

# SEWER CAPACTIY TRANSFER AGREEMENT

This Sewer Capacity Transfer Agreement (hereinafter referred to as "Agreement"), is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ between:

The **Upper Montgomery Joint Authority** (hereinafter referred to as "Authority") with its principal place of business located at 1100 Mensch Dam Road, Pennsburg, Pennsylvania, 18073

and

The \_\_\_\_\_, with its principal place of business located at \_\_\_\_\_ (hereinafter referred to as "Owner" and/or "Developer")

## WITNESSTH:

**WHEREAS**, the Authority has constructed, owns and operates sanitary sewage collection and treatment facilities in East Greenville, Pennsburg, and Red Hill Boroughs, and a portion of Upper Hanover Township that is more specifically described in the Authority's "Act 537 Plan" and all of which are located within Montgomery County, Commonwealth of Pennsylvania (hereinafter referred to as the "System"); and

**WHEREAS**, the Authority adopted Rules, Rates, and Regulations that went into effect on December 6, 2011, as last amended on December 8, 2020; and

**WHEREAS**, Article III, Section 4(B) provides for the transfer of sewer capacity between two or more properties with the Act 537 service area with the limitations enumerated in subsections 1 through 6; and

**WHEREAS**, Article III, Section 4(C) authorizes the Executive Superintendent to approve such sewer capacity transfers if the Executive Superintendent believes that the proposed transfer satisfies the criteria contained in Section 4(B); and

**WHEREAS**, \_\_\_\_\_ is the owner and developer of \_\_\_\_\_ located within the Authority's 537 service area that includes a property known as \_\_\_\_\_ (hereinafter referred to as "\_\_\_\_\_") located in the \_\_\_\_\_ part of the development; and

**WHEREAS**, \_\_\_\_\_ is the owner of a property located at \_\_\_\_\_ further identified as Parcel No. \_\_\_\_\_ (hereinafter referred to as the "\_\_\_\_\_"); and

**WHEREAS**, the Authority had previously granted and allocated \_\_\_\_\_ Equivalent Dwelling Units (EDUs) of sewer capacity to \_\_\_\_\_; and

**WHEREAS**, on \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_ (Owner) submitted to the Authority a Sanitary Sewer System Application (hereinafter referred to as the "Application") seeking to transfer one (1) EDU from \_\_\_\_\_ to \_\_\_\_\_, together with the proper application and escrow fees; and

**WHEREAS**, after review of the Application, the Executive Director has determined, pursuant to Article III, Section 4(B) that \_\_\_\_\_ (owner) meets the criteria to approve such a transfer of EDU sewer capacity.

**NOW THEREFORE**, in consideration of the above recital clauses, incorporated into and made part of this Agreement, the mutual promises contained herein, and intending to be legally bound, the parties agree as follows:

## REVIEW AND APPROVAL

1. The Executive Superintendent has reviewed \_\_\_\_\_ (owner) application for compliance with Article III, Section 4(B) and determined the following:
  - a. \_\_\_\_\_ (property) had previously been allocated a total of \_\_\_\_\_ EDUs.
  - b. \_\_\_\_\_ (owner) seeks to transfer \_\_\_\_\_ (#) of the \_\_\_\_\_ (#) existing EDUs allocated to \_\_\_\_\_ (property) that will leave \_\_\_\_\_ (#) EDU attributed to \_\_\_\_\_ (property) if the transfer is approved.
  - c. There is common ownership of the properties, \_\_\_\_\_ and \_\_\_\_\_ respectively, for which sewer capacity is sought to be transferred.
  - d. \_\_\_\_\_ (property) and \_\_\_\_\_ (property) are within the Authority's Act 537 service area.
  - e. \_\_\_\_\_ (owner) will receive no form of payment or consideration for the transfer of the sewer capacity from \_\_\_\_\_ (property) to \_\_\_\_\_ (property);
2. Based on the above, the Executive Superintendent has approved the transfer of \_\_\_\_\_ (#) EDU(s) from \_\_\_\_\_ (property) to \_\_\_\_\_ (property).
3. In exchange for the transfer of \_\_\_\_\_ (#) EDU from \_\_\_\_\_ (property) to \_\_\_\_\_ (property), \_\_\_\_\_ (owner) agrees to the following conditions:
  - a. From the date of the sewer capacity transfer to \_\_\_\_\_ (property), \_\_\_\_\_ (owner), its successors, assigns, agents, officers, directors and representative shall not seek to further transfer the sewer capacity transferred to \_\_\_\_\_ (property) for a period of two (2) years.

