

State of North Carolina

County of Union

STANDARD WATER AND SEWER SERVICES EXTENSION AGREEMENT

This Agreement is made and entered into this the _____ day of _____, 20____, by and between Union County, North Carolina, by and through its department, Union County Public Works (“UCPW” or “Union County”), _____, (“Developer”) and _____, (“Owner”).

WHEREAS, Owner is the record title owner of the real property described in Exhibit A, attached hereto, and incorporated herein by reference (the “Development Phase”), and

WHEREAS, Developer desires to develop the Development Phase by erecting thereon improvements for commercial, industrial, institutional and/or residential purposes which will require water and/or sewer service in accordance with engineered drawings, signed and sealed by the Developer’s Engineer of Record, and

WHEREAS, such drawings as are necessary for the Development Phase Project, including drawings for off-site improvements identified in the Conditional Sketch Plan Comment Letter or as otherwise required by UCPW, (the “Development Phase Plans”) have been provided to UCPW in addition to the Water and Sewer Plans for the Development, and such Development Phase Plans, incorporated herein by reference, have been approved by UCPW on the _____ day of _____, 201____ and are on file at the offices of UCPW, and

WHEREAS, Developer desires for UCPW to provide water and/or sewer service to the Development Phase, when the Development Phase Project is completed; and

WHEREAS, UCPW has submitted the Water and Sewer Plans to the North Carolina Department of Environment and Natural Resources (“NCDENR”), which has issued construction permits, identified by Permit # (s) _____, to UCPW for the construction of water and/or sewer infrastructure, and

WHEREAS, Developer has agreed to construct the infrastructure relative to the Development Phase Project in accordance with the Development Phase Plans, construction permits, all Applicable Law, and in accordance with the Union County Water and Sewer Extension Ordinance in effect as of the date of this Agreement (the “Ordinance”), and

WHEREAS, Developer has agreed to convey title to the water and/or sewer infrastructure relative to the Development Phase Project to Union County upon completion of construction and acceptance thereof by UCPW; and

(CHECK THIS BOX IF THIS PARAGRAPH APPLIES:), WHEREAS a portion of the Development Phase Project is for the construction of improvements located outside of the Development Phase, and Developer has not been able to obtain all easements and other property interests necessary for the construction of such improvements, which necessitates the signing of a Reimbursement Agreement to this agreement by Developer and Union County; and

WHEREAS, Owner has agreed to convey title to Union County of all easements and other interests in the Development Phase that are necessary for the conveyance of water or sewer and the maintenance and repair of the related infrastructure to be located thereon; and

WHEREAS, UCPW has agreed to allow Developer to construct the infrastructure relative to the Development Phase Project in accordance with the construction permits issued to UCPW by NCDENR, to accept title to said infrastructure and interests in property, to thereafter maintain said infrastructure, to provide water and/or sewer services in accordance with the terms of this Agreement and the Ordinance, and to thereafter operate such facilities so that the occupants of each residence or commercial improvement constructed in the Development Phase will receive water supply and/or sewer collection service from UCPW, all pursuant to the terms of this Agreement and the Ordinance; and

WHEREAS, Developer desires that UCPW reserve water and/or sewer treatment capacity, as specified herein, so that when the Development Phase Project has been completed, treatment capacity will be available to serve the improvements that have been constructed in the Development Phase; and

WHEREAS, Developer and Owner acknowledge that this Agreement does not entitle Developer or Owner to develop the Development Phase with densities which are

inconsistent with those allowed under the density provisions of Applicable Law, which law includes the zoning ordinance of the local government having jurisdiction.

NOW, THEREFORE, for and in consideration of these premises, the mutual undertakings and agreements herein contained and assumed, Developer, Owner and UCPW hereby covenant and agree as follows:

1. Interpretation of Agreement:

This Agreement is governed by all Applicable Law, including the terms of the Union County Water and Sewer Extension Ordinance in effect as of the date of this Agreement, which Ordinance is incorporated herein by reference. Developer, Owner, and UCPW are bound by and shall comply in all respects with the policies, procedures, requirements and terms of the Ordinance in performing their obligations under this Agreement. All policies, procedures, requirements and terms of the Ordinance shall be a part of this Agreement, even though not expressly set forth herein. Developer and Owner understand and agree that execution of this Agreement in no way vests any Development for zoning purposes, whether the Development is located within Union County's zoning jurisdiction or within the zoning jurisdiction of one of the municipalities within which UCPW provides water and/or sewer service.

