

SAMPLE THIRD PARTY BENEFICIARY CONTRACT
AGREEMENT

THIS AGREEMENT, made this _____ day of _____
by and between _____, a corporation, First
Party (hereinafter called "Company") and _____(see text, page 7 for
selection of entity)_____, a corporation only, chartered, organized,
and existing under the Laws of _____
(hereinafter called "Representative").

W I T N E S S E T H:

WHEREAS, the Company is now the owner of property in _____
_____County, State of _____ described
in Schedule A, attached hereto, upon which there is located the Company's
water supply system(s) and/or sewage system(s) or upon which there is
being constructed by the Company and will be located a water supply
system and/or sewage system; and

WHEREAS, the Company warrants that all the property described in
Schedule A, as well as all water supply system and/or sewage systems
hereafter acquired by the Company shall be made subject to the Agreement
by recordation of appropriate covenants, reservations, restrictions, or
conditions in such manner as is required by _____ law to
put all persons on notice that such properties have been subjected to
the terms of this Agreement; and

WHEREAS, the Company hereby warrants that existing and future
encumbrances, liens or other indebtedness, if any, to the title of water
supply systems and/or sewage systems now owned or hereafter acquired by
the Company shall be subordinated and made subject to this Agreement.

WHEREAS, the Company intends to construct, operate, and maintain
said water supply systems and/or sewage systems for the purpose of
supplying water and/or sewage collection and disposal service to
buildings, residences and other improvements located in areas and
subdivisions adjacent to or in the vicinities of said water supply systems
and/or sewage systems and for that purpose will construct, lay, and
maintain water storage and distribution facilities, water and sewage
mains, lateral lines, manholes, pumping stations, and all other facilities
and appurtenances necessary to maintain an adequate water supply
for domestic consumption for the occupants of such buildings, residences,
and other improvements in said areas and subdivisions and also
necessary for the purpose of supplying sewage collection and disposal
service to such buildings, residences, and other improvements; and

APPENDIX 5

WHEREAS, it is contemplated that the buildings, residences and other improvements to be served by the said water supply system and/or sewage systems of the Company will be located on properties in said areas or subdivisions which will be security for mortgages given to various lenders, including the Representative, which mortgages may be insured under the National Housing Act and/or guaranteed under the Servicemen's Readjustment Act of 1944, as amended; and

WHEREAS, the Representative is _____(see text page 7 for selection of entity)_____.

WHEREAS, one of the inducing factors to the granting of mortgage loans on properties, buildings, residences, and other improvements in the areas to be served by the water supply systems and/or sewage systems of the Company by the Representative and other lenders and the insuring thereof under the National Housing Act and/or Servicemen's Readjustment Act of 1944, as amended, is that there will be continuous operation and maintenance of the water supply systems and/or sewage systems according to the approved standards set forth in this Agreement, and that rate charges by the Company for its services will be reasonable, and the Company is desirous of assuring that its rates will be reasonable, and also assuring the continuance of the operation and maintenance of said water supply systems and/or sewage systems, for the benefit of the present and future owners of properties, buildings, residences, and other improvements, and mortgagees holding mortgages covering such buildings, residences, and other improvements, including the Representative;

NOW THEREFORE, for an in consideration of the reliance upon this Agreement by the Representative and by present and future owners of buildings, residences, and other improvements to be served by the water supply systems and/or sewage systems of the Company, and by mortgagees (who will make and hold mortgage loans on such buildings, residences, and other improvements) and by HUD/FHA and Veterans Administration in insuring or guaranteeing respectively such loans, the Company and the Representative do hereby covenant and agree as follows:

SECTION 1. (a) This Agreement is made not only with the Representative in its individual capacity but also as the representative of and for the benefit of the present and future owners or occupants of all and each of the properties, buildings, residences, and other improvements which are now or may hereafter be served by the water supply systems and/or sewage systems of the Company as well as the holders of any mortgage or mortgages covering any of such buildings, residences, and other properties and improvements.

(b) Any person, firm, association, governmental agency, or corporation (1) served by the water supply systems and/or sewage systems of the Company, or (2) holding any mortgage on any property connected to the said systems or either of them, is hereby granted the right and privilege, and is hereby authorized, in its own name and on its own behalf or on behalf of others for whose benefit this Agreement is made, to institute and prosecute any suit at law or in equity in any court having jurisdiction of the subject matter, to interpret and enforce this Agreement or any of its terms and provisions, including, but not limited to, suits for specific performance, mandamus, receivership and injunction.

