

CITY OF NORTH PORT, FLORIDA/MARSH CREEK WATER AND WASTEWATER SYSTEM STANDARD DEVELOPER'S AGREEMENT

THIS AGREEMENT made and entered into this 31st day of August 1998, by and between Marsh Creek Holdings Ltd. and Renea M. Glendinning, a Florida corporation as general partner, hereinafter referred to as "Developer", and the City of North Port, Florida, an incorporated municipality located within the State of Florida, hereinafter referred to as the "City".

RECITALS

1. The Developer owns or controls lands located in North Port, Florida, and described in Exhibit "A," attached hereto and made a part hereof as if fully set out in this paragraph and hereinafter referred to as "Property," and Developer has or is about to develop the Property by erecting thereon, residential or commercial improvements.

2. The Developer is desirous of prompting the construction and/or maintenance of central water and wastewater facilities so occupants of each residence, recreational or commercial improvement constructed will receive adequate water and wastewater service.

3. The City is willing to provide, in accordance with the provisions and stipulations hereinafter set out, and in accordance with all applicable laws, central water and wastewater facilities, and to have extended such facilities by way of water and wastewater mains, and to thereafter operate such facilities so the occupants of each residence or commercial improvement constructed on the Property will receive an adequate water and wastewater service from the City.

4. The City is also willing to provide reclaimed water service, if applicable and economically feasible and subject to City regulation.

ACCORDINGLY, for and in consideration of the Recitals, the mutual undertakings and agreements herein contained and assumed, and other good and valuable consideration the receipt and sufficiency of which are acknowledged by the parties, the Developer and the City hereby covenant and agree as follows:

SECTION 1. RECITALS. The above Recitals are true and correct, and form a material part of this Agreement.

SECTION 2. DEFINITIONS. The definitions set forth in the chapter entitled "Public Utilities" found in the North Port City Code shall apply in this Agreement unless otherwise specified below. The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning:

(1) "Service" - the readiness and ability on the part of the City to furnish water and wastewater service to each lot.

(2) "Point of Delivery or Collection" - the point where the pipes of utility are connected with the pipes of the customer. Unless otherwise indicated, the point of delivery shall be at a point on the customer's lot line.

(3) "Contribution-in-aid-of-Construction" - The sum of money, and/or property, represented by the value of the water and wastewater collection and distribution system constructed by Developer, which Developer covenants and agrees to pay to the City, as a contribution-in-aid-of-construction, to induce the City to continuously provide water and wastewater service to the Property.

SECTION 3. EASEMENT AND RIGHT OF ACCESS. Developer hereby grants and gives the City the exclusive right or privilege to construct, own, maintain, and operate the water and wastewater facilities in, under, over and across the present and future streets, roads, easements, reserved utility sites and public places as provided and dedicated to public use in the record plats, or as provided for in agreements, dedications or grants made otherwise and independent of said record plats. Developer acknowledges that the City will possess the right of ingress and egress to carry out these utility functions through the recording of the final plat.

The foregoing grants shall be for such period of time as the City requires such rights, privileges or easements in the ownership, maintenance, operation or expansion of the water and wastewater facilities. The City hereby agrees that all easement grants will be utilized in accordance with the established and generally accepted practices of the water and wastewater industry with respect to the installation of all its water and wastewater facilities in any of the easement areas; and the Developer in granting easement herein, or pursuant to the terms of this instrument, shall have the rights to grant exclusive or non-exclusive rights, privileges and easement to other entities to provide to the Property any utility services other than water and wastewater service.

SECTION 4. PROVISION OF SERVICE. Upon the continued accomplishment of all the prerequisites contained in this Agreement to be performed by the Developer, the City covenants and agrees that it will allow the connection of the water and wastewater collection and distribution facilities installed by Developer to the central water and wastewater facilities of the City in accordance with the terms and intent of this Agreement. Such connection shall be in accordance with rules and regulations of the Department of Health and Rehabilitative Services and the Florida Department of Environmental Protection. The City agrees that once it provides water and wastewater service to the Property and Developer, or others have connected customer installations to its system, that thereafter, the City will continuously provide in return for payment of all applicable rate, fees, and charges and in accordance with the other provisions of this Agreement, and of applicable laws, including rules and regulations and rate schedules, water and wastewater service to the Property in a manner to conform with all requirements of all governmental agencies having jurisdiction over the water and wastewater collection and distribution operation of the City.

