

SMITHFIELD SEWER AUTHORITY

RESOLUTION NO. 3-2008

A RESOLUTION OF SMITHFIELD SEWER AUTHORITY SETTING FORTH A POLICY FOR THE ALLOCATION OF CAPACITY TO USERS OR POTENTIAL USERS OF THE AUTHORITY'S SEWER SYSTEM AND ESTABLISHING RATES AND CHARGES FOR SUCH RESERVATION OF CAPACITY.

WHEREAS, Smithfield Sewer Authority owns and operates a wastewater collection, conveyance and treatment system to provide for the proper disposal of wastewater within certain areas of the Township of Smithfield; and

WHEREAS, this Authority owns and operates the Authority Treatment Plant which can serve certain areas of the Township and has additionally acquired capacity for conveyance to and treatment of wastewaters at the Borough Treatment Plant (as defined below); and

WHEREAS, the capacity which the Authority has purchased for the conveyance to and treatment of wastewater at the Borough Treatment Plant enables the Authority to provide the Township with additional sewer service; and

WHEREAS, the Authority has been requested in the past and will be requested in the future by persons who wish to connect to the Sewer System and become users of the Sewer System to reserve capacity; and

WHEREAS, the Authority recognizes that its Sewer System has a limited capacity for additional sewage loads and further recognizes that developers desiring to develop land and use the remaining and unused capacity need some reasonable assurance that sewer capacity for their proposed development or land use will be reserved for their needs before they make major long-term capital investments in their proposed development or use; and

WHEREAS, prior to the date of this Resolution certain properties have been developed using on-lot sewage disposals systems and such properties may require public sewer service in the future; and

WHEREAS, the Authority desires to insure that capacity in the Sewer System will be available if the existing on-lot sewage disposals system fail or failure of such systems becomes

imminent; and

WHEREAS, the Authority recognizes that reserving sewer service capacity for a particular developer will remove that capacity from that immediately available for usage, and being so reserved will result in a loss of income for the Authority; and

WHEREAS, the Authority recognizes approval for reservation of capacity should be granted on the basis of a uniform and fair allocation policy, especially if requests for capacity exceed available capacity.

NOW, THEREFORE, BE IT RESOLVED by the Board of the Smithfield Sewer Authority as follows:

ARTICLE I

Definitions and Word Usage

Section 101. In this Resolution the following rules of interpretation shall be used:

1. Words in the present tense may imply the future tense.
2. Words used in the singular may imply the plural.
3. The masculine gender includes the feminine and neuter genders.
4. The word "shall" is to be interpreted as mandatory; the word "may" as directory.
5. References to codes, ordinances, resolutions, plans, maps, governmental bodies, commissions or agencies or officials are to codes, ordinances, resolutions, plans, maps, governmental bodies, commissions or agencies or officials of the Authority or the Township as in effect or *in* office from time to time including amendments thereto or revisions or successors thereof, unless the text indicates that another reference is intended.

Section 102. Unless the context specifically and clearly indicates otherwise, the meaning of terms used in this Resolution shall be as follows:

AUTHORITIES ACT – The Municipality Authorities Act, 53 Pa. C.S. §5601 et seq.

AUTHORITY – Smithfield Sewer Authority, a municipality authority incorporated pursuant to the provisions of the Authorities Act.

AUTHORITY TREATMENT PLANT – The wastewater treatment plant owned and operated by the Authority.

BOROUGH TREATMENT PLANT – The wastewater treatment plant owned and operated

by East Stroudsburg Borough.

DEPARTMENT – The Pennsylvania Department of Environmental Protection or any agency successor thereto.

DEVELOPER – Any landowner, agent of such landowner or tenant with the permission of such landowner who makes or causes to make a subdivision of land or a land development. In this Resolution, the term developer shall also include any person to whom the developer has assigned all or a portion of rights under a reservation agreement, such as a builder or lot owner who makes application to connect to the Sewer System utilizing capacity reserved by the developer.

DEVELOPMENT – The creation of a subdivision or land development as such terms are defined in the Pennsylvania Municipalities Planning Code or any man-made change to improved or unimproved real estate, including but not limited to the erection of buildings, placement of mobile homes or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or the enlargement of a structure to add an additional residential unit or units or to expand a nonresidential unit or units in such a manner that the need for wastewater disposal shall be increased.

EDU – An equivalent dwelling unit; the amount of wastewater discharged into the Sewer System by an average dwelling in a day which is estimated to be 200 gallons per day within the Valhalla Sewer District and 218 gallons per day within the East Brown Street Sewer District and the Franklin Hill Sewer District. Nonresidential Units shall be assigned a number of EDUs based upon the estimated or actual wastewater discharged, and each 200 gallons or 218 gallons (depending on the Sewer Service District in which the subject property is located) per day of wastewater discharged or estimated to be discharged, together with the factor for inflow and infiltration, shall be considered one EDU, with such wastewater discharge being calculated using the consecutive 90 day period with the highest discharge. The number of gpd per EDU may be revised from time to time in accordance with recalculation of the tapping fee pursuant to a study performed in accordance with Act 57 of 2003.

NONRESIDENTIAL UNIT – Any improved property other than a residential unit. Nonresidential units shall include but not be limited to all improved properties used or proposed to be used for commercial, industrial or institutional purposes.

RATE RESOLUTION – The Resolution duly adopted by the Authority establishing rates and charges for the use of the Sewer System. The Rate Resolution establishes the minimum sewer rate for sewer service.

RESIDENTIAL UNIT – Any room, group of rooms, mobile home, building or other enclosure connected, directly or indirectly, to the Sewer System and occupied or intended for occupancy as a separate living quarters by a family or any other group of persons living together or by a person or persons living alone. Each residential unit shall be considered one EDU.

SEWER SERVICE DISTRICT – An area of the Township which is provided with sewer

service by means of a separate and distinct collection and conveyance system which conveys wastewater to either the Authority Treatment Plant or the Borough Treatment Plant. The Authority operates or will shortly operate three Sewer Service Districts: Valhalla Sewer Service District served by the Authority Treatment Plant; East Brown Street Sewer Service District served by the East Brown Street conveyance line and the Borough Treatment Plant; and Franklin Hill Sewer Service District served by the Franklin Hill conveyance line and the Borough Treatment Plant.

TOWNSHIP – The Township of Smithfield, Monroe County, Pennsylvania.

WASTEWATER – The liquid and water-carried domestic or industrial waste from residential units and nonresidential units, together with any inflow and/or infiltration that may be present, whether treated or untreated, which is contributed to the Sewer System.

