of the Project, will not result in any breach of any of the terms, conditions or provisions of, or constitute a default under, any existing ordinance or resolution, agreement or other instrument to which the Joint Meeting is a party or by which the Joint Meeting, its Environmental Infrastructure System or any of its properties or assets may be bound, nor will such action result in any violation of the provisions of the charter, applicable law or other document pursuant to which the Joint Meeting was established or any laws, ordinances, injunctions, judgments, decrees, rules, regulations or existing orders of any court or governmental or administrative agency, authority or person to which the Joint Meeting, its Environmental Infrastructure System or its properties or operations are subject. The Joint Meeting has obtained all permits and approvals required to date by any governmental body or officer for the making, observance and performance by the Joint Meeting of its duties, covenants, obligations and agreements under this Agreement, and for the undertaking and completion of the Project.

.6. FEMA Reimbursement. The Joint Meeting expects that a portion of the costs of the Project will be reimbursed to the Joint Meeting by the United States Federal Emergency Management Agency, and thereupon disbursed by the Joint Meeting to the I-Bank, on behalf of the Local Unit, pursuant to the terms hereof, for purposes of prepaying or repaying all or a portion of the Loan obligation of the Local Unit in accordance with the terms and provisions of the Note.

.7. Reliance. The Joint Meeting hereby acknowledges that (i) the I-Bank is making the Loan to the Local Unit pursuant to the terms of the Note, and (ii) the Local Unit is issuing the Note to the I-Bank to evidence and secure the Loan, in each case, in reliance upon each of the representations of the Joint Meeting set forth in this Section 1.

2. COVENANTS OF THE JOINT MEETING. The Joint Meeting hereby covenants and agrees for the benefit of the Local Unit and the I-Bank, as follows.

.1. Participation in the Anticipated Financing Program. The Joint Meeting covenants and agrees that it shall undertake and complete in a timely manner all conditions precedent identified by the I-Bank relating to (i) the participation by the Local Unit in the Anticipated Financing Program and (ii) the qualification by the Local Unit for receipt of the Anticipated Long Term Loan.

.2. Disposition of Environmental Infrastructure System. The Joint Meeting covenants and agrees that it shall not sell, lease, abandon or otherwise dispose of all, substantially all or any essential component (other than for obsolescence) of its Environmental Infrastructure System without the express written consent of the I-Bank, which consent may or may not be granted by the I-Bank in its sole discretion.

.3. Financing With Tax-Exempt Bonds. The Joint Meeting acknowledges, covenants and agrees that it is the intention of the Local Unit to finance the Project on a long-term basis with proceeds of I-Bank Bonds hereinafter issued, the interest on which is excluded from gross income for purposes of federal income taxation pursuant to Section 103(a) of the Code ("tax-exempt bonds"). In furtherance of such long-term financing with tax-exempt bonds, the Joint Meeting covenants and agrees that, except to the extent expressly permitted in writing by the I-Bank, the Joint Meeting will not take any action or permit any action to be taken which would result in any of the proceeds of the Loan being used (directly or indirectly) (i) in any "private business use" within the meaning of Section 141(b)(6) of the Code, (ii) to make or finance loans to persons other than the Local Unit, or (iii) to acquire any "nongovernmental output property" within the meaning of Section 141(d)(2) of the Code. In addition, the Joint Meeting covenants and agrees that no portion of the Project will be investment property, within the meaning of Section 148(b) of the Code. The Joint Meeting covenants and agrees that any Costs of the Project to be paid or reimbursed with proceeds of the Loan will result in the expenditure of proceeds under Treasury Regulations §1.148-6(d) and Treasury Regulations §1.150-2.

.4. Operation and Maintenance of Environmental Infrastructure System. The Joint Meeting covenants and agrees that it shall maintain its Environmental Infrastructure System in good repair, working order and operating condition, and promptly make all necessary and proper repairs and improvements with respect thereto.

.5. Records and Accounts; Inspections. The Joint Meeting covenants and agrees that it shall keep accurate records and accounts for the Environmental Infrastructure System, which shall be audited annually by an independent registered municipal accountant and shall be made available for inspection by the I-Bank upon prior written notice. The Joint Meeting covenants and agrees that it shall permit the I-Bank (and any party designated thereby to act on its behalf or to assist it, including, without limitation, its professional advisors), at any and all reasonable times during construction of the Project and, thereafter, upon prior written notice, (i) to visit, inspect and examine the property constituting the Project and the site on which the Project is located, and (ii) to inspect (and make and retain copies of) any Joint Meeting accounts, books, records, correspondence and files, including, without limitation, Joint Meeting records regarding contracts, receipts, disbursements, investments and the overall financial standing of the Joint Meeting, and any other matters related to the Joint Meeting, the Project and the forgoing list of deliverables. In furtherance of the intent of this subsection, the Joint Meeting covenants and agrees that it shall promptly prepare and provide such written reports and informational summaries as the I-Bank may reasonably require.

.6. Insurance. The Joint Meeting covenants and agrees that it shall maintain insurance policies providing against risk of direct physical loss, damage or destruction of its Environmental Infrastructure System, in an amount that will satisfy all applicable regulatory requirements. The Joint Meeting covenants and agrees that it shall include, or cause to be included, the I-Bank as an additional "named insured" on any certificate of liability insurance procured by the Joint Meeting and by any contractor or subcontractor for the Project.

.7. Exhibits. The Joint Meeting covenants and agrees that it shall comply with the terms, procedures and requirements as set forth in each of the Exhibits attached to the Note, including, without limitation, those relating to the undertaking and completion of the Project, which Exhibits shall be deemed to be incorporated herein and made a part hereof as if set forth herein in their entirety.

.8. Reliance. The Joint Meeting hereby acknowledges that (i) the I-Bank is making the Loan to the Local Unit pursuant to the terms of the Note, and (ii) the Local Unit is issuing the Note to the I-Bank to evidence and secure the Loan, in each case, in reliance upon each of the covenants of the Joint Meeting set forth in this Section 2.

3. SUBMISSION OF REQUISITIONS BY THE JOINT MEETING; LOAN DISBURSEMENTS TO THE JOINT MEETING.

.1. The Joint Meeting and the Local Unit hereby acknowledge and agree that disbursements of the Loan shall be made by the I-Bank pursuant to and in compliance with the terms and provisions of Section 4 of the Note; provided, however, that notwithstanding the terms and provisions of Section 4 of the Note to the contrary, (i) the Joint Meeting and the Local Unit hereby acknowledge and agree that the submission of Loan Disbursement Requisitions to the I-Bank, as required by the terms and provisions of Section 4 of the Note, shall be the obligation of the Joint Meeting, acting for and on behalf of the Local Unit in furtherance of the undertaking and completion of the Project, (ii) all proceeds of the Loan shall be disbursed by the I-Bank to the Joint Meeting, acting for and on behalf of the Local Unit, in furtherance of the undertaking and completion of the Project, and (iii) the Local Unit shall have no obligation to oversee, monitor or enforce the proper allocation of proceeds of the Loan, as shall be disbursed to the Joint Meeting by the I-Bank, to the Costs of the Project. Further, the Joint Meeting hereby acknowledges and agrees to each of the terms, provisions, conditions and limitations set forth in Section 4(d) of the Note with respect to disbursements of the Loan.

.2. Notwithstanding the terms and provisions of this Section 3 (or any other term or provision of the Note), the Joint Meeting and the Local Unit acknowledge and agree that any and all Loan repayments and all other amounts due under the Note shall be the exclusive payment obligation of the Local Unit, and the Joint Meeting shall have no obligation to make payment of any Loan repayments or any other amounts due under the Note. Notwithstanding the provisions of the proceeding sentence, the Joint Meeting hereby covenants and agrees to disburse to the I-Bank, on behalf of the Local Unit, all reimbursement payments, if any, received by the Joint Meeting from the United States Federal Emergency Management Agency that relate to the Project, and the costs of the Project financed through the Water Bank Construction Financing Program of the I-Bank with proceeds of the Note, for application, on behalf of the Local Unit, pursuant to the terms of Section 3(k) of the Note. Such disbursement by the Joint Meeting of reimbursement payments to the I-Bank, on behalf of the Local Unit, shall be completed by the Joint Meeting as expeditiously as is practical following receipt of such reimbursement payments by the Joint Meeting, but no later than three (3) business days thereafter. The Joint Meeting shall pay such reimbursement payments to the I-Bank via electronic transfer of funds pursuant to transfer instructions that shall be obtained by the Joint Meeting from the I-Bank upon the request of the Joint Meeting. The Local Unit hereby acknowledges and agrees to such disbursement by

the Joint Meeting of reimbursement payments, upon receipt thereof from the United States Federal Emergency Management Agency, to the I-Bank, on behalf of the Local Unit, for application, on behalf of the Local Unit, pursuant to the terms of Section 3(k) of the Note.

4. EVENTS OF DEFAULT. The following events shall constitute an "Event of Default" hereunder: (i) failure by the Joint Meeting to observe and perform any duty, covenant, obligation or agreement on its part to be observed or performed pursuant to the terms of this Agreement; (ii) any representation made by the Joint Meeting contained in this Agreement or in any instrument furnished in compliance with or with reference to this Agreement is false or misleading in any material respect; (iii) the occurrence of a default by the Joint Meeting with respect to the performance of its duties and obligations pursuant to the terms of the MOA; and (iv) a petition is filed by or against the Joint Meeting under any federal or state bankruptcy or insolvency law or other similar law in effect on the date of this Agreement or thereafter enacted, unless in the case of any such petition filed against the Joint Meeting such petition shall be dismissed within thirty (30) days after such filing and such dismissal shall be final and not subject to appeal, or the Joint Meeting shall become insolvent or bankrupt or shall make an assignment for the benefit of its creditors, or a custodian of the Joint Meeting or any of its property shall be appointed by court order or take possession of the Joint Meeting or its property or assets if such order remains in effect or such possession continues for more than thirty (30) days. The Joint Meeting hereby acknowledges that an Event of Default hereunder shall constitute an "Event of Default" pursuant to, and as defined in, the Note.

5. REMEDIES UPON EVENT OF DEFAULT. Whenever an Event of Default shall have occurred and be continuing pursuant to the terms hereof, the Joint Meeting and Local Unit hereby acknowledge and agree to the rights of the I-Bank to take any action permitted or required at law or in equity to enforce the observance and performance of any duty, covenant, obligation or agreement of the Joint Meeting hereunder. If an Event of Default shall have occurred, the Joint Meeting and Local Unit hereby acknowledge and agree that the I-Bank shall have the right to (i) immediately cease disbursements of the proceeds of the Loan, and/or (ii) declare all Loan repayments and all other amounts due under the Note to be due and payable by the Local Unit immediately without further notice or demand, as and to the extent provided by the terms of the Note. The Joint Meeting and Local Unit hereby acknowledge and agree that no remedy herein is intended to be exclusive, and every remedy shall be cumulative and in addition to every other remedy given under this Agreement or the Note or now or hereafter existing at law or in equity. The Joint Meeting and Local Unit hereby further acknowledge and agree that no delay or omission by the I-Bank to exercise any remedy or right accruing upon any Event of Default shall impair any such remedy or right or shall be construed to be a waiver thereof, but any such remedy or right may be exercised as often as may be deemed expedient.

6. MISCELLANEOUS.

.1. Third Party Beneficiary. The I-Bank is a third-party beneficiary to this Agreement and is entitled to the rights and benefits hereunder and may enforce the provisions hereof as if it were a party hereto.

.2. Modifications. This Agreement may not be modified, amended, supplemented, replaced, renewed or extended except by an agreement in writing signed by the parties and acknowledged and agreed to by the I-Bank.

.3. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

.4. Miscellaneous. (a) The obligations of the Joint Meeting pursuant to the terms and provisions of this Agreement shall remain in full force and effect as long as the Note remains outstanding. (b) This Agreement shall be binding upon the parties hereto and their respective successors and assigns. (c) The obligations of the Joint Meeting pursuant to the terms and provisions of this Agreement may not be assigned thereby for any reason, unless the I-Bank shall have approved said assignment in writing. (d) In the event any provision of this Agreement is held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof. (e) Whenever the Joint Meeting may seek to obtain the determination, approval or consent of the I-Bank in connection with the terms and provisions of this Agreement, such determination, approval or consent may be either granted or withheld by the I-Bank in its sole and absolute discretion. (f) The Joint Meeting and the Local Unit hereby acknowledge and agree that, consistent with the provisions of N.J.S.A. 58:11B-13, neither the directors of the I-Bank nor any officer of the I-Bank taking any action with respect to the Loan shall be liable personally with respect to the Loan or any matters or transactions related thereto.

.5. Counterparts. This Agreement may be signed in any number of counterpart copies and by the parties hereto on separate counterparts, but all such copies shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by electronic transmission shall be effective as delivery of a manually executed counterpart. Any party so executing this Agreement by electronic transmission shall promptly deliver a manually executed counterpart, provided that any failure to do so shall not affect the validity of the counterpart executed by electronic transmission.

[SIGNATURES APPEAR ON THE NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have duly executed and delivered this Agreement as of the day and year first above written.

JOINT MEETING OF UNION AND ESSEX COUNTIES

By: _____
[_]
[_]

TOWNSHIP OF WEST ORANGE

By: _____
Mayor

ACKNOWLEDGED AND AGREED:

NEW JERSEY INFRASTRUCTURE BANK

By: _____
David E. Zimmer
Executive Director

174-20
September 22, 2020

RESOLUTION

WHEREAS, on May 3, 2016, the Township of West Orange (the "Township") adopted Resolution 121-16 appointing Matrix New World ("Matrix"), with offices at 26 Columbia Turnpike, Florham Park, New Jersey as the Licensed Site Remediation Professional (the "LSRP") to assist and oversee the investigation and cleanup of certain properties on the Central Avenue (the "Redevelopment Area") as to the suspected discharge of hazardous substances or hazardous waste; and

WHEREAS, on October 26, 2016, the Township of West Orange (the "Township") adopted Resolution 228-16 designating the Redevelopment Area as an area in need of redevelopment; and

WHEREAS, the property at 8-10 Central Avenue, Block 9, Lot 32 on the Township Tax Map (the "Property") was included in the Redevelopment Area; and

WHEREAS, on October 2, 2018, the Township acquired title to the Property

WHEREAS, on November 18, 2018, the Township adopted resolution 252-18 to Matrix to apply for grant funds from the New Jersey Department of Environmental Protection/New Jersey Economic Development Authority (the "DEP") Hazardous Discharge Site Remediation Funds (the "HDSRF") Program for the purpose of funding the costs for preforming the Preliminary Assessment and Site Investigation on the Property; and

WHEREAS, on December 18, 2019, the Township adopted resolution 299-19, to authorize Matrix to perform the Preliminary Assessment and Site Investigation on the Property; and

WHEREAS, the Township received a notice of award of $63,956 from the HDSRF Program to fund the Preliminary Assessment and Site Investigation on the Property; and

WHEREAS, the Township must formally accept the Grant funds by executing the notice of approval letter with supporting documents, annexed hereto as Exhibit **"A."**

NOW, BE IT HEREBY RESOLVED BY THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF WEST ORANGE, that the above referenced grant is hereby accepted and the Business Administrator is hereby authorized to execute the approval letter with supporting documents, annexed hereto as Exhibit **"A"** as an authorized representative thereunder, as the representative for the Township of West Orange; and be it further

RESOLVED, that the Township Clerk is authorized to attest to the Business Administrator's signature; and be it further

RESOLVED that a copy of this resolution shall be made available in the Clerk's Office for reasonable inspection in accordance with applicable law.

