ORDINANCE NO. 220

AN ORDINANCE OF THE TOWNSHIP OF SOUTH HEIDELBERG, BERKS COUNTY, PENNSYLVANIA AMENDING AND RESTATING IN ITS ENTIRETY ORDINANCE NO. 153 AND IMPOSING A TRANSPORTATION CAPITAL IMPROVEMENT IMPACT FEE UPON NEW DEVELOPMENT WITHIN THE TRANSPORTATION SERVICE AREAS LOCATED IN THE TOWNSHIP OF SOUTH HEIDELBERG AND ESTABLISHING PROCEDURES AND ANCILLARY STANDARDS RELATED THERETO.

BACKGROUND

A. Act 209 of 1990 (*53 P.S. §10501-A*) amended the Pennsylvania Municipalities Planning Code to authorize Townships of the Second Class to establish an impact fee for transportation capital improvements and establishing a procedure for the adoption requirements of such an ordinance.

B. The Board of Supervisors of the Township of South Heidelberg, Berks County, Pennsylvania are responsible under the Second Class Township Code to maintain the health, safety and welfare of the residents of South Heidelberg Township.

C. The Township of South Heidelberg ("Township") has experienced considerable growth and development of a residential, commercial and industrial nature in recent years and it is anticipated that such development will continue in the future.

D. It is anticipated that such future development will create a substantial impact upon the transportation facilities and infrastructure within certain districts of the Township.

E. The Board of Supervisors is required to keep all Township roads open, in repair and usable for the safe and convenient travel by the public and the fulfillment of this duty will entail a substantial cost that is directly attributable to new development in the Township.

F. The Township hereby finds and declares that an "impact fee" imposed upon residential and non-residential development in order to assist in the financing of specified major transportation capacity improvements in designated transportation district subareas, the demand for which is uniquely created by such development, is in the best interest of the Township and its residents, is equitable, and does not impose an unfair burden on such development.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Board of Supervisors of the Township of South Heidelberg, Berks County, Pennsylvania, and it is hereby ENACTED AND ORDAINED by the authority of the same as follows:

Section 1. Title and Background Clauses. This Ordinance shall be known as the South Heidelberg Township Impact Fee Ordinance and the Background clauses of this Ordinance as set forth above are incorporated herein by reference.

Section 2. Purpose. The purpose of this Ordinance is to establish a Transportation Capital Impact Fee Program to ensure that the Township's transportation infrastructure system is available and adequate to support new growth and development. To advance this objective, there is hereby created a Transportation Capital Impact Fee (the "Fee") payable to the Township at the time of building permit issuance.

Section 3. General Findings and Conditions. The Board of Supervisors hereby finds and declares that:

(a) The conditions and standards for the determination and imposition of the Fee are set forth herein and otherwise shall follow those set forth in Act 209 of 1990, as amended (hereinafter the "Act"), and consist of:

(1) The recitals set forth above;

(2) The analysis, advice and recommendations of the Impact Fee Advisory Committee;

(3) The Land Use Assumptions Report as adopted by the Board of Supervisors by Township Resolution No. 15-2008 on August 14, 2008 as may be amended from time to time;

(4) The Roadway Sufficiency Analysis as adopted by the Board of Supervisors by Township Resolution No. 10-2009 on January 22, 2009 as may be amended from time to time;

(5) The Transportation Capital Improvement Plan, as adopted by the Board of Supervisors by Township Resolution No. 14-2009 on March 12, 2009 as may be amended from time to time;

(6) Such other conditions and standards as the Board of Supervisors may by resolution identify from time to time as being relevant and material to the imposition of the Fee and consistent with the provisions of the Act and any amendments thereto.

(b) The collection, disbursement and accounting of the Fee shall be administered by the office of the Township Manager, subject to review, oversight and control by the Board of Supervisors.

(c) The time, method and procedure for payment of the Fee shall be as set forth in Sections 15 and 16 of this Ordinance.

(d) The procedure for credits against or refunds of the Fee shall be as set forth in Sections 17 and 18 of the Ordinance.

(e) Such exemptions as the Board of Supervisors shall choose to enact shall be as set forth in Section 11 of this Ordinance.

(f) The calculation of the Fee shall be as set forth in Section 12 of this Ordinance.

Section 4. Definitions. The terms and definitions set forth in Section 502-A of the Act are hereby adopted and incorporated in this Ordinance by reference.

