December 28, 1992

Amos C. Saunders, J.S.C.
Superior Court of New Jersey
Passaic County: Chancery Division
Court House
Paterson, New Jersey 07505

Re: Borough of Ringwood v. Ringwood Borough Sewerage Authority et al.
Docket No. _____

Dear Judge Saunders:

Please accept this letter brief in support of an application to intervene in the above-referenced action by CHARLES E. LESNICK, individually as a homeowner and taxpayer of the Borough of Ringwood, as representative of the 109 homeowners and taxpayers who comprise the development known as Ringwood Acres, and on behalf of RAHA Corp., a not-for-profit New Jersey corporation, whose members are the homeowners of Ringwood Acres (collectively known for purpose of this action as 109 Homeowners). This motion is returnable on January 8, 1992.

Abbreviated Statement of Facts

The 109 Homeowners seeking to intervene in this action are homeowners and taxpayers who live in a development currently known

as Ringwood Acres[1], located in the Borough of Ringwood ("the "Borough"), County of Passaic, State of New Jersey. These 109 Homeowners are not adequately represented in the action before this court, either by the Ringwood Borough Sewerage Authority (the "Authority") or by the Borough. Moreover, it is these 109 Homeowners who will be most affected by the outcome of this litigation since it is these homeowners, and only these homeowners, who may be forced to underwrite the cost of operating and maintaining a sewer plant that could result in sewerage user fee charges of more than $9000 per year per household.

The history of this case began in 1965 when developer G. Peduto & Son ("Peduto") conceived Ringwood Acres. At that time, all homes in the Borough were served by septic tanks. In 1966, the Passaic County Planning Board (the "Planning Board") recommended that Ringwood Acres be served by sanitary sewers because of the eroding soil conditions.

Peduto accepted the Planning Board's recommendation and constructed a sewerage system for the 109 Homeowners which included the James Drive Treatment Plant (the "Plant"). The Borough's decision to allow Peduto to construct the Plant was part of an overall plan adopted by the governing body of Borough in or about October 1966 to construct a borough-wide sewerage system to service all Ringwood residents. Under this initial plan, the Borough expected to participate in a regional system with Wanague and West Milford and convert the Plant into a "pumping station" that would become a component in the overall Ringwood sewerage system.

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[1] Ringwood Acres was initially known as Highpoint Homes.

The Borough governing body, on December 12, 1969, effectuated its decision by adopting an ordinance which created the Ringwood Borough Sewerage Authority. The members of the Authority, at the time of their initial appointment, and for most of the subsequent relevant years, were the same officials who comprised the governing body of the Borough.

In the meantime, Peduto continued to construct the homes at Ringwood Acres. That development, including the Plant, was substantially completed by the early 1970's. In 1971, Peduto conveyed the Plant to the Borough for $1. The Borough, at some subsequent point, seems to have conveyed the Plant to the Authority.

The Authority, between the time of its creation and the present, attempted, but failed, to secure federal and state funding to complete its plan to have the Borough become part of a regional sewer system. During that same twenty-year period, the Authority, with the full knowledge and consent of the governing body of the Borough (very often the identical membership), authorized the issuance of bonds on at least three separate occasions: $7.4 million in or about 1973; an additional $5.7 million in or about 1978; and an additional $2.4 million in or about 1989.

Despite its commitment to the citizens of the Borough and to various municipal and county governing bodies, the Authority abandoned its commitment to become part of the Regional System. The Authority defaulted on the initial $7.4 million in bonds. The governing body of the Borough, acting in concert with the members of the Authority, voted to have that debt, as well as the $5.7

million in short-term revenue bonds, paid by all residents of the borough.

In addition, as a direct result of its decision to abandon the regional sewer project, the Authority breached a contract with the Wanague Regional Sewerage Authority. Wanague sued and was awarded a $900,000 judgment against the Authority. The governing body of the Borough has already made a commitment to assume responsibility for that debt, a debt that will be paid ultimately by all Ringwood residents.

Finally, and most importantly for the purposes of this motion to intervene, the decision to scrap the plan to become part of the Regional System eventually forced the Authority to upgrade the Plant. As noted previously, the Authority, under the original regional plan, intended to turn the Plant into a pumping station. However, once that plan was abandoned, the Plant became subject to DEP and EPA regulations which required the Plant to be upgraded to provide primary and secondary treatment. That upgrade resulted in the $2.4 million bond issue that forms the heart of this litigation and the decision made by the 109 Homeowners to intervene in this action.