Karen J. Carnevale, R.M.C. **Township Clerk**	**Michelle Casalino** **Council President**

Adopted: September 22, 2020

Exhibit “**A**”

NJEDA

February 3, 2020

jsayers@westorange.org
John K. Sayers, Business Administrator
Township of West Orange
66 Main Street
West Orange, New Jersey 07052

Re: **HDSRF, NOTICE OF APPROVAL LETTER**
HDSRF, Public Entity Grant Program
Application #PROD-00188179
Applicant: Township of West Orange
Project Site: Biddleman Inc.
Grant Award: Up to $63,956

Dear Mr. Sayers:

I am pleased to inform you that on January 31, 2020, the New Jersey Economic Development Authority (the "Authority") approved the application of the Township of West Orange for an up to $63,956 Hazardous Discharge Site Remediation Fund (the "Fund") Grant ("Grant") from the New Jersey Department of Environmental Protection (the "Department") for the preliminary assessment and site investigation, along with report preparation, at the Biddleman Inc. site (the "Project"), as stated in your request for Grant assistance.

The Authority has approved the Grant upon the terms and conditions set forth in this notice of approval letter. No act or omission by or on behalf of the Authority shall be deemed as a waiver to any of the terms and conditions contained in this letter. Such a waiver may be made only by an instrument in writing duly executed by an authorized representative of the Authority.

NAME OF GRANTEE:	Township of West Orange
PROJECT SITE:	Biddleman, Inc. 8 10 Central Avenue Block 9, Lot 32 West Orange Township, Essex County, New Jersey
GRANT:	Up to $63,956 from the Fund

CONDITIONS:

The Grantee shall complete the Project substantially as set forth in its request for Grant assistance. ***It is specifically understood and agreed that grant funds awarded for preliminary assessment or site investigation of a contaminated site must be expended within two (2) years after the date of the award; and grant funds awarded for remedial investigation of a contaminated site must be expended within five (5) years after the date of the award. Failure to expend an award of financial assistance or grant from the remediation fund within the time limits set forth herein shall result in cancellation of the award.***

It is specifically understood and agreed that the Grantee is required to complete and submit to the Authority the attached schedules (Exhibit "A"), in accordance with the terms of the grant agreement. Failure to provide said schedules in accordance with the terms of the grant agreement shall be an event of default under the Grant.

The Authority requires a valid Tax Clearance Certificate no more than 180 days old on file with the Authority at the time of closing or the Grant shall not close. Tax Clearance Certificates are issued by the Division of Taxation. To apply to receive a Tax Clearance Certificate, a Grantee must complete and submit the Application for Business Assistance Tax Clearance to the Division of Taxation.

It is specifically understood and agreed that this Grant is cross-defaulted with any other agreement entered into by the Authority and the Grantee or any other agreement entered into by the Department and the Grantee with respect to this Grant.

The interests of the Grantee and the Authority are or may be different and may conflict. The Authority's attorney represents only the Authority and does not represent the Grantee in the Grant transaction. The Grantee, therefore, is advised to employ an attorney licensed to practice in the State of New Jersey, of the Grantee's own choice, to represent the Grantee's interest in the Grant transaction.

The credit of the Grantee and all other features of the transaction shall be as represented to the Authority without material adverse change. The Grantee shall not be involved in any bankruptcy, reorganization or insolvency proceeding.

Counsel to the Authority must be satisfied with respect to the legality, validity, binding effect, and enforceability of all instruments, agreements, and documents used to effect and consummate the transactions contemplated herein.

Each unsatisfied covenant, term and condition of this notice of approval which is not expressly waived in writing by the Authority shall survive any closing hereunder. In case of any conflict between any unwaived and unsatisfied covenant, term or condition of this notice of approval and the provisions of the Grant documents delivered at or pursuant to any closing regarding this Grant, the unwaived and/or unsatisfied covenant, term or condition of this notice of approval shall control.

This notice of approval is subject to acceptance by the Grantee of the terms and conditions contained herein. This notice of approval letter must be signed and returned to the undersigned.

The Authority's commitment shall terminate and the Authority shall have no further obligation in connection with your application if this notice of approval is not signed and returned to the Authority by June 2, 2020. This Approval Letter may be executed and delivered by telecopier, email, PDF or other facsimile transmission of all with the same force and effect as if the same were a fully executed and delivered original manual counterpart.

In addition, in the event that the Grant is not closed on or before 90 days from the acceptance date of the notice of approval, the Authority's obligation to provide Grant shall terminate and you will be required to submit a new application.

We are pleased to be of service to your Grant needs. If you have any questions regarding this approval letter, please contact Kathy Junghans, Finance Officer at (609) 858-6732 or kjunghans@njeda.com.

If you have any questions regarding the closing requirements for this Grant contact Closing Officer Kathleen Smith at 609-858-6766 or ksmith@ njeda.com.

This fully executed approval letter in its entirety should be returned to Jo Ann Walls, Administrative Assistant at jwalls@njeda.com.

Sincerely,

David A. Lawyer
Managing Director of Underwriting

KJS

cc: John Doyon, NJDEP

ACCEPTED AND AGREED
THIS _____ DAY OF
_____, 20__ BY:

GRANTEE:
TOWNSHIP OF WEST ORANGE

Electronic signature on this Approval Letter shall be deemed to be valid execution and delivery as though an original ink. The parties explicitly consent to the electronic delivery of the terms of the transaction evidenced by this Approval Letter and affirm that their electronic signatures indicate a present intent to be bound by the electronic signatures and the terms of the Approval Letter. The electronic signature can be done either by AD OBE Acrobat or any other similar signature software that can be used for electronic signatures or by printing, manually signing, and scanning.

By:_____
~~Robert D. Parisi, Mayor~~
John K. Sayers, Business Administrator

EXHIBIT "A"

PROD-00188179
Applicant: Township of West Orange
Project Site: Biddleman Inc.
Grant Award: Up to $63,956

SCHEDULE B

PROJECT COMPLETION CERTIFICATE

The undersigned hereby certifies as follows:

1. I am an Authorized Representative of Grantee, the Township of West Orange. I make this statement pursuant to Section 4 of the Agreement, by and between Grantor, the New Jersey Economic Development Authority and Grantee, dated as of [insert same date as date in Agreement]. (All undefined terms used herein shall have the same meaning ascribed to them in the Agreement).

2. The Project was completed as of _____. (date)

3 The Project is being operated as an authorized "Project" under the Act and as substantially as proposed in the Application. The Grant proceeds were used only for the purposes for which the Grant was made, and the Grantee has adhered to all terms and conditions of the Agreement.

4. Enclosed is a check for unexpended Grant proceeds, if any as determined under the attached Calculation of Unexpended Proceeds Form, payable to the Authority in accordance with Section 4.1 of the Agreement.

(Signature): _____

Name (Print):_____

Date:_____ Title:_____

Forward to the NJ Economic Development Authority at the below address the executed Project Completion Certificate along with a check, payable to the NJEDA, for unexpended funds, if any, in the amount calculated on the **CALCULATION OF UNEXPENDED PROCEEDS FORM attached.**

New Jersey Economic Development Authority
Underwriting
Attn: Kathy Junghans, Finance Officer
kjunghans@njeda.com

This Project Completion Certificate may be executed and delivered to the above Finance Officer by email with attached PDF all with the same force and effect as if the same were a fully executed and delivered original.

SCHEDULE B

PROJECT COMPLETION CERTIFICATE (CONT'D.)

CALCULATION OF UNEXPENDED PROCEEDS FORM

DATE PROJECT COMPLETED: _____

The following actual approved project costs have been paid:

NJ DEP Oversight **(actual dollars invoiced)**:	$_____
Preliminary Assessment	$_____
Site Investigation	$_____
Remedial Investigation	$_____
Remedial Action	$_____
Contingency	$_____
Other costs (Itemize)	$ _____
(A) Total Project Costs Paid:	**$**_____
(B) Project Grant Amount (from Schedule A)	$_____
Amount to be Remitted ***to NJEDA (B) – (A)***	**$**_____

Kindly make checks payable to the "New Jersey Economic Development Authority" or "NJEDA" and returned with the Project Completion Certificate. Should you prefer to wire the unexpended funds instead you may do so by using the following instructions:

Wells Fargo Bank, N.A.
1 West State Street
Trenton, NJ 08608

ABA #121 000 248

ACCT # 2100009100456

New Jersey Economic Development Authority
36 West State Street
P.O. Box 990
Trenton, NJ 08625

Re: _____ Fee
(type of fee)

_____ (P_____)
(Project Name) (Project #)

SCHEDULE E

Hazardous Discharge Site Remediation Fund (HDSRF)
Public Entity Project Status Summary

Public Entity:_____ Latest Project #:_____

Site Name:_____ Site Location: _____

Size of Site: _____ Current Zoning of Site: _____

Who owns the site: **Public Entity** **Redeveloper** **Private** **Other**

Contact: _____ County: _____

Address:_____

Phone: _____ Fax: _____

Latest Application Closing Date: _____ Total grant funding to date:_____

Has the Preliminary Assessment (PA), Site Investigation (SI) and Remedial Investigation (RI) studies been completed? If not, what is the status of the work?

	Yes	No	
PA	__	__	_____
SI	__	__	_____
RI	__	__	_____

Does the site have contamination? **Yes / No** If **yes**, describe_____

_____

Has the site been remediated? **Yes / No** If **no**, when will it be done _____

What are the projected cleanup costs? (Please circle estimated costs)

0-$100,000 **$100,000 -$ 500,000** **$500,000 -$1,000,000** **$1,000,000 & over**

How was the site used previous to contamination? _____

Has the site been redeveloped? **Yes / No** If **yes**, what is the current use? _____

_____

If the site **has not been** redeveloped, what are the plans for redeveloping the site? _____

_____.

TOWNSHIP OF WEST ORANGE

By:_____
Title:
Date:_____

New Jersey Economic Development Authority
Underwriting
Attn: Kathy Junghans, Finance Officer
kjunghans@njeda.com

This Public Entity Project Status Summary may be executed and delivered to the above Finance Officer by email with attached PDF all with the same force and effect as if the same were a fully executed and delivered original.

175-20
September 22, 2020

RESOLUTION TO HOLD A CLOSED SESSION

WHEREAS, the Open Public Meetings Act (N.J.S.A. 10:4. et seq.) provides for the exclusion of \the public meetings of the governing body during the discussion of certain matters; and

WHEREAS, prior to the exclusion of the public from a meeting of the Township Council it is required that the Council adopt a Resolution stating the general nature of the subject to be discussed and stating as precisely as possible the time when the minutes of the discussion conducted in closed session can be disclosed to the public; and

WHEREAS, this body is about to consider a matter which falls within the purview of N.J.S.A. 10-4-12, and can properly exclude the public from such discussions; now, therefore, be it

BE IT RESOLVED, that the Township Council of the Township of West Orange, now assembled in public session at its regular meeting of **September 22, 2020** enter into a closed session to consider the following matter(s).

( ) 1. Discussion of any material, the disclosure of which constitutes an invasion of individual privacy.

( ) 2. A collective bargaining agreement or the terms of provisions of same.

( ) 3. Techniques or tactic utilized to protect the safety and property of the public provided that their disclosure could impair such protection.

( ) 4. An investigation of violations or possible violations of the laws of the State of New Jersey and/or the Township of West Orange Administrative Code.

(X) 5. Pending or anticipated litigation or contract negotiation in which this body is or maybe a party.

( ) 6. A matter falling within the attorney-client privilege to the extent that confidentiality is required in order for the attorney to exercise his ethical duties to this body.

() 7. Personnel matters.

( ) 8. Discussion of any matter which by express provision of Federal law or State statute or rule of Court shall be rendered confidential.

( ) 9. Discussion of any matter in which the release of information would impair a right to receive funds from the Government of the United Sates.

( ) 10. Discussion of any matter involving the purchase, lease or acquisition of real property with public funds, the setting of banking rates or investment of public funds, where it could adversely affect the public interest if discussion of such matters were disclosed.

( ) 11. Deliberations occurring after a public hearing that may result in imposition of a civil penalty or suspension or loss of a license or permit.

More specifically, the Council may discuss in closed session the following topic(s):

Pending or anticipated litigation or contract negotiation

Resolution Authorizing an Executive Session to Discuss a Matter of Litigation Specifically Kevin Malanga v. Township of West Orange, Township of West Orange Planning Board, and Township of West Orange Township Council

(the general subject matter(s)) of discussion shall be indicated by a check mark in the appropriate box and shall be more specifically referred to thereafter to the extent such additional disclosure can be made without compromising the need for confidentiality giving rise to the closed session.

IT IS FURTHER RESOLVED that the minutes of said discussion shall be made public as soon as the matter under discussion is no longer of a confidential or sensitive nature such that the public interest will no longer be served by such confidentiality.