SECTION 2. The Company covenants and agrees:

(a) The Company shall supply at all times and under adequate pressure for the use of each of the properties duly connected to its water supply system a sufficient quantity of water to meet the reasonable needs of each of the properties duly connected to said water supply systems. Such water shall be of the quality and purity as shall meet the 1974 Safe Drinking Water Act of the U.S. Environmental Protection Agency (EPA), so as to produce water without excessive hardness, corrosive properties, or other objectionable characteristics making it unsafe or unsuitable for domestic and ground use or harmful to any or all pipes within and/or without the buildings, residences, and other improvements. Records of any and all tests conducted in connection with said water supply systems shall be kept as permanent records by the Company and said records shall be open to inspection by the State Board of health of the State of _____ and the owners of the properties in the subdivisions. The said Board of Health and/or its agents shall at all times have access to the water supply system of the Company to conduct any and all tests as said Board shall determine necessary to ascertain compliance with the said Standards and characteristics. In any event, the Company shall have said Board make such analyses at least Quarterly and the Company shall pay all costs and expenses in connection therewith. In the event said Board shall determine that the purity of the water does not meet the aforesaid Standards, the company shall immediately at its sole cost and expense make any adjustment, repair, installation, or improvements to its facilities that shall be necessary or required or recommended by said Board to bring the purity of the water up to the said Standards.

(b) The Company shall provide at all times for each of the buildings, residences, and other improvements constructed in the areas and subdivisions served by the sewage systems of the Company sewage service adequate for safe and sanitary collection, treatment and disposal

APPENDIX 5

of all domestic sewage from said buildings, residences, and other improvements, in accordance with the 1972 Federal Water Pollution Control Act Amendments of the U.S. Environmental Protection Agency (EPA). The Company further shall operate and maintain the sewage systems, including

the sewage treatment plants, in a manner so as not to pollute the ground, air, or water in, under, or around said areas or subdivisions with improperly or inadequately treated sewage, or with noxious or offensive gases or odors. The Company further agrees to operate the systems in accordance with regulations and recommendations of the State Board of Health and to produce an effluent of a quality satisfactory to the State Board of Health and any and all other public authorities having jurisdiction over such matters. Records of any and all tests conducted in connection with the systems shall be kept as permanent records by the Company and said records shall be open to inspection by the State Board of Health of the State of _____ and the owners of the properties in the areas and subdivisions. The said Board of Health and its agents shall at all times have access to the systems of the Company to conduct any and all tests as said Board shall determine necessary to ascertain compliance with the said regulations and recommendations. In the event said Board shall determine that the operations of the systems do not meet the said regulations or recommendations, the Company shall immediately, at its sole cost and expense, make any adjustment, repair, installation or improvement to its facilities that shall be necessary or required or recommended by said Board to bring the operation of the systems up to the said regulations and recommendations.

SECTION 3. The Company agrees to maintain said water supply systems and/or said sewage systems at all times in good order and repair so that satisfactory water and sewage collection and disposal service as provided in the foregoing paragraphs may be supplied to each of said buildings, residences, and other improvements in said areas or subdivisions in the quantity and in the quality provided in the foregoing paragraph. The water supply systems and/or the sewage systems shall be open for inspection at all times by the agents of the _____ State Board of Health.

SECTION 4 (a) The Company reserves and has the right to establish and collect as a charge or charges for water furnished and consumed by the owners or occupants of each of the buildings, residences, and other improvements the initial rates described in Schedule "B" attached hereto and made a part hereof. The Company shall have the right to install on the premises of each of the individual buildings, residences, and other improvements a water meter to be maintained by the Company

9/76

Page 4

HUD-Wash., D. C.

4075.12 REV

APPENDIX 5

through which all water supplied to the consumer shall pass and to which the Company shall have access at reasonable times for the purpose of taking meter readings and keeping said meters in repair. In the event said meters shall be installed and the consumer shall have used in excess of _____ thousand () gallons per month, the Company may charge for any such excess at the rate or rates set forth in the attached Schedule "B".

(b) The Company reserves and has the right to establish and collect as a charge or charges for sewer service provided to the owners or occupants of each of the buildings, residences, and other improvements served by the Company, the initial rates as shown in Schedule "C" attached hereto and made a part hereof.