- b. \_\_\_\_\_(owner), his successors and assigns, shall indemnify and save harmless the Authority, its Board of Directors, Engineers, solicitors, employees, agents and/or representatives (collectively referred to as the "Indemnified Parties"), against any and all claims, demands, actual losses, costs (including, but not limited to, professional and expert witness fees or charges and costs of transcripts and attendance fees in deposition), or damages, including reasonable attorneys' fees, for or on account of any injury, suit, threat of suit, or any other legal or administrative action to any person or property occurring in, on, or in any way, relating to the transfer of sewer capacity from one property to another.
- c. \_\_\_\_\_(owner) shall pay all administrative costs and reasonable legal and engineering fees incurred by the Authority to review and effectuate the transfer of sewer capacity.
- d. Any decision or other action by the Pa. Department of Environmental Protection or other Commonwealth or federal agency with jurisdiction to disapprove or disallow such sewer capacity transfer will automatically invalidate this Agreement and prevent the transfer of the sewer capacity. In such event, the Authority shall have no duty, obligation, or liability to \_\_\_\_\_(owner), its successors, personal representatives, or assigns, and the sewer capacity shall revert to the originating property. The Owner of the property which received the transferred sewer capacity shall immediately pay to the Authority the tapping fee in effect at that time period.

#### **4. Entire Agreement**

This Agreement constitutes the entire understanding and agreement of the parties and may not be explained, modified, added to, or subtracted from, by parole evidence. This Agreement constitutes the entire agreement between the parties, and there are no

agreements, understandings, restrictions, warranties, or representations between the parties other than those set forth, or provided for, in this Agreement.

**5. Notices**

Any notice, communication, request, reply, or advice ("Notice") required or permitted to be given, made, or accepted by either party to the other under this Agreement must be in writing and may be given, or be served, by depositing it in the United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested or by delivering it in person to the party or by a professional overnight delivery service. Notice deposited in the mail in the manner described in this paragraph shall be effective only if and when received by the party to be notified. For purposes of notice, the addresses of the parties shall, until changed as provided in this Agreement, be as follows:

Developer: KBL

Authority: Upper Montgomery Joint Authority  
1100 Mensch Dam Road  
Pennsburg, PA 18073  
ATTN: Jennifer Leister, Executive Superintendent

With copy to: Gregory W. Philips, Esquire  
Yergey Daylor Allebach Scheffey Picardi  
1129 E. High Street  
P.O. Box 776  
Pottstown, PA 19464-0776

**6. Counterpart Execution**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**\*\*\*\*Signature Page to Follow\*\*\*\***

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement the day and year first above written.

**UPPER MONTGOMERY JOINT AUTHORITY**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Vice) Chair

ATTEST

By: \_\_\_\_\_  
Secretary

**KBL**

By: \_\_\_\_\_  
Managing Member

ATTEST

By: \_\_\_\_\_

COMMONWEALTH OF PENNSYLVANIA :  
: SS  
COUNTY OF MONTGOMERY :

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public, the undersigned officer personally appeared \_\_\_\_\_ who acknowledged himself/herself to be the \_\_\_\_\_ of the Upper Montgomery Joint Authority, and the he/she, as \_\_\_\_\_, being authorized to do so, execute the foregoing instrument for the purposes therein contained, by signing the name of the Upper Montgomery Joint Authority by himself/herself as \_\_\_\_\_.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

COMMONWEALTH OF PENNSYLVANIA :  
: SS  
COUNTY OF MONTGOMERY :

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public, the undersigned officer personally appeared \_\_\_\_\_ who acknowledged himself/herself to be the \_\_\_\_\_ of the KBL, and that he/she, as \_\_\_\_\_, being authorized to do so, execute the foregoing instrument for the purposes therein contained, by signing the name of the KBL by himself/herself as \_\_\_\_\_.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public