

EXHIBIT "A"
GREATER HAZLETON JOINT SEWER AUTHORITY
SANITARY SEWER SYSTEM
RESERVATION OF CAPACITY APPLICATION

- 1. Owner/Developer Name: _____
- 2. Contact Person: _____
- 3. Phone/Fax: _____
- 4. Email Address: _____
- 5. Billing Address: _____
- 6. Property Identification: _____

Property Address (If more than one lot, or for proposed subdivision, attach a plan showing all lots, and addresses as assigned by the municipality)

Municipality: _____

Tax Map Identification:

Map Number: _____ Parcel Number: _____

Map Number: _____ Parcel Number: _____

Map Number: _____ Parcel Number: _____

Map Number: _____ Parcel Number: _____

Map Number: _____ Parcel Number: _____

Map Number: _____ Parcel Number: _____

7. Number of EDU(s):

For residential developments, the number of EDU(s) shall match the number of residential equivalent dwelling units. For non-residential units, the number of EDU(s) shall be determined by current GHJSA rates, rules, regulations and the terms and conditions contained in the ROC Agreement. A copy of the executed ROC Agreement is attached hereto and made part of this Application. Please indicate below the number of EDU(s) desired to be reserved.

_____ Reserved EDU(s)

8. Agreement:

Attach to the signed Reservation of Capacity Agreement.

9. Evidence of Development Proposal:

Capacity reservation shall be approved only for an active project for which municipal approval is being sought, or has been received. A Project shall be considered active only after the Preliminary Subdivision or Land Development Plan has been submitted to the governing Municipality's Planning Department. Owner/Developer shall attach evidence of the governing Municipality approval status, such as a copy of the review application that has been submitted. If PA DEP Sewage Facilities Planning Module is being sought, Owner/Developer shall attach a copy of the entire module package, including all attachments thereto.

0. Application Review—The Authority Reserves the Right to Review and Approve:

After review of the application and confirmation of the number of EDU(s) to be reserved, the applicant shall be notified of the amount of the Reservation of Capacity Fee for three (3) years. This amount shall be paid upon execution of the Reservation of Capacity Agreement.

Date: _____
Owner/Developer Signature

Date: _____
Co-Applicant (Joint Owner/ Developer)
Signature

GHJSA USE ONLY

Date Application Received: _____

Application Approval Date: _____

Application Approval Signature: _____

Reserved Capacity: _____EDU(s)

Amount Paid: \$ _____

Reservation Agreement Date: _____

GREATER HAZLETON JOINT SEWER AUTHORITY
RESERVATION OF CAPACITY AGREEMENT

THIS AGREEMENT made and executed this _____ day of _____, _____, between the Greater Hazleton Joint Sewer Authority, an Authority in the County of Luzerne, organized and existing under the Pennsylvania Municipality Authorities Act of 1945, as amended, with its principal office located at 500 Oscar Thomas Drive, West Hazleton, Luzerne County, Pennsylvania, and having a mailing address of P.O. Box 651 Hazleton, Pennsylvania 18201 (hereinafter referred to as "The Authority" or "GHJSA"), and _____ and assigns (hereinafter referred to as "Owner/Developer").

WITNESSETH:

WHEREAS, GHJSA owns, operates and maintains a municipal sanitary sewage system and treatment plant which provides for the collection, conveyance, transmission and treatment of sanitary sewage within its sewer service area.

WHEREAS, Owner/Developer is the legal or equitable owner of a certain parcel(s) of real property identified as _____, County Tax Parcel Number(s) _____, located in Luzerne County, Pennsylvania ("the Property"), wherein the Owner/Developer desires to construct _____ (the "Project");

WHEREAS, Owner/Developer desires to reserve for Owner/Developer's use _____ Equivalent Dwelling Units ("EDU") of sanitary sewage capacity in said sewer system for use on the Property, and has submitted to GHJSA a Reservation of Capacity Application;

WHEREAS, GHJSA presently has available sewer capacity and related EDU(s) to serve the Project, but the available capacity is limited;

