

WATER SUPPLY INDEMNIFICATION AGREEMENT

THIS WATER SUPPLY INDEMNIFICATION AGREEMENT (this "Agreement") is made as of this ____ day of _____, 2010, by and between **HIGHFIELD COMMONS DEVELOPMENT, INC.**, a New Hampshire corporation, with a mailing address of c/o Chesapeake Development, LLC, 501 Daniel Webster Highway, Unit F, Merrimack, New Hampshire 03054 ("HCDI"), and [NAME OF HOMEOWNER], an individual with a mailing address of _____, Rochester, New Hampshire _____ (the "Homeowner").

RECITALS

This Agreement is premised on the following understandings of the parties:

A. 183 Washington Street, LLC, a New Hampshire limited liability company, with a mailing address c/o Chesapeake Development, LLC, 501 Daniel Webster Highway Unit F, Merrimack, New Hampshire 03054 ("183 Washington") is the owner of a certain undeveloped tract of land situated off Washington Street (a/k/a Route 202), in the City of Rochester (the "City"), County of Strafford, State of New Hampshire, said property being a portion of the property conveyed to 183 Washington by deed of Highfield Commons of Rochester, LLC dated May 28, 2009, and recorded in the Strafford County Registry of Deeds at Book 3743, Page 558 (the "Premises"). The Premises are generally depicted on a plan entitled "Revised Subdivision Plan of Highfield Commons - Phase 1, Owned by 183 Washington Street, LLC, Tax Map 237, Lots 8, 8-1 & 3, Washington Street (Route 202), Hussey Hill Road and Bickford Road, Rochester, New Hampshire", prepared by Joseph M. Wichert, LLS, Inc., dated June 30, 2010, as revised through _____, 2010, to be recorded in the Strafford County Registry of Deeds (the "Plan").

B. The Homeowner is the owner of that certain tract of land and the improvements thereon located at _____, in the City of Rochester, New Hampshire _____, and being shown as Tax Map __, Lot ____ (the "Homeowner's Lot"). The Homeowner's Lot either abuts, or is in close proximity to the Premises.

C. 183 Washington intends to develop the Premises in phases, with the first phase consisting of 135 residential building lots, including 88 single family building lots and 47 townhouse lots (the "Project"). HCDI shall be responsible for constructing and installing the infrastructure for the Project, including but not limited to installation of its water supply systems.

D. Pursuant to approvals from the City of Rochester Planning Board (the "Planning Board"), 183 Washington shall cause HCDI to satisfy the Project's water supply requirements by (i) constructing and installing a water line into the Premises, to be accepted by the City, at such locations approved by the Planning Board and based on specifications established by the City, (ii) tying the first thirty two (32) single family

homes in the Project, which includes those lots along Fillmore Boulevard and Pierce Drive, as depicted on the Plan, into such City water line, and (iii) installing individual wells for the remaining one hundred three (103) residential lots, including those townhouse lots identified on the Plan. The individual wells in the Project are intended to facilitate the use of geo-thermal technology for those homes and townhouses to be developed on the 103 lots.

E. As a condition of the Planning Board's approval to permit the installation of individual wells in the Project, the City has required that certain owners of property in and around the Premises who obtain their respective residential water supplies through private wells, including the Homeowner, be indemnified in the event that the average number of gallons of water per minute over an eight (8) hour period currently obtained by the Homeowner (the "Homeowner's GPM") is reduced, provided that such reduction is proximately caused by the installation and operation of the wells in the Project.

F. The parties hereto wish to enter into this Agreement upon the terms and conditions set forth below.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Term. The term of this Agreement shall commence as of the date of execution of this Agreement by both parties, and shall remain in effect until the earlier of (a) two (2) years after the issuance of the last certificate of occupancy for the Project, or (b) ten (10) years from the issuance of the first certificate of occupancy for those residential units in the Project to be served by wells.