WATER SYSTEM – The public water supply and distribution system providing public water service in portions of the Township.

ARTICLE II

Request for Reservation of Capacity

Section 201. Any developer in the Township who expects to require sewer service for a proposed development may request the Authority to reserve capacity in the Sewer System for the proposed development. This request shall be in writing to the Authority, shall be accompanied by an application fee of \$150.00 and an escrow deposit of \$1,500.00 from which the Authority may reimburse itself for expenses incurred in the review of plans and supporting information. The request shall include all of the following data:

1. Location of the land proposed for development, including the Sewer Service District in which the land is located.
2. Name, address, telephone number and (if applicable) state of incorporation of the applicant and, if different, name, address, telephone number and (if applicable) state of incorporation of the record owner of the land.
3. Proposed type of development, including a plan of the proposed development meeting at least the requirements for a sketch plan in the Township Subdivision and Land Development Ordinance.
4. Zoning district within which the land proposed for development is located and an identification of the provisions of the Zoning Ordinance which would allow development as shown on the sketch plan together with a letter from the Township Zoning Officer confirming that the proposed development is allowed by Township Zoning Ordinance and identifying all zoning approvals required.

5. The number and type of residential units and/or nonresidential units to be constructed and the estimated gallons per day of sanitary sewage flow and, if applicable, industrial wastewater flow, expected from each such residential unit and/or nonresidential unit.

6. Proposed point of connection to the Sewer System and proposed facilities required to provide sewer service including, but not limited to, whether pumping stations will be constructed, whether existing pumping stations will have to be improved, and whether the development may be served by gravity flows.

7. The proposed timetable for use of the Sewer System, including the number of EDUs which will be connected to the Sewer System each year during the buildout of the development. This schedule of connections is subject to the approval of the Authority.

8. Type of water service proposed, including whether the proposed development is within the service area of the Water System or, if not, the location of the nearest water main.

9. Identification of the criteria within Section 305 which the developer meets with supporting data such as copy of written decision approving subdivision or land development plan, Zoning Hearing Board decision, etc.

Section 202. The developer may submit a request for reservation of capacity at any time. The developer is encouraged to present the request for reservation of capacity as early as possible during the review of plans for subdivision or land development by the Township Planning Commission. The Board of the Authority shall establish a schedule of dates by which a request must be submitted to be considered at a meeting at which the Board will act upon all pending capacity reservation requests.

ARTICLE III

Assignment of Reserved Capacity

Section 301. The Authority may assign reserve capacity as it sees fit in the best interests of the health, safety and welfare of the Township and current Authority customers. In reserving capacity, the Authority shall be guided typically by the standards and criteria contained in this Article. It is recognized that each assignment of capacity must be renewed on a case by case basis and that changing conditions of the Sewer System or sewage flows over a period of time may result in the Authority not precisely following these guidelines. In recognition of these factors, it is hereby stated that the allocation guidelines in this Article are advisory and not mandatory.

Section 302. The Authority shall maintain a current tabulation of available estimated treatment plant hydraulic and solids handling capacity and a current tabulation of approximate existing loads and estimated or allocated loads for each Sewer Service District. Existing loads shall be determined by field measurements and laboratory testing wherever possible. Estimated allocated loads shall be determined by adding expected loads from:

1. Provisions for extension of existing Authority lines to serve residential units and nonresidential units existing on the effective date of this Resolution near the Sewer System that the Authority believes may need service in the foreseeable future or mandates by the Department that the Authority provide public sewer service to certain areas of the Township. The Authority hereby determines that in each Sewer Service District the following capacity within the Sewer System shall be reserved for such residential units and nonresidential units and/or Department mandates:

A. Valhalla Sewer Service District: 168 EDUs.

B. East Brown Street Sewer Service District: 22 EDUs.

C. Franklin Hill Sewer Service District : 30 EDUs.

2. The number of customers accessible to existing sewer collection lines but not yet physically connected.

3. Estimated amounts of infill development permissible along existing collection lines.

4. Proposed development along existing or proposed lines which has been approved but not yet installed.

5. Provision for septage or holding tank dumping which may be accepted at the wastewater treatment plants.

6. Capacity presently reserved for developers by existing reservation agreements.

Section 303. To the extent possible, the Authority shall maintain separate calculations for each separate Sewer Service District and, within each Sewer Service District, for each area which utilizes a different conveyance facility and/or pump station.

Section 304. The net capacity available for future allocation and reservation in a Sewer Service District shall be calculated by subtracting the existing loads and the allocated loads calculated in accordance with Sections 302 and 303 from the purchased or permitted capacity in the conveyance facilities and treatment plant serving the applicable Sewer Service District.

Section 305. If the Authority is faced with competing requests with limited capacity available in a certain Sewer Service District, the Authority may give preference to requests that involve:

1. A single lot abutting an existing sewer line which can be developed with a single family detached dwelling or which can be developed in accordance with a conditionally approved final land development plan with the only remaining conditions to be fulfilled are posting of financial security, execution of developer's agreement, and proof of sewage capacity.

2. Land for which there is a conditionally approved final plan with the only remaining conditions to be fulfilled are posting of financial security, execution of developer's agreement, and proof of sewage capacity. If the conditionally approved final plan is only a portion of an approved preliminary plan, only the portion of the tract which has received conditional final approval shall be considered as meeting this criteria, and only the number of EDUs to serve the use or lots on the conditionally approved final plan may be reserved under this Subsection.

3. Land for which there is a conditionally approved final plan with conditions to be fulfilling in addition to the posting of financial security, execution of developer's agreement, and proof of sewage capacity. If the conditionally approved final plan is only a portion of an approved preliminary plan, only the portion of the tract which has received conditional final approval shall be considered as meeting this criteria, and only the number of EDUs to serve the use or lots on the conditionally approved final plan may be reserved under this Subsection.

4. Land for which there is an approved preliminary plan and the developer has satisfied all conditions of preliminary approval.

5. Land for which there is an approved preliminary plan and the developer has not satisfied all conditions of preliminary approval.

6. Land for which a developer has obtained any necessary special exception or conditional use but for which the developer has not yet received approval of a preliminary plan.

7. Land that abuts existing Authority mains which have the capacity to convey the projected flows from the use identified in the application for a reservation of capacity.

