

J. Water and Sewer Agreement Between the  
Town of LaGrange and Daley Farm

WATER AGREEMENT

AGREEMENT made this 19<sup>th</sup> day of April, 2006, between the TOWN OF LAGRANGE (the "Town"), New York, a municipal corporation organized under the laws of this state, with an address at Town Hall, 120 Stringham Road, LaGrangeville, New York 12540 (on behalf of itself and on behalf of the Town's Manchester Water District ("MWD")), as party of the first part, and Daley Farm Development, LLC, an entity organized under the laws of this state having its principal office at 6 Old North Plank Road, Newburgh, New York 12550 and David Petrovits, 101 Daley Road, Poughkeepsie, New York 12603, jointly and severally, (collectively known as "Owner").

WHEREAS, Owner is, respectively, the owner in fee and/or contract vendee of certain real property (the "Real Property") described within Exhibit A annexed hereto; and

WHEREAS, the Town has established and is currently improving a special water improvement district known as the Manchester Water District (MWD); and

WHEREAS, Owner desires to acquire from the Town, by way of the MWD, a reserved supply of municipal water supply for use in connection with development of the Real Property; and

WHEREAS, the Owner is willing to commit to allow the Town's establishment of a special water improvement district, a water district extension, or a water improvement area (the "Future Water Administration Entity") covering the Real Property for purposes of (a) servicing the Real Property with municipal water supply from a point of connection to the MWD's facilities deemed

by the Town to be the closest available point of practical connection for the Real Property, (b) undertaking at no cost to the Town or the Entity, and thus at the sole cost of the Owner which shall defray such cost, necessary improvements to interconnect the Real Property to the aforesaid point of connection to the MWD's facilities, and (c) taking over ownership, operation and maintenance of the Real Property's internal distribution improvements if the Town so elects. Owner intends by this Agreement to waive and release all rights to object to such establishment of the Future Water Administration Entity by referendum, legal claim or any other challenge, and Owner hereby proposes to fully cooperate and support said establishment by the Town for the purposes set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. The Town shall have the right to establish, and Owner agrees to fully cooperate with the establishment of, a Future Water Administration Entity covering the Real Property for the purposes set forth in this Agreement. The Owner shall execute all petitions presented by the Town which are necessary to accomplish the establishment of the Future Water Administration Entity. The Owner hereby waives and releases any rights to challenge, by referendum or any other means, including litigation, the establishment of the Future Water Administration Entity. Owner shall be entitled to disclosure of the Town's budgeting and method of computation of such deposits.

2. The Town acknowledges that it is the Owner's desire to obtain a potable water supply of up to 44,740 gallons per day,

average daily design flow, for use in connection with development of the Real Property, and the Town shall exercise best efforts to provide to and reserve for the Future Water Administration Entity a supply of potable water from sources of MWD.

3. As consideration for the Town's undertaking of the obligations set forth herein to establish and to improve the Future Water Administration Entity, the Owner shall defray in full by periodic advance deposit of all funds necessary into the Town's escrow account established for the purpose of this Agreement, all engineering, legal, or other consultant costs related to the establishment and improving of the Future Water Administration Entity, it being the intention that the Entity shall be formed and improved at no cost to the Town. Owner shall also defray, by advance deposit with the Town, the costs of improving the Entity, at no cost to the Entity, by suitable water distribution line, and related accessory valves, fixtures and the like, to connect the Real Property to the facilities of the MWD.

4. As consideration for the Town's undertaking of its obligations to reserve water supply for the Real Property, Owner shall pay to the Town, on account of the MWD, the sum of \$6,500 for each buildable lot or residential unit approved by the Town's Planning Board in the context of subdivision or site plan review of development of the Real Property, payable in full upon the Planning Board's making of a resolution of conditional or unconditional final approval or upon all approvals required to be obtained by the Town to make water supply available to the Real Property, whichever is later. Any approved commercial or retail units shall be pay a reserve capacity fee in accordance with the following formula: \$6,500 multiplied times the fraction whose numerator shall be the regulatory design flow in gallons per day

of the use established for the unit and whose denominator shall be 350 g/p/d. Notwithstanding the foregoing, it is acknowledged by the Town that one of the parcels (the "MWD Parcel") to be devoted to the PDD project of the Owner is not listed on Exhibit "A" because it is already in the Manchester Water District (MWD) of the Town and it is consequently entitled to some measure of service which the parties agree to be service of development amounting under the current MWD benefit assessment formula to 17.13 benefit units. Accordingly, Owner shall be entitled to a reduction on the overall project's number of approved units which may be subject to the \$6,500/unit charge, and that reduction shall be computed as follows: 17.13 less the number of benefit units resulting from application of the MWD benefit assessment formula to approved development located within the MWD Parcel.