WHEREAS, GHJSA agrees to allocate and make available for the Owner/Developer's use within the subject development and Property _____ EDU(s) of sanitary sewage capacity, pending receipt of all local and state permits and approvals and subject to the terms and conditions contained in this Reservation of Capacity Agreement ("ROC");

WHEREAS, GHJSA is authorized by provisions of the Municipality Authorities Act of 1945, as amended, authorizing the charging of a Reservation of Capacity Fee ("ROCF") provided the ROCF is based on debt and fixed operating expenses, but which fee may not exceed sixty percent (60%) of the average sanitary sewer bill for residential customers within the sewer service area for the same billing period; and

WHEREAS, GHJSA has determined that it is in the best interests of GHJSA to impose an ROCF in its sanitary sewer service area, said ROCF will allow property owners and developers to obtain and pay for the sanitary sewer capacity expressed as EDU(s) that they believe is necessary for their Project, rather than GHJSA merely allocating same; and

NOW, THEREFORE, IN CONSIDERATION OF THESE PRESENTS, AND THE MUTUAL PROMISES, TERMS, AND CONDITIONS SET FORTH HEREIN, AND INTENDING TO BE LEGALLY BOUND HEREBY, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. The foregoing preamble and paragraphs are incorporated herein by reference hereto.

2. Owner/Developer has submitted to The Authority a Reservation of Capacity Application seeking EDU(s) in The Authority's sanitary sewage system (the "Application") and The Authority has approved said Application, resulting in this Agreement. A copy of Owner/Developer's approved Application is attached hereto as Exhibit "A" and is incorporated herein.

3. The quarterly debt service fees and fixed operating expenses for the project is calculated at a rate of sixty percent (60%) of the average sanitary sewer bill for residential customers within the same sewer service area as the Property. The average sanitary sewer bill for residential customers within GHJSA's sewer service area is presently One Hundred Twenty-Nine Dollars (\$129.00) per EDU, per quarter, or Five Hundred Sixteen Dollars (\$516.00) per EDU annually. Sixty percent (60%) of the quarterly sewer bill calculates to Seventy-Seven Dollars and Forty Cents (\$77.40) per EDU, or Three Hundred Nine Dollars and Sixty Cents (\$309.60) per EDU annually. Sixty percent (60%) of the average sanitary sewer bill for the _____ EDU(s) which have been requested by the Owner/Developer amounts to _____ Dollars (\$ _____) per year.

4. Owner/Developer filed a Preliminary Land Development and/or Preliminary Subdivision Plan for approval of the Project on _____, _____.

5. Contemporaneously, with the execution of this ROC Agreement, Owner/Developer shall pay to The Authority a payment (The Reservation of Capacity Fee) in the amount equal to three years (The Minimum ROC Term) of ROC fees. The amount of the Owner/Developer's Reservation of Capacity Fee is: \$ _____.

6. In the event Owner/Developer pays their Tapping Fee (the amount of which is specified in Paragraph 8 of this Agreement), the obligation to pay the annual ROCF shall terminate and then Owner/Developer shall be entitled to a pro-rated refund for any portion of the ROCF prepaid for the unused term, if any. Upon the ending of the initial Three-Year Term, Owner/Developer has the option to request, in writing, an additional one-year or two-year extension to the Term of the ROC Agreement. The Term extension is conditioned upon The Authority's written approval of same. The Maximum Term of the ROC Agreement shall be Five (5) years, unless the parties hereto otherwise agree in writing. In the event that the Parties agree to a written Term extension of the ROC Agreement then Owner/Developer shall pay the corresponding ROCF at the execution of the Term Addendum Agreement. In the event that the Owner/Developer desires to terminate the subject Development then the Owner/Developer shall notify The Authority in writing of their desire to terminate the subject ROC Agreement. The ROCF

shall be earned for the time period this Agreement is effective rounded to the end of the current month and refundable on a pro-rata basis for any whole calendar months remaining in a given one year period after the date in which the Owner/Developer has informed The Authority in writing of its intent to terminate the ROC Agreement. For example, if the Owner/Developer terminates the ROC Agreement on the forty fifth (45th) day of the then current time period, then The Authority shall retain a ROCF equal to two months or \$_____ and refund ten months of the ROCF equal to \$_____ to the Owner/Developer.