Section 306. The Board of the Authority shall consider all requests for capacity in accordance with a schedule adopted by motion or resolution at a public meeting which shall establish dates on which the Authority will take action on requests for capacity and a deadline for submission of the information required by Section 201 of this Resolution to be considered at such meeting. The Authority shall consider all requests for capacity received by scheduled date using the criteria set forth in Article III of the Resolution including, but not limited to, the characteristics of the request, the capacity available in the Sewer System, and the guidelines set forth herein. Review, approval, and/or rejection of a request for reservation of capacity shall be made at a public meeting.

Section 307. If after considering all the competing requests as outlined above, the Authority finds that all or a portion of the competing requests for capacity in a Sewer Service District are of similar merit, the Authority shall allocate capacity within each Sewer Service District in the Sewer System as follows. The Authority shall first reserve capacity for the requests meeting the criteria of Section 305.1. If, after reserving capacity for all requests meeting the criteria in Section 305.1 the Authority has additional capacity which may be reserved, the Authority shall then reserve capacity for requests meeting the criteria in Section 305.2. If, after reserving the capacity for all requests meeting the criteria in both Sections 305.1 and 305.2 the Authority has additional capacity which

may be reserved, the Authority shall then reserve capacity for requests meeting the criteria in Section 305.3. The Authority shall continue in the same manner until all requests are addressed or until the Authority no longer has capacity available for reservation. If the Authority does not have sufficient capacity to fulfill the requests of all developers meeting the criteria of a given subsection of Section 305, the Authority shall assign the remaining capacity to requests meeting the criteria of the subsection of Section 302 on a pro rata basis.

Section 308. All reservations of capacity in the Sewer System shall be contingent upon the Authority having rights to continue to connect users to the Sewer System and (if necessary) to increase the sewer service capacity within another municipality or authority with which the Authority has contracted. Should the Department or the owner or operator of any public wastewater treatment plant or conveyance facility impose a moratorium upon new connections or impose any type of permit allocations or limitations, developers to whom capacity has been allocated shall have no rights against the Authority for any damages which may be suffered through an inability to connect to the Sewer System. If the Department or the owner or operator of any public wastewater treatment plant or conveyance facility imposes a moratorium upon new connections or impose any type of permit allocations or limitations, a developer shall have the right to extend the three year period for which capacity is reserved by the length of time such moratorium or limitation is in effect, and such developer shall not have to pay the quarterly reservation fee during such moratorium or permit limitation.

Section 309. Upon a tentative assignment of a capacity allocation, the Authority shall request that the developer requesting such capacity enter into a reservation agreement. If the developer is not able to enter into the reservation agreement within a reasonable period of time, the assigned allocation to that developer may be equitably redistributed to other developers that may not have received an allocation that filled their request.

Section 310. Capacity shall be reserved only for the land identified in the request for reservation of capacity and only upon the developer entering into a reservation agreement with the Authority. No reservation of capacity shall be finally made until such agreement has been executed by the developer and approved by the Authority. The reservation agreement shall be in substantially the form prescribed by this Resolution. No developer shall be able to transfer capacity reserved in the Sewer System apart from a transfer of the land for which the Sewer System capacity has been reserved.

Section 311. The reservation of capacity by the Authority does not constitute approval of the proposed development or a guarantee that such approvals will be forthcoming from any other governmental entity. All proposed development within the Township is required to comply with the provisions of the Township Zoning Ordinance and the Township Subdivision and Land Development Ordinance, and developers are solely responsible for obtaining any permits or approvals required under those ordinances. Developers are also required to comply with all other Ordinances of the Township and state and federal laws and regulations which may be applicable to the proposed development, and the reservation of sewer capacity by the Authority shall in no way relieve any developer from such responsibilities and shall in no way constitute any guarantee that such approval shall be forthcoming.

Section 312. The Authority shall not issue any letter or other notification to any governmental entity, including but not limited to the Smithfield Township Planning Commission or Smithfield Township Board of Supervisors, indicating that it will provide public sewer service to a proposed development until the developer has entered into a reservation agreement with the Authority.

ARTICLE IV

Reservation Agreement

Section 401. Prior to final approval of the reservation of Sewer System capacity for a development, the developer shall enter into a reservation agreement with the Authority.

Section 402. The reservation agreement shall detail the rights, responsibilities, conditions and limits placed upon the developer and the Authority with regard to the proposed allocation or reservation of Sewer System capacity.

Section 403. Reservation agreements shall address the following issues and shall provide at least the following conditions, provisions and stipulations:

1. The specifics of the capacity being reserved by the Authority and specifics as to the land parcel, or portion thereof, and the land use proposed to be served.
2. The limit of three years on the reservation of the capacity with the right to extend the reservation for an additional two years.
3. Provisions for the quarterly payment of reservation fees to the Authority in accordance with this Resolution and any amendments to this Resolution.
4. Reimbursement by the developer of the Authority's actual expenses incurred in the engineering review of the request for reservation and the engineering and legal review and preparation of the reservation agreement. This reimbursement may be deducted from any escrow funds which the developer posted at the time developer files the request for reservation of capacity.
5. Acknowledgment by all parties that reservation approval does not constitute or guarantee subdivision or land development approval required by the Township Subdivision and Land Development Ordinance or zoning approvals required under the Township Zoning Ordinance or any other approvals required by the Township or state or federal regulations.
6. Provision that if any federal or state governmental unit or agency, or any owner or operator of a wastewater treatment plant imposes a restriction on the Authority that would prohibit the Authority from fulfilling its obligation to a developer under the reservation agreement, then in that event the developer would be entitled to a one hundred (100%) percent suspension of all quarterly reservation charges to be paid under the terms of the

agreement on a pro rata basis for the flows for the EDUs of service that the Authority cannot provide and an extension of the three year maximum period for the reservation of sewer capacity for the length of any moratorium. Such suspension shall be allowed only for quarterly reservation charges due and payable after the date of receipt of notice of such restriction by the Authority. This suspension of payment of reservation fees and extension of the three year limit on reservation of capacity shall be the only liability the Authority shall bear as a result of the lack of available capacity.

7. Provision that the rights and responsibilities of the agreement may be transferred to another person only if such person's proposed capacity requirement, land parcel, and land use are identical to those of the original developer.

8. Provisions requiring that all parties recognize that the reimbursement of Authority expenses and the payment of the reservation charge required by this Resolution are not tapping fees, connection fees, or sewer rental charges as may be required under other Authority resolutions but are separate contractual payments made by a developer to the Authority solely for the purpose of reserving capacity within the Sewer System.

