

AGREEMENT

THIS AGREEMENT made this _____ day of _____, 20____, by and between **WARWICK TOWNSHIP MUNICIPAL AUTHORITY**, a municipality authority organized and existing under the laws of the Commonwealth of Pennsylvania and specifically organized under the Municipality Authorities Act of 1945, as amended, having its principal office at 315 Clay Road, Suite B, Lititz, Pennsylvania 17543, party of the first part, hereinafter called the "Authority", and _____, with a business address of _____, Pennsylvania, _____, party of the second part, hereinafter called the "Developer".

WITNESSETH:

WHEREAS, Authority owns and operates a municipal water supply and distribution system (the "Water System") within the Village of Rothsville, Township of Warwick, Lancaster County, Pennsylvania (the "Township"); and

WHEREAS, Developer desires to install water mains in and along the streets to be constructed and/or within rights-of-way in the development to serve Developer's project known as _____, hereinafter sometimes referred to as the "Project", and to connect (and, if necessary, extend) the same to Authority's Water System; and

WHEREAS, Authority is willing to permit the installation of water mains by the Developer and the connection of such water mains to the Authority's Water System subject to compliance by Developer with the Authority's policies, rates, rules, regulations, standards and specifications including, but not limited to, the Authority's Developers' Manual.

NOW, THEREFORE, in consideration of the promises, terms and conditions of this Agreement more fully hereinbelow set forth, and intending to be legally bound hereby, the parties agree as follows:

1. Developer agrees to furnish to Authority the Developer's complete and accurate development plans and rights-of-way surveys to show the following items: (a) location of buildings, roads and streets and other land use facilities; (b) location of existing utilities; (c) proposed easements and rights-of-way other than for street and road use; (d) land to be dedicated to the Authority; and (e) such other details of the Project as may influence the design and/or construction of the water mains.

2. Developer agrees to establish a final rough grade on all roads, streets, easements and rights-of-way within which water mains are to be installed prior to the installation thereof.

3. Upon the execution of this Agreement Developer shall deposit with the Authority the sum of _____ to be used by the Authority to apply against the following costs: (i) cost of obtaining, filing and/or recording any necessary applications, permits and approvals from or with governmental bodies; (ii) cost of supervision of final stake-out; (iii) cost of inspection of the water mains; (iv) cost of water mains and appurtenance testing, including, but not limited to, televising of water mains and leak detection in accordance with the Authority's Developers' Manual; (v) cost of any water used by the Developer for testing, flushing, chlorinating or other use of water mains in accordance with the Authority's Developers' Manual; (vi) cost of preparation of "as constructed" drawings and record documents in accordance with the Authority's Developers' Manual; (vii) cost of any Pennsylvania Department of Transportation ("PennDOT") inspection fees if state roads are involved in the Project; (viii) any legal expenses (including expenses relating to the preparation of this Agreement) and engineering fees Authority may incur in the furtherance of

the design, installation or dedication to the Authority of the proposed water mains for the Project; and (ix) any other costs or expenses which may require a deposit pursuant to the terms of the Authority's Developers' Manual. In the event said sum deposited is insufficient to pay such costs, Authority shall bill Developer for the actual or anticipated additional costs, and the Authority shall have the right to suspend work pending receipt of the sum billed. In the event said sum deposited is in excess of such costs, Authority shall refund such excess money without interest to Developer upon completion of the work and acceptance of dedication of said water mains. Authority is hereby irrevocably authorized to withdraw from time to time any monies deposited by Developer in escrow in order to pay expenses and fees, including legal and engineering fees, incurred by Authority pursuant to or in connection with the administration of this Agreement.

4. Upon receipt of the sums required under Paragraph 3 hereinabove, Authority agrees to cooperate with Developer to obtain any necessary permits and to perform the Authority's other obligations hereunder. Developer or its engineer shall coordinate with the Authority's engineer the responsibility for preparing permit applications and "as constructed" drawings and the performance of the other engineering work related to this Agreement.

