

WARREN TOWNSHIP SEWERAGE AUTHORITY

RESOLUTION NO. 13-100

**RESOLUTION APPROVING OF AND AUTHORIZING THE
ENTRY INTO A SETTLEMENT AGREEMENT WITH K.
HOVNANIAN AT WARREN TOWNSHIP**

WHEREAS, K. Hovnanian at Warren Township, LLC (“K. Hovnanian”) is the developer of an active adult community known as Four Seasons at the Promenade located in Warren Township, New Jersey, within the Middlebrook Sewer Service Area; and

WHEREAS, wastewater collected by the Authority at the Four Seasons community is delivered to the Somerset Raritan Valley Sewerage Authority (“SRVSA”) for treatment; and

WHEREAS, K. Hovnanian paid certain connection fees as provided by the statutes governing municipal and regional sewerage authorities to both the Authority and SRVSA; and

WHEREAS, in 2009 K. Hovnanian first asserted a claim that it may be entitled to a refund of some portion of the connection fees it paid to the Authority, based on the New Jersey Appellate Division’s decision in 612 Assoc., L.L.C. v. N. Bergen Mun. Util. Auth., 404 N.J. Super. 531 (App. Div. 2009) (“612 Associates”); and

WHEREAS, K. Hovnanian agreed to pay its connection fees “under protest,” pending the New Jersey Supreme Court’s ruling of 612 Associates on appeal, in order to avoid litigation and in the interests of reaching an amicable settlement if the outcome of the Supreme Court case supported K. Hovnanian’s position regarding the manner in which the Authority calculated its connection fee within the Middlebrook Sewer Service Area; and

WHEREAS, the decision of the New Jersey Supreme Court in 612 Associates, decided March 7, 2013, held that in certain circumstances where sewage collection and treatment service are provided by more than one sewerage authority, there may be a need to recalculate the connection fees in order to avoid duplicate charges to the properties connecting; and

WHEREAS, application of the Supreme Court’s decision in 612 Associates resulted in a reduction of the Authority’s connection fee calculated for new connections within the Middlebrook Sewer Service Area; and

WHEREAS, the Authority maintains the position that the Supreme Court’s decision in 612 Associates should be given prospective application only; and

WHEREAS, K. Hovnanian maintains that the Court’s decision in 612 Associates should given retrospective application; and

WHEREAS, the Authority engaged its auditors to make a determination of what the historic connection fees would have been for connections made by the Four Seasons development if 612 Associates were applied retroactively; and

WHEREAS, K. Hovnanian and the Authority have agreed to enter into a Settlement Agreement the terms of which have met the approval of the Authority's Attorney, who recommends entry into same, as to amicably resolve K. Hovnanian's claim that it is entitled to a partial refund; and

WHEREAS, K. Hovnanian has represented that it did not pass on the costs of the connection fees directly to the buyers, and has agreed as part of the Settlement Agreement to defend, indemnify and hold the Authority harmless in the event that any purchasers of homes within the Four Seasons development assert entitlement to a refund.

NOW, THEREFORE, BE IT RESOLVED, by the Warren Township Sewerage Authority in the County of Somerset, New Jersey hereby approves of entry into a Settlement Agreement with K. Hovnanian in a form recommended by the Authority's Attorney and authorizes the Chairman to enter into same, and authorizes payment as provided for in such Settlement Agreement.

Moved by Mr. Checchio
 Seconded by Mrs. Garafola

Roll Call Vote	Yes	No
Chairman Reeder	x_____	_____
Mr. Truglio	_____	_____
Ms. Garafola	x_____	_____
Mr. Mosquera	_____	_____
Mr. Vetter	_____	_____
Mr. Checchio (Alt 1)	x_____	_____
Mr. Paoletta (Alt 2)	_____	_____

CERTIFICATION

I, Deborah Catapano, Secretary of the Warren Township Sewerage Authority in the County of Somerset, New Jersey, do hereby certify that the above resolution is a true and correct copy of a resolution adopted at a meeting of the Warren Township Sewerage Authority on September 18, 2013.



 Deborah Catapano, Authority Secretary