9. Provisions for the method of payment of charges, termination of charges upon connection, and stipulations and conditions of late charges and defaults, including penalties for late payment and forfeiture of reserved Sewer System capacity for failure to pay a reservation fee within 90 days after the due date of such reservation fee.

10. Provisions requiring a developer to become a customer of the Authority if the developer has not used the reserved Sewer System capacity within five years from the date of execution of the reservation agreement and the developer desires to continue to have capacity in the Sewer System available for the developer's land.

11. Provisions requiring that the developer shall hold harmless the Authority from any liability or costs incurred by the developer and all persons who may claim rights under or through the developer.

12. Provisions outlining any proposed dedication of land for a wastewater treatment plant or pumping station, any proposed contributions for the development of or improvement of a wastewater treatment plant or pumping station, and any other capital contributions which may be made by the developer. Such provisions shall address the effect of the contribution upon the reservation of capacity and whether such capacity is to be reserved in the Authority's existing Sewer System or whether the capacity will be reserved in the capacity anticipated to be developed by the Authority as a result of the dedication of land for a wastewater treatment plant or the capital contribution.

13. Other provisions deemed proper and necessary by the Authority.

ARTICLE V

Reservation Charges

Section 501. The Authority hereby sets uniform charges for the reservation of sewer service capacity in the Sewer System as sixty (60%) percent of the average sewer rate established by the Rate Resolution for one residential unit which is in effect at the time the quarterly reservation fee is due and payable for each EDU for which Sewer System capacity is reserved. Sewer rates may be increased by the Authority during the term of this Reservation Agreement.

Section 502. Reservation fees shall accrue commencing on the date the Authority executes a reservation agreement, and the reservation fee for the first quarter shall be appropriately prorated. Reservation fees shall be payable in advance for the calendar quarters commencing January 1, April 1, July 1, and October 1 on or before the ninth day of the month in which the quarter commences. The Authority shall bill the developer for the reservation fee. However, failure to receive a bill from the Authority shall not constitute grounds from non-payment or late payment of any reservation fee. Reservation fees which have not been paid within thirty (30) days of such due date shall be subject to a ten (10%) percent penalty and interest at the rate of five (5%) percent per quarter, compounded quarterly, after eighty-one (81) days. If a reservation fee remains unpaid for more than 90 days, the reservation of capacity in the Sewer System shall become null and void and the Authority may allocate such Sewer System capacity to another developer. The Authority shall have no obligation to refund any reservation fees paid by a developer who has allowed the reservation of Sewer System capacity to lapse through failure to promptly pay quarterly reservation fees.

Section 503. The Authority shall have no obligation to return any reservations fees paid by a developer if the developer abandons the proposed development, redesigns the proposed development to reduce the number of EDUs of Sewer System capacity required, or otherwise fails to use the Sewer System capacity the developer has reserved.

ARTICLE VI

Procedures Subsequent to Reservation of Capacity

Section 601. The developer, upon determining that capacity is available for him for immediate construction or is reserved for him for future construction, may proceed with obtaining all necessary approvals for the construction of the proposed development. The developer shall provide the Authority with proof that all required approvals have been obtained in accordance with the Authority's regulations and policies.

Section 602. The developer shall construct extensions of the Sewer System in accordance with the Authority's regulations and shall enter into an agreement with the Authority concerning the construction of all extensions of the Sewer System. Developers shall be required to provide financial security to guarantee the completion of all extensions of the Sewer System in accordance with the Authority policies and resolutions and with applicable Township, state and federal laws and regulations. Dedication of any extension of the Sewer System to the Authority shall be made in

accordance with the Authority's regulations, and the execution of any Reservation Agreement shall not require the Authority to accept dedication of any facilities constructed by a developer. Connections to the Sewer System shall be made in accordance with the Authority's policies and regulations, and all applicable tapping and connection fees shall be paid prior to any connection.

Section 603. Capacity in the Sewer System shall be reserved for no more than three years. If a developer has not connected residential units and/or nonresidential units to the Sewer System which use all of the EDUs for which the developer has reserved capacity within three years from the date of execution of the reservation agreement, the reservation of capacity in the Sewer System shall lapse.

1. Developer may, if developer desires, make application for not more than one (1) extension of the reservation of capacity in the Sewer System for a period of two years. Developer shall pay a fee of \$150.00 per EDU as an application fee for the right to extend the reservation of capacity in the Sewer System. Developer shall include all of the following information in the request for the extension of the reservation of capacity in the Sewer System:

A. Identification of any Zoning Ordinance approvals requested, including special exception or conditional use approval, and the date developer obtained such approvals. A copy of any written decision shall be provided to the Authority.

B. A statement of whether any Zoning Ordinance approval was appealed. If there was an appeal, identification of the person or entity which filed the appeal and the status of the appeal.

C. Identification of the date of submission of the preliminary plan for the Development for which capacity has been reserved to the Township and the status of processing of the preliminary plan. If the Board of Supervisors has approved the preliminary plan, provide a copy of the written decision.

D. Identification of the number of EDUs required by the submitted preliminary plan and, if there is a discrepancy in the amount of EDUs required by the preliminary plan and the number of EDUs for which capacity has been reserved, an explanation of the discrepancy.

E. Identification of the date of submission of any final plan or final plans for the Development for which capacity has been reserved to the Township and the status of processing of each such final plan. If the Board of Supervisors has approved any final plan, provide a copy of the written decision and, if applicable, the recording reference.

F. Identification of the number of EDUs for which capacity was reserved which have already been connected to the Sewer System and the number of EDUs for which developer desires to extend the reservation of capacity in the Sewer

System.

2. The Authority shall not grant any extension of a reservation of capacity in the Sewer System unless developer has proceeded with reasonable speed in obtaining approvals necessary to enable construction of the Development for which capacity has been reserved.

3. If developer has not completed the Development for which capacity has been reserved after the one authorized extension of the reservation of capacity in the Sewer System, developer may request that the remaining lots or units of occupancy in the Development which have not been completed be considered connected to the Sewer System and that developer become a customer of the Authority for such lots or units of occupancy. Developer shall submit a request that the remaining lots or units of occupancy in the Development which have not been completed be considered connected to the Sewer System and that developer become a customer of the Authority prior to the lapse of the reservation of capacity in the Sewer System. If developer desires to become a customer of the Authority, developer shall comply with all of the following:

A. Developer shall specify the lot or lots which shall be considered connected to the Sewer System and the number of EDUs applicable to each lot.

