

APPENDIX F
EXAMPLE DEVELOPER'S AGREEMENT

**AGREEMENT FOR THE CONSTRUCTION OF
SANITARY FACILITIES IN THE
TOWNSHIP OF GEORGES
FAYETTE COUNTY, PENNSYLVANIA**

THIS AGREEMENT entered into this _____ day of _____,
by and between:

**THE FAIRCHANCE-GEORGES JOINT MUNICIPAL SEWAGE
AUTHORITY**, a municipal authority organized and existing under the laws of the
Commonwealth of Pennsylvania, with its principal office at 141 Big Six Road,
Smithfield, Pennsylvania (hereinafter called "Authority"),

A N D

with an address of: _____
(hereinafter referred to as "Developer").

W I T N E S S E T H:

WHEREAS, Developer owns property to be developed known as the _____
Subdivision, on real estate located in the Township of Georges, title to which is vested in the
developer as follows in the Office of the Fayette County Recorder of Deeds: ~~XXXXXXXXXXXXX,
Record Book Volume XXXX, Page XXXXX.~~

WHEREAS, Developer desire to construct houses, and the Authority requires developer
to construct sanitary sewers for these houses and connect to the Authority's public sewage
system;

WHEREAS, it is to the mutual benefit of the Developer and Authority that the sanitary
sewer system, when completed, be owned, operated and maintained by the Authority; and

WHEREAS, the Authority has established rules and regulations with respect to the
construction and acceptance of sewer lines and a sewer collector system in a newly developed
Plan of Lots; and

WHEREAS, Developer desires to comply with the requirements of said rules and
regulations and to have the sewer lines and collector system, when constructed in the
Development, be owned, operated and maintained by the Authority.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter contained, as well as in consideration of the fact that the parties intend to be legally bound hereby, it is agreed as follows:

**ARTICLE I
DEFINITIONS**

- 1.01. Act - The Municipality Authorities Act, 53 Pa C.S.A. §6501 et seq., including all amendments thereto, and its predecessor Act together with Act 203 of 1990 and all amendments thereto.
- 1.02. Agreement - This agreement. It is intended by the parties hereto that this Agreement shall be any Agreement referred to in the Act and otherwise required by the Act.
- 1.03. Allowable Domestic Sewage - Sanitary waste discharged by the System and its users, other than "Unacceptable Waters," as defined below.
- 1.04. Authority – Fairchance-Georges Joint Municipal Sewage Authority, 141 Big Six Road, Smithfield, Pennsylvania 15478.
- 1.05. Authority Engineer – Herbert, Rowland & Grubic, Inc., 200 West Kensinger Drive, Suite 400, Cranberry Township, PA 16066 or as designated from time to time by Authority.
- 1.06. Authority's Estimated Cost of Project Construction - This shall include, but not necessarily be limited to, labor and material, engineering design. The Authority's Estimated Cost of Project Construction will take into consideration the Developer's Estimated Cost of Construction as prepared by Developer's Engineer.
- 1.07. Authority Inspector – The Authority, Herbert, Rowland & Grubic, Inc., or other personnel as designated from time to time by Authority.
- 1.08. Authority Solicitor – JOHN & JOHN, Attorneys at Law, 96 East Main Street, Uniontown, PA 15401 or as designated from time to time by Authority.
- 1.09. Construction Drawings - Those drawings for construction of the System, approved by the Authority, prepared by _____ and labeled "_____ " attached hereto, made a part hereof, and marked Exhibit A.
- 1.10. Certificate of Completion - A statement issued by Developer or Developer's Engineer, certifying that the Project as set forth in this Agreement has been completed in accordance with the Construction Drawings, and that punch list

items and minor road repairs and restoration have been completed. The Certificate shall include the date of completion.

- 1.11. Certified As-Built Project Costs - The as-built costs of construction incurred by the Developer related to the installation of the sanitary sewer line extension as certified by the Developer's professional engineer.
- 1.12. DEP - Commonwealth of Pennsylvania, Department of Environmental Protection.
- 1.13. DEP Permit - A permit issued by the Commonwealth of Pennsylvania, Department of Environmental Protection ("DEP") in the name of Authority for construction of "Developer's System," as defined below.
- 1.14. Developer's Name: _____

Developer's Addresses: _____

- 1.15. Developer's Contractor - Firm or individual with whom Developer contracts. If Developer act as their own contractor, then Developer also promise that any conditions and covenants imposed on Developer's Contractor shall be considered additional obligations of Developer.
- 1.16. Developer's Engineer - As designated from time to time by the Developer.
- 1.17. Developer's Escrow - The amount reasonably estimated by the Authority to secure the Authority's estimated costs of construction plan review, inspections, administrative, legal, engineering and accounting services involved in the construction.
- 1.18. Developer's System - Per those drawings approved by the Authority, discussed in paragraph 1.09 above.
- 1.19. Effective Date - The effective date of this Agreement shall be the day and year first above written.
- 1.20. EPA - The United States Environmental Protection Agency.
- 1.21. Letter of Acceptance - That letter issued by the Authority directed to Developer stating that the Authority intends to accept ownership of the constructed System, pending and conditioned upon Developer's compliance with post-construction covenants as enumerated in Article V of this Agreement. The Letter of

Acceptance shall not be issued by Authority until receipt of the Certificate of Completion and a determination by Authority that Developer has otherwise complied with the terms of this Agreement.