2. Indemnification by HCDI. During the Term of this Agreement, HCDI hereby agrees to indemnify the Homeowner against a reduction in the Homeowner's GPM; provided that the reduction is proximately caused by the installation or operation of the individual wells for the Project. HCDI'S indemnification obligations hereunder are limited solely to the remedies set forth in this Agreement. Neither HCDI nor 183 Washington is responsible for indemnifying the Homeowner in the event that a reduction in the Homeowner's GPM is caused by seasonal, environmental, or mechanical conditions that are not proximately caused by HCDI's installation of wells for the Project, including but not limited to, droughts, seasonal fluctuations in the local water table, or the deterioration or failure of well casings, piping, wiring, foot valves, or other appurtenant well equipment and connections.

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3. Indemnification Procedure.

(a) The Homeowner's GPM shall be established by an independent third party contractor, mutually agreed upon by the parties, based on a monitored pump test conducted by such contractor on the Homeowner's Lot prior to the installation of any wells in the Project. HCDI shall be responsible for payment of the independent third

party's fees in connection with the monitored pump tests. Neither HCDI nor 183 Washington shall be responsible for any of the independent third party's actions or omissions, or any indirect, special, incidental, or consequential damages of any character stemming therefrom.

(b) In the event that the Homeowner shall, in good faith, claim that its water supply has been reduced below the Homeowner's GPM as a result of the wells in the Project, the Homeowner shall provide written notice to HCDI by certified mail, return receipt requested, together with any and all evidence which, in the opinion of the Homeowner, demonstrates that the reduction has been proximately caused by the wells in the Project. Such written notice shall be supplied within ~~thirty (30)~~ days of the Homeowner's knowledge of such reduction. The term "knowledge" as used herein shall mean the actual knowledge of Homeowner.

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(c) HCDI shall, as soon as practicable, consult with the Homeowner. Upon reasonable request by HCDI, the Homeowner agrees to grant HCDI, and its agents, employees and contractors access to the Homeowner's Lot, including the Homeowner's well(s) and any pumps, equipment, power supply sources or other improvements and appurtenances related to the operation and maintenance of the well and the supply of water for the Homeowner's Lot, to conduct tests and inspections of Homeowner's water supply. HCDI is responsible for completing all consultation, testing and inspections within ~~sixty (60)~~ days of the Homeowner's written notice of a reduction in the Homeowner's GPM, at its sole cost and expense. If HCDI fails to complete such consultation, testing and inspections within the 60-day period described above, then it shall be irrebuttably presumed that the wells in the Project proximately caused the reduction in the Homeowner's GPM.

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(d) If testing and inspections (or the failure to timely test and inspect) reveal that the wells in the Project are the proximate cause of the reduction in the Homeowner's GPM, HCDI shall, at the Homeowner's election and at HCDI's sole cost and expense, (i) tie the water supply system for the Homeowner's Lot into the City water line constructed and installed by HCDI, or (ii) make such improvements to the Homeowner's existing well to eliminate the reduction in the Homeowner's GPM, or (iii) drill a new well on Homeowner's Lot with a capacity that is not less than the Homeowner's GPM. Any such work shall be completed as soon as practicable, weather and ground conditions permitting.

(e) In the event that the Homeowner fails to cooperate in permitting the establishment of the Homeowner's GPM, or if the Homeowner fails to give written notice in accordance with this Agreement, or refuses to grant access to HCDI, its contractors and agents, and/or HCDI's independent well water testing company for the purposes set forth in this Agreement, then HCDI shall have no obligation to indemnify Homeowner, and shall have no liability to the Homeowner for any damages claimed as a result of any alleged reduction in the Homeowner's GPM.