2. Definitions:

All capitalized terms contained in this Agreement shall have the same meaning as those defined terms contained in the Ordinance.

3. Legal Description of Easements and Other Property Interests:

Developer shall ensure that the plat required by the Appropriate Planning Agency contains a legal description of all easements and other property interests in the Development Phase to be conveyed to Union County, within which water and/or sewer infrastructure is to be built. Neither Developer nor Owner shall record the plat in the Register of Deeds' office until it has been approved by UCPW.

4. Development, Ownership and Control of the on-site and off-site water distribution and sewage collections systems:

Developer shall construct the infrastructure relative to the Development Phase Project (whether located within or without the boundaries of the Development Phase) as delineated in the Development Phase Plans, and in accordance with the Ordinance and other Applicable Law. Upon completion of the construction and acceptance by UCPW, Developer shall sign such documentation as UCPW may require in order to transfer title of the infrastructure to Union County.

5. CHECK THIS BOX IF THIS PARAGRAPH APPLIES: []

Acquisition of off-site easements and other property interests:

Developer and Union County have signed a document of even date herewith, entitled "Reimbursement Agreement", incorporated herein by reference and on file in the offices of UCPW, which the parties agree is a part of this Agreement. Union County will not issue the Letter of Final Acceptance under Article 5, Section 5.1 of the Ordinance until Developer has complied in all respects with the Reimbursement Agreement, including the payment to Union County of all of the costs and expenses due under the Reimbursement Agreement.

6. Owner's obligations:

Upon notification that UCPW is prepared to accept the completed infrastructure, Owner shall execute all easements and convey to Union County all interests in the easements and other property interests shown on the approved Development Phase Plans that are necessary for the conveyance of water or sewer and the maintenance and repair of the related infrastructure located thereon. In the event that Developer is the record titleholder of the Development Phase, the Developer shall have all responsibilities of Owner under this Agreement and the Ordinance in addition to the responsibilities of Developer.

7. Reservation of Allocated Capacity:

Developer and UCPW agree that the Development Phase will require Allocated Capacity (i) in the amounts indicated below for non-residential development, and (ii) in such amounts as will serve the number of Equivalent Residential Units ("ERUs") shown below for residential development. For purposes of this Agreement, ERU will be defined as the amount of water used or wastewater generated, measured in gallons per day, by a typical single family residence in Union County.

With respect to Water:

ERUs for the residential portion of the Development Phase
Gallons/Day for the non-residential portion of the Development Phase

With respect to Sewer:

ERUs for the residential portion of the Development Phase
Gallons/Day for the non-residential portion of the Development Phase.

UCPW hereby allocates and reserves the Allocated Capacity for a period of five (5) years from the date of this Agreement for the benefit of the Development Phase in accordance with the terms of the Ordinance. If the infrastructure relative to the Development Phase Project that Developer has agreed to construct under

this Agreement, as delineated on the Development Phase Plans, has not been completed and accepted by UCPW within five (5) years from the date of this Agreement, the Allocated Capacity shall revert to UCPW in accordance with the terms of the Ordinance.

8. Payments under Agreement:

A. Payment of Capacity Fees:

Developer has paid the Capacity Fees for treatment and transmission of water in the sum of \$ _____ and sewer in the sum of \$ _____, and UCPW acknowledges receipt of the Capacity Fees. UCPW has agreed to reserve the Allocated Capacity for a period of five (5) years from the date of this Agreement, and will not receive revenue for the use of such Allocated Capacity until the Development Phase has been completed and occupants of the Development Phase begin to use UCPW water or sewer services. In the event that the Allocated Capacity reverts to UCPW because the infrastructure relative to the Development Phase Project has not been completed and accepted within five (5) years from the date of this Agreement, then the Capacity Fees paid by Developer shall be retained by UCPW as liquidated damages for reserving capacity for five (5) years without receiving revenue.

B. Payment of Pro Rata Share of Off-site Sewer Improvements:

(CHECK THIS BOX IF THIS PARAGRAPH APPLIES: [] UCPW has agreed to allow Developer to construct interim alternative off-site sewer improvements under the March 18, 2013 amendment to Section 2.3(d) of the Ordinance. Under Section 2.3(d) of the Ordinance, Developer has paid a non-refundable payment-in-aid of construction of the off-site sewer improvements that would have been constructed to serve the development if the infrastructure had been constructed in accordance with the Union County Water and Sewer Master Plan in the sum of \$_____, and UCPW acknowledges receipt of said payment, and agrees to use the funds received in accordance with Section 2.3(d) of the Ordinance.