- 1.22. Notice to Proceed - Written notice from Authority to Developer, informing Developer that construction may commence. A Notice to Proceed shall be issued by Authority only after receipt of Construction Drawings, Shop Drawings, Developer's Estimated Cost of Project Construction, insurance certificates, applicable bonds, and confirmation that all necessary permits have been issued and remain in full force and effect.
- 1.23. Plan - That certain plan of subdivision prepared by _____ dated _____ and labeled " _____ " attached hereto, made a part hereof, and marked Exhibit B.
- 1.24. Specifications for Sewer Construction Manual – The Authority's rules and regulations for sanitary sewer construction and any subsequent revision adopted prior to the effective date and adopted by the Authority to which the Developer shall prepare all construction drawings and construct the System in accordance therewith. Developer shall reference these requirements in any agreement related to sanitary sewers.
- 1.25. Tapping Fee or Fees - The tapping fee as that term is defined in the Rate Resolution of the Authority as amended from time to time.
- 1.26. Authority Sewer System or Sewer System - The sanitary sewer system of Authority, including all of the collector, trunk, and interceptor sewer lines, manholes, pump stations, treatment plants and all equipment, fixtures, mechanisms and other appurtenances and physical plants of Authority (whether or not they are owned or operated by Authority) and the appurtenances thereto.
- 1.27. Unacceptable Waste - Itemized list from Authority Rate Resolution, together with those items the Authority, DEP and EPA determine from time to time as unacceptable.
- 1.28. Unacceptable Water - Any water from a domestic residence not a part or component of the sanitary sewage system, domestic laundry or cooking (kitchen) water. Storm water is expressly prohibited from entry into the Authority sanitary sewer system.

ARTICLE II
COMPLIANCE WITH GOVERNMENTAL AUTHORITIES

2.01. **Permits** - Prior to commencement of construction, Developer shall obtain all permits from the Pennsylvania Department of Transportation (PennDOT), together with any other road permits as may be required by the Commonwealth of Pennsylvania, Fayette County, the municipality where the Development is located, or any other municipal, governmental or private or public utility having jurisdiction over the roads affected by the construction. Developer shall provide Authority with copies of all such permits.

2.02. **Developer's Compliance** - The Developer shall comply with all Ordinances, Resolutions, Rules, Regulations, Policies and Guidelines of the Municipality where the Development is located, the Authority, the County of Fayette, PennDOT and the laws of the Commonwealth of Pennsylvania, and the United States of America with respect to the construction and installation of the System, to the extent that such Ordinances, Resolutions, Rules, Policies, Regulations and Guidelines are constitutional and/or permitted by law. It is further distinctly understood and agreed that the Developer shall provide the Maintenance Bond as required in this Agreement and Developer shall obtain and acquire any and all permits necessary for installation of the System. It shall be the responsibility of the Developer to obtain copies of any such Ordinances, Resolutions, Rules, Regulations, Policies, Guidelines and laws and to follow and comply with the same. It is the responsibility of the Developer to obtain approval from any entity other than the Authority that provides transportation and treatment of sewage from the Development area.

2.03. **Approval of Municipality**

(a) It is distinctly understood and agreed that the execution and delivery of this Agreement is contingent upon Developer obtaining any requisite approval from the Municipality where the Development is located with respect to the approval of this Project in regard to all matters, including construction of the System. In the event that the said approval should not be obtained and, upon the parties hereto being so notified in writing, this Agreement shall be terminated.

(b) The parties hereto agree that the Municipality where the Development is located is a third party beneficiary to the within Agreement and in the event that the Developer fails to comply with any of the Ordinances, Resolutions, Rules, Regulations, Policies, Guidelines or other requirements of that Municipality then and in that event, the Municipality may maintain and bring any civil and/or criminal action in its own name and right against Developer, but no action may be brought against the Authority.

Authority. Developer further agrees that in the event it enters into an agreement with any contractor for construction of the System as contemplated herein, Developer shall insert the above requirement in such Agreement with the contractor and furnish the contractor with a copy of same.

3.04. **Authority Inspection Requirements** - In addition to the above, all sewer lines are required to be air tested, and, at the option of the Authority Inspector, smoke tested, television, dye, ex-filtration and any other testing that may be required, at the expense of Developer. All manholes are to be vacuum tested. Said tests must take place in the presence of the Authority Inspector, and the results of said tests must be reduced to writing for review by the Authority.