Section 5. Imposition. The Fee is hereby enacted and imposed upon new development for the purpose of off-site public transportation capital improvements authorized by the Act and as described in the Impact Fee Program adopted by the Board of Supervisors. Said Fee shall apply to all new developments or subdivisions within the transportation service area(s) identified herein ("Transportation Service Area") and shall be a condition precedent to final approval of a land development plan or a subdivision plan or issuance of a building permit.

Section 6. Uses. Fee collection pursuant to this Ordinance shall be expended for costs incurred for transportation capital improvements attributable to new development and designated in the Transportation Capital Improvement Plan adopted by the Board of Supervisors on March 12, 2009 for improvements within that portion of the Transportation Service Area in which new development will be located. Additionally, the Fee may be used for the acquisition of land and rights-of-way, engineering, legal and planning costs, and all other costs, including debt service related to road improvements and such proportionate amount of the Roadway Sufficiency Analysis, as are allowed under the provisions of the Act.

Section 7. Documents Adopted by the Board of Supervisors. The following documents, previously adopted by the Board of Supervisors, are hereby incorporated by reference in this Ordinance:

(a) Recommendations of the Impact Fee Advisory Committee to the Board of Supervisors recommending the adoption of the reports set forth in subsections (b), (c) and (d) of this Section 7.

(b) Land Use Assumptions Report as adopted by Township Resolution No. 15-2008, the terms and provisions of which are incorporated herein by reference.

(c) Roadway Sufficiency Analysis as adopted by Township Resolution No. 10-2009, the terms and provisions of which are incorporated herein by reference.

(d) The Transportation Capital Improvement Plan as adopted by Township Resolution No. 14-2009, the terms and provisions of which are incorporated herein by reference.

(e) The Impact Fee Schedule as established by Township Resolution No. 14-2009, the terms and provisions of which, together with such amendments thereto as may from time to time be adopted by the Board of Supervisors, are incorporated herein by reference.

(f) The description of the Transportation Service Area is an area of the Township consisting of seven (7) square miles, or less, the same being more fully set forth on the map attached to the Roadway Sufficiency Analysis and incorporated herein by reference.

Section 8. Special Traffic Studies. Where intended to assist in determining the appropriate amount of the Fee, the Township, in its sole discretion, may require the preparation of special transportation studies to determine the traffic generation or circulation patterns in new developments. The costs of such special transportation studies shall be borne by the owner of the new development. Any such studies required by the Township shall be submitted prior to the imposition of the Fee and shall be considered in the determination of the Fee.

Section 9. Applicability of Impact Fee. This Ordinance shall be uniformly applicable to all development that occurs within a Transportation Service Area identified herein.

Section 10. Imposition of Impact Fee. No building permit shall be issued for a development in the Transportation Service Area, as identified herein, unless the applicant therefore has paid the Fee imposed by and calculated pursuant to this Ordinance. The Fee shall apply to an expansion of an existing use only if that expansion shall increase the number of peak PM hour trips.

Section 11. Exemptions. The Board of Supervisors pursuant to resolution may from time to time, pursuant to specific criteria, exempt an applicant from the payment of the Fee under any of the following three conditions only, as set forth in the Act:

(a) Affordable Housing;

(b) Overriding public interest which is defined as new growth that has been determined by the Board of Supervisors to serve an overriding public interest shall be provided an exemption against the Fee of up to one hundred percent (100%) as determined by the Board. Some examples of this could include, but shall not be limited to, municipal uses, educational uses or non-profit uses. To qualify for this exemption, an applicant shall be required to submit a request for exemption in writing to the Board of Supervisors outlining their proposed use and describing the overriding public interest, which would be served by their development;

(c) De minimis application which is defined as a proposed development that will have little or no effect on the Township's transportation infrastructure and can be shown to generate less than two (2) additional peak PM hour trips, without rounding, using the current version of the Institute of Transportation Engineers publication, *Trip Generation*, or a mutually agreed upon traffic study. To qualify for this exemption, applicants shall be required to place a written request on their final plat and submit information to support such request.

Section 12. Calculation of Impact Fees.

