

NORTH CAROLINA

5/2/94

ORANGE COUNTY

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AGREEMENT APPROVING EXTENSION OF
AND RESTRICTIONS REGARDING CONNECTIONS TO A
PUBLIC SEWER LINE TO BE CONSTRUCTED TO PROVIDE
PUBLIC SEWER COLLECTION SERVICE SOLELY TO
PINEY MOUNTAIN SUBDIVISION

THIS AGREEMENT is made and entered into this the 12th day of October, 1994, by and between Orange Water and Sewer Authority, a public body politic and corporate, organized and existing under the provisions of Chapter 162A of the North Carolina General Statutes, with its principal office in Carrboro, North Carolina, Orange County, a body politic and corporate and a political subdivision of the State of North Carolina and the Piney Mountain Homeowners Association, a North Carolina not for profit corporation (being duly authorized to act and acting for and on behalf of the owners of lots 1-13 and 15-59 in that subdivision, their grantees, successors and assigns).

W I T N E S S E T H

WHEREAS, the on-site sanitary sewer collection system serving lots in the Piney Mountain Subdivision in Orange County has failed; repairs or construction of a replacement on-site system which would serve all fifty-eight (58) lots in the Piney Mountain Subdivision not possible because of unsuitable soils in more than sixty-five percent of the area available for use as wastewater drainfield; and therefore, a public health emergency as defined in the Orange County Water and Sewer Policy exists; and

WHEREAS, the Piney Mountain Homeowners Association, representing owners of lots and homes in the Piney Mountain

Subdivision, has petitioned Orange County, the Towns of Chapel Hill and Carrboro, the City of Durham, and Orange Water and Sewer Authority to allow the extension of a public sewer collector main, and the construction and operation of related facilities, all as may be necessary to collect and transport wastewater from homes constructed or to be constructed in the Piney Mountain Subdivision to the Durham County line where it will be connected to and the wastewater thence transported through City of Durham mains for treatment in the wastewater treatment system operated by the City of Durham; and

WHEREAS, the Towns of Chapel Hill and Carrboro and Orange County entered into a Joint Planning Agreement in 1987 which identifies an area known as the Rural Buffer in which the Piney Mountain Subdivision is located and which provides for residential development only, limited to a density of no more than one residence per two acres; pursuant to that Agreement, the Towns of Chapel Hill and Carrboro and Orange County have adopted a Joint Planning Area Land Use Plan which contains significant limitations on public water and sewer extensions into the Rural Buffer and significant policy preferences against these extensions; and,

WHEREAS, Piney Mountain Subdivision is located within an area subject to the planning and zoning jurisdiction of Orange County, within the Rural Buffer, and is zoned Rural Buffer (RB); and,

WHEREAS, Orange County has adopted a Water and Sewer Policy, in part, to implement the Joint Planning Area Land Use Plan limitations on the extension of public water and sewer system

extensions into the Rural Buffer; that Policy states, in pertinent part, as follows:

"Public water and sewer facilities should be extended in accordance with the Land Use Element of the Orange County Comprehensive Plan. Such facilities will be encouraged, where they are available, in the Plan's Urban and Transition areas, and will be discouraged in Rural and Agricultural areas, except where their provision will enhance the rural character and provide for open space by allowing clustered development." and,

"Outside of Transition Areas, extension of water or sewer systems will only occur to provide service to an essential public facility, such as a school, or to remedy a public health emergency not otherwise correctable, such as a failing septic tank or failing package treatment plant(.);" and,

WHEREAS, the parties and the Towns of Chapel Hill and Carrboro have agreed that the Piney Mountain Subdivision petition ought to be allowed, notwithstanding the limitations and policy preferences against public sewer extensions contained in the Joint Planning Area Land Use Plan, as specifically contemplated under the Orange County Water and Sewer Policy, as necessary to alleviate a public health emergency, but without thereby intending or effecting any modification or other limitation to the continuing effect of the Joint Planning Area Land Use Plan's restrictions on public sewer extensions or connections within the Rural Buffer; and

WHEREAS, Orange Water and Sewer Authority has adopted a Mains Extension Policy which, consistent with the Joint Planning Agreement, Joint Planning Area Land Use Plan, and the Orange County Water and Sewer Policy, prohibits the extension of public water and sewer lines into the area designated as Rural Buffer, except as necessary to alleviate a public health emergency; and

WHEREAS, the Town of Chapel Hill and the City of Durham have agreed to an annexation boundary to the west of which Durham will not seek to annex properties into its city limits, and to the east of which Chapel Hill has agreed not to annex properties into its town limits, and the Piney Mountain Subdivision is to the west of that annexation boundary line; and