5. Securing the Developer's Performance. In lieu of cash or other collateral provided to the Town to secure the payment obligation of the Owner, should it arise hereunder upon the granting of a final subdivision approval for the Project, the following terms shall obtain:

(a) in the event of need to take steps, by litigation or otherwise, to collect the payment identified within paragraph A3(b)@ hereinabove, the Town shall be entitled to recover its actual and reasonable attorney's fees,

(b) the Owner's application to the LaGrange Town Board and/or Planning Board for approval of development for the Project, and any subsequent applications by grantees, successors, or assigns of the Owner to develop the Property by subdivision or

otherwise, shall be deemed to incorporate this Agreement by reference, and the Owner consents that any granting of any land use approvals by the LaGrange Town Board and/or Planning Board shall be expressly conditioned upon the Owner's, or its grantees, successor's or assign's, performance of the payment obligations to the Town hereunder.

6. Owner shall design and construct a water supply distribution system for the Real Property including, but not limited to, all mains, lines, valves, hydrants, equipment, accessories and appurtenances necessary to transmit and distribute potable water to all lots or units throughout the Real Property. The on-site water distribution system shall be subject to approval of the Town, and construction of said water distribution system at the Real Property shall be subject to review and inspection by the Town Engineer whose cost shall be defrayed by the Owner from an escrow account established by Owner with the Town, and replenished as deemed necessary by the Town. The Owner's on-site distribution system shall be made available for dedication to the Future Water Administration Entity at the Town's option

7. This Agreement shall run with the land comprising the Real Property, and the parties shall record this Agreement with the Clerk of Dutchess County, indexed to the Real Property.

8. The Town has made no warranties or representations to the Owner concerning future development of the Real Property, or the outcome of any review by the Town Board and/or by Planning Board, as the case may be, of any development proposal, or the approvals that may be anticipated from any agency of the Town.

9. The obligations of the Town under this Agreement are conditioned upon the Town's obtaining of all necessary federal, state or local agency approvals for the establishment of the Future Water Administration Entity and the design, financing, and construction of the water distribution improvements to the facilities of the MWD .

10. Owner shall have no right to resell or assign, for the benefit of other real property, potable water supply provided by the Town under this Agreement.

11. The duration of this Agreement shall be for a period of forty (40) years, but the Real Property's entitlement to water supply from the Entity to the extent of the capacity set forth in paragraph "2" of this Agreement, but to no more than that capacity, shall commence upon establishment and improvement of the Entity described hereinabove, together with the payment of all reserved capacity fees by the Owner.

12. (a) Nothing in this Agreement, express or implied, is intended to confer upon any third-party any rights or remedies under or by reason of this Agreement. Each party represents that it is entering into this transaction as principal for its own account and not as an agent for any other party.

(b) This Agreement is deemed to be a contract entered into and shall be interpreted under the laws of the State of New York, except the provisions thereof pertaining to the conflicts of laws.

(c) Each party agrees that it will, at any time and from time to time, at the request of any other party, make, execute, acknowledge and deliver, or cause to be done, all such further acts, deeds or other documents as may reasonably be necessary or appropriate to complete the transactions contemplated by this Agreement.

(d) This Agreement, together with the terms and conditions in effect from time to time, constitutes the entire agreement of the parties as to the subject matter hereof, supersedes all prior understandings (whether written or oral) and may not be amended or modified except by a written document signed by both parties and stating that it is intended to amend this Agreement.

(e) Each party represents to the other party that it has the power and authority to execute, deliver and perform this Agreement, that all actions necessary to authorize the execution, delivery and performance of this Agreement have been duly taken, that it has duly executed and delivered this Agreement and that this Agreement is legal, valid and binding on it, and enforceable against it, in accordance with its terms.

