

MEMORANDUM OF AGREEMENT ✓

THIS MEMORANDUM OF AGREEMENT (the "Memorandum"; and, as used in this Memorandum, the terms "herein", "hereto", "hereby" and "hereof" shall refer to the whole of this Memorandum) is made on this 29th day of December, 1989, between BERWIND CORPORATION, a Pennsylvania corporation having offices at 509 Fifteenth Street, Windber, Pennsylvania 15963 ("Berwind"); and WINDBER AREA AUTHORITY, a municipal authority, organized under the laws of the Commonwealth of Pennsylvania, having its principal office at 1409 Somerset Avenue, Windber, Pennsylvania, 15963 (the "Authority").

RECITALS:

WHEREAS, the Richland Township Water Company, Berwind and the Authority entered into a Purchase Agreement (the "First Agreement"), dated November 23, 1970, for the purchase and sale of a water system (the "Water System"), and defining certain watershed areas (the "Watersheds") serving the Authority's two impoundment facilities situate in Ogle Township, Somerset County, Pennsylvania; and

WHEREAS, pursuant to the First Agreement, Berwind executed a deed dated December 31, 1970 (the "First Deed"), to the Authority which First Deed was recorded in the Somerset County Recorder's Office in Deed Book Volume 694, page 313, and which was re-recorded in Deed Book Volume 905, page 439; and

WHEREAS, Berwind and the Authority entered into an Agreement of Sale dated December 13, 1989 (the "Second Agreement"), for the purchase and sale of 486 acres, more or less, of land situate partly

in Ogle Township and partly in Shade Township, Somerset County, Pennsylvania, and for the granting to Authority of certain easements (the "Granted Easements") in connection therewith and for the exception and reservation by Berwind of certain easements (the "Reserved Easements") in connection therewith; and

WHEREAS, pursuant to the Second Agreement, Berwind executed a deed dated December 27, 1989 (the "Second Deed"), conveying 486 acres, more or less, and Granted Easements to the Authority, which Second Deed was recorded in Somerset County Recorder's Office in Record Book Volume 1079, page 009; and

WHEREAS, Berwind did execute and deliver a deed dated December 27, 1989 (the "Third Deed"), conveying 229 acres, more or less, to the Authority, which deed was recorded in Somerset County Recorder's Office in Record Book Volume 1079, page 020; and

WHEREAS, in the premises conveyed by Berwind in the First Deed, the Second Deed and the Third Deed (collectively, the "Conveyed Premises"), Berwind has retained certain interests;

WHEREAS, the Conveyed Premises are shown on a print (the "Map") recorded in the Office of the Recorder of Deeds in Somerset County, Pennsylvania, In Miscellaneous File No. 72. ← (Original in Neilan Office Files)

WHEREAS, the parties have agreed to certain modifications of the provisions of the First Agreement and the First Deed necessitated by the changed circumstances resulting from the conveyances made by the Second Deed and by the Third Deed.

NOW, THEREFORE, the parties hereto, intending to be legally bound hereby, and incorporating the foregoing Recitals by reference,

do covenant, contract and agree as follows:

Section 1. All covenants and warranties respecting easements for pipelines and appurtenances in the First Deed (except those relating to the obligation of Berwind, its successors and assigns, to repair or restore roadways) shall be terminated and extinguished as of the end of two (2) years from the date in which the Second Deed is recorded and shall have no validity thereafter.

At the expiration of the said 2-year period, Berwind shall have no further obligation to provide easements for pipelines in existence but not identified on its other lands. The provisions of this Section relating to the termination of covenants and warranties regarding easements for pipelines shall not affect any easement or right-of-way for access heretofore granted or herein granted by Berwind to Authority.

Section 2. Sections D, E, F and G of the First Deed and the provisions corresponding thereto in the First Agreement are hereby replaced by Sections 3 and 4 hereof and are hereby declared void and of no further effect.

Section 3. Berwind, its successors and assigns, shall have the right to cut and/or remove timber and the right, to drill for, extract, and/or transport minerals, oil and gas from the entire area of the Watersheds, provided, however, that the exercise of such rights does not materially degrade Authority's water supply and provided, further, that Berwind shall not be permitted to cut and/or remove timber from those portions of the Watersheds conveyed by the First Deed, the Second Deed or the Third Deed. Berwind shall notify

Authority ninety (90) days in advance of any proposed cutting and/or removal of timber or drilling, extracting and/or transporting minerals, oil and gas. Authority shall, within forty-five (45) days of any such notice, furnish its outright or qualified approval of the matters proposed in such notice. In the case of a qualified approval, if the parties are unable to agree upon Berwind's compliance with the qualifications set forth in the qualified approval, the matter shall be submitted to arbitration as provided in the First Agreement.

Section 4. Authority agrees that Berwind, its successors and assigns, shall have the right to develop the Watersheds not conveyed by the First Deed, the Second Deed or the Third Deed, provided, however, that such development does not materially degrade Authority's water supply. Berwind shall notify Authority ninety (90) days in advance of any proposed development. Authority shall, within forty-five (45) days of any such notice, furnish its outright or qualified approval of the development proposed in such notice. In the case of a qualified approval, if the parties are unable to agree upon Berwind's compliance with the qualifications set forth in the qualified approval, the matter shall be submitted to arbitration as provided in the First Agreement.