The governing body of the Borough demands that the Authority distribute the cost of those $2.4 million bonds to the 109 Homeowners who are currently serviced by the Plant. The Authority, as noted in its papers submitted to this court, estimates that the user fees for the 109 Homeowners could increase to more than $9000 per year if the governing body of the Borough refuses to spread the cost of the Plant to all residents of the Borough.

There is no question that charging a sewerage user fee in excess of $9000 per year to a small fraction of the households that comprise Ringwood Borough is inequitable. It is also indisputable that the 109 Homeowners had virtually no control over the conduct of the Authority during the course of the last twenty years. And yet, the governing body of the Borough, who has conveniently passed its responsibility to the Sewerage Authority, now wants to abandon these 109 Homeowners and demands that the Authority impose an exorbitant user fee on these residents. A court of equity cannot allow a governing body or the creation of that governing body to abuse its citizens in such an egregious manner.

ARGUMENT

PURSUANT TO R.4:33-1, THE 109 TAXPAYERS MAY INTERVENE AS OF RIGHT.

Rule 4:33-1 provides for intervention as of right where the applicants (1) claim "an interest relating to the property or transaction which is the subject of the action," (2) demonstrate that they are "so situated that the disposition of the action may as a practical matter impair or impede [their] ability to protect that interest," (3) demonstrate that they are not "adequately represented by existing parties," and (4) make a timely application to intervene. Chesterbrooke Ltd. v. Planning Bd., 237 N.J. Super. 118 (App. Div. 1989); see also, R.4:33-1. If the above criteria are satisfied, "an application to intervene as of right 'must be approved by the court.'" Id., citing Vicendese v. J-Fad, Inc., 160 N.J. Super. 373, 379 (Ch. Div. 1978).

R. 4:33-1 is liberally construed. Atlantic Employers v. Tots & Toddlers, 239 N.J. Super. 276, 280 (1990). The courts "are firmly committed to the enlightened policy which points generally to the joinder of all matters in controversy between all of the parties in a single proceeding for just and expeditious disposition at one time and place." Looman Realty Corp. v. Broad St. Nat'l Bank, 74 N.J. Super. 71, 78 (App. Div. 1962).

The litigation between the Borough and the Authority involves issues which directly affect the 109 Homeowners. The Borough, through the authority, seeks to transfer a $2.4 million obligation to the 109 Homeowners and impose on each and every household a user fee that may be in excess of $9000 per year. Until the rights of the 109 Homeowners are resolved, the uncertainty caused by the pending litigation between the Borough and the Authority has and will continue to impact negatively on the value of the individual homesteads. In addition, this pending litigation has already caused several third-party buyers to cancel contracts of sale for homes located in Ringwood Acres and will continue to present an obstacle to marketing these particular homes.

The position taken by the Borough is certainly adverse to the interest of the 109 Homeowners. The members of the Authority are appointed by the governing body of the Borough. Although the Authority and the 109 Homeowners may currently be aligned with respect to some of the issues, the 109 Homeowners have claims against the Authority for prior acts. Further, the governing body of the Borough is attempting, even through this court action, to

have certain members of the Authority resign, clearly an attempt by the Borough to regain control of the Authority. Given this situation, the 109 Homeowners cannot expect to be adequately represented by either the Borough or the Authority.

Finally, this motion to intervene is timely. The Borough filed its complaint against the Authority on November 30, 1992, by way of an Order to Show Cause. This court, which heard that application on December 14, 1992, directed the Authority and the Borough to seek redress with the New Jersey Department of Community Affairs. Although the Borough and the Authority apparently presented their respective cases to the DCA, no resolution was reached and, as a result, the Borough has stated that it intends to seek to have this court adjudicate the lawsuit.

This application to intervene will in no way delay this litigation. No formal discovery has been done and none may be needed. In either event, intervenors are prepared to move forward with this litigation based on any calendar set by this court and will neither delay nor prejudice either the Borough or the Authority. Furthermore, as is clear from their detailed verified complaint, the intervenors have expended considerable time and money in assembling the facts and documents to support their several claims for equitable and monetary relief.

In the alternative, the intervenors seek permissive intervention under Rule 4:33-2. As explained above, the claims asserted by the intervenors involve common questions of law and fact with those currently raised by the original parties to this action. Resolution of these issues in one action will avoid

repetitive and costly litigation for all the interested parties. Without intervention, none of the parties will have the security of finality of judgment.

Respectfully submitted,

Diane C. Nardone

DCN/a.

cc. Richard J. Clemack, Esq.
Douglas R. Smith, Esq.