(f) This Agreement and the right, duties and obligations contained herein shall be solely for the benefit of the parties hereto and their permitted assignees and transferees of the Real Property, and no third-persons or entities shall have any rights hereunder as a third-party beneficiary.

(g) The parties agree and understand that the Supreme Court, Dutchess County, New York, shall have exclusive jurisdiction of any disputes arising therefrom and that all disputes shall be tried before the Court without a jury.

(h) All notices and written communications between the parties concerning this Agreement shall be deemed to have been delivered upon receipt or refusal of delivery to the following addresses:

If to Town: Supervisor  
Town of LaGrange  
120 Stringham Road  
LaGrangeville, NY 12540

With a copy to: Van DeWater & Van DeWater, LLP  
P. O. Box 112  
Poughkeepsie, NY 12602

The Chazen Companies  
P. O. Box 3479  
Poughkeepsie, NY 12602

If to Owner: c/o Stephen E. Rieger  
Rieger Homes, Inc.  
6 Old North Plank Road  
Newburgh, NY 12550

With a copy to: Daniel F. Leary, Esq.  
Cuddy & Feder LLP  
300 Westage Business Center  
Suite 380  
Fishkill, NY 12524

Either party may change the address to which notice is to be sent by like notice. Any successor elected official shall be deemed to have been changed as to this notice provision by virtue of his or her assumption of their office.

(i) This Agreement may only be amended by a written agreement of the parties. If any provision, clause or part of this Agreement or the application thereof under certain circumstances, is held invalid, the remainder of this Agreement, or the application of each provision, clause or part under other circumstances, shall not be affected thereby.


(j) The failure of any party to insist, in any one or more instances, upon performance of any of the terms or conditions of this Agreement, shall not be construed as a waiver or relinquishment of any rights or benefits granted hereunder or the future performance of any such term, covenant or condition.

**TOWN OF LAGRANGE**

By:   
Jon J. Wagner, Supervisor

**OWNER**

DALEY FARM DEVELOPMENT, LLC

By:   
Stephen E. Wiegner

  
David E. Petrovits

Acknowledgment by a Person Within New York State (RPL § 309-a)

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF DUTCHESS )

On the 19th day of April in the year 2006, before me, the undersigned, personally appeared SUPERVISOR JON J. WAGNER, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Rebecca A. Valk  
(signature and office of individual taking acknowledgment)

REBECCA A. VALK  
Notary Public, State of New York  
No. 02VA6106160  
Qualified in Orange County  
Commission Expires March 1, 2008

Acknowledgment by a Person Within New York State (RPL § 309-a)

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF DUTCHESS )

On this 19th day of April in the year 2006, before me, the undersigned, personally appeared DAVID E. PETROVITS personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

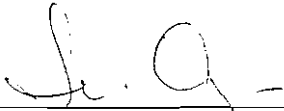
Linda A. Crotty  
(signature and office of individual taking acknowledgment)

LINDA A. CROTTY  
Notary Public, State of New York  
No. 01CR4739336  
Qualified in Dutchess County  
Commission Expires October 31, 2009

Acknowledgment by a Person Within New York State (RPL § 309-a)

STATE OF NEW YORK        )  
  ) ss.:  
COUNTY OF DUTCHESS    )

On this 19th day of April in the year 2006, before me, the undersigned, personally appeared STEPHEN E. RIEGER personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



\_\_\_\_\_  
(signature and office of individual taking acknowledgment)

**TANIKA ARMSTRONG**  
Notary Public, State of New York  
No. 01AR4990703  
Qualified in ORANGE County  
Commission Expires JANUARY 13, 2010

Exhibit A  
Water Agreement

The Real Property consists of two (2) tax parcels  
identified as follows:

a. A  $\pm$  90.15 acre parcel identified as parcel # 0213-  
3400-6360-03-099220-0000

b. A  $\pm$  87.45 acre parcel identified as parcel # 0213-  
3400-6360-03-22930-0000

## SEWER AGREEMENT

THIS AGREEMENT made this 25<sup>th</sup> day of April, 2006 by and between the Town of LaGrange, a municipal corporation organized under the laws of this state, with offices at 120 Stringham Road, LaGrangeville, New York 12540 (hereinafter the "Town"), as party of the first part and Daley Farm Development, LLC, an entity organized under the laws of this state having its principal office at 6 Old Plank Road, Newburgh, New York 12550 and David Petrovits, 101 Daley Road, Poughkeepsie, New York 12603-4338, jointly and severally, (collectively known as "Owner").