WHEREAS, Orange Water and Sewer Authority and the City of Durham have entered into a Service Area Boundary Agreement which provides that Orange Water and Sewer Authority will serve those properties lying west of the annexation boundary agreement between Chapel Hill and Durham, and thus the Piney Mountain Subdivision is within the area where the City of Durham has agreed not to extend water or sewer lines or service; however, notwithstanding that agreement, and without intending to effect any modification to that agreement as it may apply to any property other than the present Piney Mountain Subdivision lots, or to any improvements not constructed within that subdivision as of the date of this Agreement, the parties wish to authorize the connection of a line to be constructed from Piney Mountain Subdivision to a receiving main owned by the City of Durham at the Durham County line, for the

sole purpose of receiving wastewater from homes constructed and to be constructed on the fifty-nine lots which now constitute the Piney Mountain Subdivision; and

WHEREAS, a Memorandum of Understanding entered into in 1989 by and among Orange Water and Sewer Authority, Orange County, the Town of Chapel Hill and the Town of Carrboro provides that the parties will communicate regularly about matters of mutual concern, specifically including water and sewer extension policies and development requests that would require water and/or sewer service extensions into areas not developed to urban densities, and the parties acknowledge by this Agreement their agreement to cooperate together to serve their respective and mutual interests, one of which is providing for prompt action to alleviate the existing public health emergency at Piney Mountain Subdivision, while at the same time preserving the nature and effect of the mutual undertaking of the parties and the Towns of Chapel Hill and Carrboro not to provide sewer service extensions or otherwise to provide public sewer service in the Rural Buffer except as provided in the Orange County Water and Sewer Policy as may be necessary to alleviate a public health emergency; and

WHEREAS, Orange County, the Towns of Chapel Hill and Carrboro, the City of Durham and OWASA have all, by resolution of their governing boards and by collateral agreements between and among some of them, approved the connection of the Piney Mountain Subdivision to the public sewer system of the City of Durham to

correct the public health emergency created by the failed septic system serving the Piney Mountain Subdivision; and

WHEREAS, the County, the Towns, the City and the Authority are particularly concerned that their determination to approve the Piney Mountain Subdivision line, to alleviate the public health emergency, shall not effect any abrogation either of their zoning and subdivision regulations, or their water and sewer policies, or their cooperative agreements, or their respective commitments and efforts to preserve open space and the character of the Rural Buffer, and to make adequate provision for public educational facilities, and watershed and natural drainage preservation; and

WHEREAS, the parties have therefore determined that the sewer main and related facilities to be constructed and/or operated hereunder to alleviate the existing public health emergency at Piney Mountain Subdivision shall be restricted for use solely for that purpose, and that further connections thereto will not be allowed to serve either any new development, or any existing development in the absence of a public health emergency not otherwise correctable as defined in the Orange County Water and Sewer Policy.

NOW, THEREFORE, the parties have agreed for themselves and for their successors and assigns:

1. In order to alleviate the existing public health emergency, a sewer force main and appropriate pumps and facilities (sized and constructed in accordance with the specifications and requirements of the Orange Water and Sewer Authority, as necessary

to collect and convey wastewater from the existing improvements in the Piney Mountain Subdivision to the Durham County line, where the same shall be connected with sewer main facilities operated by the City of Durham), shall be constructed by Orange County or its designee and, at the sole expense of the Piney Mountain Homeowners Association, and/or its members or designate. In the event that Orange County is the recipient of a grant through the North Carolina Clean Water Revolving Loan and Grant Act of 1987 (hereafter "State Grant") for the construction of the Piney Mountain Subdivision wastewater system or any part of it, Orange County agrees to apply the State Grant funds to grant eligible construction expenses. And, in consideration of the conditions, restrictions, and undertakings herein recited among the parties, the Piney Mountain Homeowners Association has agreed to convey and shall convey the said system facilities to Orange County or its designee, which shall thereafter operate and maintain the same in accordance with the terms, conditions, restrictions and undertakings herein recited and in accordance with the terms, conditions, restrictions and undertakings of any other agreement or agreements among the parties or any of them and with other parties related to the Piney Mountain Subdivision wastewater collection system.

2. The area that may be connected to the sewer main and related facilities constructed in accordance with this Agreement is the Piney Mountain Subdivision only, a subdivision of approximately 120 acres located within Chapel Hill Township approximately one

mile west of the Orange/Durham County line on the north side of Mount Sinai Road (SR 1718). It encompasses fifty-nine platted residential single family lots described as Piney Mountain Subdivision Phase I, Lots 1-24 and Phase 2, Lots 25-59, as recorded in Plat Book 49, Pages 85 & 86, Plat Book 52, Page 183, and Plat Book 58, Pages 129 & 130, Orange County Registry. Lot 14 of the Piney Mountain Subdivision is not now connected to the existing Subdivision wastewater system but is served by an individual septic tank. That lot may be served by the sewer main and related facilities upon approval by OWASA and the satisfaction of any assessment obligation prescribed by the Piney Mountain Homeowners Association.

