

**DEVELOPER'S AND SETTLEMENT AGREEMENT**

THIS DEVELOPER'S AND SETTLEMENT AGREEMENT is made this 29<sup>th</sup> day of June, 2010, by and between ANNE ARUNDEL COUNTY, MARYLAND, a body corporate and politic of the State of Maryland (the "County"), Two Rivers Development Company, LLC, Koch-Two Rivers, Inc., and Two Rivers Investors, LLC (Two Rivers Development Company, LLC, Koch-Two Rivers, Inc. and Two Rivers Investors, LLC collectively referred to herein as "Two Rivers"), and Piney Orchard Utility Company, LLC ("POUC").

WHEREAS, pursuant to § 13-5-402 of the Anne Arundel County Code, on January 24, 2007, Two Rivers received a residential allocation from the County for water and wastewater capacity, and on January 29, 2007, Two Rivers received a commercial allocation from the County for water and wastewater capacity, said allocations constituting a total of 2,137 equivalent dwelling units ("EDUs"); and

WHEREAS, Two Rivers is subject to all fees and charges set forth in § 13-5-403 of the Anne Arundel County Code; and

WHEREAS, Two Rivers is in arrears to the County for sewer allocation reservation charges and related late fees for the period ending June 30, 2010, in the total amount of Six Hundred Seventy-Three Thousand Seven Hundred Eighty-Five Dollars (\$673,785.00) ("Two Rivers' Sewer Arrearages"); and

WHEREAS, Two Rivers has secured 500,000 gallons per day ("GPD") of equivalent nutrient load capacity at the Piney Orchard Treatment Plant; and

WHEREAS, Two Rivers desires to relinquish all but 200 EDUs of its sewer allocation and receive a phased-in allocation of at least 200 additional EDUs per year beginning on January 1, 2011 until it is allocated 2,137 EDUs, and the fees for the relinquishment of all but 200 EDUs of its sewer allocation total One Million Seven Hundred Sixty-Two Thousand Six Hundred Seventy Dollars (\$1,762,670.00) (“Two Rivers’ Sewer Relinquishment Charges”); and

WHEREAS, Two Rivers desires to settle its arrearages with the County by effectuating the transfer of 500,000 GPD of equivalent nutrient load capacity from the Piney Orchard Treatment Plant to the County for value, and the County is willing to accept 500,000 GPD of equivalent nutrient load capacity from the Piney Orchard Treatment Plant as payment to settle Two Rivers’ Sewer Arrearages and the Two Rivers’ Sewer Relinquishment Charges; and

WHEREAS, Two Rivers is also in arrears to the County for water allocation reservation charges and related late fees for the period ending June 30, 2010, in the total amount of Three Hundred Eighty-Three Thousand Four Hundred Nine Dollars (\$383,409.00) (“Two Rivers’ Water Arrearages”);

WHEREAS, Two Rivers desires to relinquish all but 200 EDUs of its water allocation and receive a phased-in allocation of at least 200 additional EDUs per year beginning on January 1, 2011 until it is allocated 2,137 EDUs, and the fees for the relinquishment of all but 200 EDUs of its water allocation total One Million One Hundred Thirty-Three Thousand One Hundred Forty-Five Dollars (\$1,133,145.00) (“Two Rivers’ Water Relinquishment Charges”); and

WHEREAS, the parties hereto are desirous of taking all steps necessary, as described herein, to effectuate the terms hereof.

NOW, THEREFORE, in consideration of the representations, warranties, and covenants set forth in this Developer's and Settlement Agreement, the parties mutually agree as follows:

**Section 1. DEFINITIONS.**

Any definitions in the preceding introductory clauses of this Developer's and Settlement Agreement are incorporated by reference herein as if fully set forth. The following words have the following meanings:

"Applicable Legal Requirements": All local, state, and federal laws, rules, regulations, standards, codes, permits and agreements currently in force or as may be enacted in the future applicable to any obligations of the parties covered by this Developer's and Settlement Agreement, including any related judicial or administrative ruling or enforcement policies or procedures in effect as of or subsequent to the date of this Developer's and Settlement Agreement as modified from time to time.