(a) The Fee in the Transportation Service Area is Two Thousand Seventy Dollars ($2,070.00) per peak PM hour trip as set forth in the *Transportation Capital Improvements Plan.*

(b) The Fee for transportation capital improvements shall be based upon the total costs of the road improvements included in the adopted Transportation Capital Improvement Plan within the Transportation Service Area indentified herein and attributable to and necessitated by new development within the said Transportation Service Area, divided by the number of anticipated peak-hour trips generated by all new development consistent with the

adopted Land Use Assumptions Report and calculated in accordance with the *Trip General Manual* published by the Institute of Transportation Engineers, 5th of subsequent editions, which is hereby adopted by the Township, to equal a per-trip cost for transportation improvements within the Transportation Service Area.

(c) The Fee for a specific new development or subdivision within the Transportation Service Area for road improvements shall be determined as of the date of preliminary land development or subdivision approval by multiplying the per-trip cost established for the Transportation Service Area as determined in Section 13 hereof by the estimated number of trips to be generated by the new development or subdivision using generally accepted traffic engineering standards.

(d) The amount of the Fee may be amended from time to time by a resolution of the Board of Supervisors in accordance with the procedures set forth in the Act.

(e) The Fee is hereby imposed on all new subdivision and development including expansion and change in use developments.

Section 13. Establishment of Transportation Service Area. A Transportation Service Area is established and shown on the "Township Study Area Map" attached to the Roadway Sufficiency Analysis Report, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference.

Additional transportation district subareas or combinations of transportation district subareas may be designated by the Board of Supervisors from time to time consistent with the procedure set forth in this Ordinance, the Act and in consideration of the following factors:

(a) The Township's Comprehensive Plan;

(b) Any standards for adequate public facilities incorporated in the Impact Fee Program;

(c) The projected build-out and timing of development areas in the Township;

(d) The need for and cost of unprogrammed transportation improvements necessary to support projected development; and

(e) Such other factors as the Board of Supervisors may deem relevant.

The Fee collected from development in each of the transportation district subareas will be used exclusively to fund transportation improvement projects scheduled for that district.

Section 14. Non-binding Impact Fee Estimate. Prior to making an application for a building permit, an applicant may request a non-binding Fee estimate from the Township, which shall be based upon the maximum development potential of the site pursuant to existing zoning regulations, unless the applicant specifies a lesser use of development, which is accepted by the Board of Supervisors in its sole discretion.

Section 15. Administration of Impact Fee.

(a) Collection of Impact Fee. The Fee due pursuant to this Ordinance shall be collected by the Township in the manner or manners prescribed herein prior to the issuance of a building permit.

(b) Establishment of Fund. Upon receipt of the Fee, the Township Manager or his designee shall be responsible for the separate and proper accounting of such Fee. All such Fee shall be deposited in interest-bearing accounts in a bank authorized to receive deposits of Township funds. Interest earned by each account shall be credited to that account and shall be sued solely for the purpose specified for funds of such account.

(c) Establishment and Maintenance of Accounts. The Township Manager or his designee shall establish appropriate trust fund accounts and shall maintain records whereby the Fee collected can be segregated for each transportation district subarea.

(d) Maintenance of Records. The Township Manager or his designee shall maintain and keep adequate financial records for each such account which shall show the source and disbursement of all revenues, which shall account for all monies received, and which shall ensure that the disbursement of funds from each account shall be used solely and exclusively for the provision of projects specified in the Impact Fee Program for the particular transportation district subarea.

Section 16. Method of Payment. Payment of the Fee shall be made by the traffic generator prior to the issuance of a building permit by the Township to the traffic generator for development on the applicable site.

Section 17. Credit. Any applicant who shall perform, at his expense and with the consent and agreement of the Board of Supervisors, off-site improvements (as herein defined) shall be eligible for a credit towards the Fee in the amount of the actual cost of such off-site improvements as approved and verified by the Township Engineer. Such credit shall not exceed the amount of the Fee. The Board of Supervisors shall not be obligated to accept an offer of off-site improvement construction by an applicant.

(a) If the applicant makes such improvements, he must enter into an agreement with the Board of Supervisors prior to the issuance of any building permit. The agreement must establish the estimated cost of the improvement, the schedule for initiation and completion of the improvement, a requirement that the improvement be completed to Township and Pennsylvania Department of Transportation standards and design criteria and such other terms and conditions as deemed necessary by the Board of Supervisors. The Board of Supervisors must review the improvement plan, verify costs and time schedules, determine if the improvement is an eligible improvement, and determine the amount of the applicable credit for such improvement to be applied to the otherwise applicable Fee prior to issuance of any building permit. In no event shall the Board of Supervisors provide a credit which is greater than the applicable Fee. If, however, the amount of the credit is calculated to be greater than the amount of the Fee due, the applicant may use such excess credit toward the Fee imposed on other building permits for development on the same site and in the same ownership. Any such applicant shall be required to post financial security sufficient, in the judgment of the Township

Engineer, to cover the cost of any such improvement installed by the applicant for which credit is sought.