7. Concurrently with the parties' execution of this Agreement, Owner/Developer agrees to provide and deliver the following documentation to The Authority to be held in escrow by The Authority's legal counsel:

- a. An undated letter addressed to The Authority stating that the Owner/Developer has decided not to proceed with the Project and no longer requires _____EDU(s) for the Project;
- b. An undated letter addressed to the Pennsylvania Department of Environmental Protection ("PADEP") explaining that the Owner/Developer has decided not to proceed with the Project and no longer requires _____ EDU(s) for the Project; and

The purpose of the foregoing required documentation is to afford The Authority the opportunity to recover the remaining unused EDU(s) for subsequent allocation to other Developers in the event that the Owner/Developer elects not to proceed with the Project.

8. The Authority has determined that, for the purposes of determining its fee for a Project connecting to its sanitary sewer service system ("Tapping Fee"), an EDU is measured at 230 gallons per day of effluent. The parties hereby acknowledge that The Authority's Tapping Fee is One Thousand Seven Hundred Fifty Dollars (\$1,750.00) per EDU. The total Tapping Fee of _____ Dollars (\$_____) for the _____ EDU(s) shall be due upon issuance of the Sewer Permit which is required to obtain a Building Permit for the relevant Municipality. Owner/Developer's obligation to pay the annual ROCF shall terminate when Applicant's obligation to pay the Tapping Fee is due and payable.

9. Owner/Developer recognizes and hereby acknowledges that the ROCF assessed in this Agreement shall not be applied to, nor credited to the Tapping Fee(s), inspection fees, quarterly sewer rental charges, or other charges or fees imposed upon the Owner/Developer by The Authority. The Tapping Fee is a separate and additional fee that shall be paid by the Owner/Developer to The Authority.

10. Owner/Developer hereby acknowledges that once connected, directly or indirectly, to the Sewage Collection System, the Owner/Developer recognizes, acknowledges, and agrees that:

- a. The minimum bill issued by the Authority for Sewage Treatment shall be equal to the number of EDUs allocated to the Owner/Developer under this agreement multiplied by the Sewage Treatment Rate contained in Article 3 of the Authority's Rate Resolution;
- b. The minimum bill issued by the Authority for Sewage Transmission shall be equal to the number of EDUs allocated to the Owner/Developer under this agreement multiplied by the Sewage Transmission Rate contained in Article 3.1 of the Authority's Rate Resolution.

11. Owner/Developer hereby acknowledges that the capacity reserved by this Agreement is reserved only and specifically for the Property(ies) identified in this Agreement and for the intended use of the Property as set forth in the Reservation of Capacity Application attached hereto and made part of this Agreement.

12. Owner/Developer recognizes and agrees that the capacity addressed in this ROC Agreement cannot be transferred to any other Property, Project, or to another Party unless agreed to in writing by The Authority.

13. The capacity referred to in accordance with the Application, this Agreement, and the Rates, Rules, and Regulations of The Authority is subject to any limitation or restriction placed upon The Authority by any regulatory agency, and a determination by The Authority that the regulatory requirements can be met in a manner deemed to be in the best interests of the existing customers and of The Authority's sewer system ratepayers. This includes, but is not limited to, the implementation of PADEP's Chesapeake Bay Tributary Strategy of Chesapeake Bay Point Source Plan and the Governing Municipalities Corrective Action Plan (CAP) as approved by PADEP, which may limit treatment plant or sanitary sewer system capacity.

14. Approval of the EDU(s) by The Authority does not give the Owner/Developer a claim against any assets of The Authority and does not transfer to the Owner/Developer any ownership interest in The Authority, or its sanitary sewer system. In addition, the Owner/Developer hereby agrees to indemnify and hold The Authority harmless against any and all claims—including attorneys' fees incurred by The Authority in defense of same—relating to sanitary sewer capacity availability and the reservation thereof. The Authority's approval does not constitute a representation that such EDU(s) are sufficient for Owner/Developer's intended use of the Property and does not grant any rights to the Owner/Developer.