3.05. **Authority Inspector** - All construction shall occur in the presence of the Authority Inspector. If the Developer allows construction of any portion of the Developer's System to be constructed outside the presence of the Authority Inspector, at the option of the Authority Inspector; that portion of the Developer's System will be deemed unacceptable and the Developer will be obligated to reinstall and reconstruct any and all portions thereof, if so directed.

Developer shall be responsible for all costs and expenses associated with this Inspector and an additional deposit may be required prior to construction of the System to cover the costs of the Inspector. In the event the Authority Inspector is unavailable, an authorized representative of the Authority from the Authority's Engineer, will cause a full time Inspector to be present during time of construction.

3.06. **Construction Commencement** - No construction shall commence on any portion of the Developer's System without the Developer first having obtained Authority's written Notice to Proceed and Developer having given forty-eight (48) hours prior written notice to the Authority office of Developer's intention to commence construction.

3.07. (a) **Right of Entry** - Developer agrees that the Authority and its representatives and agents shall have the right to enter upon Developer's Premises at any time for the purposes of inspecting the construction work to be performed hereunder, and in case any work shall be disapproved or rejected by the Authority and not corrected by the Developer within thirty (30) days after notice to correct such work, the Authority shall have the right to remove and replace said work, and the expense of such removal and replacement shall be charged to Developer.

(b) In the event unusual conditions or circumstances are encountered by the Developer in the course of construction of the System, which are not specifically covered by the Construction Specifications/Drawings, Developer will not continue the work unless the Authority first approves the procedure in accordance with good construction practice, and the Developer shall be responsible for any costs incurred for such construction.

3.08. **Developer's Contractor** - All sections of this Agreement which refer to the obligations of Developer's Contractor shall be attached to any construction contract entered into

with the Developer and Developer's Contractor, and the Developer's Contractor shall be obligated to comply with those sections.

**ARTICLE IV
CONSTRUCTION INSURANCE AND BONDING**

4.01. **Insurance** - Developer shall deliver to the Authority, prior to the commencement of any work in connection with said System, the following:

(a) Certificates of insurance, with an insurance company authorized to do business in the Commonwealth of Pennsylvania, certifying that any general contractor performing any work in connection with said system to have in place liability insurance, naming Developer, Authority, and Authority Engineer as additional insureds and the certificates of such insurance shall be delivered to the Authority prior to commencement of any work by any contractor.

(b) During the progress of construction of the System, Developer's Contractor shall maintain such insurance as will protect it from claims under the Worker's Compensation Act and such other insurance as is required by law for all persons who shall be directly or indirectly employed by it in connection with construction of the System.

4.02. **Bonds** - Developer shall, upon execution hereof, deliver to the Authority a Performance, Labor and Material Payment and Completion Bond pursuant to the terms and conditions set forth in paragraph 4.02 (a) of this Agreement. The Performance, Labor and Material Payment and Completion Bond shall provide that in the event of default by Contractor and/or Developer, the Surety shall perform the terms and conditions of the Construction Contract and complete the work without restriction or limitation as to the outstanding principal amount of the Bond.

(a) A Performance, Labor and Material Payment and Completion Bond issued by an acceptable surety authorized to do business in the Commonwealth of Pennsylvania and executed by the Developer, in the amount of one hundred ten (110%) percent of the Authority's estimated cost of project construction, naming the Authority as obligee, certifying that the Developer will construct and complete the System, as provided herein and will perform in accordance with the terms of this Agreement and the rules and regulations of the Authority in connection with the construction of the System; provided, however, that said bond may be the bond of the Developer's Contractor for the identical purpose, naming the Developer and Authority as co-obligees.

(b) The Performance, Labor and Material Payment and Completion Bond, must specifically refer to the within Agreement by reference to the date hereof and must also contain as a condition of the obligation that the Developer shall well and truly perform or cause to be performed all of the obligations under this Agreement, and that all contracted labor and material associated with the completion of the improvements hereunder must be paid in full, or otherwise the obligation of the Bond shall remain in full force and effect.

(c) Authority may, at its sole option, waive placement by Developer of the Bond, and in lieu thereof approve such other types of financial security as permitted pursuant to

paragraph 53 Pa. C.S.A. §5607 (d) (23) of the Act, which approval shall not be unreasonably withheld.

(d) Deliver to Authority any PennDOT Road Occupancy Permit and/or Maintenance Bond and Agreement as may be necessary and required.