(b) An applicant shall be entitled as a credit against the Fee in an amount equal to the fair market value of land dedicated by the applicant and accepted by the Township for future right-of-way, realignment or widening of existing roadways provided that any on-site land dedication shall not be counted unless it exceeds the requirements of the Township SALDO.

(c) An applicant shall be entitled as a credit against the Fee an amount equal to the value of any road improvement construction which is contained in the Transportation Capital Improvement Plan and which was performed at the applicant's expense.

Section 18. Refunds. A Fee collected pursuant to this Ordinance shall be refunded, together with interest earned thereon, to the payor of the Fee under the following circumstances:

(a) In the event the Township completes or terminates the Capital Improvement Plan and there remain undisbursed funds at the time of termination or completion, the respective payors shall be entitled to a share of the fund balance in the same proportion as the payor's Fee payment plus interest earned bears to the total Fee collected plus interest.

(b) In the event any specific road improvement project is completed at a cost to the Township less than ninety-five percent (95%) of the budgeted cost of the road project, the Township shall refund an amount equal to the excess budgeted cost over actual cost to the payors, pro rata, plus accumulated interest.

(c) In the event the Township fails to commence construction within three (3) years of the scheduled construction date of the project as set forth in the Transportation Capital Improvement Plan, the Township shall refund the portion of the Fee paid by any payor making written request therefor which is attributable to said project, with accumulated interest, provided no refund shall be paid with respect to any project actually begun prior to the receipt of such refund request.

(d) In the event the development for which the Fee was paid has not commenced prior to the expiration of the building permit issued therefore, the Fee paid with accumulated interest shall be refunded to the payor. Further, if a building permit after issuance is altered in such a way as to reduce the indicated Fee, the difference between the amount indicated and the amount actually paid shall be refunded. The payor, at his option, may roll over the Fee attributable to an expired building permit to cover a Fee incurred by a renewal of said expired permit.

(e) With respect to refunds arising out of Subsections (a) or (b) hereof, any funds unclaimed within one year after notice as required by law shall be transferred to the general account of the Township, and the payor's entitlement to said refund shall lapse. It is the responsibility of the payor to provide the Township with the current address of his place of business. The allocation of refunds shall be determined by generally accepted accounting practices.

Section 19. Effect of Impact fee on Zoning, PRD and Subdivision Regulations. This Ordinance shall not affect, in any manner, the permissible use of property, density of development, previously adopted design and improvement standards and requirements or any other aspect of the development of land or provision of public improvements which remain subject to applicable zoning, subdivision and PRD regulations of the Township, which shall be operative and remain in full force and effect without limitation with respect to all such development.

Section 20. Impact Fee as Additional and Supplemental Requirement. The Fee is additional and supplemental to, and not in substitution of, any other requirements imposed by the Township on the development of land or the issuance of building permits. Nothing herein contained shall be deemed to alter or affect the Township's existing ordinances and regulations regarding on-site improvements. In no event shall a property owner be obligated to pay for transportation capital improvements in an amount in excess of the amount calculated pursuant to this Ordinance; provided, however, that a property owner may be required to pay, pursuant to Township ordinances, regulations or policies, for other public facilities in addition to the Fee for transportation improvements as subdivided herein.

Section 21. Repeal of Ordinances. Any ordinance, parts of ordinances, resolution or parts of resolutions conflicting with the provisions of this Ordinance, including Ordinance No. 153, are hereby repealed insofar as they are inconsistent with this Ordinance's provisions.

Section 22. Severability. If any article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase or word in this Ordinance, is, for any reason declared to be illegal, unconstitutional or invalid, by any Court of competent jurisdiction, this decision shall not affect or impair the validity of the Ordinance as a whole, or any other article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase, word, or remaining portion of the within Ordinance. The Board of Supervisors of the Township of South Heidelberg, Pennsylvania, hereby declares that it would have adopted the within Ordinance and each article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase and word thereof, irrespective of the limitations, restrictions, sentences, clauses, phrases, or word that may be declared illegal, unconstitutional or invalid.