"Effective Date": The date upon which this Developer's and Settlement Agreement becomes effective. The Effective Date shall be the date that an ordinance of the Anne Arundel County Council ratifying this Developer's and Settlement Agreement becomes law pursuant to Section 308(j) of the Anne Arundel County Charter.

"Equivalent Nutrient Load Capacity": Annual loading, expressed in pounds per year, of nitrogen at 6,091 and phosphorous at 457, minus any applicable offsets by MDE.

"Execution date": The date upon which this Developer's and Settlement Agreement is signed and legally executed by all parties hereto.

“Patuxent Water Reclamation Facility” (“Patuxent WRF”): The wastewater treatment facility owned and operated by the County that is an arrangement of devices and structures for treating wastewater influent and is located at 1640 Professional Boulevard, Crofton, Maryland.

“Piney Orchard Treatment Plant”: The wastewater treatment facility that currently treats wastewater from the Piney Orchard Sewer Service Area, and is an arrangement of devices and structures for treating wastewater influent, which is owned by POUC and located at 8791 Piney Orchard Parkway, Odenton, Maryland.

“Two Rivers”: For the purposes of this Developer’s and Settlement Agreement, Two Rivers Development Company, LLC, Koch-Two Rivers, Inc. and Two Rivers Investors, LLC shall be referred to collectively as “Two Rivers”. The parties acknowledge and agree that Two Rivers Investors, LLC intends to convey its remaining interest in the Two Rivers Project to Two Rivers Development Company, LLC. Upon such conveyance, and unless and until Two Rivers Investors, LLC reacquires an interest in the Two Rivers Project, Two Rivers Investors, LLC shall have no further interest in and shall be released from liability under this Developer’s and Settlement Agreement and, during any such period, the term Two Rivers shall mean and refer only to Two Rivers Development Company, LLC and Koch-Two Rivers, Inc.

“Two Rivers Project”: Two Rivers has obtained from the County a Special Exception and Sketch Plan Approval for 2,060 residential lots/units and community clubhouse (2,137 equivalent dwelling units), and Final Plan Approval for a portion of those lots, including associated infrastructure based on utilizing public sewer service from the County at the Patuxent WRF, which development project shall be referred to herein as the “Two Rivers Project”.

## **Section 2. EFFECTIVE DATE**

This Developer's and Settlement Agreement shall only become effective, if at all, upon the Effective Date.

## **Section 3. AGREEMENT.**

(a) All of the prefatory paragraphs are included herein as a substantive part of this Developer's and Settlement Agreement.

(b) Upon the Effective Date, Two Rivers shall retain 200 EDUs of its sewer allocation and shall relinquish the remainder of its sewer allocation of EDUs. Two Rivers shall pay the allocation reservation charges, capital facility connection fees, and capital facility deferral fees for its retained 200 EDUs of sewer allocation in accordance with County Code provisions, with an allocation date of October 1, 2010.

(c) Within sixty (60) days of the Effective Date, POUC shall apply jointly with the County to the State of Maryland, Department of the Environment ("MDE") to modify POUC's National Pollutant Discharge Elimination System ("NPDES") permit to transfer 500,000 GPD equivalent nutrient load capacity from the Piney Orchard Treatment Plant to the County's Patuxent WRF, thus reducing the rated discharge capacity of POUC, in accordance with MDE's Policy for Nutrient Cap Management and Trading in Maryland's Chesapeake Bay Watershed, which took effect April 17, 2008.

(d) Upon either the effective date of an ordinance of the Anne Arundel County Council ratifying this Developer's and Settlement Agreement, or the date that MDE issues a final modified discharge permit effectuating the transfer of the equivalent of 500,000 GPD of excess nutrient as described in Section 3(a), whichever is later and after both have occurred, POUC

shall transfer 500,000 GPD equivalent nutrient load capacity to the Patuxent WRF, and the County shall accept the 500,000 GPD of equivalent nutrient load capacity in lieu of payment of, and as consideration for, the Two Rivers' Sewer Arrearages and the Two Rivers' Sewer Relinquishment Charges. In no event shall the transfer or acceptance occur prior to the occurrence of the later event. Two Rivers shall remain responsible to the County for the Two Rivers' Water Arrearages and the Two Rivers' Water Relinquishment Charges, as more fully described in Section 3(g).