Section 5. In addition to, and not in limitation of, other rights retained by Berwind in the Conveyed Premises, including, but not limited to, the Reserved Easements, Berwind, its successors and assigns, shall have the right to use existing roadways or relocations or extensions thereof across the Conveyed Premises and other lands of the Authority encompassed within the Conveyed Premises or traversed by

the Granted Easements as a means of ingress, egress and regress for persons and vehicles to and from those lands identified by Berwind as Berwind Tracts Nos. 393, 394, 395, 396, 793, 794, 856 and 857, all of which lands are as shown on the Map. The Authority shall maintain at its own cost and expense the easements of use retained by Berwind as provided in this Section 5 to the extent required for its own uses. In the event that Berwind requires greater improvements or maintenance to the easements of use retained by Berwind as provided in this Section 5 than are provided by Authority, such improvements or maintenance shall be at the sole cost of Berwind.

Section 6. Authority recognizes that those portions of the Conveyed Premises identified on the Map as Parcels C, D, and E are parts of larger tracts of land which Berwind, except for its wish to accommodate Authority, would not convey separately from the larger tracts of which they form a part. Therefore, Authority agrees that it will not convey any part of said Parcels C, D, and E, voluntarily or involuntarily, but, when no portion of any of said Parcels C, D and E is any longer used as a site for deep water wells or back up wells supplying Authority's customers, Berwind shall have the

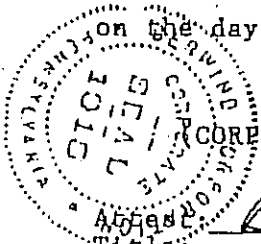
right to purchase any or all of the acreage making up Parcels C, D and E at a purchase price of Seven Hundred Dollars (\$700.00) per acre. Said purchase right shall be exercised upon sixty (60) days' written notice from Authority to Berwind or, in the event that no such notice be given and said parcels are no longer used as sites for deep water wells or back up wells supplying water to Authority's customers, Berwind shall have the right at any time to exercise its right of purchase by notifying Authority in writing of its intention to acquire said Parcels C, D, and E.

Section 7. Except as set forth herein, all terms and conditions of the First Agreement, the Second Agreement, the First Deed, the Second Deed and the Third Deed shall remain in full force and effect.

Section 8. This Memorandum shall be binding on the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed and delivered this Memorandum

on the day and year first above written.



BERWIND

(CORPORATE SEAL)

BERWIND CORPORATION

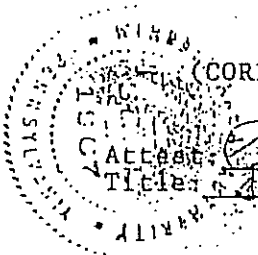
Attest: Bette A. Clark  
Title: Secretary

By: [Signature]  
Title: V.P.

AUTHORITY

(CORPORATE SEAL)

WINDBER AREA AUTHORITY

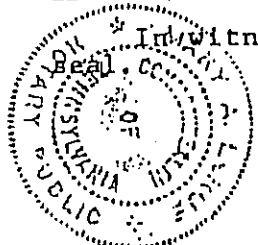


Attest: Charles R. Kounz  
Title: Secretary

By: Marj S. White  
Title: Chairman

COMMONWEALTH OF PENNSYLVANIA:
COUNTY OF CAMBRIA Phila. : SS.

On this the 27th day of December, 1989, before me,
Mary A. LaRue the undersigned officer, personally
appeared R. D. Kayser who acknowledged himself to
be the Vice-President of Berwind Corporation, a corporation,
and that he as such Vice-President, being authorized to
do so, executed the foregoing instrument for the purposes therein
contained, by signing the name of the corporation by himself as
Vice-President.

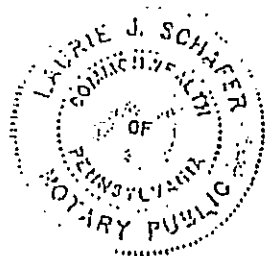


Mary A. LaRue (SEAL)

NOTARIAL SEAL
MARY A. LARUE, Notary Public
City of Philadelphia, Phila. Count.
My Commission Expires July 25, 1991

COMMONWEALTH OF PENNSYLVANIA:
COUNTY OF CAMBRIA : SS.

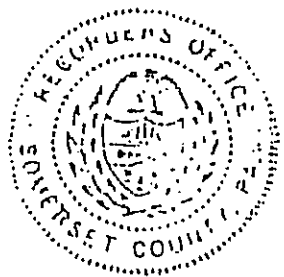
On this the 30th day of December, 1989, before me,
Laurie J. Schaffer the undersigned officer, personally
appeared Marvin L. Whitaker who acknowledged himself to
be the Chairman of Windber Area Authority, a municipal
authority, and that he as such Chairman, being
authorized to do so, executed the foregoing instrument for the
purposes therein contained by signing the name of the authority
by himself as Chairman.



Laurie J. Schaffer (SEAL)

NOTARIAL SEAL
LAURIE J. SCHAFFER, NOTARY PUBLIC
SOMERSET TOWNSHIP, SOMERSET COUNTY
MY COMMISSION EXPIRES OCT. 10, 1992

054339
VERA M. LORIE
RECORDER
90 JAN 10 PM 3:49
ENTERED FOR RECORDS
SOMERSET COUNTY



State of Pennsylvania }
Somerset County } SS
RECORDED on this 10th day of January, A. D.
1990 in the Recorder's Office of said County, in
RECORD Vol. 1079 Page 927 Given under
my hand and the seal of said office, the day and
year aforesaid

Vera M. Lorie Recorder

Hand: James Cascio
FEES AND TAX PAID 25.50