Section 23. Effective Date. This Ordinance shall become effective shall take effect five (5) days subsequent to its enactment.

DULY ENACTED AND ORDAINED this 14th day of May, 2009.

TOWNSHIP OF SOUTH HEIDELBERG

David A. Schaeffer, Chairman

Attest:

_____ (SEAL)
Secretary

Dean M. Baim, Supervisor

Richard E. Hummel, Supervisor

EXHIBIT "A"

ROADWAY SUFFICIENCY ANALYSIS REPORT

CERTIFICATE OF ENACTMENT

I hereby certify that the foregoing is a true and accurate copy of Ordinance No. 219 adopted by the Board of Supervisors of the Township of South Heidelberg, Berks County, Pennsylvania at a regular meeting held on May 14, 2009, pursuant to notice as required by law.

Date: 5/14/09

Secretary

MASANO•BRADLEY
ATTORNEYS AT LAW

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RECEIVED
MAY 19 2009

May 18, 2009

Ronald R. Seaman, Township Manager
Township of South Heidelberg
68A North Galen Hall Road
Wernersville, PA 19565-9719

Re: Traffic Impact Fee Ordinance

Dear Ron:

Enclosed please find two (2) fully executed copies of the above-referenced Ordinance. I would suggest keeping one (1) with the permanent records for the Township and possibly providing the other copy to McMahon Associates, Inc. for their file. Should you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,

MASANO ♦ BRADLEY

Michael J. Gombar, Jr.

MJG/skg
Enclosures

ORDINANCE NO. 220

AN ORDINANCE OF THE TOWNSHIP OF SOUTH HEIDELBERG, BERKS COUNTY, PENNSYLVANIA AMENDING AND RESTATING IN ITS ENTIRETY ORDINANCE NO. 153 AND IMPOSING A TRANSPORTATION CAPITAL IMPROVEMENT IMPACT FEE UPON NEW DEVELOPMENT WITHIN THE TRANSPORTATION SERVICE AREAS LOCATED IN THE TOWNSHIP OF SOUTH HEIDELBERG AND ESTABLISHING PROCEDURES AND ANCILLARY STANDARDS RELATED THERETO.

BACKGROUND

A. Act 209 of 1990 (*53 P.S. §10501-A*) amended the Pennsylvania Municipalities Planning Code to authorize Townships of the Second Class to establish an impact fee for transportation capital improvements and establishing a procedure for the adoption requirements of such an ordinance.

B. The Board of Supervisors of the Township of South Heidelberg, Berks County, Pennsylvania are responsible under the Second Class Township Code to maintain the health, safety and welfare of the residents of South Heidelberg Township.

C. The Township of South Heidelberg ("Township") has experienced considerable growth and development of a residential, commercial and industrial nature in recent years and it is anticipated that such development will continue in the future.

D. It is anticipated that such future development will create a substantial impact upon the transportation facilities and infrastructure within certain districts of the Township.

E. The Board of Supervisors is required to keep all Township roads open, in repair and usable for the safe and convenient travel by the public and the fulfillment of this duty will entail a substantial cost that is directly attributable to new development in the Township.

F. The Township hereby finds and declares that an "impact fee" imposed upon residential and non-residential development in order to assist in the financing of specified major transportation capacity improvements in designated transportation district subareas, the demand for which is uniquely created by such development, is in the best interest of the Township and its residents, is equitable, and does not impose an unfair burden on such development.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Board of Supervisors of the Township of South Heidelberg, Berks County, Pennsylvania, and it is hereby ENACTED AND ORDAINED by the authority of the same as follows:

Section 1. Title and Background Clauses. This Ordinance shall be known as the South Heidelberg Township Impact Fee Ordinance and the Background clauses of this Ordinance as set forth above are incorporated herein by reference.

Section 2. Purpose. The purpose of this Ordinance is to establish a Transportation Capital Impact Fee Program to ensure that the Township's transportation infrastructure system is available and adequate to support new growth and development. To advance this objective, there is hereby created a Transportation Capital Impact Fee (the "Fee") payable to the Township at the time of building permit issuance.