WHEREAS, the Town and its Titusville Sewer District (the "District") have been engaged, at the direction of this state's Department of Environmental Conservation, in a program to increase and to improve the existing sewage treatment and collection facilities of the District in order to address regulatory compliance issues; and

WHEREAS, the District intends to increase and to improve the District's facilities by the design and construction of a new sewage treatment plant situated on an approximate five (5) acre parcel along the Wappinger Creek, together with related facilities which shall include a new waste water collection line connecting the District's existing treatment facilities to proposed new treatment plant; and

WHEREAS, The Town has adopted a Wastewater Master Plan for the District which addresses future potential service areas, and the Wastewater Master Plan has been the subject of full environmental impact statement review pursuant to SEQRA; and

WHEREAS, the Owner is the respective fee owners and/or contract vendees, respectively, of certain parcels of real property more particularly described within Exhibit "A" annexed hereto (the "Real Property"), and Owner wishes to obtain sewage treatment and collection capacity in the District's proposed increased and improved facilities by inducing the Town (a) to promote and to facilitate the Town's establishment and improvement, at no cost to the Town, of one or more sewer improvement districts or sewer improvement areas, pursuant to Articles 12, 12-A or 12-C of the Town Law, respectively, (the "Future Sewer Administration Entities"), to include the Real Property and/or other real property, and (b) to reserve wastewater collection and treatment capacity for the Real Property to accommodate a real estate development project know as Daley Farm; and

WHEREAS, the parties contemplate that each Future Sewer Administration Entity, if established and improved, will make use of the District's increased and improved facilities for the collection and treatment of wastewater to be transmitted by the Future Sewer Administration Entities to the District's improved facilities at an appropriate point of connection for each such entity to be designated by the Town.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, receipt whereof is hereby acknowledged, the Town Board and the Owner agree as follows:

1. Description of the District's Project: The Town, on behalf of the District, agrees that it shall exercise best efforts to construct (a) a new sewage treatment plant on the

aforesaid approximate five (5) acre site on the Wappinger Creek near Overlook Road in the Town (the "Plant"), (b) a new sewage collection line connecting the Plant to the vicinity of the District's existing treatment facilities, and generally running west along, but not within, the former "Maybrook rail line" (the "Collection Line"), and (c) related accessory appurtenances.

2. Description of the Owner's Property: The Owner represents that it owns certain real property situated in the Town and more particularly described in Exhibit "A" (the "Real Property").

3. Description of the Future Sewer Administration Entities Project: The Town agrees that it shall exercise best efforts (a) to establish, by petition of property owners, or otherwise, one or more Future Sewer Administration Entities which include the Real Property and/or the other parcels of real property, and (b) to cause the Future Sewer Administration Entities to create appropriate improvements at limited cost to the Entity as provided herein, including but not limited to a force main, pumping station, public collection line facilities, and related appurtenances, for purposes of collecting and transmitting sewage generated by the Real Property to the District's facilities at a point of connection at Davis Road to be determined by the Town after consultation with Owner. Owner shall be responsible for (a) all Town professional consultant costs incurred, and as they are incurred, to establish the Entity and (b) the costs of such improvements for the relevant Entity covering the Real Property, as well as the costs of lines and appurtenances connecting the Real Property to the collection improvements of the District, to the limited extent necessary to insure that the estimated annual cost to typical user, as