(e) Beginning January 1, 2011, subject to availability of capacity at the Patuxent WRF, the County shall allocate at least 200 additional EDUs of sewer allocation per year to Two Rivers until 2,137 sewer EDUs have been allocated to Two Rivers. The number of sewer EDUs that are reserved per year exceeding 200 at Two Rivers' request are subject to availability of capacity at the Patuxent WRF and the reasonable discretion of the Director of the County's Department of Public Works. Until Two Rivers has been allocated 2,137 sewer EDUs, Two Rivers shall be allocated a cumulative minimum of 200 EDUs per year, such that, as long as the number of sewer EDUs allocated to Two Rivers over the number of years since January 1, 2011, averages at least 200 sewer EDUs per year, then Two River shall not be required to receive additional sewer allocation. Two Rivers shall pay allocation reservation charges, capital facility connection fees, and capital facility deferral fees for sewer in accordance with County Code provisions for all sewer EDUs allocated beginning January 1, 2011.

(f) Two Rivers shall remain liable for all of the sewer charges and fees due and payable to the County pursuant to the County Code, including Two Rivers' Sewer Arrearages and Two Rivers' Sewer Relinquishment Charges, until the transfer of the equivalent of 500,000 GPD of excess nutrient load capacity from the Piney Orchard Treatment Plant to the Patuxent

WRF is effectuated. Should this transfer of capacity fail to occur, this Developer's and Settlement Agreement is voidable at the option of the County, and the County may seek payment in full of all charges and fees due and payable from Two Rivers in accordance with the County Code, including Two Rivers' Sewer Arrearages and Two Rivers' Sewer Relinquishment Charges, as well as any other remedy at law.

(g) Upon the Effective Date, Two Rivers shall retain 200 EDUs of its water allocation and shall relinquish the remainder of its water allocation of EDUs. Two Rivers shall pay the allocation reservation charges, capital facility connection fees, and capital facility deferral fees for its retained 200 EDUs for water in accordance with County Code provisions, with an allocation date of October 1, 2010. Two Rivers shall not be required to pay capital facility deferral fees at this time for the relinquished EDUs because Two Rivers shall be required to pay capital facility deferral fees when it receives future allocations pursuant to this subsection. Two Rivers' Water Arrearages and Two Rivers' Water Relinquishment Charges, minus capital facility deferral fees, total Eight Hundred Nineteen Thousand, Two Hundred Thirty-Four Dollars (\$819,234.00). Within thirty (30) days of the Effective Date, Two Rivers shall pay to the County Eighty-One Thousand Nine Hundred Twenty-Three Dollars (\$81,923.00) (10% of the Two Rivers' Water Arrearages and Two Rivers' Water Relinquishment Charges, after capital facility deferral fees are subtracted). Two Rivers shall finance the remaining balance of Two Rivers' Water Arrearages and Two Rivers' Water Relinquishment Charges, in the amount of Seven Hundred Thirty-Seven Thousand Three Hundred Eleven Dollars (\$737,311.00) at 8% interest, with quarterly payments of Forty-Five Thousand Ninety-One Dollars (\$45,091.00) over 5 years, with the first payment becoming due and payable within one hundred twenty (120) days of the Effective Date. Beginning January 1, 2011, subject to availability of capacity within the