15. The EDU(s) reserved by this Agreement shall be terminated, or altered, only upon the occurrence of one of the following events:

- a. Owner/Developer filing for bankruptcy or receivership;

- b. Owner/Developer's Subdivision, Site Plan or Land Development Plan for the subject Property not being approved by the Governing Municipality;
- c. Owner/Developer withdrawing or terminating its Subdivision, Site Plan or Land Development Plan for the subject Property;
- d. Owner/Developer modifying its Subdivision, Site Plan or Land Development Plan for the subject Property resulting in an increase in the number of allocated EDU(s) in this Agreement not otherwise approved in writing by The Authority;
- e. Owner/Developer changing the use for the subject Property resulting in an increase in the allocated EDU(s) in this Agreement not otherwise approved in writing by The Authority;
- f. Owner/Developer failing to pay the Reservation of Capacity Fees when they are due and payable;
- g. Once the subject Property has received a building permit and a sewer connection or tap-on permit and the Owner/Developer has paid the Tapping Fee; or
- h. Five (5) years from the date of the parties' execution of this Agreement; or
- i. As individual units of the Property covered by this Agreement apply for and are issued building permits and sewer connection permits for the respective EDU's reserved under this Agreement.

16. The Owner/Developer agrees to proceed expeditiously and in Good Faith with the securing of any and all approvals necessary to develop the Project, which shall be accomplished at the sole cost and expense of the Owner/Developer.

17. The Owner/Developer may not assign its rights and/or obligations under this Agreement without the prior written consent of The Authority, which consent may not be unreasonably withheld.

18. This Agreement shall be construed in accordance with the laws of the Commonwealth of Pennsylvania. Any disputes arising hereunder shall only be brought before the Court of Common Pleas of Luzerne County, Pennsylvania. The parties submit to the exclusive jurisdiction and venue of that Court. In the event that The Authority is required to take any action to enforce any provision of this Agreement, it shall be entitled to recover all expenses incurred, including reasonable attorney's fees and court costs. The Authority shall be entitled to all remedies available at law or in equity.

19. **Adjustment to Charges:** Annually, after completion of the annual billing period, an Owner/Developer who has reserved sanitary sewer capacity may apply to the Authority to have the reserve capacity and annual sewer rental charges adjusted to reflect capacity utilized by connections to the sanitary sewage system during the preceding period.

a. Residential Subdivisions: For each dwelling unit connected to the sewer system during such period, the Owner/Developer's reserve capacity shall be reduced by one (1) equivalent dwelling unit (EDU), and the annual Reservation of Capacity charge for the current period shall be reduced to reflect each equivalent dwelling unit so connected.

b. All other Subdivisions, Land Developments and Projects: For the number of gallons of average daily flow connected to the sewer system during such period, the Owner/Developer's reserve capacity as represented by EDU's shall be reduced by that number of gallons and the annual sewer rental charge of the number of EDU's for the current period shall be reduced to reflect the number of EDU's connected to the Authority's system conditioned upon all Tapping Fees and Tapping Related Fees being paid in full.

20. In the event that the average sanitary sewer bill for residential customers within the sewer service area increases or is amended, the ROCF shall be amended, consistent with the amended Rate Resolution, accordingly after the initial three (3) year ROCA term.

SPECIAL CONDITIONS:

IN WITNESS WHEREOF, AND INTENDING TO BIND THEMSELVES, THEIR HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, AND ASSIGNS, the undersigned do hereunto set their hands and seals the day and date above first written.

The Parties understand and agree that because of logistics and practicality, that not all of the Parties' signatures will be contained on one page. The Parties further agree that signed Counterparts (separate signature pages) shall have the same legal and binding effect on the Parties.

ATTEST:

**THE GREATER HAZLETON
JOINT SEWER AUTHORITY**

Secretary

Chairman

Commonwealth of Pennsylvania:
County of Luzerne:

On this, the ____ day of _____, _____, before me _____, the undersigned officer, personally appeared _____, Chairman, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal. _____
Notary Public

ATTEST:

**OWNER/DEVELOPER
PRINTED NAME AND TITLE**

**OWNER/DEVELOPER
SIGNATURE AND TITLE**

Commonwealth of Pennsylvania:
County of Luzerne:

On this, the _____ day of _____, _____, before me _____, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

Notary Public