3. The sewer main and related facilities constructed in accordance with this Agreement to serve the Piney Mountain Subdivision, and originally connected to the City of Durham main at the county line, will be connected to OWASA mains when the same may be constructed in the area proximate to Piney Mountain Subdivision, and the cost of construction of facilities and connections to join this line to future OWASA lines shall be paid by the Piney Mountain Homeowners Association through assessments of the owners of lots within the Piney Mountain Subdivision. If for any reason OWASA is unable to continue its agreement with the City of Durham providing for the City of Durham to receive and treat waste from Piney Mountain Subdivision through the line to be constructed hereunder, the owners of lots in Piney Mountain Subdivision shall be responsible for and shall pay to OWASA the cost of an appropriate

line and connection to the OWASA sewer collection system as may be necessary to connect the Piney Mountain system to OWASA collector mains leading to OWASA's wastewater treatment facilities unless the owners of lots in Piney Mountain Subdivision make provision for a privately-owned wastewater disposal system and service. In the event OWASA elects to discontinue its agreement with the City of Durham and to connect the Piney Mountain Subdivision to its sewer collection system at a time when its sewer mains are not proximate to Piney Mountain Subdivision, OWASA shall do so at its expense. Any such connection to OWASA's wastewater collector mains and wastewater treatment facilities shall be in accordance with the terms, conditions, restrictions and undertakings herein recited.

4. In consideration of acceptance, operation and maintenance of the sewer main and related system facilities by Orange Water and Sewer Authority, the owners of properties to be connected to the sewer main to be constructed have agreed to pay and shall pay to Orange Water and Sewer Authority rates, fees and charges calculated by the Authority as those necessary to recover the direct and indirect costs of the services provided, including reasonable reserves for maintenance and replacement of the facilities necessary to provide the service to the Piney Mountain Subdivision, and a reasonable charge representing recovery of a share of the cost of OWASA's existing capital plant and facilities used to provide service to the subdivision. The rates and charges may be different from those charged customers of OWASA's existing sewer system, and shall include provisions for recovery of such direct

and indirect costs as may be incurred and paid to the City of Durham for its acceptance and treatment of the wastewater from the Piney Mountain Subdivision. Neither the Piney Mountain Homeowners Association nor any property owner served by the wastewater collection and treatment facilities shall make any claim based upon discrimination based on rates, fees or charges, and in the event of any such claim in derogation of this covenant, the claimant shall be liable for OWASA's costs of defense, including reasonable attorneys fees.

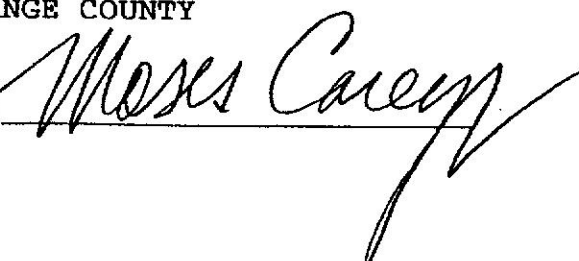
5. The main and facilities constructed hereunder shall be used solely to provide service to the homes constructed and to be constructed on the lots which now constitute the Piney Mountain Subdivision as described in paragraph 2 of this Agreement. Orange Water and Sewer Authority shall not permit, nor shall any of the other parties to this Agreement request or attempt to permit, or approve any development which would require connections to this line to serve properties other than the 59 presently platted lots within the Piney Mountain Subdivision, except as may be necessary to alleviate a public health emergency, except by and with the consent of the Orange Water and Sewer Authority, Orange County and the Towns of Chapel Hill and Carrboro.

6. Orange Water and Sewer Authority and the City of Durham have executed a separate Agreement for Collection and Treatment of Wastewater from Piney Mountain Subdivision, a copy of which is Exhibit A to this Agreement.

7. The parties hereto agree that this Agreement is entered into solely to recognize and provide the means for alleviating an existing public health emergency in the Piney Mountain Subdivision and its environs in Orange County, and that nothing herein shall be deemed or construed so as to modify or diminish the commitment of the parties, as expressed in the various intergovernmental agreements, policies, subdivision, and zoning documents referenced above, not to provide public water and sewer service extensions in areas identified by the parties' policies and understandings as not suitable for development at urban densities. Nor shall this agreement be construed, deemed, or urged by any party to amend the Joint Planning Agreement, the Joint Planning Land Use Plan, the Orange County Water and Sewer Policy, the Annexation Boundary Agreement executed by and between the City of Durham and the Town of Chapel Hill, or the Service Area Boundary Agreement executed by and between Orange Water and Sewer Authority and the City of Durham, except as and for the specific, limited purposes for which it is entered.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed for and in their place and stead by their duly authorized undersigned officers and agents, to be effective from and after the date first above written.

ORANGE COUNTY

By: 

ATTEST:


COUNTY CLERK

ORANGE WATER AND SEWER AUTHORITY

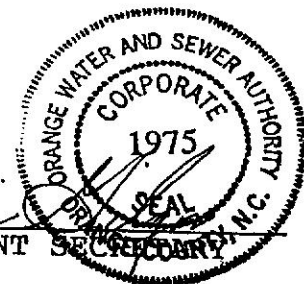
By: *Ernest Bellamy*

PINEY MOUNTAIN HOMEOWNERS ASSOCIATION

By: *Shirley P. Hunt*
President

ATTEST:

John P. Bell
ASSISTANT SECRETARY



ATTEST:

Will M. P. A.
SECRETARY