County's water system, the County shall allocate at least 200 additional EDUs of water per year to Two Rivers until 2,137 EDUs of water have been allocated to Two Rivers. The number of water EDUs that are reserved per year exceeding 200 at Two Rivers' request are subject to availability of capacity and the reasonable discretion of the Director of the County's Department of Public Works. Until Two Rivers has been allocated 2,137 EDUs of water, Two Rivers shall be allocated a cumulative minimum of 200 EDUs of water per year, such that, as long as the number of water EDUs allocated to Two Rivers over the number of years since January 1, 2011, averages at least 200 water EDUs per year, then Two River shall not be required to receive additional water allocation. Two Rivers shall pay allocation reservation charges, capital facility connection fees, and capital facility deferral fees for water in accordance with County Code provisions for all EDUs allocated beginning January 1, 2011. The transfer of 500,000 GPD equivalent nutrient load capacity, as described in Section 3(d) of this Developer's and Settlement Agreement, in no way eliminates, lessens, or reduces Two Rivers' responsibility to pay to the County the full amount of the Two Rivers' Water Arrearages and the Two Rivers' Water Relinquishment Charges.

(h) Two Rivers, POUC, and the County shall use reasonable efforts to help obtain approval by the Anne Arundel County Council of an ordinance ratifying this Developer's and Settlement Agreement and the terms herein, and to help obtain approval by MDE of the transfer of the equivalent nutrient load capacity from the Piney Orchard Treatment Plant to the Patuxent WRF.

(i) No later than thirty (30) calendar days following the Execution date of this Developer's and Settlement Agreement, POUC, Two Rivers, and the County each shall designate a representative who will act as the primary liaison for all communications regarding

this Developer's and Settlement Agreement. Each party shall give notice to the other parties of the representative's name and address, and thereafter, apprise the other parties of any changes in such information.

(j) After the first building permit is issued for the Two Rivers Project, the County shall provide a monthly written report to POUC that includes a summary of building permits applied for and issued for the Two Rivers Project and the number of EDUs per building permit.

(k) The EDU allocation method set forth in this Developer's and Settlement Agreement does not alter or negate the approval for adequacy of public facilities presently obtained by the Two Rivers Project pursuant to Anne Arundel County Code Article 17, Title 5 (2005).

(l) Neither POUC nor Two Rivers may assign its rights or responsibilities under this Developer's and Settlement Agreement to a third party without the written consent of the County, not to be unreasonably withheld, conditioned or denied.

#### **Section 4. DEFAULTS AND REMEDIES**

(a) Event of Default. In the event that Two Rivers or POUC fails to comply with the terms of this Developer's and Settlement Agreement, the County may, at its option, declare this Developer's and Settlement Agreement null and void, exercise all rights the County may have at law or in equity, and seek a determination of default or redress from the Circuit Court of Anne Arundel County.

In the event of a default by the County, Two Rivers shall have the right of any available remedy in law or equity.

(b) Remedies Cumulative. No remedy reserved to any party under this Developer's and Settlement Agreement is intended to be exclusive of any other available remedy or remedies but each such remedy shall be cumulative and shall be in addition to every remedy given under this Developer's and Settlement Agreement, at law, in equity, or by statute. Delay or omission to exercise any right or power accruing upon any failure by either party to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon default by the other party shall not impair any such right or power or be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce, by injunction or other appropriate legal or equitable remedy, strict compliance by the other party with all of the covenants and conditions of this Developer's and Settlement Agreement.

#### **Section 5. AUTHORITY TO SIGN.**

The parties to this Developer's and Settlement Agreement certify that this Developer's and Settlement Agreement has been duly authorized and approved by all required organizational action of the parties. The persons executing this Developer's and Settlement Agreement on behalf of the parties certify that he or she has the legal and organizational authority to do so.

#### **Section 6. MISCELLANEOUS.**

(a) Notices. Any notice or other communication pursuant to this Developer's and Settlement Agreement shall be in writing and shall be deemed to have been duly given or made to the party entitled to notice when personally delivered on the third business day after being

mailed by United States Registered or Certified Mail, postage prepaid, to the following addresses:

If to County:

Director, Department of Public Works

With a copy to:

County Attorney

If to Two Rivers:

Two Rivers Development Company, LLC  
Attn: Stephen A. Eckert  
8120 Woodmont Avenue, Suite 300  
Bethesda, Maryland 20814  
Facsimile: (301) 913-5482

And to:

Two Rivers Development Company, LLC  
Attn: William Gerald  
8120 Woodmont Avenue, Suite 300  
Bethesda, Maryland 20814  
Facsimile: (301) 913-5482

And to:

Koch-Two Rivers, Inc.  
Attn: Gary W. Koch  
2661 Riva Road, Suite 220  
Annapolis, Maryland 21401  
Facsimile: (410) 573-5257

And to:

Two Rivers Investors, LLC  
Attn: Frank M. Timlin  
7520 Indian Pipe Ct.  
Columbia, MD 21046

If to POUC:

Piney Orchard Utility Company, LLC  
Attn: John C. Stamato  
2661 Riva Road  
Building 300, Suite 340  
Annapolis, MD 21401  
Facsimile: (410) 571-9415

or to such other address as each party may hereafter specify in writing to the other party.

(b) Entire Agreement; Amendments; Beneficiaries. Except as expressly set forth herein, this Developer's and Settlement Agreement constitutes the entire agreement between the parties and contains all of their representations, warranties, covenants, or obligations. This Developer's and Settlement Agreement supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions, written or oral, of the parties, relating to any transaction contemplated by this Developer's and Settlement Agreement. The rights and obligations of the parties under this Developer's and Settlement Agreement shall inure to the benefit of and be binding upon their respective successors and permitted assigns.

(c) Severability. In the event any provision of this Developer's and Settlement Agreement or application of any provision is held invalid for any reason or reasons, such invalidity shall not affect the other provisions or the applications hereto which can be given effect without the invalid provisions or application. To this end, all the provisions of this Developer's and Settlement Agreement are deemed to be severable, each from the other.

(d) Enumeration and Headings. The enumerations and headings contained in this Developer's and Settlement Agreement are for convenience of reference only and do not form any part of this Developer's and Settlement Agreement.

(e) Counterparts. This Developer's and Settlement Agreement may be executed in any number of counterparts and by the parties on separate counterparts, each of which when so executed and delivered will be an original document, but all of its counterparts together will constitute one and the same instrument.

(f) Choice of Law. This Developer's and Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of Maryland. The parties agree that any

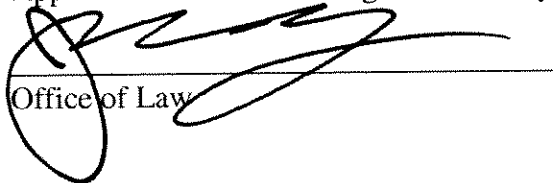
cause arising hereunder shall be subject to the jurisdiction of the Circuit Court for Anne Arundel County, Maryland.

(g) Perpetuities. If any of the covenants, restrictions, or other provisions of this Developer's and Settlement Agreement shall be unlawfully void, or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

[Signatures on next page.]

IN WITNESS WHEREOF, the parties have caused this Developer's and Settlement Agreement to be executed by their duly authorized representatives as of the date first above written.

Approved as to form and legal sufficiency:

  
Office of Law

6-29-10  
Date


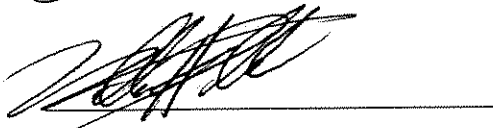
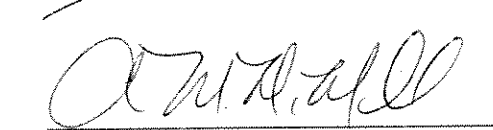
ATTEST:

  
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ANNE ARUNDEL COUNTY, MARYLAND

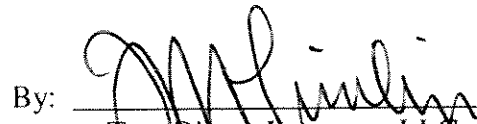
  
By: \_\_\_\_\_  
Dennis Callahan  
Chief Administrative Officer

TWO RIVERS

  
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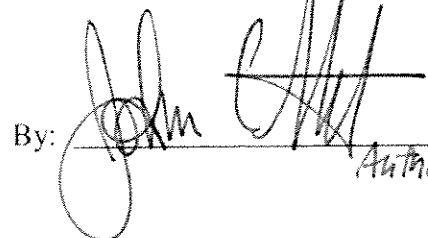
By:  Authorized Person  
Two Rivers Development Company, LLC

By:   
Koch-Two Rivers, Inc.