SECTION 5. In the event the Company should fail to operate and maintain the water supply systems and/or the sewage systems in the manner and under the conditions specified herein (failure due to Acts of God, natural disasters or other causes beyond the control of the Company, including labor troubles or strikes, excepted) or in the event the Company collects or attempts to collect from the consumers of water or from users of the sewage systems charges in excess of the rate or rates specified or provided for in this Agreement, then in either of such contingencies, if such default shall continue for a period of thirty (30) days (or for a period of two (2) days in the event such default consists of a shutdown of the water or sewage treatment plant or suspension of water or sewage services, except for the causes above set forth) after written notice to the company by any consumer, mortgagee, or by any person for whose benefit this contract is made, then and in such event any such person for whose benefit this contract is made, may enforce this Agreement by action, instituted for such purpose in any court of competent jurisdiction and in such action shall be entitled as a matter of right to the entry of an order appointing a receiver or other officer appointed by the Court to take immediate possession of the water supply systems and/or sewage systems of the Company for the purpose of operating and maintaining the same with the full right to hold, use, operate, manage and Control the same for the benefit of the parties for whom this Agreement is made, with full right to collect the charges for services at rates not in excess of those specified or provided for in this Agreement. Such receiver or other officer of the Court, during the period of its operation, shall be entitled to such reasonable compensation and expenses, including reasonable attorneys' fees, as may be determined by the Court.

APPENDIX 5

SECTION 6. The Company may establish, amend or revise from time to time and enforce Rules and Regulations for Water Service and Rules and Regulations for Sewer Service or Rules and Regulations covering both water supply and sewer service and covering the furnishing of water supply service and sewer service within said areas or subdivisions, provided, however, all such rules and regulations established by the Company from time to time shall at all times be reasonable and subject to such regulations as may now or hereafter be provided by law; and provided further that no such rule or regulation so established, amended or revised can be inconsistent with the requirements of this Agreement nor shall the same abrogate any provision hereof. Any such rules and regulations established, amended, revised and enforced by the Company from time to time shall be binding upon any owner or occupant of any of the property

located within the boundaries of such areas or subdivisions, the owner or occupant of any building, residence or other improvement constructed or located upon such property and the user or consumer of any water supply service and sewer service.

SECTION 7. Changes in the initial, rates described in Section 4 hereof may be proposed by the Company and by third party beneficiaries of this Agreement in the following manner:

If within ninety (90) days after notice to the Representative and to all parties connected to the water supply systems and/or sewage systems of a rate change proposed by the Company, not more than one-third of such parties have signified in writing their opposition to such proposed rate change, the Company may forthwith establish such new rates. If more than one-third of such parties signify, in writing, their opposition to a rate change proposed by the Company, or if more than one-third of such parties proposed in writing a rate change which the Company opposes, and the parties cannot negotiate an agreement within ninety (90) days to the reasonableness of the new rates, then the matter of the reasonableness of such new rates shall be referred to a board of arbiters selected as follows: the Company shall designate one arbiter, the objecting parties shall designate one arbiter, and the two arbiters thus selected shall choose a third arbiter. The three arbiters shall make their written recommendations to the parties to the dispute as to the reasonableness of the new rates within ninety (90) days after the reference of the dispute to them. Written notice of the hearing of the dispute by the arbiters shall be given to the Company and to all objecting parties. All proceedings before the arbiters shall be recorded in writing. Either side to the arbitration may present written objections to the recommendations within thirty (30) days after the decision. If no written objections are made, it shall be considered that all parties have agreed

9/76

Page 6

HUD-Wash., D. C.

4075.12 REV

APPENDIX 5

that the new rates recommended by the arbiters are reasonable. If written objections are filed by either side, the question of the reasonableness of the new rates shall be the subject of review by a court of competent jurisdiction in appropriate legal proceedings initiated for such purpose. In the event of arbitration or court proceedings the proposed change of rates shall be held in abeyance and shall not become effective until the conclusion of such proceedings.

SECTION 8. Notwithstanding any provision of this Agreement no third party beneficiary shall have or claim to have any right, title, lien, encumbrance, interest or claim of any kind or character whatsoever in and to the Company's water supply system and/or sewage systems, or properties and facilities, and the Company may mortgage, pledge or otherwise encumber, or sell or otherwise dispose of, any or all of such water supply systems and/or sewage systems, properties and facilities without the consent of such third parties. The words "properties and

facilities: as used in this Section shall not only include physical properties and facilities but all real, personal and other property of every kind and character owned by the Company and used, useful, or held for use in connection with its water supply systems and/or sewage systems, including revenues and income from the users of water and sewage services, cash in bank and otherwise; provided, however, that this Agreement as set forth herein shall be binding upon all successors and assigns of the Company.