4.03. **Authority's Right to Affect Work Stoppage.** It is understood and agreed that Authority, by and through its Manager or any other authorized employee designated by the Board of Directors of the Authority, shall have the right, but not the obligation, to stop all construction work as it may pertain to the installation of the herein contemplated sewer line or lines in the event that it reasonably appears that a safety or hazardous condition exists or may exist by the continuation of work that could cause serious bodily harm, injury or death to persons or property of the general public, any workmen and/or Authority personnel or other third party persons or property, public or private. In the event that work is stopped for the above reason, the Authority, if acting reasonably and in its best judgment, even though future events may prove it to be wrong, shall have no liability whatsoever and the Developer shall further indemnify, defend and hold harmless the Authority from and against any and all claims, suits, damages, judgments, penalties and interests as a result of Authority's action.

4.04. **Indemnification** - Developer shall be held responsible for accidents during construction of the System and to the fullest extent permitted by law, Developer shall indemnify, defend and hold harmless the Authority and its professional advisors, agents, servants, workmen and employees from and against all suits, claims, actions, damages, losses and expenses, including, but not limited to, attorneys' fees, and all suits, claims, actions, workers' compensation claims, damages, losses and expenses brought by any third parties, and/or employees of Developer or contractors and subcontractors of Developer, and for all costs or liability to which Authority may be held responsible, and for any injury or alleged injury to the person or property of another resulting from negligence or carelessness arising out of or resulting from the performance of the construction of the System or from any improper or inferior workmanship, or from inferior materials used in the construction of the System. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph 4.04.

ARTICLE V POST-CONSTRUCTION COVENANTS

5.01. **Certificate of Completion** - (a) The Developer or its Engineer or other responsible agent as designated by Developer will issue a Certificate of Completion within five (5) days of completion of the construction contemplated under this Agreement. Authority shall issue to Developer a Letter of Acceptance after receipt of the Certificate of Completion a determination by Authority that Developer has complied with the terms of this Agreement.

5.02. **As-Built Drawings** - Within thirty (30) days after issuance of the Certificate of Completion, Developer shall submit to the Authority office two (2) sets of blue line "as-built plans" of the Developer's System as constructed. The plans shall be at 1" per 50' horizontal scale and at 1" per 10' vertical scale. The Mylar plans shall be at 36" x 24". After review and approval of the "as-built plans" as submitted, Developer shall submit four (4) 24" x 36" paper sets, four (4) laminated 11" x 17" paper sets, and a disk containing record drawings of as-built conditions in a software format approved by the Authority (AutoCAD Version 2002 or higher). As-built plans shall be developed based on an as-built survey performed by the Developer. As-built survey shall incorporate horizontal control based upon the Pennsylvania State Plane Coordinate System, South Zone, and vertical control based upon the North American Vertical Datum of 1029 (NAVD 29). The as-built plans shall include: Plan and profile of view to scale, stationing of all service connections, elevations of all manhole inverts and castings, location of all other underground utilities and pipes, the distances between the utilities and any portion of the Developer's System and all other matters which are relevant to the continued operation and maintenance of Developer's System as determined by the Authority.

5.03. **Cost Certifications**

Within thirty (30) days from the date a Certificate of Completion is issued by the Authority, Developer and/or Developer's Engineer will cause a certified As-Built Project Cost Certificate to be issued which specifically delineates the actual cost of construction incurred by Developer.

5.04. **Plan Changes**

Developer shall also submit to Authority three (3) copies of all plans showing line changes and the location of all laterals. The plans shall also bear the original markings and notations as to all changes, including initials of Developer's Contractor and Authority Inspector, which shall be given by Developer's Contractor to the Authority office within seven (7) days from the completion of Developer's System. In the event the Developer or the Developer's Contractor determines not to bring a lateral to at least the boundary line of the Premises, this must be duly noted on the plans in the field and initialed by both the Developer's Contractor and the Authority Inspector. Otherwise, all laterals shall be constructed to at least the boundary line of the Premises.

5.05. **Maintenance Bond**

(a) To further secure and insure this covenant to maintain the work, Developer shall furnish, after construction of the System and before Authority takes title to the System, a maintenance bond (the "Maintenance Bond") in the amount of fifteen (15%) percent of the certified "As-Built" Project Costs issued by an acceptable surety, authorized to do business in the Commonwealth of Pennsylvania, guarantying to maintain the stability of the work, as well as of the sewer pipe and other materials furnished in construction of the System, for a period of eighteen (18) months from the date the Authority takes title to the System, all in accordance with the Authority plans and specifications as approved by the Authority.

(b) Authority may, at its sole option, waive placement by Developer of the Maintenance Bond, and in lieu thereof accept such other security in such amounts as Authority deems proper.