The foregoing resolution was duly adopted by the Township Council of the Township of West Orange at a public meeting held on **September 22, 2020.**

Motion:

Second:

Vote

Aye:

Opposed:

Karen J. Carnevale, R.M.C. **Municipal Clerk**	**Michelle Casalino** **Council President**

Adopted: September 22, 2020

176-20
September 22, 2020

RESOLUTION AUTHORIZING THE COLLECTOR OF TAXES TO REBATE PAYMENT TO THE LISTED TAXPAYER PURSUANT TO FINAL JUDGMENT BY THE TAX COURT OF NEW JERSEY

WHEREAS, final judgment on tax appeals has been rendered by the Tax Court of New Jersey on the petitions of the taxpayers listed on the attached schedule reducing the assessment for the years stated;

WHEREAS, such judgment by merit of N.J.S.A. 54:3-27.2 shall be conclusive and binding upon the municipal assessor and taxing district;

NOW, THEREFORE BE IT RESOLVED by the West Orange Township Council that the Collector of Taxes and Treasurer of West Orange, be and they are hereby authorized, empowered and directed to cause to be paid or applied to the said taxpayers the sums in full and final satisfaction to tax rebates due:

LIST ATTACHED

Karen J. Carnevale, R.M.C.	**Michelle Casalino**
Municipal Clerk	**Council President**

I hereby certify funds are available from Account No._____

John Gross, Chief Financial Officer

Adopted: September 22, 2020

TAX COURT JUDGMENT
176-20

TAX YEAR	DATE	BLOCK	LOT	QUAL	OLD VALUE	NEW VALUE	DIFFERENCE	TX RATE	REFUND AMOUNT
2019	7/29/2020	165.15	11.04	C0413	1359300	1260000	99300	0.04161	$4,131.87
2017	8/27/2020	88	29		590000	525000	65000	0.03986	$2,590.90
2018	8/27/2020	88	29		590000	525000	65000	0.04038	$2,624.70
2019	8/31/2020	125.02	33		615500	515500	100000	0.04161	$4,161.00
2013	8/21/2020	168	27.02		1168000	716000	452000	0.03648	$16,488.96
2014	8/21/2020	168	27.02		1168000	730400	437600	0.03742	$16,374.99
2015	8/21/2020	168	27.02		1168000	729200	438800	0.03817	$16,749.00
								TOTAL	**$63,121.42**

177 -20
September 22, 2020

RESOLUTION

WHEREAS, pursuant to Resolution No. 105-20 adopted by the Township Council on April 28, 2020, the Tax Assessor and Special Tax Appeal Counsel were authorized to take steps necessary to approve a proposed settlement with regard to Block 78.02, Lot 2, known as 125 Northfield Avenue in the Township of West Orange (the "Property"); and

WHEREAS, the Special Tax Appeal Counsel has advised that an error existed in the proposed settlement with regard to increasing the assessment from $6 million to $7.1 million in 2018; and

WHEREAS, the proposed Stipulation has now been revised to reflect that the 2018 affirmative tax appeal will be withdrawn as a result of negotiations whereby the property owner will withdraw all pending tax appeals concerning another property owned by the same owner or related entity and represented by the same attorney located at 21 Hutton Avenue, Block 78.02, Lot 1 (the "Hutton Property"); and

WHEREAS, Special Tax Appeal Counsel recommends the settlement which will resolve a defense of appeal against the Township**;** and

WHEREAS, the Law Department recommends revision of the settlement approved under Resolution No. 105-20 to reflect this correction.

NOW, BE IT HEREBY RESOLVED BY THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF WEST ORANGE, that the revised Stipulation be and is hereby approved with regard to the Property based upon the withdrawal of the pending tax appeal concerning the Hutton Property; and be it further

RESOLVED, that Special Tax Appeal Counsel and the Tax Assessor are authorized to implement this provision.

Karen J. Carnevale, R.M.C. **Township Clerk**	**Michelle Casalino** **Council President**

Adopted: September 22, 2020

Atty. ID No. 007711983
Blau & Blau
Attorneys at Law
223 Mountain Avenue
Springfield, New Jersey 07081
(973) 564-9003
Attorneys for Plaintiff

Township of West Orange,

Plaintiff

v.

WHS LLC c-o Community Management,

Defendant

Tax Court of New Jersey
Docket Nos. 005562-2015
005356-2016
002019-2017
004372-2018
000946-2019
000703-2020

Civil Action
Stipulation of Settlement

1. It is hereby stipulated and agreed that the assessment of the following property be adjusted and judgment entered as follows:

Block: 78.02
Lot: 2
Address: 125 Northfield Avenue
District: West Orange
Year(s): 2015, 2016, 2017 and 2018

	Original Assessment	County Board Judgment	Requested Judgment
Land	$2,231,300		$2,231,300
Improvement	$3,768,700	Direct	$3,768,700
Total	$6,000,000	Appeal	$6,000,000

Block: 78.02
Lot: 2
Address: 125 Northfield Avenue
District: West Orange
Year(s): 2019

	Original Assessment	County Board Judgment	Requested Judgment
Land	$2,231,300		$2,231,300
Improvement	$3,768,700	Direct	$4,968,700
Total	$6,000,000	Appeal	$7,200,000

Block: 78.02
Lot: 2
Address: 125 Northfield Avenue
District: West Orange
Year(s): 2020

	Original Assessment	County Board Judgment	Requested Judgment
Land	$2,231,300		$2,231,300
Improvement	$3,768,700	Direct	$5,018,700
Total	$6,000,000	Appeal	$7,250,000

2. The undersigned have made such examination of the value and proper assessment of the properties and have obtained such appraisals, analysis and information with respect to the valuation and assessment of the properties as they deem necessary and appropriate for the purpose of enabling them to enter into the Stipulation. The assessor of the taxing district has been consulted by the attorney for the taxing district with respect to this settlement and has concurred.

3. Based upon the foregoing, the undersigned represent to the Court that the above settlement will result in an assessment at the fair assessable value of the properties consistent with assessing practices generally applicable in the taxing district as required by law.

4. The parties have agreed that statutory interest will be waived if the tax is paid within 60 days of the bill being sent by the collector.

Charles E. Blau

Charles E. Blau
Attorney for Plaintiff
Dated: September 3, 2020

Jonathan F. Donath
Attorney for Defendant
Dated: September , 2020

178-20
September 22, 2020

RESOLUTION

A Resolution Authorizing the Planning Board to Undertake a Preliminary Investigation to Determine Whether Block 155, Lots 40.02, 41.02, and 42.02 Qualifies for Designation as a Non-Condemnation Area in Need of Redevelopment Pursuant to N.J.S.A. 40A:12A-1 et. seq.

WHEREAS, the Local Redevelopment and Housing Law, *N.J.S.A.* 40A:12A-1 et seq. ("LRHL"), provides a mechanism to empower and assist local governments in efforts to promote programs of redevelopment; and

WHEREAS, the Township of West Orange (the "Township") desires to explore whether the real properties located on Executive Drive and Rooney Circle and more commonly known as Block 155, Lots 40.02 (100 Executive Drive), 41.02 (10 Rooney Circle), and 42.02 (200 Executive Drive) on the Township of West Orange Tax Map, inclusive of any and all streets, "paper" streets, private drives and right of ways (the "Study Area") may be an appropriate area for consideration for redevelopment; and

WHEREAS, the LRHL sets forth a specific procedure for establishing an area in need of redevelopment; and

WHEREAS, pursuant to *N.J.S.A.* 40A:12A-6, prior to the Township making a determination as to whether the Study Area qualifies as an area in need of redevelopment, the Township Council must authorize the Township Planning Board ("Planning Board"), by resolution, to undertake a preliminary investigation to determine whether the Study Area meets the criteria of an area in need of redevelopment set forth in *N.J.S.A.* 40A:12A-5; and

WHEREAS, the Township Council wishes to direct the Planning Board to undertake such preliminary investigation to determine whether the Study Area meets the criteria for designation as an area in need of redevelopment pursuant to *N.J.S.A.* 40A:12A-5 and in accordance with the investigation and hearing process set forth at *N.J.S.A.* 40A:12A-6; and

WHEREAS, the Township Council hereby states that any redevelopment area determination shall authorize the municipality to use all those powers provided by the LRHL for use in a redevelopment

area, except the use of eminent domain (hereinafter referred to as a "Non-Condemnation Redevelopment Area"); and

WHEREAS, the notice of any hearing to be conducted by the Planning Board with regards to this Resolution shall specifically state that a Non-Condemnation Redevelopment Area determination shall not authorize the municipality to exercise the power of eminent domain to acquire any property in the Study Area.

NOW, THEREFORE, BE IT RESOLVED that the Township Council hereby directs the Planning Board to conduct the necessary investigation and to hold a public hearing to determine whether the Study Area defined hereinabove qualifies for designation as an area in need of redevelopment under the criteria and pursuant to the public hearing process set forth in *N.J.S.A.* 40A:12A-1, *et seq.*; and

BE IT FURTHER RESOLVED that the Township Council hereby states that any Non-Condemnation Redevelopment Area determination shall authorize the municipality to use all those powers provided by the LRHL for use in a redevelopment area, except the use of eminent domain.

BE IT FURTHER RESOLVED that the notice of any hearing to be conducted by the Planning Board with regards to this Resolution shall specifically state that a Non-Condemnation Redevelopment Area determination shall not authorize the municipality to exercise the power of eminent domain to acquire any property in the Study Area.

BE IT FURTHER RESOLVED that the Planning Board shall submit its findings and recommendations to the Township Council in the form of a Resolution with supportive documentation.

BE IT FURTHER RESOLVED that a certified copy of this Resolution be forwarded to the Township Clerk, Chief Financial Officer and Planning Board and Planning Board Secretary.

BE IT FURTHER RESOLVED that a copy of this Resolution shall be made available in the Clerk's office in accordance with applicable law.

Karen J. Carnevale, R.M.C. **Township Clerk**	**Michelle Casalino** **Council President**

Adopted: September 22, 2020

179-20
September 22, 2020

RESOLUTION

WHEREAS, the Township of West Orange (the "Township") seeks to explore whether certain real property located on Executive Drive and Rooney Circle and more commonly known as Block 155, Lots 40.02 (100 Executive Drive), 41.02 (10 Rooney Circle), and 42.02 (200 Executive Drive) on the Township of West Orange Tax Map (the "Study Area") may be an appropriate area for consideration for redevelopment; and

WHEREAS, the Township seeks to retain Heyer, Gruel & Associates (the "Planning Consultant") to perform the evaluation as to whether the Study Area meets the qualification under the Local Redevelopment and Housing Law (the "LRHL") as an area in need of redevelopment; and

WHEREAS, the Planning Consultant has provided a proposal for the preparation and presentation of an evaluation and report as to whether the Study Area meets qualification under the LRHL, annexed hereto as Exhibit **"A"** (the "Proposal"); and

WHEREAS, the Proposal shall be capped at $30,000.

NOW THEREFORE, BE IT RESOLVED BY THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF WEST ORANGE, that the Township be and hereby is authorized to retain the Planning Consultant to perform the evaluation as to whether the Study Area constitutes an Area in Need of Redevelopment consistent with the Proposal annexed hereto as Exhibit **"A;"** and be it further

RESOLVED, that the Business Administrator is authorized to execute all necessary agreements or documents to retain the Planning Consultant consistent with the Proposal annexed hereto as Exhibit **"A;"** and be it further

RESOLVED, that the Municipal Clerk be and is hereby authorized to attest to the Business Administrator's signature; and be it further

RESOLVED, that the Planning Consultant is a licensed professional under New Jersey law and, therefore, this is a professional services engagement not subject to the public bidding requirements of the Local Public Contracts Law; further, this engagement is not subject to the fair and open process; and be it further

RESOLVED, that a copy of this Resolution shall be made available in the Clerk's office in accordance with applicable law.

Karen J. Carnevale, R.M.C. **Township Clerk**	**Michelle Casalino** **Council President**

Adopted: September 22, 2020

HEYER, GRUEL & ASSOCIATES
COMMUNITY PLANNING CONSULTANTS

September 15, 2020

Richard Trenk, Esq.
McManimon, Scotland & Baumann, LLC
75 Livingston Avenue
Roseland, NJ 07068

RE: Proposal for Professional Planning Services
West Orange Area in Need of Redevelopment Study –
Block 155, Lots 40.02, 41.02, and 42.02

Dear Mr. Trenk:

We are pleased to submit this proposal to provide professional planning services associated with the preparation of an Area in Need of Redevelopment Investigation for the above referenced properties in the Township. Our firm is well versed in the preparation of redevelopment investigations throughout the State and have several ongoing redevelopment projects with the Township. We have extensive experience working with the Local Redevelopment and Housing Law (LRHL) and frequently sit on panels dealing with redevelopment law topics.

The scope of work for the project will include site visits with interior and exterior inspections and photo documentation of the existing property conditions, collection and review of relevant Township records, tax and property information, review of environmental records, review of building mechanical and systems condition, review of tenancy and market trends, and the preparation of a written document describing the properties and evaluating them regarding the criteria outlined in the LRHL.

Our fee for preparation of the Study would not exceed $30,000 including attendance at not to exceed three Planning Board meetings, billed at our attached standard municipal hourly rates. All other meetings and preparation will be billed separately per meeting at our hourly rates.

We welcome the opportunity to continue to work with the Township on important redevelopment projects. Should you have any questions, please do not hesitate to contact us.

Sincerely yours,

HEYER, GRUEL & ASSOCIATES

Fred Heyer

Fred Heyer, PP, AICP LEED-AP ND, CNUa
Principal

Susan S. Gruel

Susan S. Gruel, PP
Principal

HGA

HEYER, GRUEL & ASSOCIATES
COMMUNITY PLANNING CONSULTANTS

STAFFING AND RATES

The following is a breakdown of anticipated staffing involvement and hourly rates:

2020 FEE SCHEDULE - MUNICIPAL CLIENTS		
PRINCIPALS:	SUSAN S. GRUEL FRED HEYER	$ 175 PER HOUR
PRINCIPAL PLANNERS:		$ 150 PER HOUR
SENIOR PLANNERS:		$ 135 PER HOUR
ASSOCIATE PLANNERS:		$ 120 PER HOUR
ADMINISTRATIVE AGENTS:		$ 110 PER HOUR

Note: Travel time / mileage charges are not billed.

180-20
September 22, 2020

Resolution Amending Resolution 156-20, Authorizing the Award of a Professional Service Contract to Dr. David E. Jones for Employee Training Workshops

WHEREAS, the Township Council of the Township West Orange adopted Resolution 156-20 on August 11, 2020, authorizing the award of a Professional Service Contract to Dr. David E. Jones for Employee Training Workshops for Township Employees over 12 training sessions; and

WHEREAS, the Township's Chief Financial Officer has determined that up to 18 sessions will be as much as $13,000 less expensive (because of overtime scheduling considerations) and provide a better educational experience; and

NOW THEREFORE, BE IT RESOLVED by the Township Council of the Township of West Orange Resolution 156-20 be amended to say that the Township is hereby authorized to retain the professional services of Dr. David E. Jones for a maximum fee of $45,000 with funds certified by the Chief Financial Officer; and

BE IT FURTHER RESOLVED, that the Township Clerk is hereby authorized to have a notice to be published in the manner provided by law if required and that the Resolution and Agreement are on file in the Office of the Township Clerk and are available for public inspection.