B. Developer shall pay a tapping fee for each EDU for which developer desires to be considered connected to the Sewer System prior to the date upon which the reservation of capacity will lapse. The tapping fee shall be the tapping fee in effect on the date developer pays the tapping fee.

C. Developer shall pay the full amount of the minimum sewer rate for each EDU which developer requests be considered as connected to the Sewer System and a customer of the Authority. If developer fails to promptly pay such sewer rates, the Authority shall have all rights to secure payment through filing of a municipal lien and to take appropriate legal action to collect past due sewer rates, penalties and interest in accordance with the then-current Rate Resolution.

Section 604. A developer may at any time, upon written application to the Authority, cancel all or any portion of the capacity reserved for the developer's tract. If the developer has obtained approval of a planning module for land development or a preliminary subdivision or land development plan proposing to use such capacity, the developer shall present evidence that the developer has taken all necessary action to void such approvals with the application to cancel the reservation of capacity. Any cancellation of capacity shall become effective as of the beginning of the next full month following cancellation, and a prorated portion of the prepaid reservation fee shall be returned to the developer.

ARTICLE VII

Transfer of Reserved Capacity

Section 701. A developer may transfer capacity which has been reserved for a tract of land to a purchaser of all or a portion of such tract.

1. If developer transfers the capacity to the landowner of an individual lot created from the tract or a builder of a structure on a lot created from the tract, the developer shall provide written notice to the Authority that developer has transferred such capacity before the Authority will issue a connect permit for such structure.

2. If developer desires to transfer more than a single EDU of capacity, the developer and the purchasing developer shall make application for such transfer to the Authority and shall pay the Authority's administrative costs to process the application for the transfer.

A. The Authority will not approve a request to transfer capacity if the selling developer is in violation of this Resolution or if the selling developer is in default of the reservation agreement.

B. The purchasing developer shall enter into a reservation agreement with the Authority and shall agree to be bound by all terms and conditions of this Resolution and the reservation agreement between the Authority and the selling developer.

Section 702. No capacity in the Sewer System may be transferred separately from the land for which the Authority allocated such capacity.

ARTICLE VIII

Additional Provisions

Section 801. The provisions of this Resolution are severable, and if any section, sentence, clause, part or provision hereof shall be held to be illegal, invalid or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect or impair the remaining sections, sentences, clauses, parts or provisions of this Resolution. It is hereby declared to be the intent of the Board that this Resolution would have been adopted if such illegal, invalid or unconstitutional section, sentence, clause, part or provision had not been included herein.

Section 802. Nothing in this Resolution shall be construed to affect any suit or proceeding pending in any court, or any rights or liability incurred, or any permit issued or approval granted, or any cause or causes of action existing prior to the adoption of this Resolution.

Section 803. This Resolution shall become effective and be in force immediately.

DULY RESOLVED this 11th day of August, 2008, by the Board of Smithfield Sewer Authority, in lawful session duly assembled.

SMITHFIELD SEWER AUTHORITY

Attest:


[Signature]
(Assistant) Secretary

By:

[Signature]
(Vice) Chairman

[AUTHORITY SEAL]

SMITHFIELD SEWER AUTHORITY
RR 5, Box 5229
East Stroudsburg, Pennsylvania 18301

APPLICATION FOR RESERVATION OF SEWER CAPACITY

Information relating to the Applicant:

Name of Applicant: _____

Address of Applicant: _____

Telephone Number of Applicant: _____

Fax Number of Applicant: _____

E-mail of Applicant: _____

If the applicant is not a natural person, specify the legal status of the applicant and the state of incorporation or formation if a corporation, limited liability company, limited partnership, etc.

If a corporation, name of president: _____

If a limited liability company, name of manager: _____

If a limited partnership, name of general partner: _____

Information relating to the subject property:

Address of subject property: _____

Tax Account Number of subject property: _____

Sewer Service District of subject property: _____

Zoning District of subject property: _____

Attach a copy of the deed for the subject property.

If the applicant is not the record owner of the subject property complete the following:

Name of Property Owner: _____

Address of Property Owner: _____

Telephone Number of Property Owner: _____

Fax Number of Property Owner: _____

E-mail of Property Owner: _____

Information relating to the proposed development of the subject property:

Description of the proposed development of the subject property: _____

Attach a copy of a sketch plan of the proposed development meeting the requirements of the Subdivision and Land Development Ordinance.

Identify all provisions of the Zoning Ordinance which would allow development as shown on the sketch plan and all zoning approvals required.

Attach a letter from the Zoning Officer confirming that the proposed development is permitted under the Zoning Ordinance and outlining the Zoning Ordinance approvals necessary.

Information relating to requested sewer service:

Number and type of residential units proposed: _____

Number and type of nonresidential units proposed: _____

Estimated gpd of sanitary sewage flow per residential unit: _____
Estimated gpd of sanitary sewage flow from all residential units: _____
Estimated gpd of sanitary sewage flow per nonresidential unit: _____
Estimated gpd of sanitary sewage flow from all nonresidential units: _____
Estimated gpd of industrial wastewater flow per nonresidential unit: _____
Estimated gpd of industrial wastewater flow from all nonresidential units: _____

Identify proposed point of connection to the Sewer System and proposed facilities required to provide sewer service including, but not limited to, whether pumping stations will be constructed, whether existing pumping stations will have to be improved, and whether the development may be served by gravity flows: _____

Identify the proposed timetable for use of the Sewer System, including the number of EDUs which will be connected to the Sewer System each year during the buildout of the development:

Year	Number of EDUs to be connected
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Type of water service proposed, including whether the proposed development is within the service area of a public water service provider or, if not, the location of the nearest water main:

Identify below the criteria within Section 305 of Resolution No. 3-2008 which the developer meets with supporting data such as copy of written decision approving subdivision or land development plan, Zoning Hearing Board decision, etc.

This application is not complete until the fee established for such applications by Authority Resolution has been paid and all information required by this application has been furnished. In making this application, the applicant agrees to pay all fees required by the fee schedule adopted by the Authority. **This application is not complete until four (4) copies of this form and all supporting data have been provided to the Authority.**

By signing this application, I, the applicant, do hereby verify that I have reviewed and understand the statements made in this application and that all such statements are true and correct to the best of my knowledge, information and belief. These statements are being given by me to induce official action on the part of the Smithfield Sewer Authority Board, and I understand that any false statements made herein are being made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Date: _____

(Signature of Applicant; show capacity if Applicant is a partnership, corporation or limited liability company)

Print name

SEWER CAPACITY RESERVATION AGREEMENT

THIS AGREEMENT made as of the _____ day of _____, 20____, by and between SMITHFIELD SEWER AUTHORITY, a municipal authority organized and existing under the laws of the Commonwealth of Pennsylvania with offices at RR 5, Box 5229, East Stroudsburg, Pennsylvania 18301, hereinafter referred to as the "Authority"; and _____, with a mailing address of _____ hereinafter referred to as the "Developer".