5.06. **Entry of Unacceptable Waste and Water Into The Authority System**

(a) All construction required of the Developer and the Developer's Contractor shall be accomplished in such a manner that only Allowable Domestic Sewage enters the System. Unacceptable Waste and Water shall not be permitted to enter the Authority Sewer System. In the event that Unacceptable Waste and Water enters the Authority's Sewer System from the Developer's System prior to the expiration of the Maintenance Bond, then Authority shall have the option of doing the following: (1) the Authority may remove the Unacceptable Waste and Water with the cost of removal to be paid by the Developer upon presentation of an invoice; (2) the Authority may seal the Developer's System without any resulting liability to the Authority from the Developer or others lawfully using the Developer's System; (3) the Authority may require the Developer to remove the Unacceptable Waste and Water within the time provided in any notification to do so by the Authority; and/or (4) the Developer shall be responsible or liable for the payment of penal damages and fines as are otherwise authorized under the laws of the Commonwealth of Pennsylvania. Developer's liability for the entry of unacceptable waste and/or water into the Authority's System shall terminate upon the earlier of the Authority's acceptance of the dedication of the System pursuant to paragraph 5.07 of this Agreement or the connection of the first user to the System; provided, however, such termination shall be valid only upon receipt of Developer's certification that any and all purchasers or successors in interest shall be notified in writing of all requirements of the DEP and the Authority.

(b) If the Authority chooses to act pursuant to Section 5.06(a)(3) and in the event the Developer fail to remove the Unacceptable Waste and Water within the time limits required by the Authority in its notification to the Developer, then in addition to all other rights of the Authority and obligations and liabilities of the Developer pursuant to this Agreement, the Developer will pay the Authority the additional sum of ~~One Hundred and no/100 (\$100.00) Dollars~~ per day thereafter as a penal sum by reason of Developer's failure to remove the Unacceptable Waste and Water. In addition, the Authority may exercise such other remedies as are permitted under its Rules and Regulations, the laws of the Commonwealth of Pennsylvania and the Regulations of DEP and the EPA. The Authority may exercise all or any of the above-

listed remedies either cumulatively or in the alternative on each occasion where Unacceptable Waste and Water enters the Developer's System and thereafter the Authority's Sewer System.

(c) In the event the Authority suffers and/or incurs costs or fines by reason of entry of Unacceptable Waste and Water into the Authority's Sewer System caused by Developer prior to the earlier of conveyance of the System to the Authority, or connection of the first user, then the Authority shall be entitled to reimbursement from the Developer upon written notice to do so. The failure on the part of the Developer to make such reimbursement shall be considered a default under this Agreement. In such an event, the Authority may proceed against the Security Deposit, the posted security (Bonds), or any of its rights upon default as may be granted to Authority in this Agreement.

(d) Developer certifies that pursuant to Section 405 of the Solid Waste Management Act of 1980, that the Developer has no actual or constructive knowledge of any hazardous or toxic waste which was, is, or presently exists, or has been disposed of on the subject property, improvements, or any part thereof. In this connection, Developer does hereby indemnify, will defend and does hold harmless Authority from and against any and all claims, actions, causes of actions, in law or equity, filed or brought against the Authority by the Commonwealth of Pennsylvania Department of Environmental Protection or the United States Environmental Protection Agency making claim against the Authority for any loss, damage, interest, penalty, fine, or liability, foreseen or unforeseen, of any kind whatsoever.

5.07. Conveyance of System

(a) After inspection and approval of the construction of the System, Developer shall convey title of the System to the Authority within sixty (60) days of Authority's issuing the Letter of Acceptance. After acceptance of the System, the conveyed portion of the System shall be considered the property of the Authority as of the date of conveyance. Thereafter, subject to the maintenance bonding required of the Developer, which bonding requirement shall not exceed eighteen (18) months as set forth in paragraph 5.05 of this Agreement, Authority shall operate and maintain the conveyed portion of the System.

(b) No tap permits shall be issued until acceptance and conveyance of the within conveyed portion of the System to the Authority.

5.08. Maintenance and Repair Prior to Expiration Date

(a) Until expiration of the Bond, Developer shall be responsible for the full and complete maintenance and repair of Developer's System, including, but not limited to, System malfunctions such as ground settlement and restoration.

(b) In the event the Authority determines that maintenance and repair work is required prior to expiration of the Bond, the Authority shall then notify the Developer to make the necessary repairs. If the Developer or the Developer's Contractor does not make the necessary repairs within a period of thirty (30) days (or forty-eight [48] hours if Authority determines it to be an emergency) from receipt of the notice, then Authority shall have the right,

but not the obligation, to accomplish the necessary repairs and bill the cost of repairs to the Developer. In the event that Developer does not pay for the cost of the repairs or make reimbursement to the Authority within the time stated in the invoice, then the Authority shall have the right to (1) reimburse itself from any Developer's Escrow then remaining; (2) proceed against the security posted; or (3) treat the failure to pay as a default by the Developer under this Agreement and proceed under the rights otherwise granted to Authority under this Agreement. In addition, in the event of such occurrence, Developer agrees not to construct any remaining portion of the Developer's System thereafter.