SECTION 5. DESIGN, REVIEW, CONSTRUCTION, INSPECTION, AND CONVEYANCE OF FACILITIES.

5.1. So that the City may provide water and wastewater facilities, and to continuously provide customers located on the Property with water and wastewater services, Developer hereby covenants and agrees to pay for the construction and to transfer ownership and control to the City as a contribution-in-aid-of-

construction, the on-site and off-site water and wastewater collection and distribution systems referred to herein.

5.2. Developer shall provide the City with engineering plans and specifications of the type and in the form as prescribed by the City, showing the on-site and off-site water and wastewater collection and distribution systems proposed to be installed to provide service to the subject Property. The City will advise Developer's engineer of any sizing requirements as mandated by the City's system policies and utility standards for the preparation of plans and specifications for facilities within the Property. If applicable, such detailed plans may be limited to a phase of the Property, and subsequent phases may be furnished from time to time. However, each such phase, if applicable, shall conform to a master plan for the development of the Property and such master plan shall be submitted to the City concurrent with or prior to submission of plans for the first phase. All such plans and specifications shall be submitted to the City and no construction shall commence until City has approved such plans and specifications in writing. After approval, Developer shall cause to be constructed, at Developer's expense, the water and wastewater collection and distribution systems as shown on all plans and specifications.

5.3. During the construction of the water and wastewater collection and distribution systems by Developer, the City shall have the right to inspect such installation to determine compliance with the plans and specifications, adequacy of the quality of the installation, and further, shall be entitled to perform standard tests for pressure, filtration, line and grade, and all other normal engineering tests required by specifications and/or good engineering practices. Complete as-built plans shall be submitted to the City upon completion of construction.

5.4. By these presents, Developer hereby transfers to the City, title to all water and wastewater collection and distribution systems installed by Developer's contractor, pursuant to the provisions of this Agreement. Such conveyance is to take effect without further action upon the acceptance by the City of the said installation. As further evidence of said transfer to title, and upon the completion of the installation and prior to the rendering of service by the City, Developer shall convey to the City, by bill of sale, or other appropriate documents, in form

satisfactory to the City's counsel, the complete on-site and off-site water and wastewater collection and distribution system as constructed by Developer and approved by the City. Developer shall further cause to be conveyed to the City, all easements and/or rights-of-way covering areas in which water and wastewater collection and distribution lines are installed by recordable document in form satisfactory to the City's counsel. All conveyance of easements and/or rights-of-way shall be accompanied by a title policy or other evidence of title, satisfactory to the City, establishing Developer's rights to convey such continuous enjoyment of such easements or rights-of-way for those purposes set forth in this Agreement to the exclusion of any other person in interest. The use of easements granted by Developer shall include the use by other utilities so long as such uses by electric, telephone, or gas utilities, or cable television do not unreasonably and materially interfere with use by the City. The City agrees that the acceptance of the water and wastewater collection and distribution systems, installed by Developer, for service, or by acceptance of the bill of sale, shall constitute that assumption of responsibility by the city for the continuous operation and maintenance of such systems from that date forward.

5.5. All installations by Developer or its contractor shall be warranted for at least one year from the date of acceptance by the City. Mortgagee(s), if any, holding prior liens on such properties shall be required to release such liens, subordinate their position and join in the grant or dedication of the easements or rights-of-way. All water and wastewater collection and distribution facilities shall be covered by easements if not located within platted or dedicated rights-of-way.

5.6. Whenever the development of the subject Property involves one customer or a unity of several customers, and in the opinion of the City ownership by the City of the internal water and wastewater collection and distribution system is not necessary, then, at the sole option of the City, Developer, or its successor or assigns, shall retain ownership and the obligation for maintenance of such on-site facilities.

5.7. Payment of the contributions-in-aid-of-construction does not and will not result in the City waiving any of its rates, rate schedules or rules and regulations, and their enforcement

shall not be affected in any manner whatsoever by Developer making the contribution. The City shall not be obligated for any reason whatsoever nor shall the City pay any interest or rate of interest upon the contribution. Neither Developer nor any person or other entity holding any of the Property by, through or under Developer, or otherwise, shall have any present or future right, title, claim or interest in and to the contributions or to any of the water and wastewater facilities and properties of the City, and all prohibitions applicable to Developer with respect to no refund of contributions, no interest payment on said contributions and otherwise, are applicable to all persons or entities. Any user or customer of water and wastewater services shall not be entitled to offset any bill or bills rendered by the City for such service or services against the contributions. Developer shall not be entitled to offset the contributions against any claim or claims of the City unless specified in the Special Conditions of this Agreement.