identified in the statutory map, plan and report for the Entity, does not exceed the regulatory threshold established by the State Comptroller for determining whether the approval of that regulatory agency is required for establishment of the Entity and the Entity's undertaking of the aforesaid improvements by public financing. For purposes of potentially apportioning (based on a pro rata design flow demand or reasonable equivalent) the costs of lines and appurtenances connecting the Real Property to the Town designated point of connection to the District's facilities, and limited to situations where (i) owners of suitable and proximate lands intervening between the Real Property and the point of connection and/or (ii) owners of suitable and proximate lands located beyond the Real Property in relation to the point of connection are willing to enter into a suitable reserved capacity agreement if the Town requires one and to give an irrevocable petition (within the meaning and following the procedures of Article 12 of this state's Town Law), the Town shall use best efforts (so long as all legal, engineering, administrative costs, and disbursements arising out of the exercise are defrayed by the Owner and/or third parties) to create a Future Sewer Administration Entity which encompasses such additional lands and the Real Property. The Town shall not be obligated to employ such best efforts to impose, on its own motion, the establishment of a Future Sewer Administration Entity upon owners of any real properties who have not executed the aforesaid petition to be included, nor shall the Town be obligated to establish such an entity if the estimated annual cost to typical user, as identified in the statutory map, plan and report, exceeds the regulatory threshold established by the office of the State Comptroller for determining whether the approval of that regulatory agency is required for establishment of the entity. Owner shall contribute the sum of \$23,400.00 to

the Town's open space preservation fund payable at the time of the Entity's incurring of public debt to undertake the subject improvements.

4. Reserved Capacity: Owner has applied, or is about to apply, to the Town Board for a project specific rezoning of the Real Property from its current zoning designation to a zoning designation of "PDD". The Owner's Real Property shall have a Maximum Reserved Capacity for wastewater collection and treatment in the District's facilities, by way of the appropriate Future Sewer Administration Entity to be formed, of 44,740 gallons per day, average daily flow, which is calculated to reflect uses related to the potential zoning change. The Minimum Reserved Capacity for the Real Property shall be 32,490 gallons per day, average daily flow, based upon a determined standard plan lot count of 91 times the per lot usage factor of 350 g/p/d.

Owner's application for PDD rezoning is accompanied by a project development plan for the establishment of a certain density of mixed single family and multi-family residential units, and some accessory commercial or retail use, i.e., the Owner's "Proposed Density" of development. If the PDD rezoning is granted by the Town Board, but the Planning Board determines to approve a project development plan of less than the Proposed Density then, with respect to the unneeded wastewater demand which directly results from the Planning Board's decision, the Owner shall possess the option to return, or "put", the resulting excess reserved capacity back to the Town, and only under the following circumstances the Town shall be obligated to accept such put and to arrange for payment back to the Owner for

the returned capacity at the rate identified in paragraph "5" hereof:

(a) the Owner exercises the put option within 5 years of the Planning Board determination;

(b) other real property in the Town, then unserved by municipal sewage collection, or served but in need of additional capacity, is deemed by the Town to be an appropriate site for the delivery of initial or additional municipal wastewater service and at the charge then generally prevailing for use of the District's collection and treatment facilities; and

(c) the owner of the identified real property fully defrays the price of the put to be paid by the Town to the Owner, and otherwise meets all terms of, and makes all contractual arrangements required by the Town at that time to reserve sewage treatment capacity, including the payment of then prevailing reserved capacity charges. The Town has designed the District's new wastewater treatment plant to provide (a) an initial capacity of .05 MGD("Module 1") which will accommodate the District's waste- water requirements and the requirements of the Sleight Farm and Frank Farm subdivisions, and (b) two potential expansions of .05MGD each ("Module 2" and "Module 3", respectively) as may be needed to accept wastewater from an expanded user base. The .05 MGD capacity of Module 1 is greater than the combined actual treatment demand of the District, Sleight Farm and Frank Farm. Access to the remaining treatment capacity of Module 1, and access to the capacity created by Module 2, shall be made available to the Owner or to those third parties who have made the same or similar reserve capacity agreements with the Town based upon the order in which building permits are issued, if necessary, to develop and use the subject competing parcels.

5. Consideration for the Reservation of Capacity: The owner shall pay the Town, for use to defray the costs of final design, approval and construction of the District's increased and improved facilities, the sum of \$715,840 derived from the rate of \$16.00 per gallon. Payment should be made as follows:

(a) With the making of this agreement, the sum of \$178,960 [25%]:

(b) Upon the date to be fixed by the Town as the deadline for receipt of bids to undertake the construction of the "Titusville Trunk" sewer line the sum of \$357,920 [50%]; and

(c) Within ninety days after the Town's award of the construction contract for the Titusville Trunk, the remainder of \$178,960 [25%].