9. Change of Development:

Developer agrees that the plan of the Development Phase will not be changed in such a fashion that results in a change of the Development Phase Plans or the Allocated Capacity unless UCPW consents to the change in writing in accordance with the terms of the Ordinance. No change in the plan of the Development Phase that increases or decreases the Allocated Capacity of either water or sewer by more than 5% shall be effective unless a written amendment to this Agreement has been signed by UCPW, Owner and Developer and recorded in the Register of Deeds' office.

10. Sale of Development Phase:

Developer and Owner shall provide written notice to UCPW within five (5) business days of transfer of title of the Development Phase or any portion thereof, except for the transfer of title of a portion of the Development Phase (such as a Lot) to the end user pursuant to the Developer’s plan of development.

11. Transfer of Allocated Capacity:

The Allocated Capacity is an appurtenance to the Development Phase, and, as such, will pass with the title to the Development Phase. The Allocated Capacity cannot be assigned, sold, transferred, leased, encumbered, or disposed of in any manner by Owner or Developer other than by sale or encumbrance of the Development Phase. The Allocated Capacity cannot be used in connection with the development of any real property other than the Development Phase. In the event of transfer of the Development Phase or any portion thereof, the person who acquires title shall have the Allocated Capacity attributable to such property subject to the terms of the Ordinance and this Agreement.

12. Oversizing of Water or Sewer Infrastructure:

In the event that UCPW requires Developer, as a condition of approval of the Water and Sewer Plans, to install improvements (whether located within or without the boundaries of the Development Phase) with a greater capacity than required to serve the Development Phase in order for UCPW to serve future developments or to meet future service needs of UCPW, UCPW shall reimburse Developer in accordance with the terms of Exhibit B, attached hereto, and incorporated herein by reference.

13. Notices:

Unless otherwise provided herein, all notices and other communications which may be or are required to be given or made by any party to any other party in connection with this Agreement shall be in writing and shall be deemed to have been properly given and received on the date delivered in person or deposited in the United States mail, to the addresses set forth below (or at such other addresses as specified by written notice delivered in accordance herewith):

To UCPW: Director, Union County Public Works
 500 N. Main St., Suite 500
 Monroe, NC 28112

To Developer:

To Owner:

14. Authorization:

Each party warrants that it has the corporate or other organizational power and authority to execute, deliver and perform this Agreement. Each party further warrants that the execution, delivery and performance by it of the Agreement has been duly authorized and approved by all requisite action of the party's management and appropriate governing body.

15. Entire Agreement:

This Agreement shall inure to the benefit of and be binding upon the parties hereto, their assigns and successors in interest. This Agreement (and the Development Phase Plans, the Reimbursement Agreement signed in accordance with Paragraph 5, above, if applicable, and any other documents that are specifically referred to herein as being incorporated by reference) contains the complete agreement of the parties regarding the terms and conditions of the Agreement, and there are no oral or other written conditions, terms, warranties, understandings or agreements pertaining thereto which have not been incorporated herein. This Agreement may be modified only by written instrument duly executed by both parties or their respective successors in interest.

16. Severability:

The provisions hereof are severable, and should any provision be determined to be invalid, unlawful or otherwise null and void by any court of competent jurisdiction, the other provisions shall remain in full force and effect and shall not thereby be affected unless such ruling shall make further performance hereunder impossible or impose an unconscionable burden upon one of the parties. The parties shall endeavor in good faith to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as practicable to that of the invalid, illegal or unenforceable provisions.

17. Selection of Law:

This Agreement shall be construed and enforced in accordance with the laws of the State of North Carolina. Exclusive venue for any disputes arising hereunder is conferred upon the General Courts of Justice of the State of North Carolina sitting in Union County, North Carolina.

18. E-Verify:

E-Verify is the federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program, used to verify the work authorization of newly hired employees pursuant to federal law. Contractor warrants that Contractor and any subcontractor performing work under this agreement: (i) uses E-Verify if required to do so by North Carolina law; and (ii) otherwise complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. A breach of this warranty by Contractor will be considered a breach of this agreement, which entitles Union County to terminate this agreement, without penalty, upon notice to Contractor.