5.09. Acceptance of Flow from Developer's System - Upon completion of construction, Authority will accept Allowable Domestic Sewage from any user in the Developer's System under the terms of this Agreement, provided:

- (a) All users will be charged uniform rates and costs in accordance with the Rules and Regulations of the Authority.
- (b) No connection of any user will be exempt from payment of the current Tapping Fee in effect at the time application for connection is made.
- (c) No user shall be permitted to cause a surcharge, or sudden increased flow to Developer's sewer, or the Authority Sewer System.
- (d) The construction shall be completed within three hundred sixty (360) days of the issuance of a Notice to Proceed by the Authority in accordance with the terms of this Agreement as required by any provision of any Developer Agreement with the Municipality where the Development is located.
- (e) No customer shall be permitted to connect into the Developer's System without prior written approval from the Authority. Developer covenant and agree that they shall, under no circumstances, permit any person or party to tap into the System unless previously approved by the Authority.
- (f) If a Tap-in Permit is not acquired, and building lateral(s) not connected to the sewer system and inspected within twelve (12) months of the initial tap fee escrow deposit date, a Debt Service and Administration Charge will be instituted until such time as the tap is used.
- (g) Billing for all customer charges shall be in accordance with Authority rules and regulations.

5.10. Acceptance of Developer's System by Authority pursuant to Paragraph 5.07 and receipt by Authority of As-Built drawings with corresponding corrections made of any deficiencies found in the System are required prior to Authority issuing tap-in permits to Developer, unless written consent is first obtained from the Authority, which consent shall not be unreasonably withheld.

**ARTICLE VI
REIMBURSEMENT**

6.01. **Waiver of Reimbursement** - Developer acknowledges that upon consultation with independent legal counsel, is fully aware of and familiar with Act 203 of 1990, Act 57 of 2003, and 53 Pa. C.S.A. §5607(b)(31). Based upon the above representation and after due and careful consideration, Developer hereby knowingly and willfully waives any rights they may have by virtue of the foregoing Acts. Notwithstanding anything to the contrary herein contained, Developer voluntarily hereby waives any and all rights it may have to reimbursement by the Authority or others for Developer's costs in construction of the System, either now or in the future.

**ARTICLE VII
PAYMENT OF TAPPING FEES**

7.01. **Payment of Tapping Fees** - Tapping Fees shall be due and payable at the time that any Application for a Tapping Permit is made.

7.02. **Other Charges Permitted** - The fees imposed in this Agreement are in addition to any charges, including user charges, to which the Authority is entitled to charge under the Act.

**ARTICLE VIII
RIGHTS OF WAY AND LICENSE AGREEMENT**

8.01. **Preparation of Rights of Way** - Developer shall be responsible for preparing a survey and/or right of way, forty (40) feet wide during construction and twenty (20) feet wide thereafter, showing all necessary information required for Authority's Solicitor to prepare legal descriptions for the areas not owned by the Developer which will be affected by installation of the System.

8.02. **As-Built Survey** - It shall be Developer's responsibility to provide Authority with an As-Built Survey of the System within the Project showing the location of the sewer line as installed and of all rights of way located within the property which is not owned by Developer, together with ensuring that the sewer line is installed in the center line of the right of way. Authority shall not accept the conveyance of the System until "As-Built" drawings are received and approved. In the event that Developer fails to provide "As-Built" drawings, the Authority may direct its Engineer to undertake the survey and to prepare "As-Built" drawings. The cost of the work by the Authority's Engineer shall be paid by Developer and may be deducted from any escrow deposit.

8.03. **Obtaining Rights of Way** - It is the responsibility of the Developer to obtain all necessary rights of way, which shall always be in the name of Authority as grantee. If the Developer cannot obtain or are unsuccessful in obtaining the rights of way, Authority agrees to use its best efforts to obtain same. However, should Authority undertake soliciting rights of way, Developer shall be responsible to reimburse to Authority all of its costs in obtaining same. All rights of way must be obtained and recorded before Authority will issue a Notice to Proceed.

8.04. **Condemnation** - If Developer and Authority are both unsuccessful in obtaining the rights of way, Developer may then request the Authority to initiate condemnation procedures. Under no circumstance shall Authority be required to exercise its power of eminent domain, in the event that the Authority has such right concerning particular property, and any exercise of said power shall be at the Authority's sole discretion.

8.06. **Costs** - Developer is responsible to pay for all rights of way and other recording fees incurred in construction of the Project. With respect to Condemnation, Developer is responsible for all costs of the Authority associated therewith, including, but not limited to, legal fees, expert witness fees, engineering fees, filing costs and expenses, payment of verdicts, interest, settlements, costs of appeal, delay damages, and reimbursable fees to condemnees.