5. Developer shall install the water mains with its own contractors; provided, however, the work shall not be undertaken intermittently, but shall be rapidly prosecuted to completion on or before _____, said time being of the essence. No work may commence unless and until the Authority approves in writing Developer's construction submittals. Developer's contractors shall be experienced in the installation of water mains and must be approved by the Authority's engineer. At all times during the installation of water mains, Developer or its contractors shall obtain and maintain in force liability insurance insuring against liability for injury to and/or death of any person and/or damage to property of any person or persons in connection with

the construction of the water mains. The minimum limits and coverages of such insurance shall be determined by the Authority's engineer, and any policy or policies shall name the Authority, its agents, servants and employees, as named insureds or additional insureds. The policies of insurance shall be written by one or more responsible insurance carriers licensed to do business in Pennsylvania . Developer shall provide to the Authority copies of such certificates or endorsements as are necessary to establish that the insurance policies required by this Agreement are in place. The insurance policies shall provide that the Authority is a named insured or an additional insured, and shall require notice be sent to the Authority at least thirty (30) days in advance of termination or cancellation thereof. Developer shall indemnify and hold the Authority, its agents and servants harmless from any and all claims arising from damages relating the construction of the water mains and the violation of any permits, including reasonable attorneys' fees and costs of investigation and defense.

6. All construction of water mains by Developer shall be completed in strict conformity to: (a) the Authority's policies, rules, regulations, standards and specifications including, but not limited to, the Authority's Developers' Manual, which are on file in the office of the Authority located at 315 Clay Road, Suite B, Lititz, Pennsylvania 17543, and which are incorporated herein by reference thereto; and (b) the requirements of the Pennsylvania Department of Environmental Protection ("DEP"). Without limiting the foregoing, Developer shall cause its contractors to comply with the Authority's Developer's Manual, including technical specifications and construction submittals. Developer acknowledges and agrees that even though the Authority, and/or the Authority's engineer, may communicate directly with the Developer's contractors, the Developer shall nevertheless remain fully and primarily responsible for compliance with the Authority's Developer's Manual, including technical specifications and construction submittals, notwithstanding.

7. Upon completion of the installation of the water mains, the Developer's engineer shall, at the Developer's expense, prepare "as constructed" drawings and record documents, in accordance with the Authority's Developers' Manual, to record the water mains as actually constructed. Without limiting the foregoing, Developer shall comply with Section 9 of the Authority's Developers' Manual regarding record documents and Section 10 of the Authority's Developers' Manual regarding acceptance procedure. The Authority's staff, or the Authority's engineer, shall make a final inspection, prepare the necessary closing documents and, if the work is satisfactory, recommend that the water mains be accepted by the Authority. In the event that the Developer's engineer fails to prepare such "as constructed" drawings and record documents, the Authority's engineer shall, at Developer's expense, prepare the "as constructed" drawings and record documents.

8. Developer hereby irrevocably dedicates the water mains to the Authority, and the Authority agrees to accept said water mains upon completion, provided:

(a) The location, plans and specifications for said water mains have been approved or prepared by the Authority's engineer prior to the start of construction;

(b) Developer has obtained approval for grades and locations from all appropriate governmental bodies and has been issued the necessary permits from all appropriate state and municipal agencies, including, but not limited to PennDOT Highway Occupancy, Township Road Opening and Township Use and Occupancy Permits;

(c) Said water mains have been constructed in accordance with the aforesaid plans and specifications which are to be approved by the Authority's engineer prior to the beginning of construction thereof;

(d) Inspection by the Authority's engineer or employees is permitted during the entire course of construction, during which Developer shall comply with reasonable

requirements of said engineer or employees as to advance notice of time when the inspections are to be made;

(e) Developer shall cooperate with and assist the Authority to obtain any necessary Highway Occupancy Permits from PennDOT for any laying of water mains on public highways, shall pay all expenses related to compliance with state or local requirements, and shall hold Authority harmless from any cost, including inspection fees, in connection with state or local requirements;

(f) Developer has obtained approval for grades and locations and has been issued the necessary permits from all appropriate state and municipal agencies, including, but not limited to PennDOT Highway Occupancy, Township Road Opening and Township Use and Occupancy Permits;

(g) The water mains are in use at the time the water mains are accepted by the Authority;

(h) Developer has obtained all rights-of-way and easements for the water mains, has provided evidence satisfactory to the Authority's solicitor that title to said rights-of-way and easements is good and marketable and free of all liens and encumbrances, and has transferred such rights-of-way and easements to the Authority;

(i) Developer furnishes the Authority or Authority's certified public accountant with information reflecting the actual cost of the water mains dedicated to the Authority, if requested to do so by the Authority; and

(j) Developer has complied with all the terms of this Agreement.

If the water facilities constructed by Developer include a pumping station that is intended for dedication to the Authority, then Developer shall dedicate the pumping station to the Authority

prior to the issuance of any water permits required for the connection of any properties within the Project to the Authority's Water System.