4. Dispute Resolution. In the event that a dispute arises under this Agreement, including any dispute that the remedy elected by the Homeowner will not cure the reduction in the Homeowner's GPM, the parties shall first refer the matter to the City for resolution, prior to the institution of any petition, suit, bill, claim or action in a court of competent jurisdiction. The City may refer the dispute to one or more of its departments for voluntary resolution. If the City fails to take any action on a parties' referral with sixty (60) days of the date of such referral, or if the parties cannot reach a voluntary resolution of the dispute, then the parties may elect to request that the Planning Board resolve the dispute. If the parties elect not to request that the Planning Board resolve the dispute, or if the Planning Board does not choose to accept the request, or if either party is dissatisfied with the resolution by the Planning Board, then any party may proceed to enforce their respective rights in a court of competent jurisdiction, including those rights and remedies permitted under this Agreement, or at law or in equity. In the event that a court of competent jurisdiction determines that any claim or dispute was made in bad faith, or with reckless disregard of the facts and circumstances, it shall award attorney's fees and costs to the other party.

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5. Performance of Work. Any and all work contemplated by this Agreement shall be accomplished in a good and workmanlike manner, and the materials and specifications used shall be those that conform to industry standards and are appropriate for the use for which they are intended (the "Work"). All Work will be performed with all due professional diligence, and where applicable, in conformity with all requirements of federal, state and local laws, codes, rules and regulations. Following completion of the Work, HCDI shall leave the Homeowner's Lot in its original condition, reasonable wear and tear excepted.

6. Limitation of Liability. Under no circumstances and under no legal theory, whether in tort (including negligence), contract, or otherwise, shall HCDI or 183 Washington be liable to Homeowner for any indirect, special, incidental, or consequential damages of any character arising as a result of the reduction in the Homeowner's GPM. Any liability for damages, expenses, fees, costs, injuries or losses resulting from a reduction of the Homeowner's GPM proximately caused by the installation of individual wells in the Project, whether such claims could have been asserted against HCDI and/or 183 Washington, is limited solely to the remedies set forth in this Agreement, the satisfactory performance of the Work, and the bearing of costs and expenses associated with the Work.

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7. Surety. In connection with HCDI's indemnification obligations to Homeowner hereunder, HCDI shall place an appropriate surety for the term of this Agreement to cover reasonable potential costs associated with the performance of its obligations under this Agreement, as well as the Work. The amount of the surety shall be established by mutual agreement of the City Planning and Engineering departments, HCDI and 183 Washington prior to the issuance of any building permits for lots in the Project which will be served by wells.

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8. Miscellaneous Provisions.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire.

(b) This Agreement represents the entire agreement between and among 183 Washington, HCDI and the Homeowner with respect to the matters addressed herein. This Agreement may be amended only by a written instrument signed by the parties.

(c) This Agreement shall be binding upon, and inure to the benefit of the parties and their respective heirs, successors and assigns. In the event that 183 Washington engages other contractors or builders in addition to or in replacement of HCDI, to construct or install the wells for the Project, 183 Washington shall be responsible to ensure that each such contractor or builder shall perform those duties and obligations of HCDI under this Agreement, and shall provide notice to the Homeowner of such engagements.

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(d) Upon execution of this Agreement, the parties shall record a notice of this Agreement, in a form mutually satisfactory to the parties, in the Strafford County Registry of Deeds.

(e) Any notice required or permitted to be given hereunder shall be deemed to be given when mailed certified mail return receipt requested or upon delivery (with receipt) by Federal Express, or nationally reputed overnight express service or via hand delivery, in any case addressed to the parties at their respective addresses referenced below:

If to HCDI: Highfield Commons Development, Inc.
c/o Chesapeake Development, LLC
501 Daniel Webster Highway, Unit F
Merrimack, NH 03054
ATTN: Christian Strickler

With a Copy to: Richard Y. Uchida, Esquire
Orr & Reno, PA
One Eagle Square
P. O. Box 3550
Concord, NH 03302-3550

If to Homeowner to: _____

With a copy to: _____

[the next page is the signature page]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Water Supply Indemnification Agreement as of the date first set forth above.

HIGHFIELD COMMONS
DEVELOPMENT, INC.

By: _____
Christian Strickler, President

HOMEOWNER:

183 WASHINGTON STREET, LLC

By: _____
Christian Strickler, Member

(183 Washington joins for the purpose of acknowledging its rights, duties, obligations and responsibilities under this Agreement.)