BACKGROUND:

Wastewater from properties served by the Authority's public wastewater collection and conveyance system is conveyed to the Authority's Wastewater Treatment Plant or to the East Stroudsburg Borough Wastewater Treatment Plant (the "Treatment Plants").

The capacity of the Treatment Plants and the conveyance facilities is limited. The Authority does not desire to purchase and/or construct wastewater treatment capacity and wastewater conveyance capacity beyond that required to reasonably serve landowners who desire to connect to the Sewer System. The Authority therefore desires to insure that wastewater treatment capacity and wastewater conveyance capacity in the Sewer System will be used or that developers who have indicated a desire to obtain such capacity will pay for capacity within the reasonably near future.

Developer owns or has an option to acquire land located at _____ within Smithfield Township, Monroe County, Pennsylvania, and described in Exhibit "A" attached hereto and incorporated herein (the "Land"), and further identified as Monroe County Tax Parcel No. _____ which can be served by the Sewer System. The Land is located within the _____ Sewer Service District. Developer proposes to develop the Land as _____ and has requested that the Authority reserve _____ EDUs of capacity in the _____ Sewer Service District for Developer's proposed development of the Land.

In order to reserve capacity in the Sewer System and in order to insure that the Authority will receive income sufficient to defray the amortization of debt which the Authority has incurred to acquire capacity, Developer agrees that it shall pay reservation fees in accordance with the understandings set forth in this Agreement. Developer also agrees that the wastewater facilities it shall construct to serve its development (the "Development Sewer Extension") shall be installed in accordance with and governed by this Agreement and by all applicable Authority resolutions, rules

and regulations.

NOW, THEREFORE, with the foregoing background incorporated herein by reference and made a substantive part hereof, and in consideration of the promises, terms and conditions of this Agreement, and intending to be legally bound hereby, the parties agree as follows:

1. The foregoing background recitals are incorporated into and made a substantive part of this Agreement.

2. The Authority shall reserve the amount of sewage capacity in the Sewer System for the Land which Developer has requested, being _____ EDUs within the _____ Sewer Service District (hereinafter referred to as the "Reserved Capacity"). Except as provided in subparagraph (A) hereof, upon execution of this Agreement and payment of the charges set forth herein by Developer, the Reserved Capacity shall remain reserved for three (3) years from the date of this Agreement.

A. If, after execution of this Agreement, Developer receives preliminary or final subdivision and/or land development approval for its proposed use of the Land which would permit less intensive development than that for which capacity was requested, the Developer shall so notify the Authority.

B. Any EDUs which are not required by the development of the Land as approved by the Smithfield Township Board of Supervisors shall be available for reallocation. Upon notification by the Developer of the approval of a subdivision or land development plan for the Land which permits a less intensive development, the Developer shall no longer be required to pay the portion of the Reservation Fee attributable to such EDUs.

C. The Authority shall have no obligation to return to Developer any Reservation Fees which are attributable to those EDUs relinquished and which were paid by Developer prior to obtaining such subdivision and/or land development approval for the Land because the Authority during such time period reserved such capacity which could have been allocated to another user or potential user.

3. The reservation fee shall be sixty (60%) percent of the average sewer bill for one residential unit which is in effect at the time the quarterly reservation fee is due and payable for each EDU for which sewer capacity is reserved. The present minimum quarterly sewer rate for one residential unit is \$162.50, and the present average sewer bill for one residential unit per quarter is \$162.50, and the reservation fee for the Reserved Capacity on the date of this Agreement is \$97.50 per EDU of Reserved Capacity.

4. Reservation fees shall accrue commencing on the date of Agreement, and the reservation fee for the first quarter shall be appropriately prorated. Reservation fees shall be payable in advance for the calendar quarters commencing January 1, April 1, July 1, and October 1 on or before the ninth day of the month in which the quarter commences. The Authority shall bill the Developer

for the reservation fee. However, failure to receive a bill from the Authority shall not constitute grounds from nonpayment or late payment of any reservation fee. Reservation fees which have not been paid within thirty (30) days of such due date shall be subject to a ten (10%) percent penalty and interest at the rate of five (5%) percent per quarter, compounded quarterly, after eighty-one (81) days.

5. Developer acknowledges that the reimbursement of Authority expenses and the payment of the Reservation Fees required by this Reservation Agreement and the Authority's Resolution No. 3-2008 are not tapping fees, connection fees, or sewer rates as may be required under other Authority resolutions but are separate contractual payments made by Developer to the Authority solely for the purpose of reserving capacity within the Sewer System.

6. In the event that Developer fails to make full payment to the Authority of all sums due and owing, including Reservation Fees, late charges and interest, within ten (10) days after written notice is mailed to Developer at _____, Developer shall be considered in default of this Agreement. If Developer is in default of this Agreement, all fees and charges which have been paid to the Authority shall be retained by the Authority, and Developer shall have no claim against the Authority for the return of such fees and charges. All Reserved Capacity shall immediately be released and shall become available for reallocation by the Authority to other developers, and Developer shall not be responsible for any future payments of reservation fees.

7. Developer agrees to secure permits from the Authority and to pay the full appropriate tapping, connection and customer facilities fees as established by the Authority from time to time prior to obtaining connection permits to authorize connecting dwelling or nonresidential structures to the Sewer System. The amount of the tapping, connection and customer facilities fees shall be the amount of the tapping, connection and customer facilities fees as established by resolution of the Authority on the date that the Developer or its assign pays the tapping, connection and customer facilities fee for that EDU. Developer acknowledges that Developer shall pay both the capacity and collection components of the Authority's tapping fee without any offset, deduction, credit or refund.

8. This Agreement shall constitute a reservation of capacity in the Sewer System for Developer to the extent that the Authority shall have the right to continue to connect new users to the Sewer System. If the Department of Environmental Protection ("DEP") or the owner or operator of any public wastewater treatment plant or conveyance facility imposes a moratorium upon new connections or imposes any type of permit allocations or limitations, Developer shall have the right to extend the three (3) year period for which capacity is reserved by the length of time such moratorium or limitation is in effect, and Developer shall not have to pay the quarterly reservation fee during such moratorium or permit limitation. Developer shall not be entitled to any other relief. Developer expressly acknowledges that Developer shall have no claim against or right to recover

damages from the Authority if the Authority is unable to provide sewer service for the amount of EDUs for which Developer has reserved capacity.