Karen J. Carnevale, R.M.C. **Township Clerk**	**Michelle Casalino** **Council President**

Adopted: September 22, 2020

I hereby certify funds are available from Account No. _____

John Gross, Chief Financial Officer

181-20
September 22, 2020

RESOLUTION AUTHORIZING COST OF MAILING FOR ELECTRONIC TAX SALE

WHEREAS, NJSA 54:5-19.1 authorizes electronic tax sales pursuant to rules and regulations to be promulgated by the Director of the Division of Local Government Services, and

WHEREAS, the rules and regulations require a municipality to send two (2) notices of tax sale to all properties included in said sale; and

WHEREAS, the rules and regulations allow said municipality to charge a fee of $25.00 per notice for the creation, printing and mailing of said notice; and

WHEREAS, in an effort to more fairly assign greater fiscal responsibility to delinquent taxpayers, the Township of West Orange will charge $25.00 per notice mailed which will be assessed specifically to the delinquent accounts that are causing the need for a tax sale and not to the general tax base.

NOW, THEREFORE BE IT HEREBY RESOLVED by the Township Council of the Township of West Orange hereby authorized and directed to be charged for each notice of tax sale that is sent in conjunction with the 2020 electronic tax sale.

Karen J. Carnevale, R.M.C.	**Michelle Casalino**
Township Clerk	**Council President**

Adopted: September 22, 2020

182-20
September 22, 2020

RESOLUTION

ELECTRONIC TAX SALE

WHEREAS, NJSA 54:5-19.1 authorizes electronic tax sales pursuant to rules and regulations to be promulgated by the Director of the Division of Government Services, and

WHEREAS, the Director of the Division of Local Government Services has approved NJ Tax Lien Investors/RealAuction.com to conduct electronic tax sales, and

WHEREAS, an electronic tax sale is innovative and provides a greater pool of potential lien buyers, thus creating the environment for a more complete tax sale process, and

WHEREAS, the Township of West Orange wishes to participate in an electronic tax sale.

NOW, THEREFORE, BE IT RESOLVED, by the Township Council of the Township of West Orange, New Jersey, that the Tax Collector is hereby authorized to participate in an electronic tax sale and submit same to the Director of the Division of Local Government Services if necessary.

Karen J. Carnevale, R.M.C.	**Michelle Casalino**
Township Clerk	**Council President**

Adopted: September 22, 2020

2615-20

AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 2, SECTION 59 OF THE GENERAL ORDINANCES OF THE TOWNSHIP OF WEST ORANGE, ENTITLED "BOARD OF THE OSKAR SCHINDLER PERFORMING ARTS CENTER"

BE IT ORDAINED BY THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF WEST ORANGE, in the County of Essex and State of New Jersey that Chapter 2 Section 59 of the Revised General Ordinances of the Township of West Orange is hereby amended and supplemented as follows:

I. PURPOSE

The purpose of this Ordinance is to update the makeup of the Board of the Oskar Schindler Performing Arts Center to add two members to the Board including a member from the West Orange High School Department of Performing Arts and a member from the managing organization of the Oskar Schindler Performing Arts Center.

II. CHAPTER 59.2 SHALL BE AND HEREBY IS AMENDED AND SUPERSEDED TO READ AS FOLLOWS:

2-59.2 Creation and Composition.

The body will be known as the Board of the Oskar Schindler Performing Arts Center (the "BOSPAC"). It shall consist of seven (7) members.

III. CHAPTER 59.3 SHALL BE AND HEREBY IS AMENDED AND SUPERSEDED TO READ AS FOLLOWS:

2-59.3 Appointment of Members; Terms and Meetings.

The Board of the Oskar Schindler Performing Arts Center shall be comprised of the follows:

a. One member shall be a member of the Township Council and shall be designated as the Council Liaison to the Oskar Schindler Performing Arts Center;

b. One member shall be selected by the Mayor;

c. One member shall be selected by the West Orange Recreation Department;

d. One member shall be selected by the West Orange Arts Council;

e. One member shall be selected by the West Orange Department of Public Works;

f. One members shall by selected by the West Orange High School Department of Performing Arts; and
g. One members shall be selected by the entity or organization managing the Oskar Schindler Performing Arts Center by either contract or designation.

Members shall serve terms of three (3) years. Members may be reappointed for successive terms. Any member who resigns or fails to attend three consecutive meetings shall have the balance of his or her term filled by the appointing authority herein.

IV. REPEAL OF CONFLICTING ORDINANCES

Any Ordinances of the Township, which are in conflict with this Ordinance, are hereby repealed to the extent of such conflict.

V. SEVERABILITY

If any part of this Ordinance shall be deemed invalid, such parts shall be severed and the invalidity thereof shall not affect the remaining parts of this Ordinance.

VI. EFFECTIVE DATE

This Ordinance shall take effect upon final passage and publication in accordance with the law.

ROBERT D. PARISI, MAYOR

MICHELLE CASALINO,
COUNCIL PRESIDENT

KAREN J. CARNEVALE, R.M.C., MUNICIPAL CLERK

INTRODUCED: September 8, 2020

ADOPTED: September 22, 2020

LEGISLATIVE HISTORY

This Ordinance is intended to update the makeup of the Board of the Oskar Schindler Performing Arts Center to add two (2) members to the Board including a member from the West Orange High School Department of Performing Arts and a member from the managing organization of the Oskar Schindler Performing Arts Center.

2617-20

AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER XXV LAND USE REGULATIONS OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF WEST ORANGE TO IMPLEMENT RECOMMENDATIONS OF THE MASTER PLAN REEXAMINATION

BE IT ORDAINED, by the Township Council of the Township of West Orange, in the County of Essex, State of New Jersey, as follows:

Section 1. Chapter XXV Land Use Regulations is hereby amended by making the following changes to the Township's Zoning Map:

1. Block 152.02, Lot 186: rezone from O-R to R-1.
2. Block 169, Lots 19 and 19.01 and abutting right-of-way of Cedar Avenue: rezone from R-3 to R-1.
3. Block 106, Lot 20.02: rezone from OB-2 to R-1.
4. Block 89, Lots 1.01, 3, 4, 5, 6, 10, 12, 14, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 41.01: rezone from OB-1 to B-1.
5. Block 171.03, Lot 17: rezone from R-4 to B-2.
6. Block 155, Lot 40.04: rezone from P-C to B-2.

Section 2. Chapter XXV Land Use Regulations, Section 25-4b is hereby amended and supplemented by adding the following definitions:

25-4 DEFINITIONS.

b. *Specific Definitions.*

Craft distillery shall mean a distillery operating with a craft distillery license as defined and regulated within N.J.S.A. 33:1-10.

Microbrewery shall mean a brewery operating with a limited brewery license as defined and regulated within N.J.S.A. 33:1-10.

Mixed-use development shall mean a building or buildings that includes one or more dwelling units above one or more nonresidential uses on the ground floor.

Winery shall mean a salesroom operated by the holder of a plenary winery license as defined and regulated within N.J.S.A. 33:1-10.

Section 3. Chapter XXV Land Use Regulations is hereby amended and supplemented by amending the following sections:

25-7 GENERAL REGULATIONS AND PROVISIONS .

Township of West Orange Zoning Ordinance, Section 25-7.1
TABLE OF DISTRICT REGULATIONS – PART A: PERMITTED USES

ZONE	PERMITTED PRINCIPAL USES	PERMITTED ACCESSORY USES	PERMITTED CONDITIONAL USES
R-1	One family, detached dwelling Water reservoir, well tower, filter bed Federal, state, county or township building Golf course and golf club house Farm, nursery, greenhouse and similar uses Hospital	Required accessory parking Private garage Horticultural or agricultural building Customary accessory building or structure Private swimming pool Private recreation facility Home occupation Home professional office Signs Fences and dividing walls Farm produce stand for produce grown on premises Private storage shed Greenhouses	Commercial recreation Public school Private school Library Museum Park or playground Public utility building or structure Telephone exchange Private club, other than a golf club House of worship
R-2	SAME AS R-1 AND in addition Senior citizens housing project (Sen. C.H.) as defined in Sec. 25-4	SAME AS R-1	SAME AS R-1
R-3	SAME AS R-1	SAME AS R-1	SAME AS R-1 AND in addition Townhouse residential cluster development but EXCLUDING Commercial recreation
R-3AH	SAME AS R-3	SAME AS R-3	SAME AS R-3
R-4	SAME AS R-1	SAME AS R-1	SAME AS R-1 AND in addition Banquet and Conference centers but EXCLUDING Farm produce stands Commercial recreation
R-5	SAME AS R-1	SAME AS R-1	SAME AS R-4 AND in addition Hotels and Restaurants on ten (10) or more acres Townhouse/low-rise residential cluster development Additional off-street parking
R-6	SAME AS R-1	SAME AS R-1	SAME AS R-4 AND in addition Additional off-street parking
R-T	SAME AS R-1 AND in addition Two family dwelling	SAME AS R-1	SAME AS R-4 AND in addition Nursing home Long-term care residential health care facility

			Additional off-street parking
R-G	SAME AS R-1 AND in addition Garden apartment on site of 5 acres or more only Professional office building Offices for insurance Banks	SAME AS R-1	SAME AS R-4 AND in addition Senior citizens housing project Assisted living Congregate care facility Nursing home Long-term care residential health care facility Additional off-street parking
R-M	SAME AS R-T AND in addition Multi-family development	SAME AS R-1	SAME AS R-G EXCLUDING Public school Private school Public utility building or structure Telephone exchange Library Museum Park or playground
OB-1	SAME AS R-1 AND in addition Office building	Required accessory parking Signs	SAME AS R-1 EXCLUDING Produce stand AND in addition Nursing home Long-term care residential health care facility Congregate care facility Assisted living Commercial antenna Check cashing facility
OB-2	SAME AS OB-1	SAME AS OB-1	SAME AS OB-1 EXCLUDING Check cashing facility AND in addition Senior citizens housing project
B-1	SAME AS R-T AND in addition Retail store Personal service store or studio Office or office building Business or vocational school Restaurant Bar Massage, bodywork or somatic therapy establishment Fitness center/health club	Required accessory parking Private garage Home occupation Home professional office Signs Vending machines	Motor vehicle fueling station Theater Public utility building or structure Telephone exchange Senior citizens housing project Hotel Private club, other than a golf club Video or amusement arcade Fast food restaurant Commercial antenna Microbreweries, craft distilleries and wineries
B-2	Retail store Personal service store or studio Office or office building Business or vocational school Restaurant Bar Massage, bodywork or somatic therapy establishment Fitness center/health club	SAME AS OB-1 AND in addition Vending machines	SAME AS B-1

P-C	Retail store Personal service store or studio Restaurant Bar Motor vehicle fueling station Post office Civic center, limited to assembly hall and non-commercial indoor recreation facilities Theater on lots of 8-acre minimum Urgent care Physical therapy Fitness center/health club Home design showroom Indoor commercial recreation	Required accessory parking Required accessory truck loading spaces Private garage Signs	Video or amusement arcade Commercial antenna Microbreweries, craft distilleries and wineries
O-R	Office building Post office Civic center, limited to assembly hall and non-commercial indoor recreation facilities Research laboratory	SAME AS P-C AND in addition Restaurant Bar	Commercial antenna
I	Light industry, including dry cleaning plants, machine shops, publishing or printing plants, research laboratories and steam laundries Office building Warehouse Self-storage facility Storage yard Wholesale business Motor vehicle fueling station Motor vehicle service station Car wash, Public utility building	SAME AS OB-1	Billiard parlor Bowling alley Commercial recreation Commercial antenna Motor vehicle sales establishment Microbreweries, craft distilleries and wineries
R-C	Townhouses One family, detached dwelling	SAME AS R-1	SAME AS R-1 AND in addition Congregate care facility Assisted living
PURD	Townhouses Garden apartments Multi-family development	SAME AS R-1	SAME AS R-1 AND in addition Congregate care facility Assisted living
GA	Open space Recreation		
E-C, E-LR, E-MU, E-MR, HSD, MSS, HD: see the Downtown Redevelopment Plan for use regulations			
O-RA: see the Organon Redevelopment Plan for use regulations			
MUBR: see the Valley Road Area (Harvard Press) Redevelopment Plan for use regulations			

25-8.12 Principal Uses.

There shall be no more than one (1) principal use upon any single lot, except:

a. In B-1 and B-2 Districts, mixed-use developments shall be permitted as a conditional use in accordance with the requirements of Section 25-24.2b2(m).

b. All proposed mixed-uses must comply with all health and building code regulations, including Certificate of Continued Occupancy requirements. Off-street parking shall be provided as required for each individual use, except that shared parking shall be permitted for a mixed-use development containing a residential use, per Section 25-12.2a3.

c. All commercial/retail uses currently on the street level cannot be converted to residential use.

d. Mixed uses and multiple principal uses on one lot shall be permitted in the B-1, B-2, P-C, O-R and I Districts.

25-8.2 Yard Encroachments.

In all districts, the space in a required front, side, side front yard or rear yard shall be open and unobstructed except for:

a. An unroofed terrace projecting not more than eight (8) feet into the required rear yard.

b. Steps projecting not more than six (6) feet leading to a basement or first floor.

c. Doorways, windows, sills, lintels, wall ornaments or leaders projecting not more than two (2) feet. A variance shall be required for any feature that projects more than two (2) feet into a required yard.

d. Fire escapes required by law, and chimneys, not over four (4) feet wide, provided that the Building Inspector shall determine that such projections are so placed as not to obstruct light or ventilation.

e. An existing private garage for a one-family or two-family dwelling may be rebuilt within its same footprint.

f. A handicap accessibility ramp for a one-family or two-family dwelling, in accordance with Section 25-9.12.

25-12.1 General Provisions for Off-Street Parking.