SECTION 6. EVIDENCE OF TITLE. Within a period of thirty (30) days after the execution of this Agreement, at the expense of the Developer, Developer agrees to either deliver to the City an Abstract of Title, brought up to date, which abstract shall be retained by the City, and remain the property of the City, or to furnish the City an opinion of title from a qualified attorney at law or a qualified title insurance company with respect to the Property, which opinion shall include a current report on the status of the title, setting out the name of the legal title holders, the outstanding mortgages, taxes, liens, and covenants. The provisions of this Section are for the exclusive rights of service contained in this Agreement. Any mortgage or lien holder having an interest in the Property shall be required to join in the grant of exclusive service rights set forth in this Agreement. Title standards shall be the same as those applicable to real estate generally adopted by the Florida Bar and in accordance with Florida law.

SECTION 7. OWNERSHIP OF FACILITIES. Developer agrees with the City that all water and wastewater facilities conveyed to the City for use in connection with providing water and wastewater services to the Property, shall at all times remain in the complete and exclusive ownership of the City, and any entity owning any part of the Property or any residence or building constructed or located

thereon, shall not have the right, title, claim or interest in and to such facilities, or any part of them, for any purpose, including the furnishing of water and wastewater services to other persons or entities located within or beyond the limits of the Property.

SECTION 8. APPLICATION OF RULES, REGULATIONS, AND RATES.
Notwithstanding any provision in this Agreement, the City may establish, revise, modify and enforce rules, regulations and rates covering the provision of water and wastewater service to the Property. Such rules, regulations and rates are subject to the approval of the City Commission of the City of North Port, Florida. Such rules and regulations shall at all times be reasonable and subject to regulation as may be provided by law or under contract. Rates charged to Developer or customers located upon the Property shall be identical to rates charged for the same classification of service. All rules, regulations and rates in effect, or placed into effect in accordance with the preceding, shall be binding upon Developer, upon any other entity holding by, through or under Developer; and upon any customer of the water and wastewater service provided to the Property by the City.

SECTION 9. PERMISSION TO CONNECT REQUIRED. Developer, or any owner of any parcel of the Property, or any occupant of any residences or buildings located thereon, shall not have the right to and shall not connect any customer installation to the water and wastewater facilities of the City until approval for such connection has been granted by the City.

SECTION 10. BINDING AGREEMENT; ASSIGNMENTS BY DEVELOPER.
This Agreement shall be binding upon and shall inure to the benefit of Developer, the City and their respective assigns and successors by merger, consolidation or conveyance. This Agreement shall not be sold, conveyed, assigned or otherwise disposed of by Developer without the written consent of the City first having been obtained. The City agrees not to unreasonably withhold such consent.

SECTION 11. NOTICES. Until further written notice by either party to the other, all notices provided for herein shall be in writing and transmitted by messenger, or by mail to: _____ Attention: _____ and if the City, shall be mailed or delivered to at: City of North Port, Municipal Building, 5650

North ~~Port~~ Boulevard, North Port, Florida 34287, Attention:
Utilities Director.

SECTION 12. SURVIVAL OF COVENANTS. The rights, privileges, obligations and covenants of Developer and the City shall survive the completion of the work of Developer with respect to completing the water and wastewater facilities and services to any phase area and to the Property as a whole.

SECTION 13. ENTIRE AGREEMENT; AMENDMENTS; APPLICABLE LAW; ATTORNEY'S FEES. This Agreement supersedes all previous agreements or representations, either verbal or written, heretofore in effect between Developer and the City, made with respect to the matters herein contained, and when duly executed, constitutes the agreement between Developer and the City. No additions, alterations or variations of the terms of this Agreement shall be valid, nor can provisions of the Agreement be waived by either party, unless such additions, alterations, variations or waivers are expressed in writing and duly signed. This Agreement shall be governed by the laws of the State of Florida, as well as all applicable local ordinances of the City and it shall be and become effective immediately upon execution by both parties hereto. In the event that the City or Developer is required to enforce this Agreement by court proceedings or otherwise, by instituting suit or otherwise, then the prevailing party in such suit shall be entitled to recover all costs incurred, including reasonable attorney's fees.