In witness whereof, the parties have set their hands and seals this the day and year first above written

.[Signature Page]
(County)

Union County a Political Subdivision of North Carolina

By: _____

Cynthia A. Coto
Title: **County Manager**

ATTEST :

By: _____

Lynn West
Title: **Clerk of the Union County Board of Commissions**

SEAL-STAMP State of North Carolina – County of Union

On this the ____ day of _____, 20____, Lynn West personally appeared before me, a Notary Public in this jurisdiction, and having been duly sworn did state that she knows the common seal of Union County, and is acquainted with Cynthia A. Coto, who is County Manager of Union County; and did further state that she is the duly appointed or designated Clerk to the Board of Commissioners of Union County, and saw the County Manager sign the foregoing instrument, and that Lynn West, as Clerk, affixed the common seal of Union County to the instrument, and that Lynn West as Clerk, signed her name in attestation of the execution of the instrument in the presence of the County Manager, and that they both acknowledged the due execution of the same. Witness my hand and official seal or stamp.

My commission expires:_____

Notary Public:_____

SAMPLE

[Signature Page]

Developer

Individual Developer:

_____(SEAL)
Name: _____

_____(SEAL)
Name: _____

LLC/Corporate Developer:

Entity Name: _____

By: _____
Title: _____



LLC/Corporate seal

Partnership:

Partnership Name

_____(SEAL)
Name: _____, General Partner

NOTARY ACKNOWLEDGMENT
(Developer)

Individual Acknowledgment

State of _____

County of _____

I, _____, Notary Public of the County and State aforesaid, certify that _____, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this ____ day of _____, 20_____.

_____(SEAL)

My Comm. Expires:

Notary: _____

Corporate/LLC Acknowledgment

State of _____

County of _____

I, the undersigned Notary Public of the County and State aforesaid, certify that _____ personally came before me this day and acknowledged that __he is/are the _____ of _____ a _____ (type of Entity), and that by authority duly given and as the act of such entity, he signed the foregoing instrument in its name on its behalf as its act and deed. Witness my hand and Notarial stamp or seal, this ____ day of _____, 20_____

_____(SEAL)

My Comm. Expires:

Notary: _____

Partnership Acknowledgment

State of _____

County of _____

I, the undersigned Notary Public of the County and State aforesaid, certify that _____ personally came before me this day and acknowledged that ___he is/are the General Partner of _____, and that by authority duly given and as the act of such entity, he signed the foregoing instrument in its name on its behalf as its act and deed. Witness my hand and Notarial stamp or seal, this ____ day of _____, 20_____

_____(SEAL)

My Comm. Expires:

Notary: _____

SAMPLE

[Signature Page]

Owner

Individual Owner:

_____(SEAL)

Name: _____

_____(SEAL)

Name: _____

LLC/Corporate Owner:

Entity Name: _____

By: _____

Title: _____



LLC/Corporate Seal

Partnership:

Partnership Name

_____(SEAL)

Name: _____, General Partner

NOTARY ACKNOWLEDGMENT
(Owner)

Individual Acknowledgment

State of _____

County of _____

I, _____, Notary Public of the
County _____ and State _____ aforesaid, certify that
_____, personally
appeared before me this day and acknowledged the due execution of the foregoing
instrument for the purposes therein expressed. Witness my hand and Notarial stamp or
seal this _____ day of _____, 20_____.

_____(SEAL)

My Comm. Expires:

Notary: _____

Corporate/LLC Acknowledgment

State of _____

County of _____

I, the undersigned Notary Public of the County and State aforesaid, certify that
_____ personally came before me this
day and acknowledged that they are the _____ of
_____ a _____ (type
of Entity), and that by authority duly given and as the act of such entity, he signed the
foregoing instrument in its name on its behalf as its act and deed. Witness my hand and
Notarial stamp or seal, this _____ day of _____, 20_____

_____(SEAL)

My Comm. Expires:

Notary: _____

Partnership Acknowledgment

State of _____

County of _____

I, the undersigned Notary Public of the County and State aforesaid, certify that _____ personally came before me this day and acknowledged that they are the General Partner of _____, and that by authority duly given and as the act of such entity, he signed the foregoing instrument in its name on its behalf as its act and deed. Witness my hand and Notarial stamp or seal, this ____ day of _____, 20_____

_____(SEAL)

My Comm. Expires:

Notary: _____

SAMPLE