In all districts off-street parking spaces for the storage or parking of passenger vehicles of occupants, employees and patrons of main buildings and structures hereafter occupied or used shall be provided in accessory private garages or in accessory parking areas in amounts not less than specified in this section, provided that nothing in this section shall prevent the repairing, reconstruction or rebuilding and continued use, pursuant to Section 25-24, of any nonconforming building or structure lawfully existing. All parking areas in all uses other than one (1), two (2) and three (3) family houses shall meet all of the following requirements:

a. All off-street parking areas shall be surfaced with an asphalt, bituminous, or cement binder pavement which shall be graded and drained to dispose of all surface water as provided by the Township Engineer. There shall be a five (5) foot wide sidewalk at least five (5) inches above the parking area level between any building and a parking area or drive used by the public.

b. The entire perimeter of all parking areas and the edges of all entrance and exit drives shall be enclosed with a concrete or granite block curb at least six (6) inches above the paving surface. Curbing shall not be less than five (5) feet from any fence or screening nor less than five (5) feet from any structure. Where required, concrete wheel stops shall be provided.

c. All parking spaces within a parking area shall be clearly marked showing the parking arrangement and traffic direction within the parking area, and such marking shall be continuously maintained.

d. Any lighting in connection with off-street parking shall conform with Section 25-14 of this chapter.

e. Any parking area shall be screened on any side which adjoins or faces premises situated in any residence district by a fence, wall, berm, evergreen or hedge maintained in good condition as required. The fences as required by this subsection may be waived by the Planning Board or the Zoning Board if in the Board's judgment, because of the topography or other extraordinary or exceptional conditions, the fence is not necessary to protect the adjoining property.

f. All parking areas shall be so designed that vehicles are not compelled to back directly onto a public right-of-way.

g. Such parking area shall be used solely for the parking of passenger automobiles and no repair work or service of any kind shall be conducted in the parking lot. No permitted sign shall be larger than two (2) square feet in area.

h. All parking areas shall be designed with service aisles to meet the following standards:

   1. Parallel parking, twelve (12) foot aisle width.

   2. Thirty (30°) degree angle parking, eleven (11) foot aisle width. One way.

   3. Forty-five (45°) degree angle parking, thirteen (13) foot aisle width. One way.

   4. Sixty (60°) degree angle parking, eighteen (18) foot aisle width. One way.

   5. Ninety (90°) degree angle parking, twenty-four (24) foot aisle width. Two way.

   6. All driveways for two way traffic shall be a minimum of twenty-four (24) feet wide and in no case shall a driveway be less than fourteen (14) feet wide.

i. Each entrance or exit from such parking area shall be at least fifty (50) feet from any residential district.

j. Every off-street parking area shall be subject to site plan approval by the Planning Board or Board of Adjustment to ensure its adequacy, relation to traffic safety and protection of the adjacent properties.

k. Off-street parking facilities as required by this chapter shall be provided on the same lot as the principal building or use that they serve, except that off-site parking facilities for non-residential uses in the B-1, B-2, OB-1 and OB-2 Districts may be provided on properties within 250 feet of the lot on which the principal building is located.

l. Off-street parking facilities may be placed in any required yard in the I, I-B, P-C and O-R Districts, provided the parking area, placed in the front yard, is at no point closer to the public right-of-way than one-half (1/2) the setback requirement or fifty (50) feet whichever is less. No parking in the side yard shall be closer than one-half (1/2) the side yard requirements to the side property line or ten (10) feet whichever is greater. In the O-B and B Districts, off-street parking may be placed in the side or rear yard only.

m. The parking requirement for a building or development with a mix of non-residential uses shall be the total of the requirements of the component uses, computed separately in accordance with the provisions of this subsection. Shared parking shall be permitted for a mixed-use development containing a residential use, per Section 25-12.2a3.

n. The amount of parking area to be improved as required by subsection 25-12.2 may be reduced by the Planning Board or Board of Adjustment if it can be clearly demonstrated by the applicant that the full amount of parking area is not necessary, however, the area to remain unimproved shall at all times be available for parking in the event that future conditions should so require, shall be fully graded and suitably landscaped in keeping with the remainder of the site. The approved site plan shall show the location of all required parking stalls and shall designate those spaces which meet the definition of compact size as described in paragraph p. below. The Board, in its discretion, may allow up to twenty-five (25%) percent of the total number of required spaces to be designated as compact size if the applicant presents adequate proof that such spaces will not adversely affect the health, safety or welfare of the Township and/or the users of the subject property.

o. Landscaped plans shall be submitted for detailed planting within the parking area. In parking areas with 30 or more parking spaces, there shall be a minimum of one (1) tree plus ground level planting for each ten (10) parking stalls, which may be provided within and/or on the perimeter of the parking area. The maximum length of a single row of parking spaces shall be 20 spaces, at which point a landscaped area with a minimum width of eight feet shall be provided.

p. Standard size parking spaces shall have minimum dimensions of nine (9) feet by eighteen (18) feet measured perpendicular to the axis of the length with adequate provision for ingress and egress to all parking spaces. Compact size spaces shall not be less than eight (8) feet by fifteen (15) feet, if approved by the Planning Board or Board of Adjustment.

25-12.2 Minimum Required Number of Parking Spaces.

...

b. Non-residential uses.

1. The number of off-street parking spaces required for any non-residential use shall be determined by reference to Parking Schedule II below, except for uses in the B-1 and B-2 zones in the Central Business District which are regulated by Section 25-12.2b5.

Parking Schedule II Parking Requirements for Non-Residential Uses	
Use	Required Parking Spaces
Assisted living or congregate care facility	1 per bed
Car wash	3 per washing lane
Child care facility, day care center or nursery school	1 for each 350 square feet of gross square feet plus 1 for each employee and cooperative adult assistant on the premises at the same time during peak periods. Such uses shall also provide for additional off-street areas for loading and unloading of school buses.
Bank	1 for each 300 square feet of gross floor area
Billiard parlor	2 per billiard table
Bowling alley	2.5 per lane
Commercial recreation, fitness center/ health club	1 per 150 square feet of gross floor area, plus 5 per each outdoor court or field
Motor vehicle fueling station or motor vehicle service station	5, plus 2 for each service bay and 1 for each 200 square feet of gross floor area of retail space. Vehicles that are on the premises to be repaired shall be parked in standard or compact parking spaces that are appropriately striped.
Hospital, nursing home or long -term care residential health care facility	1 per bed, plus 1 per every 2 nonresident employees and 1 per every resident employee
Hotel	1 per room, plus 1 space for each 1,000 square feet of gross floor area of ballrooms, conference rooms or similar space
Light industrial, laboratory and research uses	1 for each 400 square feet of gross floor area

Medical, dental, psychiatric and chiropractic offices	1 for each 150 square feet of gross floor area
Office, other than medical, dental, psychiatric and chiropractic offices	1 per 250 square feet of gross floor area
Places of worship, community buildings, social halls and places of indoor public assembly	1 for each 3 seats of fixed capacity or 1 for each 45 square feet of floor area available to patrons. Benches and pews shall be considered as 1 seat for each 2 linear feet of seating space.
Private clubs, community center buildings and swim clubs	1 for each 45 square feet of gross floor area. For outdoor swim clubs, 1 for each 45 square feet of gross floor area, plus 1 for each 2 registered members.
Public, private, business or vocational school	1 for each employee on the premises at the same time during peak hours, plus 1 for each 5 pupils in the eleventh and twelfth grade, plus 1 parking space for each 2 pupils over 18 years of age who are not in the eleventh and twelfth grades. Additional parking spaces shall be provided for any other activity and use on the premises, such as an assembly hall in accordance with the provisions of this ordinance.
Restaurant, fast food restaurant, bar, cabaret and catering facilities	1 for each 3 seats or stools or 1 for each 45 square feet of floor area available to patrons, whichever requirement is greater. Benches shall be considered as 1 seat for each 2 linear feet of seating space.
Retail stores and personal service stores or studios not separately listed	1 per 250 square feet of gross floor area. Food service uses such as delis, bakeries and coffee shops with on-site seating shall add one additional space for every 3 seats.
Self-storage facility	1 per 10,000 square feet of gross floor area, plus 1 space per 250 square feet of gross floor area of office and retail accessory uses
Storage yard, machine shop, research laboratory, steam laundry, dry cleaning plant, publishing or printing plant or public utility building	1 per 300 square feet of gross floor area
Theater	1 for each 3 seats
Warehouse, wholesale business	1 per 600 square feet of gross floor area

2. Unscheduled uses. Off-street parking requirements for uses not listed in Parking Schedule II shall be established by the approving authority, based upon accepted industry standards.

3. Fractional spaces. Whenever the application of Parking Schedule II results in a fractional parking space in excess of one-half, a full space shall be required.

4. Joint parking facilities. Persons developing property in the B-1 and B-2 Districts may meet the required parking provisions of this subsection by participation in a joint parking program of two (2) or more business uses, provided plans for such a joint program have been approved by the Planning Board and further provided that the area of the parking facilities equals the total parking area requirements of each use participating therein. Furthermore, a joint parking agreement establishing the rights and obligations of all parties to the agreement shall be signed and submitted to the Board. The agreement shall be conditioned on approval by the Board and the filing of same with the County as a recorded easement.

5. The following standards shall only apply to permitted nonresidential uses in the portions of the B-1 and B-2 zones in the Central Business District:

   (a) Restaurant or bar: one space for each four seats or stools

   (b) All other permitted nonresidential uses: no off-street parking spaces are required for the first 1,000 square feet of gross floor area of an individual use. One space shall be provided per 300 square feet of gross floor area above the first 1,000 square feet.

25-14 LIGHTING.

25-14.1 General Standards.

a. *Purpose.* Site lighting shall be designed to:

   1. Provide adequate illumination in appropriate locations for site users and the general public for purposes of traffic and pedestrian safety, security, property and building identification, and aesthetic improvement;

   2. Prevent excessive illumination and glare; and

   3. Provide proper orientation and shielding of fixtures to prevent undue illumination of adjacent properties.

b. *Shielding of fixtures.* All lighting fixtures shall be directed downward and shall be equipped with the necessary shielding so as to prevent the direct source of light from being visible from any point beyond the property lines of the premises upon which the lighting structure is located.

c. *Height of fixtures.* Light poles shall not exceed a height of 18 feet above normal grade in the vicinity of the light fixture. Normal grade shall be construed to be the newly established grade after construction, exclusive of any filling, berming, mounding, excavating or curbing or retaining wall which alters the grade at the base of the light fixture from the grade in the general vicinity of the fixture.

d. *Maximum illumination level at property line.* The level of illumination at ground level shall not exceed 0.5 of a foot-candle at the property line, nor 0.3 of a foot-candle at any property line abutting a property used by or zoned for residential use.

e. *Duration of illumination.* Duration of operation of all lighting and maximum lumen power permitted shall be as determined satisfactory by the Planning Board or Zoning Board of Adjustment with due regard to whether any limitations imposed will deprive the applicant of a reasonable use of his property and whether the application will be detrimental to the public health and general welfare or to the property and personal rights of the abutting owners. Provision shall be made for the reduction in the intensity of illumination to the minimum needed for security purposes when the facility is not in operation.

f. *Underground installation.* All wiring for light fixtures shall be laid underground, and not strung between poles or buildings.

25-14.2 Scope and Details of Site Lighting.

All areas of the site as depicted on the site plan shall be identified as to the minimum level of illumination in compliance with subsection 25-14.3. The fixture spacing, type mounting height, wattage, photometric pattern shall be shown and calculated for each type of fixture used. A plot of the minimum design illumination shall show the location of each fixture by a symbol and the limits of the isolux/isocandela trace. The lighting for off-street parking shall be designed to direct light downward towards the parking areas.

25-14.3 Minimum Levels of Illumination.

Minimum Levels of	*Pedestrian*	*Parking Areas*	*Streets*

Illumination	*Walkways*		
RG	4/0.4	5/0.5	4/0.4
RM	4/0.4	5/0.5	4/0.4
Cluster	4/0.4	5/0.5	4/0.4
PURD	4/0.4	5/0.5	4/0.4
OB-1	6/0.6	16/1.5	6/0.6
OB-2	6/0.6	16/1.5	6/0.6
B-1	10/0.9	20/2.0	13/1.2
B-2	10/0.9	20/2.0	13/1.2
PC	10/0.9	16/1.5	13/1.2
OR	4/0.4	11/1.0	6/.06
I	4/0.4	11/1.0	6/.06
Parking Garage*	75/7.5	54	
Circulation Aisles	110/10		
*Day Conditions are listed; Night Conditions		54/5	

Lux/Foot-Candles

The levels shown are measured in lux/foot-candles. The minimum standards are based on the level of light that will be available for new lamps and clean luminaries. When by test or other means it has been determined that less than eighty (80%) percent of the light specified in the minimum standards is attained or a significant number of burnouts are evident the owner shall be notified and he will have thirty (30) days in which to correct the lighting level to the minimum standards.

25-24.2 Conditional Uses.

...

b. *Specific Requirements.* Subject to the stipulations, guiding principles and conditions contained in this section, the Planning Board shall have the power to grant conditional uses authorized by the Table of District Regulations, in specified districts, as follows:

...

2. Business and Industrial Districts.

...

(h) Video Arcade or Amusement Arcade. A video arcade or amusement arcade shall be a conditional use in an I, P-C, B-1 and B-2 Zoning District subject to the following conditions:

(1) There shall be no more than one (1) video arcade or amusement arcade in any structure.

(2) Appropriate lighting, both indoor and outdoor, to ensure the safety of patrons must be provided.

(3) The video arcade or amusement arcade shall comply with all West Orange ordinances with respect to signage. In addition, there will be no signs illuminated in any manner so as to make them appear to be flashing.

(4) The operation of the video arcade or amusement arcade shall not cause a disturbance to the public including but not limited to noise, nuisance or loitering.

(5) A video arcade or amusement arcade shall be monitored during all hours of operation by an individual whose duties shall include assuring the safety of arcade patrons.

(6) A video arcade or amusement arcade shall contain a minimum of fifty (50) square feet of floor area per each mechanical amusement device or similar player operated device.

(i) Fast Food Restaurant. A fast food restaurant shall be permitted in a B-1 or B-2 District as a conditional use if the following requirements are satisfied:

(1) A site plan, prepared by a New Jersey licensed architect or engineer, shall be submitted to the Planning or Zoning Board, as required by this chapter and State law, and the plan shall show all standards, established herein for fast food restaurant operation as a conditional use, have been satisfied.

(2) No part of any building or structure used as a fast food restaurant nor any driveway entrance or exit to or from the same shall be located within five hundred (500) feet of any line of any lot upon which is located another fast food restaurant.