Developer hereby agrees that its offer to dedicate the water mains shall be enforceable by the Authority in an action in equity, and Developer shall be responsible for all court costs and reasonable legal fees incurred by the Authority in the event it becomes necessary to seek such specific performance.

9. Prior to the commencement of any construction or the recording of any plans relating to the Project, Developer shall furnish Authority with an improvement guarantee in the form and the amount required by the Municipality Authorities Act, as amended. Such improvement guarantee must be approved by the Authority's solicitor and engineer. Developer's improvement guarantee shall not be released until all water mains and related land rights, including easements, have been properly dedicated to the Authority and until all "as constructed" drawings have been furnished to the Authority.

10. Developer shall guarantee the correction of all defective work and material discovered during a period of eighteen (18) months from the date of acceptance of the water mains. All water mains shall be tested by Developer under the supervision of the Authority's engineer or employees eighteen (18) months following acceptance, and Developer shall correct any defective work and material discovered during such inspection at its sole expense. Authority may, at its option, require Developer to post financial security to secure the structural integrity and the functioning of the water mains in accordance with the approved design and specifications and the Authority's rules and regulations during said eighteen (18) month period as a condition to acceptance of said water mains.

11. Prior to and as a condition precedent to Authority's final acceptance of the water mains, Developer shall transfer to the Authority full and absolute ownership, free and clear of all liens and

encumbrances, to all water mains, fittings, valves, meters, hydrants, accessories, and appurtenances as required to be constructed in the construction plans and specifications and title to all easements and rights-of-way through, in or on private property for ingress to, egress from, and maintenance and replacement of the water mains, all of which shall be subject to the approval of the Authority's solicitor.

12. In further consideration of the Authority's undertakings herein, Developer hereby irrevocably dedicates to the Authority, free of all liens and encumbrances, all necessary rights-of-way and easements, which shall include rights-of-way and easements within all streets whether or not such streets are or will be offered for dedication (as determined in the sole discretion of the Authority's engineer), for the reconstruction, enlargement, repair, inspection, maintenance, removal, relocation and extension of the water mains on, upon, under and through Developer's tract of land.

Developer shall furnish Authority with legal descriptions for said rights-of-way and easements, if such descriptions are requested by the Authority, together with evidence satisfactory to the Authority's solicitor (either a policy of title insurance or an attorney's certificate of title) that title to the said rights-of-way and easements is good and marketable and free of all liens and encumbrances.

13. It is understood by the parties hereto that title to the aforementioned water mains shall be and remain in Developer until such time as said water mains are accepted by the Authority and that Developer may not connect to the Authority's Water System until permission to do so has been obtained from an authorized representative of the Authority.

14. Developer agrees that upon Authority's acceptance of said water mains, title to said water mains shall be and remain at all times in the Authority, its successors and assigns.

15. In addition to all other responsibilities of Developer under this Agreement, Developer shall be responsible for all maintenance and repairs to all portions of the water mains which are located on or above the surface of the ground until the water mains are officially accepted by the Authority and the term of the maintenance security posted by the Developer has expired, and:

(i) if the water mains are located within the right-of-way of a street which has been offered for dedication to the Township, until the final wearing course has been installed and the Township has accepted dedication of such street; or

(ii) if the water mains are located within a private street or access drive which will not be dedicated to the Township, until the final wearing course has been installed on such private street or access drive and the Township has been granted all necessary easements for the water mains.

During such time as Developer is responsible for the maintenance and repair of the water mains which are located on or above the surface of the ground, Developer will repair any damage, or at the option of the Authority will reimburse the Authority for repairs made by employees, agents or contractors of the Authority for any damage, to the water mains. Such damage includes but is not limited to damage to water mains caused by the plowing of snow or other maintenance of the streets. The provisions of this Paragraph shall not be interpreted to diminish or affect the rights of the Authority upon acceptance of dedication of the water mains.

16. Developer agrees to secure a permit from the Authority and to pay the appropriate prevailing connection and/or tapping fees as established by the Authority from time to time prior to commencing construction of the water mains. A copy of the Authority's tapping and connection fee resolution, as amended and as may be amended in the future, is on file at the office of the Authority and is incorporated herein by reference hereto. Developer acknowledges that a tapping

fee will be payable to the Authority for each dwelling unit or equivalent dwelling unit in the Project prior to the commencement of the construction of each dwelling unit or nonresidential facility.