9. Developer shall not have the right to transfer any portion of the Reserved Capacity to any other person unless Developer also transfer the Land to such person. Developer may transfer a portion of the Land together with such portion of the Reserved Capacity to serve that portion of the Land being transferred. The person purchasing the Reserved Capacity shall enter into an agreement with the Authority and shall agree to be bound by all provisions of this Agreement and all applicable Authority Resolutions.

10. Developer may request that the Authority extend the reservation of capacity for a period not to exceed two (2) additional years. If Developer desires that the Authority extend the reservation of capacity beyond the three (3) year term of this Agreement, Developer shall make application to the Authority in accordance with the provisions of Resolution No. 3-2008 shall pay any application fee imposed by the Authority, and shall provide evidence that Developer has met the criteria in Resolution No. 3-2008 for an extension of the reservation of capacity in the Sewer System. Developer shall make such application not less than 60 days prior to the expiration of the three year term of this Agreement. If the Authority grants Developer's request for an extension of the reservation of capacity in the Sewer System, Developer shall enter into an amendment to this Agreement setting forth the date on which the reservation of capacity shall expire.

11. Developer agrees that if the Developer has not become a customer of the Authority for all EDUs of the Reserved Capacity at the end of the term of this Agreement (or, if extended, at the end of such extension), the Authority shall no longer reserve capacity in the Sewer System for the Land. Developer may, at Developer's option, become a customer of the Sewer System by notifying the Authority at least 60 days prior to the expiration of the reservation of capacity in the Sewer System that Developer desires to become a customer of the Sewer System. If Developer desires to become a customer of the Authority at the expiration of the reservation of capacity in the Sewer System, Developer agrees that Developer shall comply with all of the following:

A. Developer shall specify the lot or lots which shall be considered connected to the Sewer System and the number of EDUs applicable to each lot.

B. Developer shall pay a tapping fee for each EDU for which Developer desires to be considered as connected to the Sewer System prior to the date upon which the reservation of capacity will lapse. The tapping fee shall be the tapping fee in effect on the date Developer pays the tapping fee.

C. Developer shall pay the full amount of the minimum sewer rate for each EDU which Developer requests be considered as connected to the Sewer System and a customer of the Authority. If Developer fails to promptly pay such sewer rates, the Authority shall have all rights to secure payment through filing of a municipal lien and to take appropriate

legal action to collect past due sewer rates, penalties and interest in accordance with the then-current Rate Resolution and other applicable laws and regulations.

12. Developer shall reimburse the Authority for all of the Authority's actual expenses incurred in the engineering review of the request for reservation and the engineering and legal review and preparation of this Agreement. This reimbursement may be deducted from any escrow funds which the Developer posted at the time Developer filed the request for reservation of capacity.

13. Developer shall install the Development Sewer Extension with its own forces; provided, however, the work shall not be undertaken intermittently, but shall be rapidly prosecuted to completion once commenced.

14. Developer or its contractors shall obtain and maintain in force liability insurance at all times during the installation of the Development Sewer Extension. The minimum limits and coverages of such insurance shall be approved by the Authority's engineer, and any policy or policies of insurance shall name the Authority, its agents, servants and employees, as additional insureds. Developer shall indemnify and hold the Authority and its agents, servants, employees and officials harmless from any and all liability, claims or expenses arising from damages relating to the construction of the Development Sewer Extension.

15. All construction of sewer facilities by Developer shall be completed in strict conformity to the Authority's policies, rules, regulations, standards and specifications in effect at the later of: (i) the time Developer receives preliminary plan approval for its respective developments, or (ii) the date of this Agreement. Provided, however, in the event that an approved preliminary plan of Developer should expire, all construction of sewer facilities by Developer shall be completed in strict conformity to the Authority's policies, rules, regulations, standards and specifications in effect at the time any subsequently filed preliminary plan is approved. A copy of the Authority's current policies, rules, regulations, standards and specifications are on file in the office of the Authority located at the intersection of Route 209 and Buttermilk Falls Road, East Stroudsburg, Pennsylvania and are incorporated herein by reference thereto.

16. Developer agrees to furnish to the Authority its complete and accurate development plans and right-of-way surveys to show the following items: (a) location of buildings, roads, 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 Development Sewer Extension.

17. Upon the completion of the installation of the Development Sewer Extension, the Authority's engineer will, at Developer's expense, finalize all contract drawings to record the Development Sewer Extension as actually constructed (unless Developer's engineers agree to prepare such "as constructed" drawings), make a final inspection, prepare the necessary closing documents,

and, if the work is satisfactory, recommend that the Authority accept the Development Sewer Extension to serve the completed Development.

18. Developer shall dedicate the Development Sewer Extension to serve the Development to the Authority without payment of any consideration therefor, and the Authority agrees to accept the Development Sewer Extension upon completion, provided:

A. The location, plans and specifications for the Development Sewer Extension have been approved or prepared by the Authority Engineer prior to the start of construction;

B. Approval of grades and locations has been obtained from all appropriate governmental bodies;

C. The Development Sewer Extension has been constructed in accordance with the aforesaid plans and specifications which were approved by the Authority Engineer prior to the beginning of construction thereof;

D. Inspection by the Authority 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. The Development Sewer Extension is in use at the time the facilities are accepted by the Authority;

F. Developer has obtained or negotiated for all rights-of-way and easements for the Development Sewer Extension and has transferred or have arranged for direct transfer from third parties of such rights-of-way and easements to the Authority in a form acceptable to the Authority; and

G. Developer has complied with all the terms of this Agreement.

Developer agrees that the offer to dedicate the Development Sewer Extension shall be enforceable by the Authority in an action in equity. 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, unless such refusal to dedicate results from a breach by the Authority of its duties and obligations under this Agreement. Developer shall not be permitted to use and/or connect to the Sewer System if Developer is in violation of this Agreement.

19. In the event Developer or its successors or assigns should file a voluntary petition in bankruptcy or be adjudicated a bankrupt or insolvent or should file any petition or answer seeking any reorganization, arrangement, recapitalization, readjustment, liquidation or dissolution or similar relief under any present or future bankruptcy law, or should seek or consent to appointment of any trustee, receiver, liquidator of all or any part of its property, or should make any assignment for the benefit of creditors, the parties hereby agree that the easements and Development Sewer Extension shall automatically and irrevocably be deemed dedicated by Developer to the Authority and the

Authority shall be deemed to have accepted said easements and Development Sewer Extension as part of the Sewer System. In such event it is agreed that the Authority was the beneficial owner of such assets from the date they were acquired or constructed by Developer and that Developer had no financial interest in such assets.

