

ESCROW AGREEMENT

WHEREAS, by Resolution 2018-5.6 adopted by Borough Council on May 7, 2018 (superseding Resolution 2018-4.11), Pennington Borough Council conditionally authorized expansion of the Pennington Sewer Service Area to include the property known as 100 Lewis Brook Road in Hopewell Township located partially in Pennington Borough (“the Property”);

WHEREAS, a copy of Resolution 2018-5.6 (“Resolution”) is attached to this Agreement and incorporated herein by reference;

WHEREAS, the conditions for expansion of the Pennington Sewer Service Area to include the Property are set forth in paragraphs numbered 1 through 5 at the top of page two of the Resolution and paragraphs numbered 1 through 3 under “BE IT RESOLVED” also on page two of the Resolution;

WHEREAS, condition no. 2 under “BE IT RESOLVED” on page two of the Resolution provides that “Borough Council will approve sewer service to the Property after all conditions for expansion of the Sewer Service Area have been satisfied and all amendments and approvals required to effect the expansion have been obtained, subject to the following conditions precedent as further described above [then listing 5 conditions]”;

WHEREAS, condition no. 3 under “BE IT RESOLVED” on page two of the Resolution provides:

“The escrow agreement between the Borough and owners covering the services of the Borough Engineer shall include not only the cost of engineering services related to review of the proposed expansion of the Sewer Service Area and proposed sewer connection but also all services related to amendment of the water quality management plan and other procedural steps for finalizing the proposed expansion of the Sewer Service Area and all services related to satisfying conditions for connection to the Borough system including related inspections. The intent is that Owners establish and fund an escrow to cover all services by the Borough Engineer in connection with this matter through conclusion.”

WHEREAS, in September 2020 the Borough entered into an Escrow Agreement with then owners Daniel Popkin and Robin Federiconi covering described engineering services under the Resolution and related escrow provisions;

WHEREAS, the Property has since been sold to Gimbert and Carmen Fernandez (hereafter “Owners”) intending to reside at 100 Lewis Brook Road and now seeking to connect with the Pennington sewer system;

WHEREAS, the escrow agreement between the Borough and Popkin/Federiconi in September 2020 covering the services of the Borough Engineer is no longer operable and an agreement with the new Owners is required;

WHEREAS, the intent of this new agreement is to cover the fees and costs of the Borough Engineer not only in inspecting the force main installation in the Pennington Right-of-Way and inspecting the connection to the Borough sewer system but also in determining and/or confirming the Owners’ compliance with all conditions of approval contained in Resolution 2018-5.6;

WHEREAS, references to the Borough Engineer include the services of the firm Van Note-Harvey Associates;

NOW, THEREFORE, IT IS AGREED, on this _____ day of November 2022, as follows:

- A. The above recitals are incorporated in and acknowledged to be part of this Agreement.
- B. Before any work is performed by the Borough Engineer, Owners will deposit with the Borough Clerk an initial amount of \$3,000.00 to be held by the Borough in escrow for the payment of invoices submitted by the Borough Engineer for time and out-of-pocket costs expended by the Borough Engineer and the firm of Van Note-Harvey Associates in performing the work covered by this Agreement as described above. It is understood that the hourly billing rate of the Borough Engineer is \$143 per hour.
- C. Promptly after services are rendered, the Borough Engineer shall submit invoices to the Borough Clerk with copies to Owners describing the services performed, the applicable fee for these services and any out of pocket costs for which reimbursement is due. All invoices shall be paid by the Borough Clerk no earlier than seven (7) business days after date of receipt, to permit Owners to make timely objection to any amount billed.
- D. Owners shall be advised of all amounts expended from the escrow and the sums needed to replenish the fund in anticipation of projected additional billings. The Borough Engineer is expected to make best efforts to ensure that the timing of the billings does not permit amounts invoiced to exceed the funds on hand, Owners agree to promptly replenish the fund as requested by the Borough Clerk.

- E. Owners agree to hold the Borough harmless from any and all claims, expenses, litigation or liabilities relating to payment of amounts due to the Borough Engineer or the firm Van Note-Harvey Associates in connection with the work.
- F. Borough agrees to return all unexpended funds, net of any amounts still owing to the Borough Engineer, when the services of the Borough Engineer are no longer required.

_____	_____
GIMBERT FERNANDEZ (Owner)	Date

_____	_____
CARMEN FERNANDEZ (Owner)	Date

THE BOROUGH OF PENNINGTON

By: _____	_____
JAMES DAVY, MAYOR	Date