SECTION 14. DISCLAIMERS; LIMITATIONS ON LIABILITY.

14.1. STATUS. THE PARTIES DEEM EACH OTHER TO BE INDEPENDENT CONTRACTORS, AND NOT AGENTS OF THE OTHER.

14.2. INDEMNITY. THE DEVELOPER SHALL INDEMNIFY THE CITY, ITS RESPECTIVE AGENTS AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITY, DEMANDS, DAMAGES, EXPENSES, FEES, FINES, PENALTIES, SUITS, PROCEEDINGS, ACTIONS AND FEES, INCLUDING ATTORNEYS' FEES, FOR INJURY (INCLUDING DEATH) TO PERSONS OR DAMAGE TO PROPERTY OR PROPERTY RIGHTS THAT MAY ARISE FROM OR BE RELATED TO ACTS, ERRORS, OR OMISSIONS OF THE DEVELOPER, ITS AGENTS, EMPLOYEES, SERVANTS, LICENSEES, INVITEES, OR CONTRACTORS OR BY ANY PERSON UNDER THE CONTROL OR DIRECTION OF THE DEVELOPER, OR BY THE DEVELOPER'S USE OF THE CITY'S SYSTEM, AND THE DEVELOPER SHALL

INDEMNIFY THE CITY AS AFORESAID FROM ALL LIABILITY, CLAIMS AND ALL OTHER ITEMS ABOVE MENTIONED, ARISING OR GROWING OUT OF OR CONNECTED WITH ANY DEFAULT, BREACH, VIOLATION OR NONPERFORMANCE BY THE DEVELOPER OF ANY COVENANT, CONDITION, AGREEMENT OR PROVISION CONTAINED IN THIS AGREEMENT CONCERNING ALL OR ANY PART OF THE CITY'S SYSTEM.

14.3. FORCE MAJEURE. THE CITY SHALL NOT BE LIABLE OR RESPONSIBLE TO THE DEVELOPER BY REASON OF THE FAILURE OR INABILITY OF THE CITY TO TAKE ANY ACTION IT IS REQUIRED TO TAKE OR TO COMPLY WITH THE REQUIREMENTS IMPOSED HEREBY OR (OR ANY INJURY TO THE DEVELOPER OR BY THOSE CLAIMING BY OR THROUGH THE DEVELOPER, WHICH FAILURE, INABILITY OR INJURY IS CAUSED DIRECTLY OR INDIRECTLY BY FORCE MAJEURE AS HEREINAFTER SET FORTH). THE TERM "FORCE MAJEURE" AS EMPLOYED HEREIN SHALL MEAN ACTS OF GOD, STRIKES, LOCK-OUTS, OR OTHER INDUSTRIAL DISTURBANCE; ACTS OF PUBLIC ENEMIES, WAR, BLOCKADES, RIOTS, ACTS OF ARMED FORCES, MILITIA, OR PUBLIC AUTHORITY, EPIDEMICS; BREAKDOWN OF OR DAMAGE TO MACHINERY, PUMPS, OR PIPE LINES; LANDSLIDES, EARTHQUAKES, FIRES, STORMS, FLOODS, OR WASHOUTS; ARRESTS, TITLE DISPUTES, OR OTHER LITIGATION; GOVERNMENTAL RESTRAINTS OF ANY NATURE WHETHER FEDERAL, STATE, COUNTY, MUNICIPAL OR OTHERWISE, CIVIL OR MILITARY; CIVIL DISTURBANCES; EXPLOSIONS, FAILURE OR INABILITY TO OBTAIN NECESSARY MATERIALS, SUPPLIES, LABOR OR PERMITS OR GOVERNMENTAL APPROVALS WHETHER RESULTING FROM OR PURSUANT TO EXISTING OR FUTURE RULES, REGULATIONS, ORDERS, LAWS OR PROCLAMATIONS WHETHER FEDERAL, STATE, COUNTY, MUNICIPAL OR OTHERWISE, CIVIL OR MILITARY; OR BY ANY OTHER CAUSES, WHETHER OR NOT OF THE SAME KIND AS ENUMERATED HEREIN, NOT WITHIN THE SOLE CONTROL OF THE CITY AND WHICH BY EXERCISE OF DUE DILIGENCE THE CITY IS UNABLE TO OVERCOME.