In the event the Owner does not obtain the proposed change of zone of the property to "PDD" district within 24 months, through no fault of the Owner given diligent, good faith prosecution of the application for rezoning, the Owner shall be entitled to an adjustment of the consideration, and of the reserved capacity. The amount of the monetary adjustment shall be one hundred percent (100%) of the difference between the consideration for the Maximum Reserved Capacity and the consideration for the Minimum Reserved Capacity calculated at the rate of \$16.00 per gallon.

6. Security for Payment of the Consideration; Letter of Credit: Upon the signing of this Agreement, Owner shall provide a Letter of Credit (the "Letter") in favor of the Town by a bank which is a member of the New York Clearing House and which provides a site for presentation and draw of the Letter of Credit within this State and within a 100 mile radius of the LaGrange Town Hall. Owner shall deliver a Letter satisfactory

to the Town Attorney and setting forth the Town's entitlement to draw upon the Owner's failure to render timely payment pursuant to the terms of this Agreement.

Owner agrees that the issuing bank shall have the unconditional right to rely on the draft of Letter by the Town.

7. Installation of Collection System by Owner: Owner shall be responsible for the design and construction of wastewater collection system for the entire Real Property including, but not limited to obtaining sewer line easements and other necessary real property rights, secondary and main interceptor lines, and pumping stations accommodating the collection and transmission of wastewater (the "Collection System"). Plans for the complete facilities, and the design and construction of the Collection System shall comply with all laws, rules and regulations applicable thereto, including without limitation the New York Public Health Law, the New York Environmental Conservation Law, and the Federal Environmental Protection Act. The plan for the complete facilities and the design shall be subject to the approval of the LaGrange Town Board. Construction of the Owner's on-site Collection System shall be supervised and inspected by representatives of the Town and, with the approval and consent of the Town Board, construction may occur in phases. The Owner shall fund an escrow account with the Town to defray the consultant fee expenses incurred by the Town.

8. Time of the Approval of the Design and Plans for the Collection System: At the time Owner submits its application for project development plan approval of the development of the Real Property to the Town Board having jurisdiction over the proposed development, Owner shall submit to the Town Board the

design and plans for any Collection System. The Town Board shall review the design and plans for the Collection System and the Board shall have the right to approve, modify, or disapprove the design and plans. Notwithstanding the approval of the Owner's development plan by any board of the Town of LaGrange having jurisdiction over such development plan, Owner shall not commence the construction, development or improvement of the Real Property nor seek any building permits for any structures on the Real Property until the Town Board has approved the design and plans of the Collection System. A Future Sewer Administration Entity established by the Town shall, after Town approval of construction, take over ownership, operation and maintenance of the collection of the Collection System, provided Owner is able to provide to the Town suitable utility easements and clear title to the easements and of the fixtures.

9. Administration: Owner irrevocably commits to allow the Town, at the Town's option, to establish any one or more of the following alternative means for providing sewer collection and treatment service to the Owner's Real Property, assessing the Real Property for appropriate purposes including, but not limited to, contribution of an appropriate share of the actual resulting capital costs of the District's Plant, Collection Line, and related appurtenances, and taking over ownership, operation and maintenance of Owner's future Collection System:

(a) establishment or extension of a special sewer improvement district(s) including the Real Property and any Collection System proposed by the Owner under either Article 12 or 12-A of the Town Law;

(b) extension of the Titusville Sewer District to include the Owner's Real Property and any Collection System under Article 12 or 12-A of the Town Law; and/or

(c) inclusion of the Owner's Real Property and any Collection System within a sewer improvement area established under Article 12-C of the Town Law.

Owner pledges not to interfere with the Town's election among these alternatives. Owner shall be responsible to defray the Town's costs and expenses in establishing any of the aforesaid entities.