By:   
Two Rivers Investors, LLC  
By: Frank M. Tindin, Manager

PINEY ORCHARD UTILITY COMPANY

  
\_\_\_\_\_

By:   
Authorized Person

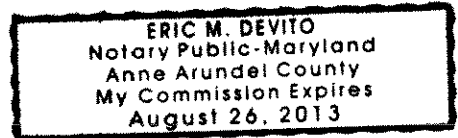
STATE OF MARYLAND, COUNTY OF Anne Arundel, to wit:

I HEREBY CERTIFY, That on this 28th day of June, 2010, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared STEPHEN A. ECKERT, known to me or satisfactorily proven to be the individual whose name is subscribed to the foregoing instrument, who acknowledged himself to be the Authorized Person of TWO RIVERS DEVELOPMENT COMPANY, LLC, a Maryland corporation (the "Corporation"), and that s/he, as such Authorized Person, being authorized so to do, executed the foregoing Developer's and Settlement Agreement on behalf of the Corporation by signing the name of the Corporation by himself as such Authorized Person.

AS WITNESS my Notarial Seal.

Eric M. Devito  
Notary Public

My Commission Expires: 8/26/2013



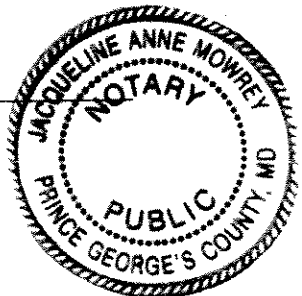
STATE OF MARYLAND, COUNTY OF Prince Georges to wit:

I HEREBY CERTIFY, That on this 28th day of June, 2010, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared GARY W. KOCH, known to me or satisfactorily proven to be the individual whose name is subscribed to the foregoing instrument, who acknowledged himself to be the Authorized Person of KOCH-TWO RIVERS, INC., a Maryland corporation (the "Corporation"), and that s/he, as such Authorized Person, being authorized so to do, executed the foregoing Developer's and Settlement Agreement on behalf of the Corporation by signing the name of the Corporation by himself as such Authorized Person.

AS WITNESS my Notarial Seal.

Jacqueline Anne Mowrey  
Notary Public

My Commission Expires: 5/6/2014



STATE OF MARYLAND, COUNTY OF MONTGOMERY, to wit:

I HEREBY CERTIFY, That on this 28th day of June, 2010, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared Frank M. Timlik, known to me or satisfactorily proven to be the individual whose name is subscribed to the foregoing instrument, who acknowledged himself to be the Manager of TWO RIVERS INVESTORS, LLC, a Maryland limited liability company (the "Corporation"), and that s/he, as such Manager, being authorized so to do, executed the foregoing Developer's and Settlement Agreement on behalf of the Corporation by signing the name of the Corporation by himself as such Authorized Person.

Manager

AS WITNESS my Notarial Seal.

[Signature]  
Notary Public

My Commission Expires: 3/1/2014

STATE OF MARYLAND, COUNTY OF Anne Arundel, to wit:

I HEREBY CERTIFY, That on this 29<sup>th</sup> day of June, 2010, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared JOHN C. STAMATO known to me or satisfactorily proven to be the individual whose name is subscribed to the foregoing instrument, who acknowledged himself to be the Authorized Person of PINEY ORCHARD UTILITY COMPANY, a Maryland corporation (the "Corporation"), and that s/he, as such Authorized Person, being authorized so to do, executed the foregoing Developer's and Settlement Agreement on behalf of the Corporation by signing the name of the Corporation by himself as such Authorized Person.

AS WITNESS my Notarial Seal.

[Signature]  
Notary Public

My Commission Expires: 8/26/2013