(3) No part of any building or structure used as a fast food restaurant shall be located within one thousand (1,000) feet of any residential district boundary line.

(4) The minimum size for any lot upon which any fast food restaurant is located shall be thirty thousand (30,000) square feet, and the minimum street frontage of such lot shall be two hundred (200) feet. If a fast food restaurant is located on a corner lot, the minimum street frontage on each street shall be two hundred (200) feet.

(5) Combined entrance and exit driveways to and from any lot upon which is located a fast food restaurant shall have an unrestricted width of not less than twenty-four (24) feet nor more than thirty (30) feet, shall be located not nearer than twenty (20) feet to any lot line and shall be so designed to avoid the need for any existing vehicle to back across or into any portion of a public sidewalk or street. One-way entrance or exit driveways shall have a minimum width of eighteen (18) feet.

(6) The minimum distance between driveways on a lot upon which is located a fast food restaurant shall be one hundred (100) feet, measured from the two (2) closest driveway curbs.

(7) The minimum distance of any driveway into the street, of a lot upon which a fast food restaurant is located, from a street intersection shall be one hundred (100) feet, measured from the nearest end of the curb radius of the intersection to the nearest end of the curb radius of the driveway.

(8) All fast food restaurants shall provide suitable areas for storage of trash, designed and constructed to allow no view of the trash storage from the street, to prevent trash from blowing around the site onto adjacent properties or public rights-of-way and to permit safe removal of trash.

(10) All fast food restaurants shall provide parking in accordance with Section 25-12.2b.

(11) Any lot on which is located a fast food restaurant must comply with the front yard, side yard, and rear yard requirements for the B-1 or B-2 District in which the lot is located.

25-28.5 Exceptions to Section 28.

The terms of this section shall not apply to the following:

a. Existing single family homes built before the date of this ordinance's approval, additions to such homes or rebuilding of such homes after a disaster.

b. Improvements for which preliminary subdivision or site plan approval or construction permits have been issued prior to the effective date of this.

c. Areas which previously contained structures or other improvements, or were previously graded.

d. Other than where the exceptions set forth herein apply, all applications for subdivision or site plan approval shall be reviewed under these requirements by the applicable land use board and its professionals to determine the presence of steep slopes and other natural features, if any, on the subject property and compliance with the provisions of this chapter. All construction permit applications that include grading or clearing of any lot, other those within the scope of the exceptions set forth herein, shall be reviewed under these requirements by the Township Engineer and the Township Planner.

Section 4. Chapter XXV Land Use Regulations is hereby amended and supplemented by adding the following sections:

25-9.12 Ramps for One-Family and Two-Family Dwellings.

The installation of wheelchair or other handicap access ramps shall be permitted in accordance with the following conditions:

a. Handicap access ramps which are needed to facilitate access to dwellings in a residential zone in which a disabled person or persons reside are exempt from the setback requirements applicable to that zone.

b. Where a handicap access ramp has been constructed which does not meet the setback requirements otherwise applicable, the ramp may remain as long as the dwelling is occupied by a disabled person for whom the ramp will facilitate access. Access ramps shall be removed within 60 days from the date that the disabled person or persons no longer reside at the dwelling unless a variance is approved for the continuation of the access ramp.

c. A zoning permit shall be required for the construction of a handicap access ramp.

25-11.14 DRIVE-UP WINDOWS

A drive-up window shall be permitted as an accessory use for banks, restaurants, fast food restaurants, pharmacies and similar retail uses in the zoning districts in which such uses are permitted and shall meet the following conditions:

a. Drive-up window stacking lanes shall be separate and distinct from parking lot aisles and driveways by means of defined separation including curbing, landscaping, striping so as to meet the required circulation aisle standards exclusive of the drive-through window lane.

b. Stacking lanes shall have sufficient length for a minimum of six vehicles in total for restaurants and fast food restaurants and three vehicles for banks and retail uses. Each lane shall have a minimum width of nine feet.

c. The entire length of the stacking lane or lanes shall be behind the front yard limit line and shall not block any parking space, aisle, driveway or loading area when the stacking lane is occupied with the maximum number of vehicles.

d. If multiple stacking lanes are provided for restaurant or fast food restaurant uses, they shall merge into one drive-up window lane prior to reaching any window or windows. Facilities with separate lanes served by separate windows or transaction portals shall be exempt from this requirement.

e. The drive-up window stacking lane may end after the last window and merge with the exit driveway of the property.

f. The drive-up window lane shall not be used as an exit driveway from the property.

g. The drive-up windows and stacking lane or lanes shall be designed to prevent uncontrolled conflicting movements between any on-site vehicles and pedestrian traffic and shall also be designed to allow safe ingress and egress from the site at all times.

h. One or more drive-up windows may be used for payment and/or pickup of product, said window or windows shall be an integral part of the principal building.

i. No drive-up windows shall be permitted in a required yard setback.

25-24.2 Conditional Uses.

...

b. *Specific Requirements.* Subject to the stipulations, guiding principles and conditions contained in this section, the Planning Board shall have the power to grant conditional uses authorized by the Table of District Regulations, in specified districts, as follows:

...

2. Business and Industrial Districts.

...

(m) Mixed-use Development. A mixed-use development shall be permitted as a conditional use in a B-1 and B-2 District subject to the following conditions:

(1) Permitted uses on the ground floor of a mixed-use development shall include the following permitted uses in the B-1 and B-2 Districts: retail store, personal service store or studio, office, business or vocational school, restaurant, bar, massage, bodywork or somatic therapy establishment, and fitness center/health club.

(2) One or more dwelling units shall be permitted on the upper floor(s) above any of the permitted ground floor uses in Section 25-24.2b2(m)(1).

(3) Access to upper floor uses shall be provided by means of a separate entrance than provided for ground floor uses.

(4) Minimum lot area shall be 5,000 square feet, and the minimum street frontage of such lot shall be 50 feet.

(n) Microbreweries, craft distilleries and wineries. Microbreweries, craft distilleries and wineries shall be permitted as a conditional use in an I, P-C, B-1 and B-2 Zoning District subject to the following conditions:

(1) Sampling room and retail sales. A microbrewery, distillery or winery shall provide a sampling room and retail sales area where product shall be sold to consumers and where samples shall be offered.

(2) Street frontage. Warehousing of materials or product, or offices ancillary to the microbrewery, distillery or winery shall not occupy any street frontage. In addition, at least 50% of the street frontage of the tenant space shall be occupied by the sampling room and retail sales area.

Section 5. If any provision of this Ordinance or application thereof, under any circumstances, is held invalid, the invalidity shall not affect any other provisions or applications

of this Ordinance that can be given effect without the invalid provision(s) or application(s) and to this end the provisions of this Ordinance are severable.

Section 6. All other Ordinances or parts of Ordinances inconsistent with this Ordinance are hereby repealed.

Section 7. This Ordinance shall take effect upon final passage and publication in accordance with law.

Karen J. Carnevale, R.M.C. **Municipal Clerk**	**Michelle Casalino** **Council President**

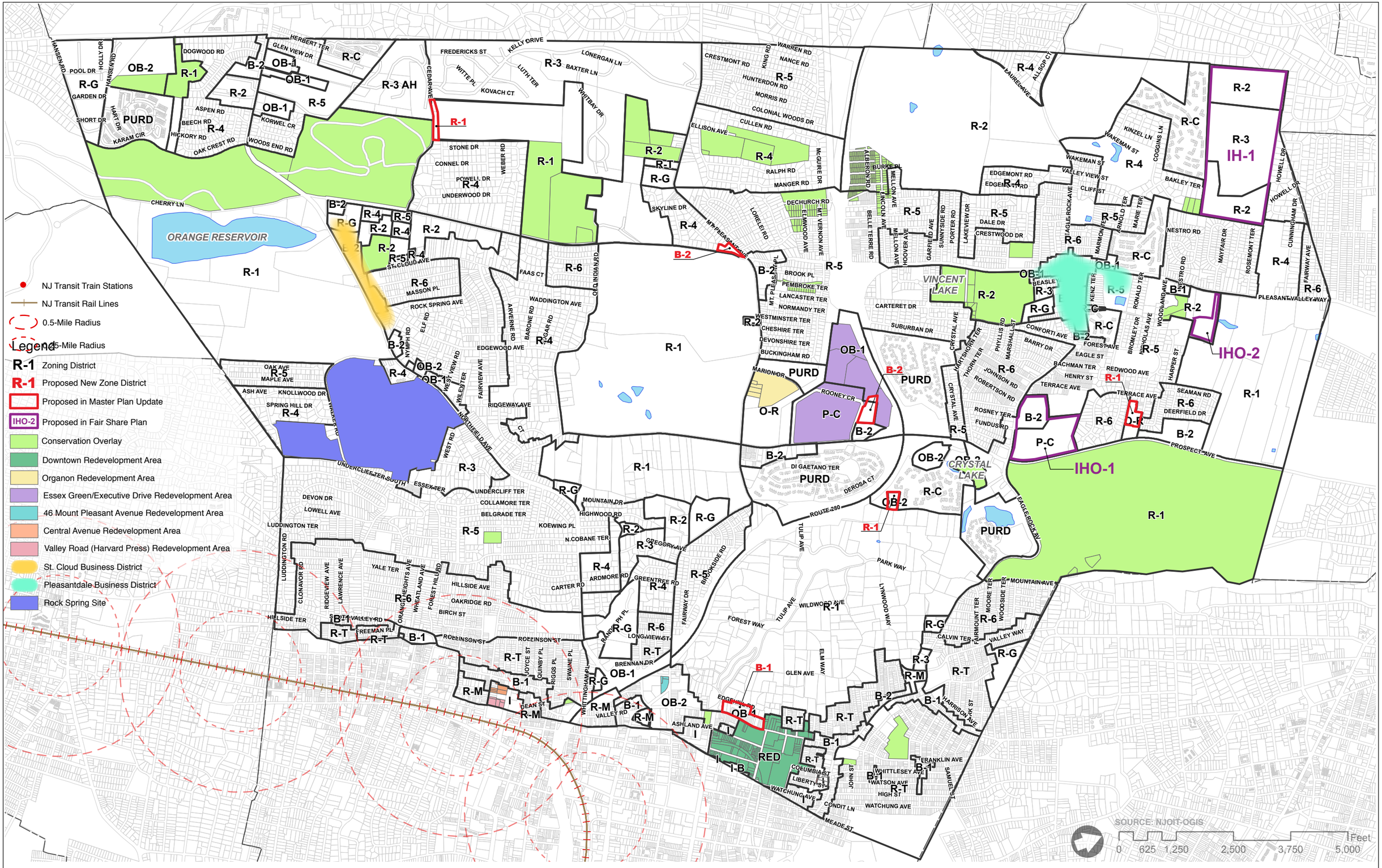
Robert D. Parisi, Mayor

Introduced:

Adopted:

LEGISLATIVE HISTORY

This Ordinance is presented to revise the municipal code section governing land use regulation to implement recommendations in the Township of West Orange Master Plan Reexamination Report and Land Use Element adopted by the West Orange Planning Board on January 8, 2020.



PROPOSED ZONING AMENDMENTS TO IMPLEMENT FAIR SHARE PLAN AND MASTER PLAN UPDATE | TOWNSHIP OF WEST ORANGE | PHILLIPS PREISS GRYGIEL LEHENY HUGHES LLC 2020

2618-20

AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 7, TRAFFIC, SUBSECTION 7-32.2, RESTRICTED PARKING ZONES, OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF WEST ORANGE

BE IT ORDAINED, by the Township Council of the Township of West Orange, in the County of Essex, State of New Jersey as follows:

Section 1. Subsection 7-32.2, Restricted Parking Zones, of the Revised General Ordinances of the Township of West Orange is hereby supplemented and amended as follows (*italic type denotes deletion,* **bold type denotes addition):**

7-32.2 Restricted Parking Zones. Pursuant to N.J.S.A 39:4-197.6, Restricted Parking Zones, as defined in N.J.S.A. 39:4-207.6e, are established in front of the following residences as indicated on the Tax Maps of the Township of West Orange, at the specified locations. Parking within a specific zone is restricted to the motor vehicle issued a permit pursuant to N.J.S.A. 39:4-197.7. In accordance with N.J.S.A., 39:4-197.6 parking is permitted in the Restricted Parking Zone except when prohibited in front of the residence by other sections of this Chapter.

Residence Address	No. of Spaces	Location
179 High Street	**1**	**Beginning 267 feet north of the northerly curbline of Washington Street extended and extending 20 feet northerly.**

Section 2. If any provision of this Ordinance or application thereof, under any circumstances, is held invalid, the invalidity shall not affect any other provisions or applications of this Ordinance that can be given effect without the invalid provision(s) or application(s) and to this end the provisions of this Ordinance are severable.

Section 3. All other Ordinances or parts of Ordinances inconsistent with this Ordinance are hereby repealed.

Section 4. This Ordinance shall take effect upon final passage and publication in accordance with law and upon the approval of the New Jersey Department of Transportation if required.

Robert D. Parisi, Mayor

Michelle Casalino, Council President

Karen J. Carnevale, R.M.C.
Township Clerk

INTRODUCED: September 8, 2020

ADOPTED: September 22, 2020

LEGISLATIVE HISTORY

This Ordinance is in response to requests from a handicapped resident who resides at 179 High Street By adopting this Ordinance, the Township will establish a handicapped parking stall adjacent to this address. Such parking stalls are permissible under the laws of New Jersey, and they are designated as Restricted Parking Zones.