17. Developer acknowledges that the extension of the Authority's Water System governed by this Agreement is designed and located such that no individual service lines to serve properties not located within the Project can be connected to the extension. Developer specifically acknowledges that no reimbursement under Section 5607(d)(31) of the Municipality Authorities Act, codified as 53 Pa.C.S. §5607(d)(31), shall be due Developer.

18. Developer shall be responsible for compliance with all applicable soil erosion and sedimentation control requirements. All charges, fees and filings in connection with these requirements shall be the Developer's responsibility.

19. Developer agrees to give the Authority ten (10) days' written notice of Developer's intention to begin construction of the water mains so that the construction may be properly inspected by the Authority. Any work which has begun before the expiration of such ten (10) day period without the consent of the Authority will not be approved. In addition, any improperly constructed work will not be accepted. Inspection by the Authority is solely for the purpose of determining that the water mains are constructed in accordance with the Authority's specifications. Methods of construction and conformance with all applicable local, state and federal laws and regulations are the responsibility of the Developer. At all times, the contractor installing the water mains shall keep on the construction site, available to the Authority, one (1) copy of the approved plans and specifications, any shop drawings approved by the Authority and the Authority's Developers' Manual.

20. Developer shall hire, employ, and pay its own contractor or contractors to construct the water mains according to the aforesaid approved plans and specification, and the Authority, its servants, agents and/or employees shall have no responsibility or liability for payment of any part

of the cost or expenses arising out of or relating to said construction or the labor, materials and equipment used therein or thereon or the acquisition of any rights-of-way. The Authority, its servants, agents and employees, including its engineer, shall have no responsibility or liability whatsoever for any injury or damage to any persons or property occurring upon or associated with the construction of the Project. Developer shall be responsible for any and all safety measures or procedures required by statute, regulation, resolution or good construction practice, and the Authority, its servants, agents and/or employees, including its engineer, shall have no responsibility therefor.

Developer agrees to indemnify and hold harmless the Authority, its engineer, servants, agents and/or employees from any claim for any injury or damage of any nature or kind whatsoever, including costs of investigation and defense and including but not limited to reasonable attorneys' fees, brought by any third party, including Developer's employees or Developer's contractors and their employees, arising from a breach of this Agreement, a breach of the rules and regulations of the DEP, the standards of DEP, or from Developer's breach of any other statute, regulation, resolution, ordinance or accepted construction practice, whether relating to the design or installation of the water mains.

21. This Agreement relates to the final plan for a ____ lot and _____ unit subdivision or land development to be known as _____, prepared by _____, plan No. _____, dated _____, last revised _____. Any changes or revisions to the plan which in any way relate to the design, specifications, location or construction of the water mains must be approved by the Authority prior to recording.

22. The Authority does not represent or warrant that the Authority's Water System can provide sufficient flows to provide fire suppression service to or for the Project and Developer

expressly acknowledges and agrees that the Authority is not required to provide fire suppression service as part of the Authority's Water System. Developer agrees that Developer shall be solely responsible for, and shall defend, indemnify and hold harmless, Authority and its officers, employees, agents, and servants (collectively "Indemnees") from any and all liability, loss or damage, including attorneys' fees and costs of investigation and defense, as a result of claims or causes of action, demands, or costs against the Indemnees which arise from or relate in any manner to the inability of the Authority's Water System to provide fire suppression service to or for the Project, or any portion thereof.

23. For the purpose of this Agreement any reference to "water mains" shall include water lines, fittings, valves, meters, hydrants and related accessories and appurtenances.

24. This Agreement shall not be modified except by the mutual written consent of the parties hereto.

25. This Agreement shall bind and inure to the benefit of the respective heirs, personal representatives, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties have caused these presents to be duly executed the day and year first above written.

WARWICK TOWNSHIP MUNICIPAL
AUTHORITY

ATTEST: _____
(Assistant) Secretary

By: _____
(Vice) Chairman

[AUTHORITY SEAL]

(Individual Developer)

_____(SEAL)
(Signature of Individual)

Witness:

Trading and doing business as:

(Partnership Developer*)

(Name of Partnership)

Witness:

By: _____(Seal)
Partner

By: _____(Seal)
Partner

By: _____(Seal)
Partner

*All partners must sign

(Corporation Developer)

(Name of Corporation)

ATTEST:

By: _____
(Assistant) Secretary

By: _____
(Vice) President

[CORPORATE SEAL]

(Limited Liability Company Developer**)

(Name of Limited Liability Company)

Witnesses:

By: _____
Member

By: _____
Member

By: _____
Member

**All members must sign.