8.07. **License Agreement** – Developer recognizes that a crossing under Regional Trail Corporation property is necessary for the Authority to provide sewage service to Developer's properties. Developer further recognize that the Regional Trail Corporation and its agent, Omega Rail Management, will only enter into a License Agreement with the Authority to permit the crossing, not an easement, and said Agreement is terminable at will by the Regional Trail Corporation. All fees sought by the Regional Trail Corporation and its agent, Omega Rail Management, are also the responsibility of Developer.

ARTICLE IX DEFAULT AND RIGHTS OF TERMINATION

9.01. **Termination** - Failure of Developer to pay any portion of the Tapping Fee required under Article VII or to perform any other obligation under this Agreement shall be an incident of default and may result in termination of this Agreement.

9.02. **Discretionary Termination** - Authority shall have the right to terminate this Agreement by written notice to Developer in the event any of the following occurs:

- (a) Failure by Developer to provide the required insurance pursuant to this Agreement.
- (b) Failure of Developer to perform any promise, condition or covenant contained herein.

9.03. **Default by Developer** - In the event of Developer's failure to perform any of its promises, covenants and obligations hereunder, the same shall be considered a default. In the event of default by Developer, and if no cure has been made within ten (10) days after written notice of default has been given to Developer by Authority, then Authority shall have the following rights:

(a) To terminate this Agreement by written notice to Developer.

(b) To reimburse itself for any damages or costs from the Developer's Escrow tendered under Article III, or by proceeding against the security submitted under Article IV, subparagraph 4.02 or by proceeding against Developer in accordance with the Municipal Lien Act, as amended, the Authority shall first proceed against the Security Deposit for reimbursement and then against the security submitted under Section 4.02 of this Agreement. In the event the Developer's Escrow and/or the security both are insufficient to cover Authority's costs resulting from default, or insufficient for Authority to complete construction of Developer's System, and the Authority chooses to complete the construction of the System, then Developer shall reimburse to Authority any and all costs that Authority has expended (or is expected to expend) in completing said work, including reasonable legal fees, engineering fees and costs of suit.

(c) **Penal damages** - Developer's liability for the entry of unacceptable waste and/or water into the collection system shall terminate upon the earlier of the Authority's acceptance and dedication of the collection system or the connection of the first user to the System. Furthermore, all enforcement action taken pursuant to this Agreement shall provide Developer adequate due process and should be conducted in a manner consistent with the hearing and penalty provisions set forth in the Sewage Facilities Act; provided, however, that this termination of liability shall not end in the event there are latent defects not easily discoverable upon inspection.

9.04. **Effect of Termination and Default** - In the event of termination of this Agreement, Developer shall have any and all rights and remedies granted pursuant to this Agreement, in addition to any and all other rights and remedies it may have under the common or statutory laws of the Commonwealth of Pennsylvania or the laws of the United States of America.

9.05. In the event of default by Developer, Authority shall have any and all rights and remedies heretofore granted it under this Agreement, in addition to any and all other rights it may have under the common or statutory laws of the Commonwealth of Pennsylvania or Laws of the United States of America.

9.06. **Remedies cumulative** - The remedies of Authority under this Article shall be cumulative, and the Authority shall be permitted to exercise any one (1) or more of its rights at its discretion.

9.07. **Performance and Completion Bond and Maintenance Bond Remittance**

(a) The Authority shall return to Developer by Certified Mail to Developer's last known addresses within seventy-five (75) days of the expiration of the Performance and Completion Bond and Maintenance Bond established in Articles IV and V of this Agreement, any funds remaining under the Performance and Completion Bond and Maintenance Bond, as well as any Developer's Escrow remaining, together with an accounting of all expenditures from the Bond and Developer's Escrow.

ARTICLE X - REMEDIES OF AUTHORITY

10.01. **Waiver of Defenses** - In the event Developer or their heirs, administrators, executors, and assigns, fail to pay when due any charges imposed upon them pursuant to this Article, Developer and their heirs, administrators, executors, and assigns hereby waive the filing of an Affidavit of Defense and for all other defenses which may be available to them and do hereby empower the Prothonotary or any attorney of any court of record in Pennsylvania or elsewhere to appear for Developer and on behalf of Developer to agree to the entry of an amicable action or actions for the recovery of the sewer rents and other charges herein provided and in said amicable action to confess judgment in the amount of any sewer charges due and payable to Authority and to waive any defenses against Authority if and when Authority files a municipal lien against Developer in the amounts due Authority for unpaid sewer charges, rentals, costs and expenses.

ARTICLE XI SPECIAL PROVISIONS

11.01. All eight inch (8") or larger sewer lines shall be required to be air tested, lamped, and mandrel tested at the Authority's discretion. Six inch (6") lines shall be required to be air tested, lamped, and mandrel tested at the Authority's discretion.

11.02. All manholes are to be vacuum tested.

11.03. Force mains, if applicable, shall be hydrostatically tested at one hundred fifty percent (150%) of expected operating pressure.