14.4. DISCLAIMER OF THIRD PARTY BENEFICIARIES. THIS AGREEMENT IS SOLELY FOR THE BENEFIT OF AND SHALL BE BINDING UPON THE FORMAL PARTIES HERETO AND THEIR RESPECTIVE AUTHORIZED SUCCESSORS AND ASSIGNS, AND NO RIGHT OR CAUSE OF ACTION SHALL ACCRUE UPON OR BY REASON HEREOF, TO OR FOR THE BENEFIT OF ANY THIRD PARTY NOT A PARTY TO THIS AGREEMENT OR AN AUTHORIZED SUCCESSOR OR ASSIGNEE THEREOF.

14.5. DISCLAIMER OF SECURITY. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE DEVELOPER EXPRESSLY ACKNOWLEDGES (1) THAT IT HAS NO PLEDGE OF OR LIEN UPON ANY REAL PROPERTY

(INCLUDING SPECIFICALLY, THE CITY'S SYSTEM), ANY PERSONAL PROPERTY, OR ANY EXISTING OR FUTURE REVENUE SOURCE OF THE CITY (INCLUDING, SPECIFICALLY, ANY REVENUES OR RATES, FEES, OR CHARGES COLLECTED BY THE CITY IN CONNECTION WITH THE CITY'S SYSTEM) AS SECURITY FOR ANY AMOUNTS OF MONEY PAYABLE BY THE CITY UNDER THIS AGREEMENT; AND (2) THAT ITS RIGHTS TO ANY PAYMENTS OR CREDITS UNDER THIS AGREEMENT ARE SUBORDINATE TO THE RIGHTS OF ALL HOLDERS OF ANY BONDS OR NOTES OF THE CITY, WHETHER CURRENTLY OUTSTANDING OR HEREAFTER ISSUED.

SECTION 15. COVENANT NOT TO ENGAGE IN UTILITY BUSINESS. The Developer, as a further consideration for this Agreement, agrees that it shall not (the words "shall not" being used in a mandatory definition) engage in the business of providing water and wastewater service to the Property during the period of time the City, its successors and assigns, provide water and wastewater service to the Property, it being the intention of the parties hereto that the foregoing provision shall be a covenant running with the land and under said provision and also under other provisions of this Agreement the City shall have the sole and exclusive right and privilege to provide water and wastewater service to the Property and to the occupants of each residence, building or unit constructed thereon.

SECTION 16. RECORDATION. The parties hereto agree that an executed copy of this Agreement and Exhibits attached hereto shall be recorded in the Public Records of Sarasota County, Florida at the expense of the Developer.

SECTION 17. SEVERABILITY. If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the parties contained therein are not materially prejudiced, and if the intentions of the parties can continue to be effected. To that end, this Agreement is declared severable.

SECTION 18. AUTHORITY TO EXECUTE AGREEMENT. The signature by any person to this Agreement shall be deemed a personal warranty by that person that he has the full power and authority to bind any corporation, partnership, or any other business entity for which he purports to act hereunder.

SECTION 19. CAPACITY. The execution of this Agreement between Developer and the City does not constitute a specific reservation of capacity by Developer, and the City does not hereby guarantee that capacity will be available for Developer's project at any later date. Any specific reservations of capacity must be detailed within the body of this Agreement, under the heading "Special Conditions," and such capacity shall be so reserved, for a definite period of time only upon the payment of appropriate fees and charges or negotiated between the parties, by the Developer to the City. Said fees and charges shall also be set forth in Exhibit "B" hereof.

SECTION 20. SPECIAL CONDITIONS. The following Special Conditions are mutually agreed between Developer and the City:
SEE EXHIBIT "B" ATTACHED TO AND INCORPORATED IN THIS AGREEMENT.

IN WITNESS WHEREOF, Developer and the City have executed or have caused this Agreement, with the named Exhibits attached, if any, 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:

CITY:

THE CITY OF NORTH PORT, FLORIDA

(x) Helen M. Raimbeau

Name: Helen M. Raimbeau

(x) Vicki L. Bills

Name: Vicki L. Bills

By: Ray E. Hall Sr.