Section 3. General Findings and Conditions. The Board of Supervisors hereby finds and declares that:

(a) The conditions and standards for the determination and imposition of the Fee are set forth herein and otherwise shall follow those set forth in Act 209 of 1990, as amended (hereinafter the "Act"), and consist of:

(1) The recitals set forth above;

(2) The analysis, advice and recommendations of the Impact Fee Advisory Committee;

(3) The Land Use Assumptions Report as adopted by the Board of Supervisors by Township Resolution No. 15-2008 on August 14, 2008 as may be amended from time to time;

(4) The Roadway Sufficiency Analysis as adopted by the Board of Supervisors by Township Resolution No. 10-2009 on January 22, 2009 as may be amended from time to time;

(5) The Transportation Capital Improvement Plan, as adopted by the Board of Supervisors by Township Resolution No. 14-2009 on March 12, 2009 as may be amended from time to time;

(6) Such other conditions and standards as the Board of Supervisors may by resolution identify from time to time as being relevant and material to the imposition of the Fee and consistent with the provisions of the Act and any amendments thereto.

(b) The collection, disbursement and accounting of the Fee shall be administered by the office of the Township Manager, subject to review, oversight and control by the Board of Supervisors.

(c) The time, method and procedure for payment of the Fee shall be as set forth in Sections 15 and 16 of this Ordinance.

(d) The procedure for credits against or refunds of the Fee shall be as set forth in Sections 17 and 18 of the Ordinance.

(e) Such exemptions as the Board of Supervisors shall choose to enact shall be as set forth in Section 11 of this Ordinance.

(f) The calculation of the Fee shall be as set forth in Section 12 of this Ordinance.

Section 4. Definitions. The terms and definitions set forth in Section 502-A of the Act are hereby adopted and incorporated in this Ordinance by reference.

Section 5. Imposition. The Fee is hereby enacted and imposed upon new development for the purpose of off-site public transportation capital improvements authorized by the Act and as described in the Impact Fee Program adopted by the Board of Supervisors. Said Fee shall apply to all new developments or subdivisions within the transportation service area(s) identified herein ("Transportation Service Area") and shall be a condition precedent to final approval of a land development plan or a subdivision plan or issuance of a building permit.

Section 6. Uses. Fee collection pursuant to this Ordinance shall be expended for costs incurred for transportation capital improvements attributable to new development and designated in the Transportation Capital Improvement Plan adopted by the Board of Supervisors on March 12, 2009 for improvements within that portion of the Transportation Service Area in which new development will be located. Additionally, the Fee may be used for the acquisition of land and rights-of-way, engineering, legal and planning costs, and all other costs, including debt service related to road improvements and such proportionate amount of the Roadway Sufficiency Analysis, as are allowed under the provisions of the Act.

Section 7. Documents Adopted by the Board of Supervisors. The following documents, previously adopted by the Board of Supervisors, are hereby incorporated by reference in this Ordinance:

(a) Recommendations of the Impact Fee Advisory Committee to the Board of Supervisors recommending the adoption of the reports set forth in subsections (b), (c) and (d) of this Section 7.

(b) Land Use Assumptions Report as adopted by Township Resolution No. 15-2008, the terms and provisions of which are incorporated herein by reference.

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(d) The Transportation Capital Improvement Plan as adopted by Township Resolution No. 14-2009, the terms and provisions of which are incorporated herein by reference.

(e) The Impact Fee Schedule as established by Township Resolution No. 14-2009, the terms and provisions of which, together with such amendments thereto as may from time to time be adopted by the Board of Supervisors, are incorporated herein by reference.

(f) The description of the Transportation Service Area is an area of the Township consisting of seven (7) square miles, or less, the same being more fully set forth on the map attached to the Roadway Sufficiency Analysis and incorporated herein by reference.

Section 8. Special Traffic Studies. Where intended to assist in determining the appropriate amount of the Fee, the Township, in its sole discretion, may require the preparation of special transportation studies to determine the traffic generation or circulation patterns in new developments. The costs of such special transportation studies shall be borne by the owner of the new development. Any such studies required by the Township shall be submitted prior to the imposition of the Fee and shall be considered in the determination of the Fee.

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(a) Affordable Housing;

(b) Overriding public interest which is defined as new growth that has been determined by the Board of Supervisors to serve an overriding public interest shall be provided an exemption against the Fee of up to one hundred percent (100%) as determined by the Board. Some examples of this could include, but shall not be limited to, municipal uses, educational uses or non-profit uses. To qualify for this exemption, an applicant shall be required to submit a request for exemption in writing to the Board of Supervisors outlining their proposed use and describing the overriding public interest, which would be served by their development;

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adopted Land Use Assumptions Report and calculated in accordance with the *Trip General Manual* published by the Institute of Transportation Engineers, 5th of subsequent editions, which is hereby adopted by the Township, to equal a per-trip cost for transportation improvements within the Transportation Service Area.