11.04. Developer agrees that it will supply, at its own cost and expense, ABS ManPan manhole inserts in all manholes and/or water tight manhole lids as the Authority deems appropriate. Developer shall contact Authority for the approved vendor for the ABS ManPan manhole inserts and/or water tight manhole lids.

11.05. Developer further agrees that it will supply and insert stainless steel inserts in those manholes as the Authority deems appropriate not included in paragraph 11.04 above, at Developer's sole cost and expense. Developer shall contact Authority for the approved vendor for the stainless steel inserts.

11.06. Developer's Contractor shall submit five (5) sets of shop drawings for approval by Authority.

11.07. Developer's Contractor shall provide to Developer's Engineer the exact wye locations for incorporation into the "as-built" construction drawings. Developer's Engineer shall provide two (2) sets of lateral wye location forms for each lot included in this Project.

11.08. As part of the "as-built" drawings referred to in Section 5.02 of this Agreement, Developer are responsible to submit to the Authority the construction working drawings, as well as all sewer service lateral dimensions, including stationing, length and depth of the actual lateral locations for each lot for which sanitary sewer service is provided. If the actual lateral locations are not known, an internal inspection of the sewer line shall be done, utilizing closed circuit TV by a qualified company duly approved by the Authority to do such work. The results of the inspection shall be reduced to writing and submitted to the Authority, along with a copy of the videotape. All costs shall be borne by the Developer.

11.09. Developer's Contractor is further required to provide to Authority pre-construction and post construction photographs of the Municipal, PennDOT, and/or other roadways opened, bonded and/or traveled as deemed necessary by the Authority. Developer shall provide to the Authority copies of any Road Occupancy Permits and/or bonds and Hauling permits and/or bonds required. In lieu thereof, Developer shall provide to Authority written confirmation that said permits and/or bonds are not required.

11.10. Developer shall be under and subject to all rules, regulations, policies, procedures and practices of the Authority, together with any and all rules, regulations, policies procedures and practices of the United States Environmental Protection Agency, the Pennsylvania Department of Environmental Protection in connection with the quality and quantity of discharge as those rules and regulations may be amended from time to time.

ARTICLE XII MISCELLANEOUS

12.01. It is specifically understood and agreed that neither Developer, contractors, or any subcontractors working thereunder shall be deemed to be the agent, servant, workman, officer or employee of the Authority or in any way or manner acting within the scope, agency and authority of the Authority; but, to the contrary, Developer, contractors and any subcontractors shall be deemed "independent contractors," acting on a mission and goal entirely of their own and in no way upon the specific business or agency of Authority.

12.02. **Billings and User Charges** - Billings for user charges shall be issued in accordance with rules and regulations applicable and in effect from time to time by Authority.

12.03. **Agreement Binding** - This Agreement shall be binding upon the parties hereto, their respective heirs, executors, administrators, successors and assigns. The covenants and promises contained herein shall be covenants running with the land and shall be enforceable against and to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

12.04. **Notices** - All notices required hereunder shall be given to Developer at the address listed under subsection 1.12; and to Authority at 141 Big Six Road, Smithfield, Pennsylvania 15478, with a copy to the Authority Solicitor at 96 East Main Street Uniontown, PA 15401; or to such other addresses as the parties hereto shall direct from time to time.

12.05. **Time is of the Essence** - It is understood and agreed that time shall be of the essence for all covenants, promises and obligations contained in this Agreement.

12.06. **Executed Counterparts** - This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each party has executed at least one counterpart.

12.07. This Agreement expresses the entire agreement between the parties and may not be altered or modified except in writing executed by each of the parties.

12.08. The parties hereto agree to execute and deliver all documents and to perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

12.09. In the event that any clause or provision of this Agreement is declared invalid, void or unenforceable by any administrative agency of the United States or the Commonwealth of Pennsylvania or any court having jurisdiction, the same shall be deemed severable from this Agreement and shall not affect the validity or enforceability of the remaining portions of this Agreement.

12.10. This Agreement and the construction and enforceability thereof shall be interpreted under the laws of the Commonwealth of Pennsylvania and any dispute or litigation arising hereunder shall be heard and decided by the Courts of Common Pleas of Fayette County which should have sole and exclusive jurisdiction and venue over any disputes, litigation, claims or demands arising hereunder. Nothing contained herein shall preclude Developer from taking an appeal to the appropriate Appellate Court within the jurisdiction of Pennsylvania or the United States of America.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties have caused this instrument to be executed the day and year first above written.

ATTEST:

**FAIRCHANCE-GEORGES JOINT
MUNICIPAL SEWAGE AUTHORITY**

Secretary

By _____
Chairman

WITNESS:

DEVELOPER:

WITNESS:

DEVELOPER:

EXHIBIT A

EXHIBIT B