SECTION 9. All notices provided for herein shall be in writing or by telegram, and if to Company, shall be mailed or delivered to Company at _____, and if to parties for whose benefit this contract is made shall be mailed or delivered to their last known business or residential addresses.

SECTION 10. (a) The covenants, reservations, restrictions or conditions herein set forth are and shall be deemed to be covenants, reservations, restrictions or conditions imposed and running with the land and properties now owned or hereafter acquired by the Company, and limiting the use thereof for the purposes and in the manner set forth herein and shall be binding upon and shall inure to the benefit of the Company, its successors and assigns, and shall likewise be binding upon and shall inure to the benefit of all parties who, in any manner whatsoever, shall acquire title to the Company's water supply systems and/or sewage systems, and properties and facilities as defined in Section 8 hereof. To this end the Company shall make all water supply systems and/or sewage systems now owned or hereafter acquired subject to this

APPENDIX 5

Agreement by recordation or appropriate covenants, reservations, restrictions, or conditions in such manner as is required by law to put all persons on notice that such water supply systems and/or sewage systems have been subjected to the terms of this Agreement are deemed to be covenants, reservations, restrictions, or conditions imposed upon and running with the land and properties now owned or hereafter acquired by the Company.

(b) This Agreement shall also be binding upon and shall inure to the benefit of the Representative, its successors and assigns, and as set forth in Section 1 hereof, all present and future owners or occupants of all and each of the properties, buildings, residences, and other improvements which are now or may hereafter be served by the water supply systems and/or sewage systems of the Company as well as the holders of any mortgage or mortgages covering any such properties, buildings, residences and other improvements, as well as the successors and assigns of all such present and future owners and occupants and holders of mortgages.

SECTION 11. This Agreement shall be governed by the laws of

the State of _____.

SECTION 12. This Agreement shall remain in full force and effect and for the benefit of all parties mentioned herein until either (a) the water supply systems and sewage systems described herein are taken over by governmental authority for maintenance and operation; or (b) other adequate water supply and sewage collection and disposal service is provided by a governmental authority through means other than the water supply systems and sewage systems owned by the Company; or (c) the rates, services and operation of the Company are placed by law under the jurisdiction of a regulatory commission or other governmental agency or body empowered to fix rates and to which a consumer of the Company may seek relief. Upon the happening of any of the aforesaid events, this Agreement shall automatically terminate; and, at the request of the Company, the Company and the Representative shall execute an instrument cancelling this Agreement.

9/76

Page 8

HUD-Wash., D. C.

4075.12 REV

APPENDIX 5

IN WITNESS WHEREOF, the Company and the Representative have caused this Agreement to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Agreement.

Signed, Sealed and Delivered
in the presence of

By _____
President

Attest:

Secretary

(As to the Company)

(COMPANY)

By _____
President

Attest:

Secretary
(REPRESENTATIVE)

Individually and as the Representative
of all parties for whose benefit the

foregoing Agreement is made.

Page 9

9/76

HUD-Wash., D. C.

4075.12 REV

APPENDIX 5

SCHEDULE "A,"

Description of Property

SCHEDULE "B"

Initial Water Rates to be charged

SCHEDULE "C"

Initial Rates for Sewer Services to be charged

9/76

Page 10

HUD-Wash., D. C.

4075.12 REV

APPENDIX 5

STATE OF _____
COUNTY OF _____

I, the undersigned Notary Public, do hereby certify that _____
_____ and _____
President and Secretary, respectively, of _____,
a _____ corporation, and who as such officers
executed the foregoing Agreement, this day personally appeared before
me and acknowledged before me that they executed said Agreement as such
officers and attached the corporate seal of said corporation in the
name of and for and on behalf of said corporation, freely and
voluntarily, for the uses and purposes therein expressed, and with full
authority to do so.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my
official seal this _____ day of _____, 19__.

Notary Public, State of _____

My commission expires: _____

STATE OF _____
COUNTY OF _____

I, the undersigned Notary Public, do hereby certify that _____
_____ and _____
President and Secretary, respectively, of _____,
a corporation organized and existing under the laws of the State of _____
_____, the Representative, and who as such officers

Page 11

9/76

HUD-Wash., D. C.

4075.12 REV

APPENDIX 5

executed the foregoing Agreement, this day personally appeared before me and acknowledged before me that they executed said Agreement as such officers and attached the corporate seal of said corporation in the name of and for and on behalf of said corporation, freely and voluntarily, for the uses and purposes therein expressed, and with full authority so to do.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this _____ day of _____, 19__.

Notary Public, State of _____

My commission expires: _____

9/76

Page 12

HUD-Wash., D. C.