(c) The Fee for a specific new development or subdivision within the Transportation Service Area for road improvements shall be determined as of the date of preliminary land development or subdivision approval by multiplying the per-trip cost established for the Transportation Service Area as determined in Section 13 hereof by the estimated number of trips to be generated by the new development or subdivision using generally accepted traffic engineering standards.

(d) The amount of the Fee may be amended from time to time by a resolution of the Board of Supervisors in accordance with the procedures set forth in the Act.

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Section 13. Establishment of Transportation Service Area. A Transportation Service Area is established and shown on the "Township Study Area Map" attached to the Roadway Sufficiency Analysis Report, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference.

Additional transportation district subareas or combinations of transportation district subareas may be designated by the Board of Supervisors from time to time consistent with the procedure set forth in this Ordinance, the Act and in consideration of the following factors:

(a) The Township's Comprehensive Plan;

(b) Any standards for adequate public facilities incorporated in the Impact Fee Program;

(c) The projected build-out and timing of development areas in the Township;

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The Fee collected from development in each of the transportation district subareas will be used exclusively to fund transportation improvement projects scheduled for that district.

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(b) Establishment of Fund. Upon receipt of the Fee, the Township Manager or his designee shall be responsible for the separate and proper accounting of such Fee. All such Fee shall be deposited in interest-bearing accounts in a bank authorized to receive deposits of Township funds. Interest earned by each account shall be credited to that account and shall be sued solely for the purpose specified for funds of such account.

(c) Establishment and Maintenance of Accounts. The Township Manager or his designee shall establish appropriate trust fund accounts and shall maintain records whereby the Fee collected can be segregated for each transportation district subarea.

(d) Maintenance of Records. The Township Manager or his designee shall maintain and keep adequate financial records for each such account which shall show the source and disbursement of all revenues, which shall account for all monies received, and which shall ensure that the disbursement of funds from each account shall be used solely and exclusively for the provision of projects specified in the Impact Fee Program for the particular transportation district subarea.

Section 16. Method of Payment. Payment of the Fee shall be made by the traffic generator prior to the issuance of a building permit by the Township to the traffic generator for development on the applicable site.

Section 17. Credit. Any applicant who shall perform, at his expense and with the consent and agreement of the Board of Supervisors, off-site improvements (as herein defined) shall be eligible for a credit towards the Fee in the amount of the actual cost of such off-site improvements as approved and verified by the Township Engineer. Such credit shall not exceed the amount of the Fee. The Board of Supervisors shall not be obligated to accept an offer of off-site improvement construction by an applicant.

(a) If the applicant makes such improvements, he must enter into an agreement with the Board of Supervisors prior to the issuance of any building permit. The agreement must establish the estimated cost of the improvement, the schedule for initiation and completion of the improvement, a requirement that the improvement be completed to Township and Pennsylvania Department of Transportation standards and design criteria and such other terms and conditions as deemed necessary by the Board of Supervisors. The Board of Supervisors must review the improvement plan, verify costs and time schedules, determine if the improvement is an eligible improvement, and determine the amount of the applicable credit for such improvement to be applied to the otherwise applicable Fee prior to issuance of any building permit. In no event shall the Board of Supervisors provide a credit which is greater than the applicable Fee. If, however, the amount of the credit is calculated to be greater than the amount of the Fee due, the applicant may use such excess credit toward the Fee imposed on other building permits for development on the same site and in the same ownership. Any such applicant shall be required to post financial security sufficient, in the judgment of the Township

Engineer, to cover the cost of any such improvement installed by the applicant for which credit is sought.

(b) An applicant shall be entitled as a credit against the Fee in an amount equal to the fair market value of land dedicated by the applicant and accepted by the Township for future right-of-way, realignment or widening of existing roadways provided that any on-site land dedication shall not be counted unless it exceeds the requirements of the Township SALDO.

(c) An applicant shall be entitled as a credit against the Fee an amount equal to the value of any road improvement construction which is contained in the Transportation Capital Improvement Plan and which was performed at the applicant's expense.