TOWNSHIP OF WEST ORANGE, ESSEX COUNTY, NEW JERSEY
BOARD OF ALCOHOLIC BEVERAGE CONTROL

RESOLUTION

WHEREAS, the Township Council of the Township of West Orange serves as the Township of West Orange Board of Alcoholic Beverage Control; and

WHEREAS, the 1920's Road House, Inc., t/a Essex House, Inc., ("the Licensee") is the owner and operator of the Essex House, a restaurant and bar located at 525 Northfield Avenue, West Orange, New Jersey, 07052, the License bearing #0722-33-071-003; and

WHEREAS, an Application has been filed by the Licensee for the renewal of its Plenary Retail Consumption License #0722-33-071-003, for the License Term from **July 1, 2020 through June 30, 2021**; and

WHEREAS, on February 21, 2012, the Township of West Orange brought a Notice of Charges of ABC Violations against the Licensee, charging violations of N.J.A.C. 13:2-23.6(a)(2), prohibition against immoral activities, disturbance, and nuisance on or about the licensed premises (one count - brawl, act of violence, disturbance, or unnecessary noise), and N.J.A.C. 13:2-23.6(b), prohibition against immoral activities, disturbance, and nuisance (one count - failing to operate licensee's business in orderly and lawful fashion so as to constitute a nuisance, the misconduct of the licensee, its employees and patrons creating conditions contrary to the public health, safety and welfare), all occurring over the course of 2010 to the present, and most recently on February 10, 2012; and

WHEREAS, the Licensee was properly and personally served with that Notice of Charges and by and through its attorney, Robert C. Williams, Esq., entered a Not Guilty plea to each charge with the Municipal Clerk; and

WHEREAS, the Licensee appeared before the Township Council of the Township of West Orange, serving as that municipality's ABC Board, the Licensee represented by its counsel, Robert C. Williams, Esq., and Kenneth W. Kayser, Esq., appearing on behalf of the Township as its ABC Prosecutor, for a hearing on the charges; and

WHEREAS, discussion and negotiation resulted in the Licensee and the Township, coming to an agreement to resolve the charges without the need for an evidentiary hearing, which agreement, memorialized by Resolution, was placed on the record before the ABC Board, providing as follows:

As to Charge 2, a violation of N.J.A.C. 13:2-23.6(b), prohibition against immoral activities, disturbance, and nuisance on premises, to wit, failing to operate licensee's business in orderly and lawful fashion so as to constitute a nuisance, the misconduct of the licensee, its employees and patrons creating conditions contrary to the public health, safety and welfare, the Licensee shall change its plea from not guilty to non-vult;

As to Charge 1, charging a violation of N.J.A.C. 13:2-23.6(a)(2), prohibition against immoral activities, disturbance, and nuisance on or about the licensed premises, to wit, permitting a brawl, act of violence, disturbance, or unnecessary noise on the licensed premises, said Charge is and hereby is dismissed;

As to Charge 2, the Licensee's License shall be suspended for ten (10) days, and said period of suspension shall be held in abeyance for a period of one (1) year from the date of the adoption of this Resolution, April 3, 2012, and if within that one (1) year period there occurs a new violation of any section of N.J.A.C. 13:2-23.6, for which there is a finding of responsibility, whether made within or after that one (1) year period, and there being no waiver of the Licensee's right to defend such a charge, the ten (10) days held in abeyance as to Charge 2 shall be served at the direction of the ABC Board in addition to any penalty imposed on the new charge(s);

Further as to Charge 2, the Licensee shall agree to the attachment to its License of a Special Condition that it shall have no parties or party-type events which are open to the public and promoted through social networking, or other internet sites, or otherwise promoted or advertised, and intended to attract a large number of attendees who pay for admission, whether to a promoter, or to the Licensee, or someone working for either or both;

Further as to Charge 2, the Licensee shall agree to the attachment to its License of a Special Condition that whenever a private party, or other private event is held at the licensed premises, which is anticipated to result in the parking lot at the premises filling to 75% of capacity, or more, at least two parking attendants shall be employed to monitor and manage ingress to and egress from the lot so as to maintain order and to prevent patrons from parking on the adjacent and nearby residential streets and off-street parking locations;

Further as to Charge 2, the Licensee shall agree to the attachment of its License of a Special Condition that entertainment at the licensed premises involving amplified music shall not be permitted after 11:00 p.m., on Sundays through Thursdays, and shall not be permitted after 1:00 a.m., on Saturday and Sunday mornings, excepting an event already committed to for Saturday, June 23, 2012, a party consisting of an older group of patrons who have previously had parties at the Licensee's location without incident and at which amplified music may be played until 1:30 a.m.;

During the period of suspension, if and when served, no alcoholic beverages shall be served or consumed on the premises and any and all alcoholic beverages on the premises shall be secured; and

WHEREAS, Special Conditions such as those agreed to may be re-imposed with each License renewal, subject to the Licensee's right to be heard with respect to them; and

WHEREAS, the Licensee, by and through its counsel, was notified by certified mail, return receipt requested, of the ABC Board's intention to continue the same Special Conditions for the 2012 to 2013 License Term, and for each succeeding License Term, and was provided with an opportunity to object and be heard with respect to the Special Conditions being imposed, and declined to object or to request a hearing; and

WHEREAS, the Licensee was again notified by letter dated and sent by certified mail, registered return receipt on or about **August 5, 2020**, of the ABC Board's intention to impose the same Special Conditions upon renewal of the license for the next License Term and providing the opportunity for a formal hearing regarding such imposition of Special Conditions upon request; and

WHEREAS, the Licensee has offered no objection and therefore by its inaction has consented to continuation of the same Special Conditions upon renewal for the next License Term;

NOW, THEREFORE, BE IT RESOLVED THAT THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF WEST ORANGE serving as the Township Board of Alcoholic Beverage Control, does hereby approve the renewal of the Plenary Retail Consumption License 0722-33-071-003, belonging to the Licensee, for the period from **July 1, 2020 through June 30, 2021**, for the premises located at 525 Northfield Avenue, West Orange, New Jersey, subject to the following Special Conditions pursuant to *N.J.S.A.* 33:1-32:

1. It shall have no parties or party-type events which are open to the public and promoted through social networking, or other internet sites, or otherwise promoted or advertised, and intended to attract a large number of attendees who pay for admission, whether to a promoter, or to the Licensee, or someone working for either or both;

2. Whenever a private party, or other private event is held at the licensed premises, which is anticipated to result in the parking lot at the premises filling to 75% of capacity, or more, at least two parking attendants shall be employed to monitor and manage ingress to and egress from the lot so as to maintain order and to prevent patrons from parking on the adjacent and nearby residential streets and off-street parking locations;

3. Entertainment at the licensed premises involving amplified music shall not be permitted after 11:00 p.m., on Sundays through Thursdays, and shall not be permitted after 1:00 a.m., on Saturday and Sunday mornings;

AND BE IT FURTHER RESOLVED, that a copy of this Resolution shall be provided to the Director of the Division of Alcoholic Beverage Control of the State of New Jersey, the Licensee and Licensee's attorney, Robert C. Williams, Esq., the Municipal Clerk's Office and the West Orange Police Department, and shall be maintained in the Township's permanent Alcoholic Beverage Control records, and that the Director is, and hereby is, respectfully requested to grant his approval to the foregoing Special Conditions as required by statute, and to communicate that approval to the Township of West Orange, which approval shall then also be maintained in the Township's permanent ABC records.

The above Resolution was passed by Township Council of the Township of West Orange serving as the West Orange Board of Alcoholic Beverage Control at their regular meeting held on **September 22, 2020**.

Michelle Casalino, Council President and ABC Board Chairman	Karen J. Carnevale, Municipal Clerk and Secretary to the ABC Board

Adopted: September 22, 2020

651-20
September 22, 2020

TOWNSHIP OF WEST ORANGE, ESSEX COUNTY, NEW JERSEY
ALCOHOLIC BEVERAGE AND CONTROL BOARD

RESOLUTION

WHEREAS, the Township Council of the Township of West Orange serves as the Township of West Orange Board of Alcoholic Beverage Control; and

WHEREAS, an Application has been filed by Las Palmeras, Inc. t/a La Dolce Vita Bar Restaurante (formerly Las Palmeras), 364 Valley Road, West Orange, NJ, for the renewal of its Plenary Retail Consumption License, bearing License #0722-33-045-005, for the License Period **July 1, 2020** through **June 30, 2021**, the annual renewal deadline extended by COVID-19 Executive Order to September 30, 2020; and

WHEREAS, the Licensee's application for renewal complies with the New Jersey State Laws regulating the sale, consumption, and distribution of alcoholic beverages; and

WHEREAS, the Licensee, in or about early June, 2016, resolved with the State of New Jersey at least ten (10) charges filed by the Office of the Attorney General, Department of Law and Public Safety, Division of Alcoholic Beverage Control, alleging that the Licensee had committed various and serious offenses during 2014, and seeking suspension of the license for 209 days, the resolution of which included payment of $8,600 in lieu of a 72 day suspension, with 45 days held in abeyance for a period of 2 years, and the mitigating factor that the Township had imposed Special Conditions on this Licensee, including, but not limited to, the requirement to install and maintain a video security system, and the Township learning of such disposition shortly after the Licensee's License had been renewed for the 2016-2017 License term; and

WHEREAS, the Special Conditions existing on the Licensee for that License Term were as follows"

1. The Licensee shall hire one off-duty WOPD Officer or private security guard at prevailing rates to provide for exterior security at the Licensed Premises on Friday, Saturday and Sunday nights from 9:30 p.m., to 1:30 a.m.;

2. The Licensee shall hire a licensed security company to provide security for the interior of the Licensed Premises on Friday, Saturday and Sunday nights from 9:30 p.m., to 1:30 a.m.;

3. The Licensee shall install and maintain a video surveillance system to cover the interior of the Licensed Premises, including the bar area, the front and back entrances and exits and the front sidewalk area on Valley Road, which surveillance system shall be maintained in good working order and operating during all hours when the Licensed Premises is open for business, and recordings shall be kept and made available to the West Orange Police Department upon

request for at least thirty (30) days following the date of recording, and the Licensee shall cooperate with the West Orange Police Department in the implementation and maintenance of this video surveillance system; and that

4. The Licensee, every day it is open, shall close its doors to new customers at 12:30 a.m., shall cease the sale of alcoholic beverages at 1:00 a.m., and all customers shall be off the premise by 1:30 a.m.; and

WHEREAS, new ABC charges were brought by the Township against this Licensee in February, 2017, as follows: On or about November 27, 2016, at or about 11:20 p.m., in the Township of West Orange, County of Essex and State of New Jersey, at and about the Licensed premises of the Licensee located at 364 Valley Road, West Orange, New Jersey, the Licensee did conduct the premises so as to allow, permit or suffer in, upon and about that premises, an act of violence and disturbance, specifically a patron shoving and throwing a bottle at another patron, who was highly intoxicated, and causing a laceration above the victim's left eye, in violation *N.J.A.C.* 13:2-23.6(a)2, and the Licensee has violated *N.J.A.C.* 13:2-23.6(b) , in that it has repeatedly and over a period of at least the past three years allowed, permitted, or suffered in or upon the licensed premises assaults, acts of violence and/or disturbances, including, but not limited to seventeen incidents requiring police intervention in or about the year 2014, adversely affecting public safety or the rights of the public, to which a non-vult plea was entered and disposition made on June 1, 2016, by the State of New Jersey, Department of Law and Public Safety, Division of Alcoholic Beverage Control, Trans. No. R42991, as well as fifteen incidents of affrays, two incidents of aggravated assault, an incident of strong arm robbery, urinating in public, disorderly conduct, and ten noise complaints, all occurring in 2015, as well as twenty-one incidents of affrays, four incidents of simple assault, an aggravated assault, assault with a weapon, fighting, strong arm robbery, disorderly conduct, theft and noise complaints in 2016, all contrary to the public health, safety and welfare, requiring many calls to and interventions by the West Orange Police Department, such that the operation of this licensed premises has become, and its operation is, a nuisance, the Licensee unable to maintain control of its patrons and its licensed and surrounding premises; and

WHEREAS, counsel for the Licensee had advised that the Licensee employed a new Co-Manager in February, 2017, and had voluntarily self-imposed certain time constraints on its operation since that time, which were greater constraints than those currently existing Special Conditions, in an effort to eliminate the incidents which have given rise to the pending and earlier ABC charges and Special Conditions during the past several years; and

WHEREAS, the West Orange Township ABC Board and the Licensee agreed with respect to said pending charges to proceed as follows:

> The Township ABC Board shall adjourn the hearing on the pending ABC charges for a period of 90 days, from the currently scheduled June 27, 2017, to the second regular Council Meeting in September, or first such meeting in October, 2017, and shall then determine based upon the Licensee's operation in the interim whether there is a need to

go forward with prosecution of those charges, or to forego them in view of the Licensee's improved and acceptable operation during 2017; and

The Licensee agrees to continue its to date self-imposed modifications to the previously imposed Special Condition no. 4, closing its doors to new customers at 12:00 a.m., rather than 12:30 a.m., ceasing the sale of alcoholic beverages at 12:15 a.m., rather than at 1:00 a.m., and having all customers off the premises by 1:00 a.m., instead of at 1:30 a.m., all of those limitations applicable every day the Licensee is open; and

The Licensee understands and acknowledges that Special Conditions 1 and 2, previously imposed and to continue for the 2017-2018 License Term, contemplate that any security company and security guard, or officer, shall be licensed and registered pursuant to the "Security Officer Registration Act" ("SORA"), *N.J.Stat*. §45:19A-1, *et seq*., the terms "security guard" and "security officer" meaning the same thing, and, if not already in full compliance with "SORA", full compliance shall be achieved within sixty (60) days of enactment of this Resolution; and

WHEREAS, twenty-two new charges were brought against this Licensee and hearings held on those charges on July 10, 2018 and August 21, 2018, twelve of those charges having been sustained as evidenced in ABC Board Resolution 598-18, dated August 21, 2018, as follows:

• Violation of N.J.A.C. 13:2-23.6(a) 2 - Prohibition Against Any Brawl, Act of Violence, Disturbance, or Unnecessary Noise on Premises relating to an incident occurring on or about October 9, 2017;
• Violation of N.J.A.C. 13:2-23.6(a) 2 - Prohibition Against Any Brawl, Act of Violence, Disturbance, or Unnecessary Noise on Premises relating to an incident occurring on or about January 13, 2018;
• Violation of N.J.A.C. 13:2-23.6(b) - Prohibition Against Operation of Liquor License Business in a Manner Which Fails to Avoid Acts of Violence and Disturbances so as to Constitute a Nuisance Contrary to the Public Health, Safety and Welfare, relating to numerous incidents occurring over the last three years;
• Violation of N.J.A.C. 13:2-23.13, Requirement to Maintain copies of current license certificate; application; list of employees on the licensed premises, resulting from an ABC inspection occurring on October 13, 2017, during which an incomplete E141a Form was produced by the Licensee;
• Violation of N.J.S.A. 33:1-31(h), for violation of any ordinance, resolution or regulation of the issuing authority, the Licensee at the time of the October 9, 2017, assault incident not in compliance with one of its Special Conditions of operation in that its video surveillance system was not operating properly and not properly maintained to ensure such proper operation, not recording the incident occurring on that date, a violation of the Special Condition;
• Violation of N.J.S.A. 33:1-25 and 1-26, for circumvention of the application and licensing process and effectively sharing profits with unlisted and unlicensed owners,

specifically, with women hired to entertain customers, in and about October, 2017;
• Violation of N.J.A.C. 13:2-23.13(a)(2), requiring Class C Licensees to have a photostatic or other true copy of the current license application as well as the last filed long-form application (if the current application is short form), kept on the Licensed premises in order to conduct the licensed business, at the time of an ABC investigation on October 13, 2017;
• Violation of N.J.A.C. 13:2-23.32 (e), requiring that for an unlimited period of time licensees must keep permanent records of account truly and accurately containing a record of all moneys invested in the licensed business, etc., such documents able to be stored off the licensed premises but produced within 7 days of a request by the Director, the issuing authority or agents or representatives thereof, occurring during an ABC inspection on October 13, 2017;
• Violation of N.J.S.A. 33:1-31(h), Suspension or revocation of license for any violation of any ordinance, resolution or regulation of the issuing authority or governing body, on January 8, 2018, the Licensee remaining open after the closing time required by its Special Conditions;
• Violation of N.J.S.A. 33:1-31(h), Suspension or revocation of license for any violation of any ordinance, resolution or regulation of the issuing authority or governing body on January 13, 2018, the Licensee remaining open after the closing time required by its Special Conditions;
• Violation of N.J.S.A. 33:1-31(h), Suspension or revocation of license for any violation of any ordinance, resolution or regulation of the issuing authority, on or about July 9, 2017, the Licensee remaining open after the closing time required by its Special Conditions;
• Violation of N.J.S.A. 33:1-31(h), Suspension or revocation of license for any violation of any ordinance, resolution or regulation of the issuing authority on or about July 24, 2017, the Licensee remaining open after the closing time required by its Special Conditions;
and the penalties imposed having been consolidated, including a thirty-day suspension of the License with fifteen days held in abeyance; and

WHEREAS, new incidents have occurred since resolution of those charges and for which charges were prepared as well as some additional charges being in the process of preparation and prosecution of all of them anticipated in the very near future; and

WHEREAS, the purpose of the ABC regulatory scheme is to protect the health, safety and welfare of the people of the State of New Jersey, and the fostering of moderate and responsible use and consumption of alcoholic beverages, and the proposed special conditions being logically related to the regulatory scheme and being reasonable efforts to promote the purposes of that scheme;

NOW, THEREFORE, BE IT RESOLVED THAT THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF WEST ORANGE, serving as the Township's Board of Alcoholic Beverage Control, does hereby approve the renewal of the Plenary Retail Consumption License heretofore issued to the Licensee bearing License #0722-33-045-005, for the 2020 - 2021 Licensing term, said renewal being subject to the following Special Conditions pursuant to *N.J.S.A.* 33:1-32, all of which Special Conditions having been found by the Board to be

necessary and proper to accomplish the objects of Title 33 and secure compliance with its provisions, and submitted promptly for approval by the Director of the Division of Alcoholic Beverage Control in accordance with law:

1. The Licensee shall hire one off-duty WOPD Officer or private security guard at prevailing rates to provide for exterior security at the Licensed Premises on Friday, Saturday and Sunday nights from 9:30 p.m., to 1:30 a.m.;

2. The Licensee shall hire a licensed security company to provide security for the interior of the Licensed Premises on Friday, Saturday and Sunday nights from 9:30 p.m., to closing at 1:00 a.m..;

3. The Licensee shall install and maintain a video surveillance system to cover the interior of the Licensed Premises, including the bar area, the front and back entrances and exits and the front sidewalk area on Valley Road, which surveillance system shall be maintained in good working order and operating during all hours when the Licensed Premises is open for business, and recordings shall be kept and made available to the West Orange Police Department upon request for at least thirty (30) days following the date of recording, and the Licensee shall cooperate with the West Orange Police Department in the implementation and maintenance of this video surveillance system; and that

4. The Licensee, every day it is open, shall close its doors to new customers at 12:00 a.m., shall cease the sale of alcoholic beverages at 12:15 a.m., and all customers shall be off the premises by 1:00 a.m.; and

AND BE IT FURTHER RESOLVED, that a copy of this Resolution shall be provided to the Director of the Division of Alcoholic Beverage Control of the State of New Jersey for the Director's approval before implementation and for that Division's records, and shall be maintained in the Township's permanent Alcoholic Beverage Control records.

The above Resolution was passed by the Township Council of the Township of West Orange serving as the West Orange Board of Alcoholic Beverage Control at the Board's regular meeting held on **September 22, 2020.**

Michele Casalino, Council President and ABC Board Chairman	**Karen J. Carnevale, Municipal Clerk/ Secretary to the ABC Board**

Adopted: September 22, 2020

653-20
September 22, 2020

TOWNSHIP OF WEST ORANGE, ESSEX COUNTY, NEW JERSEY
WEST ORANGE ABC BOARD

RESOLUTION

WHEREAS, an Application has been filed by Huguitos Bar and Restaurant LLC, 19 White Street, West Orange, NJ, for renewal of its Plenary Retail Consumption License # 0722-33-024-005, for the period **July 1, 2020 through June 30, 2021**, the Application submitted to the Township Clerk and in compliance with New Jersey State Laws regulating the sale, consumption, and distribution of alcoholic beverages; and

WHEREAS, in May, 2018, following an ABC inspection, numerous ABC violations were observed and recommendations made for certain ABC violation charges to be brought against the Licensee, including, but not limited to, failure to provide a copy of the most recent full application and/or current renewal application, having an incomplete employee list, failure to have true book or books of account available on the licensed premises, failure to produce same within seven business days of demand, employee hindering an investigation, lease out of the License, and non-payment of required taxes, or failure of proof of payment of same, such charges currently pending; and

WHEREAS, in February, 2009, notices of alcoholic beverage control charges, including seven separate allegations of violation of *N.J.A.C.* 13:2-23.6, prohibiting immoral activities, disturbance and nuisance on the premises, and two separate allegations of violation of *N.J.A.C.* 13:2-23.1(b), prohibiting the sale of alcoholic beverages to intoxicated persons, were brought by the Township of West Orange against Huguitos Bar and Restaurant, LLC, License # 0722-33-024-005, and properly served upon that Licensee; and

WHEREAS, the Township and the Licensee, each represented by counsel, in order to avoid the time and expense of a hearing on the charges, came to a mutually satisfactory agreement to resolve all of the charges; and

WHEREAS, the Township Council of the Township of West Orange, sitting as and constituting the Township's ABC Board, at its regular meeting held on the evening of March 24, 2009, having pursuant to the aforesaid agreement accepted a plea of non-vult to Count III of the ABC charges brought against the Licensee on February 18, 2009, alleging violation of *N.J.A.C.* 13:2-23.6, Prohibition Against Immoral Activities, Disturbance, and Nuisance on Premises, specifically that "The Licensee has violated *N.J.A.C.* 13:2-23.6, in that it has repeatedly and over a period of more than a year, allowed, permitted, or suffered in or upon the licensed premises brawls, acts of violence, disturbances and/or unnecessary noise, requiring many calls to and interventions by the West Orange Police Department, and numerous charges against the licensed premises, including, but not limited to, incidents and charges of such conduct occurring on September 8, 2007, May 7, 2008, May 18, 2008, June 22, 2008, August 17, 2008, August 28, 2008, and November 23, 2008, such that the operation of this licensed premises has been a nuisance."; and

WHEREAS, in exchange for the non-vult plea of the Licensee, the agreement provided for a 10 day suspension of the license, 5 days to be held in abeyance for a period of one year and to be served in the event of a liquor license violation within that one year period of time, 5 days to be served commencing on a Sunday, and the voluntary restrictions in place since September,

2008, are to be continued as follows: Sunday through Wednesday last call at 12:30 a.m., closing at 1:00 a.m., and Thursday, Friday and Saturday last call at 1:00 a.m., and closing by 2:00 a.m., no patrons admitted to the premises after 12:30 a.m., on Sunday through Wednesday, and no patrons admitted to the premises after 1:00 a.m., on Thursday, Friday and Saturday, the additional security to be continued, one officer on Thursday and two on Friday and Saturday, all of those voluntary restrictions to be revisited in connection with the licensee's renewal for the 2009/2010 license year in June, 2009, when the West Orange ABC Board can consider whether or not special conditions should be imposed with renewal of the license; and

WHEREAS, the Licensee, the West Orange Police Department and the municipal ABC Board came to an agreement with respect to Special Conditions to be imposed for the 2009 to 2010 License year; and

WHEREAS, the Licensee requested that the requirement for one security personnel being present on Thursday nights be deleted because there is so little business on Thursday nights and the Police Department reporting that in view of the lack of significant incidents over the past year at the licensed premises and the existing 90-day review period, it had no objection to this requested change which was made at the time of License renewal for the 2010 to 2011 License year; and

WHEREAS, the Licensee was notified by certified mail, return receipt requested, of the ABC Board's intention to continue the same Special Conditions for the 2012 to 2013 License Term, and was provided with an opportunity to object and be heard with respect to the Special Conditions to be imposed, and notified the ABC Board by letter dated June 6, 2012, from counsel for the Licensee, that the Licensee requested the Special Conditions to be amended to include that the Licensee shall have last call Monday through Wednesday at 12:30 a.m., with no patrons to be admitted to the premises after 12:30 a.m., and closing at 1:00 a.m., and shall have last call Thursday through Sunday at 1:00 a.m., with no patrons to be admitted to the premises after 1:00 a.m., and closing at 2:00 a.m., requesting a hearing with respect to said request; and

WHEREAS, the West Orange Police Department had reviewed its records with respect to this Licensee over the 2011 to 2012 license year and agreed that its records supported a modification of the Special Conditions consistent with the request of the Licensee; and

WHEREAS, the ABC Board then approved renewal of the License for the 2012 – 2013 License Term as follows;

A. The Licensee shall have last call on Monday through Wednesday at 12:30 a.m., no patrons to be admitted to the premises after 12:30 a.m., closing at 1:00 a.m.;

B. The Licensee shall have last call on Thursday through Sunday at 1:00 a.m., no patrons to be admitted to the premises after 1:00 a.m., and closing at 2:00 a.m.;

C. The Licensee shall provide at least two security officers on Friday and Saturday evenings until closing on each of those nights;

D. The Licensee shall provide at least two security video cameras outside the premises, one covering the Ashland Avenue side of the building and the other the White Street side of the building, and at least two security video cameras inside the premises, one covering the entire bar area and the other covering the back room, all security video cameras to be properly maintained, kept in proper working order and the video disks or tapes kept for 30 days before being recycled;

E. Members of the West Orange Police Department shall periodically monitor the security system in place at the Licensed premises including all security video cameras, personnel and deployment of all of them, and the Licensee shall work with the Police Department to maintain and, as necessary or advisable, improve security in and outside the Licensed premises to address and remedy alcohol consumption related problems;

F. All of the above Special Conditions shall be subject to review by the Board every ninety (90) days, and in the event there are incidents implicating the purpose of the ABC regulatory scheme to protect the health, safety and welfare of the people of the State of New Jersey, and the fostering of moderate and responsible use and consumption of alcoholic beverages, then, subject to the Licensee's right to be heard at a public hearing, the Board may adjust the Special Conditions without the need to wait for the next license renewal; and

WHEREAS, by letter dated **August 5, 2020**, sent by the Municipal Clerk that day to the Licensee via certified mail, registered return receipt, and to the Licensee's counsel via e-mail advising all of the ABC Board's intention to impose the same Special Conditions upon renewal of the License for the **2020-2021** License Term, modifying the language in Special Condition D., and offering a formal hearing in the event the Licensee had any objection to such Special Conditions; and

WHEREAS, the Licensee has by its inaction consented to the same Special Conditions upon renewal together with the proposed modification of the language in Special Condition D.; and

WHEREAS, the ABC Commissioner for the State of New Jersey has advised that the Special Condition set forth in paragraph F., above, exceeds the Township's lawful discretion; and

WHEREAS, the Township has never actually imposed or modified a Special Condition at times other than expressly permitted by statute;

NOW, THEREFORE, BE IT RESOLVED THAT THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF WEST ORANGE serving as the Township Board of Alcoholic Beverage Control, does hereby approve the renewal of the Plenary Retail Consumption License heretofore issued to the Licensee, Huguitos Bar and Restaurant, LLC, bearing License # 0722-33-024-005, for the **2020-2021** licensing term for the premises at 19 White Street, subject to the following Special Conditions pursuant to *N.J.S.A.* 33:1-32:

A. The Licensee shall have last call on Monday through Wednesday at 12:30 a.m., no patrons to be admitted to the premises after 12:30 a.m., closing at 1:00 a.m.;

B. The Licensee shall have last call on Thursday through Sunday at 1:00 a.m., no patrons to be admitted to the premises after 1:00 a.m., and closing at 2:00 a.m.;

C. The Licensee shall provide at least two security officers on Friday and Saturday evenings until closing on each of those nights;

D. The Licensee shall provide at least two security video cameras outside the premises, one covering the Ashland Avenue side of the building and the other the

White Street side of the building, and at least two security video cameras inside the premises, one covering the entire bar area and the other covering the back room, all security video cameras to be operating during all hours when the Licensed Premises is open for business, to be properly maintained, kept in proper working order and the video disks or tapes kept and made available to the West Orange Police Department upon request for at least thirty (30) days following the date of recording and before being recycled;

E. Members of the West Orange Police Department shall periodically monitor the security system in place at the Licensed premises including all security video cameras, personnel and deployment of all of them, and the Licensee shall work with the Police Department to maintain and, as necessary or advisable, improve security in and outside the Licensed premises to address and remedy alcohol consumption related problems;

AND BE IT FURTHER RESOLVED, that a copy of this Resolution shall be provided to the Director of the Division of Alcoholic Beverage Control of the State of New Jersey and shall be maintained in the Township's permanent Alcoholic Beverage Control records, and that the Director is, and hereby is, respectfully requested to grant his approval to the foregoing Special Conditions as required by statute, and to communicate that approval to the Township of West Orange, which approval shall then also be maintained in the Township's permanent ABC records;

The above Resolution was passed by the Township Council of the Township of West Orange sitting and serving as the West Orange Board of Alcoholic Beverage Control at their regular meeting held on **September 22, 2020.**

Michelle Casalino, Council President and ABC Board Chairman	Karen J. Carnevale, Municipal Clerk and Secretary to the ABC Board

Adopted: September 22, 2020