20. Prior to the commencement of any construction or the recording of any plans relating to the Development, Developer shall furnish Authority with an improvement guarantee in the form and the amount required by the Pennsylvania Municipalities Planning Code and the Municipality Authorities Act. Such improvement guarantee must be approved by the Authority's Solicitor and Engineer. Developer's improvement guarantee shall not be released until the Development Sewer Extension 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.

21. 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 Development Sewer Extension. All portions of a Development Sewer Extension 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 Development Sewer Extension 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 the Development Sewer Extension.

22. Prior to and as a condition precedent to Authority's final acceptance of a Development Sewer Extension, Developer shall transfer to the Authority full and absolute title, free and clear of all liens and encumbrances, to the Development Sewer Extension 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 Development Sewer Extension, all of which shall be subject to the approval of the Authority's Solicitor.

23. In further consideration of the Authority's undertakings herein, subject to the Authority's performance of its obligations under this Agreement, Developer hereby offers to dedicate to the Authority, free of all liens and encumbrances, all necessary rights-of-way and easements (as reasonably determined by the Authority's engineer), which shall include rights-of-way within all streets whether or not such streets are or will be offered for dedication for the reconstruction, enlargement, repair, inspection, maintenance, removal, relocation and extension of the Development Sewer Extension on, upon, under and through Developer's land. Developer shall furnish Authority with legal descriptions for said rights-of-way, 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 is good and market-

able and free of all liens and encumbrances.

24. It is understood by the parties hereto that title to the aforementioned easements and Development Sewer Extension shall be and remain in the Developer until such time as the Authority accepts dedication of the Development Sewer Extension and that the Developer may not connect to the Authority's Sewer System until permission to do so has been obtained from an authorized representative of the Authority.

25. Developer agrees that upon Authority's acceptance of the Development Sewer Extension, title to said mains, together with all accessories and appurtenances thereto, shall be and remain at all times in the Authority, its successors and assigns.

26. Developer acknowledges that this Agreement does not constitute approval of any of the proposed Development or a guarantee that such approvals will be forthcoming from the Authority, Smithfield Township, Smithfield Township Board of Supervisors, or any other governmental entity. All proposed developments within the Township are required to comply with the provisions of the Smithfield Township Zoning Ordinance, the Smithfield Township Subdivision and Land Development Ordinance, and the Smithfield Township Storm Water Management Ordinance, and Developer is solely responsible for obtaining any permits or approvals required under those ordinances. Developer is also required to comply with all other applicable ordinances of the Township and state and federal laws and regulations which may be applicable to the proposed development, and this Agreement shall in no way relieve Developer from such responsibilities and shall in no way constitute any guarantee that such approval shall be forthcoming.

27. Developer hereby acknowledges that the Authority is authorized to allow or make connections to the Development Sewer Extension at any time.

28. Developer agrees to give the Authority five (5) days' written notice of Developer's intention to begin construction of the Development Sewer Extension so that the construction may be properly inspected by the Authority. Any work which has begun 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 Development Sewer Extension is 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 Development Sewer Extension 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 current standard construction and material specifications for Sewer System.

29. Developer shall hire, employ, and pay its own contractor(s) to construct the Development Sewer Extension according to the approved plans and specifications, and the Authority, its servants, agents, employees and/or officials 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, employees and officials, 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 Development Sewer Extension. 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, employees and/or officials, including its engineer, shall have no responsibility therefor.

30. Developer agrees to indemnify and hold harmless the Authority, its engineer, servants, agents, employees and/or officials 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 by Developer, or by Developer's contractors, agents, servants and/or employees, of this Agreement, a breach of the rules and regulations of the DEP, the standards of the Pennsylvania Department of Labor and Industry or the Federal Occupational Safety and Health Administration, or from Developers' breach of any other statute, regulation, resolution, ordinance or accepted construction practice, or from the negligence, recklessness or intentional acts of the Developer, and Developer's agents, servants, contractors and/or employees, whether relating to the design or installation of the Development Sewer Extension.

31. This Agreement shall not grant to Developer any legal title or equitable interest in any specific physical property of the Authority, nor shall it create any relationship between the parties other than that of owner/customer of the Sewer System.

32. Developer waives any claim or cause of action that the provisions of this Agreement are in violation of or contrary to Act 203 of 1990 or Act 209 of 1990 or Act 57 of 2003 or any provision of the Authorities Act now or as the Authorities Act may be amended. Developer releases the Authority from any payments or reimbursements to Developer, and Developer agrees that Developer shall make no requests for refunds of any reservation fees or other fees paid pursuant to this Agreement.

33. The provisions of Resolution No. 3-2008 of the Authority are incorporated herein by reference, and Developer specifically agrees to be bound by each and every provision of Resolution No. 3-2008.

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

35. This Agreement shall bind and inure to the benefit of the respective heirs, personal representatives, successors and assigns of the parties hereto. Notwithstanding the foregoing, any Developer who transfers all or a portion of the capacity reserved in the Sewer System shall remain

personally liable for all sums to be paid to the Authority under this Agreement prior to the date of the transfer.

36. For the purpose of this Agreement, the masculine gender shall be deemed to include the feminine and the neuter, and vice versa. Unless the context otherwise requires, the use of the singular and plural shall be interchangeable.

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

SMITHFIELD SEWER AUTHORITY

Attest: _____
(Assistant) Secretary

By: _____
(Vice) Chairman

[AUTHORITY SEAL]

(Individual or Husband and Wife Developer)

Witness:

_____ (SEAL)
(Signature of Individual)

_____ (SEAL)
(Signature of Spouse)

Trading and doing business as:

(Partnership Developer)*

Witness:

_____ (Name of Partnership)

_____ Partner

_____ Partner

_____ Partner

*All partners must sign this Agreement. Attach additional signature lines if necessary.

(Corporation Developer)

ATTEST:

(Name of Corporation)

By: _____
(Assistant) Secretary

By: _____
(Vice) President

[CORPORATE SEAL]

(Limited Liability Company Developer)**

Witnesses:

(Name of Limited Liability Company)

By: _____
Member

By: _____
Member

By: _____
Member

**All members must sign