Section 18. Refunds. A Fee collected pursuant to this Ordinance shall be refunded, together with interest earned thereon, to the payor of the Fee under the following circumstances:

(a) In the event the Township completes or terminates the Capital Improvement Plan and there remain undisbursed funds at the time of termination or completion, the respective payors shall be entitled to a share of the fund balance in the same proportion as the payor's Fee payment plus interest earned bears to the total Fee collected plus interest.

(b) In the event any specific road improvement project is completed at a cost to the Township less than ninety-five percent (95%) of the budgeted cost of the road project, the Township shall refund an amount equal to the excess budgeted cost over actual cost to the payors, pro rata, plus accumulated interest.

(c) In the event the Township fails to commence construction within three (3) years of the scheduled construction date of the project as set forth in the Transportation Capital Improvement Plan, the Township shall refund the portion of the Fee paid by any payor making written request therefor which is attributable to said project, with accumulated interest, provided no refund shall be paid with respect to any project actually begun prior to the receipt of such refund request.

(d) In the event the development for which the Fee was paid has not commenced prior to the expiration of the building permit issued therefore, the Fee paid with accumulated interest shall be refunded to the payor. Further, if a building permit after issuance is altered in such a way as to reduce the indicated Fee, the difference between the amount indicated and the amount actually paid shall be refunded. The payor, at his option, may roll over the Fee attributable to an expired building permit to cover a Fee incurred by a renewal of said expired permit.

(e) With respect to refunds arising out of Subsections (a) or (b) hereof, any funds unclaimed within one year after notice as required by law shall be transferred to the general account of the Township, and the payor's entitlement to said refund shall lapse. It is the responsibility of the payor to provide the Township with the current address of his place of business. The allocation of refunds shall be determined by generally accepted accounting practices.

Section 19. Effect of Impact fee on Zoning, PRD and Subdivision Regulations. This Ordinance shall not affect, in any manner, the permissible use of property, density of development, previously adopted design and improvement standards and requirements or any other aspect of the development of land or provision of public improvements which remain subject to applicable zoning, subdivision and PRD regulations of the Township, which shall be operative and remain in full force and effect without limitation with respect to all such development.

Section 20. Impact Fee as Additional and Supplemental Requirement. The Fee is additional and supplemental to, and not in substitution of, any other requirements imposed by the Township on the development of land or the issuance of building permits. Nothing herein contained shall be deemed to alter or affect the Township's existing ordinances and regulations regarding on-site improvements. In no event shall a property owner be obligated to pay for transportation capital improvements in an amount in excess of the amount calculated pursuant to this Ordinance; provided, however, that a property owner may be required to pay, pursuant to Township ordinances, regulations or policies, for other public facilities in addition to the Fee for transportation improvements as subdivided herein.

Section 21. Repeal of Ordinances. Any ordinance, parts of ordinances, resolution or parts of resolutions conflicting with the provisions of this Ordinance, including Ordinance No. 153, are hereby repealed insofar as they are inconsistent with this Ordinance's provisions.

Section 22. Severability. If any article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase or word in this Ordinance, is, for any reason declared to be illegal, unconstitutional or invalid, by any Court of competent jurisdiction, this decision shall not affect or impair the validity of the Ordinance as a whole, or any other article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase, word, or remaining portion of the within Ordinance. The Board of Supervisors of the Township of South Heidelberg, Pennsylvania, hereby declares that it would have adopted the within Ordinance and each article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase and word thereof, irrespective of the limitations, restrictions, sentences, clauses, phrases, or word that may be declared illegal, unconstitutional or invalid.

Section 23. Effective Date. This Ordinance shall become effective shall take effect five (5) days subsequent to its enactment.

DULY ENACTED AND ORDAINED this 14th day of May, 2009.

TOWNSHIP OF SOUTH HEIDELBERG

Attest:

David A. Schaeffer, Chairman

(SEAL)

Secretary

Dean M. Baim, Supervisor

Richard E. Hummel, Supervisor

EXHIBIT "A"

ROADWAY SUFFICIENCY ANALYSIS REPORT

CERTIFICATE OF ENACTMENT

I hereby certify that the foregoing is a true and accurate copy of Ordinance No. 219 adopted by the Board of Supervisors of the Township of South Heidelberg, Berks County, Pennsylvania at a regular meeting held on May 14, 2009, pursuant to notice as required by law.

Date: 5/14/09

Secretary