If requested by the Town, Owner shall dedicate, at no cost to the Town, Owner's Collection System, and real property interests related thereto, and such additional utility easements required to construct the collection system and/or any other municipal sewage collection facilities provided such utility easements are located so as not to restrict, limit or otherwise interfere with the development of the Real Property and construction of improvements thereon, to the Town or to the Future Sewer Administration Entity of the Town's choice. Owner shall execute whatever petition or petitions are presented by the Town to include the Real Property in a special improvement district, district extension, or improvement area. If Owner refuses, this Agreement shall be deemed the equivalent of an irrevocable petition to establish such Future Sewer Administration Entities and a waiver of the right to petition for permissive referendum, or to otherwise challenge by any means, the establishment of such entity or entities, and the Town shall otherwise be entitled to exercise default remedies established by this Agreement including the recovery of reasonable attorneys fees and other professional fees or costs occasioned by a dispute, claim, or suit arising out of Owner's failure to comply. In the event that Owner receives land use approvals for development of the Real Property prior to Town exercising any of the options

described in this Paragraph "9", Owner shall make the transfer of any title or interest to the Real Property, or any subdivided portion thereof, subject to all of the obligations of this paragraph, this provision being in addition to the legal effect of recording this instrument with the County Clerk.

The Town is authorized to administer the resulting sewer district, sewer district extension, and/or improvement area (also referred to herein as Future Sewer Administration Entities) so as to recover, through the imposition of benefit assessments against the Owner's Real Property, the prorated difference between the total cost of the District's improvement of its facilities and the sum of capital contributions provided by the Owner and other land owners entering into this form of agreement, or one similar to it, for the purpose of defraying the District's improvements of its facilities, and the method of prorating shall consist of a fraction whose numerator is the reserved capacity of each participating property owner and whose denominator is the permitted capacity of the District's Plant.

Notwithstanding the Real Property's inclusion within one or more Future Sewer Administration Entities and notwithstanding the nature of any rights to receive sewage collection and treatment service which arise generally as a consequence of such inclusion by operation of law, (a) the entitlement of the Real Property to benefit from sewage and collection treatment service shall be capped at the relevant reserve capacity figure resulting from application of ¶ "5" of the Agreement, and (b) the Owner waives and releases the Town, the District, and any Future Sewer Administration Entities from any obligation to provide additional collection and treatment capacity until and unless the Owner pays the Town or relevant Future Sewer Administration

Entities the then prevailing charge for reservation of capacity, if it then exists, in the Plant, Collection Line, and appurtenant facilities of the District.

10. Recording this Agreement shall be binding on the heirs, successors and assigns of the parties hereto, it shall run with the land, and a memorandum of this Agreement or this Agreement shall be recorded in and indexed to the Real Property in the Dutchess County Clerk's Office.

11. Securing the Owner's Performance: In the event of need by the Town to take steps, by litigation or otherwise, to collect the payments identified herein, or to otherwise remedy a default in performance of a provision of this Agreement by the Owner, the Town shall be entitled to recover its actual and reasonable attorney's fees.

12. Warranties and Representations: The Town has made no warranties or representations to the Owner concerning future development of the Real Property, or the outcome of any review by the Planning Board of any development proposal, or the approvals that may be anticipated from any agency of the Town.

13. Contingencies: The obligations of the Town under this Agreement are conditioned upon the Town's obtaining of all necessary federal, state or local agency approvals for the design, financing, and construction of (i) the aforesaid increased and improved facilities of the District, and (ii) the establishment, financing for and improvement of one or more Future Sewer Administration Entities.

14. Owner shall have no right to resell or assign, for the benefit of other real property, sewage collection and treatment capacity provided by the Town under this Agreement.

15. The rights to transmission and treatment capacities conferred by this agreement shall be for a period of twenty (40) years commencing with the date of functional completion of the District's increased and improved facilities.

16. (a) Nothing in this Agreement, express or implied, is intended to confer upon any third-party any rights or remedies under or by reason of this Agreement. Each party represents that it is entering into this transaction as principal for its own account and not as an agent for any other party.

(b) This Agreement is deemed to be a contract entered into and shall be interpreted under the laws of the State of New York, except the provisions thereof pertaining to the conflicts of laws.

(c) Each party agrees that it will, at any time and from time to time, at the request of any other party, make, execute, acknowledge and deliver, or cause to be done, all such further acts, deeds or other documents as may reasonably be necessary or appropriate to complete the transactions contemplated by this Agreement.

(d) This Agreement, together with the terms and conditions in effect from time to time, constitutes the entire agreement of the parties as to the subject matter hereof, supersedes all prior understandings (whether written or oral) and may not be amended or modified except by a written document signed by both parties and stating that it is intended to amend this Agreement.



If to Owner: c/o Stephen E. Rieger  
Rieger Homes, Inc.  
6 Old North Plank Road  
Newburgh, NY 12250


With a copy to: Cuddy & Feder, Esqs.  
300 Westage Business Center  
Suite 380, Fishkill, NY 12524

Either party may change the address to which notice is to be sent by like notice. Any successor elected official shall be deemed to have been changed as to this notice provision by virtue of his or her assumption of their office.

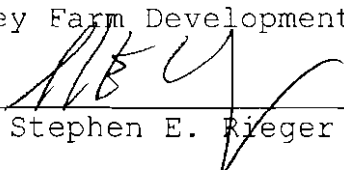
(i) This Agreement may only be amended by a written agreement of the parties. If any provision, clause or part of this Agreement or the application thereof under certain circumstances, is held invalid, the remainder of this Agreement, or the application of each provision, clause or part under other circumstances, shall not be affected thereby.

(j) The failure of any party to insist, in any one or more instances, upon performance of any of the terms or conditions of this Agreement, shall not be construed as a waiver or relinquishment of any rights or benefits granted hereunder or the future performance of any such term, covenant or condition.

**TOWN OF LAGRANGE**

By:   
Jon S. Wagner, Supervisor

**(OWNER)**

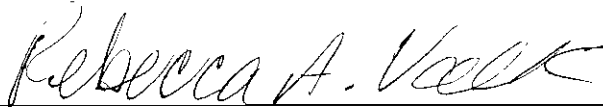
Daley Farm Development, LLC  
By:   
Stephen E. Rieger

  
David E. Petrovits

Acknowledgment by a Person Within New York State (RPL § 309-a)

STATE OF NEW YORK        )  
                                  ) ss.:  
COUNTY OF DUTCHESS    )

On the 19<sup>th</sup> day of April in the year 2006 before me, the undersigned, personally appeared SUPERVISOR JON J. WAGNER, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

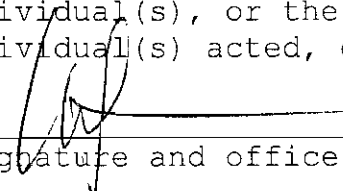
  
REBECCA A. VALK  
Notary Public, State of New York  
No. 02VA6106160  
Qualified in Orange County  
Commission Expires March 1, 2008

(signature and office of individual taking acknowledgment)

Acknowledgment by a Person Within New York State (RPL § 309-a)

STATE OF NEW YORK        )  
                                  ) ss.:  
COUNTY OF DUTCHESS    )

On this 25<sup>th</sup> day of April in the year 2006 before me, the undersigned, personally appeared DAVID E. PETROVITS personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

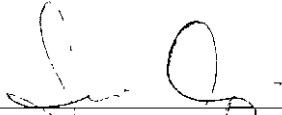
  
\_\_\_\_\_  
(signature and office of individual taking acknowledgment)

WHITNEY VAN DUSER  
Notary Public, State of New York  
Qualified in Ulster County  
Commission Expires: March 22, 2007

Acknowledgment by a Person Within New York State (RPL § 309-a)

STATE OF NEW YORK     )  
                                      )  ss.:  
COUNTY OF DUTCHESS    )

On this 10<sup>th</sup> day of April in the year 2006 before me, the undersigned, personally appeared STEPHEN E. RIEGER personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



\_\_\_\_\_  
(signature and office of individual taking acknowledgment)

**TANIKA ARMSTRONG**  
Notary Public, State of New York  
No. 01AR4990703  
Qualified in ORANGE County  
Commission Expires JANUARY 13, 2010

Exhibit A  
Sewer Agreement

The Real Property consists of three (3) tax parcels  
identified as follows:

a. A ± 55.76 acre parcel identified as parcel # 0213-  
3400-6360-03-081270-0000;

b. A ± 90.15 acre parcel identified as parcel # 0213-  
3400-6360-03-099220-0000; and

c. A ± 87.45 acre parcel identified as parcel # 0213-  
3400-6360-03-22930-0000.