Attest: Doris J. Jagg

STATE OF Florida
COUNTY OF Sarasota

The foregoing instrument was acknowledged before me this 31st day of August, 1998 by Ray E. Hall Sr., Chairperson of THE CITY OF NORTH PORT, FLORIDA, on behalf of THE

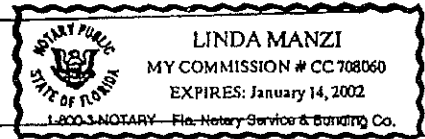
CITY OF NORTH PORT. He is personally known to me or has produced
as identification and did (did not) take an oath.

Linda Manzi
Signature of Person Taking Acknowledgment

Linda Manzi
Name of Acknowledger Typed, Printed or Stamped

Title or Rank

Serial Number, if any.



DEVELOPER:

MARSH CREEK HOLDINGS, LTD.,

a Florida limited partnership

By: Marsh Creek Properties, Inc.,

a Florida corporation,

As General Partner

(x)
Name:

(x)
Name:

James L. Ritchey
Janet M. Hamans

By:

H. Dieter Gebhard
As its Vice President

STATE OF FLORIDA
COUNTY OF

The foregoing instrument was acknowledged before me this 28th day of Aug, 1998 by H. Dieter Gebhard, as Vice President of Marsh Creek Properties, Inc., a Florida corporation and general partner of Marsh Creek Holdings, Ltd., a Florida limited partnership, on behalf of the corporation and the partnership. The above-named person is personally known to me or has produced _____ as identification. If no type of identification is indicated, the above-named person is personally known to me.



OFFICIAL NOTARY SEAL
JANET M. HAMANS
MY COMM. EXP. 05-08-2000
No. CC 542636

Janet M. Hamans
Signature of Notary Public

Janet M. Hamans
Print Name of Notary Public

I am a Notary Public of the State of Florida, and my
commission expires on _____

(x) [Signature]
By: Summary Blank

(x) Penelope J. Sindall
By: PENELOPE J. SINDALL

Renea M. Glendinning
Renea M. Glendinning, as Trustee
Under Trust Agreement dated April 30, 1998

STATE OF FLORIDA
COUNTY OF SARASOTA

The foregoing instrument was acknowledged before me this 28th day of August, 1998 by Renea M. Glendinning, as Trustee under Trust Agreement dated April 30, 1998. The above-named person is personally known to me or has produced Driver's License as identification. If no type of identification is indicated, the above-named person is personally known to me.

(Notary Seal)



OFFICIAL NOTARY SEAL
PENELOPE J. SINDALL
MY COMM. EXP. 8-28-00
No. CC 471702

Penelope J. Sindall
Signature of Notary Public

PENELOPE J. SINDALL
Print Name of Notary Public

I am a Notary Public of the State of Florida,
and my commission expires on _____

EXHIBIT "A"

DESCRIPTION OF REAL ESTATE:

TRACT "A": A portion of Section 21, Township 39 South, Range 21 East, Sarasota County, Florida, more particularly described as follows:

Commencing at the Northwest corner of the Fifty-Sixth Addition to Port Charlotte Subdivision, per plat thereof, recorded in Plat Book 28, Pages 50 and 50-A, Public Records of Sarasota County, Florida, said corner also being on the centerline of the Snover Waterway (200' wide), as shown on the Plat of the Eighteenth Addition to Port Charlotte Subdivision, per plat thereof recorded in Plat Book 14, Pages 6, 6-A through 6-V, Public Records of Sarasota County, Florida; thence S.00° 43'08"W. along the Westerly Boundary Line of said Fifty-Sixth Addition to Port Charlotte Subdivision also being the Westerly Right-of-Way Line of Sumter Boulevard (200' wide) a distance of 100.00 feet to the POINT OF BEGINNING; at the intersection of said Right-of-Way Line with the South Line of said Snover Waterway; thence along said Westerly Right-of-Way Line of Sumter Boulevard the following two courses; S.00° 43'08"W., a distance of 1346.71 feet to the point of curvature of a 2100.00 foot radius curve to the left, with the center point bearing S.89°16'52"E.; thence Southerly along the arc of said curve, through a central angle of 15°16'04", a distance of 559.59 feet to an intersection with the Northerly Right-of-Way Line of Price Boulevard, with said point also being a point of reverse curvature of a 25.00 radius curve to the right, with the center point bearing S.75°27'04"W.; thence along the said Northerly Right-of-Way Line of Price Boulevard (100' wide) the following four courses; Southwesterly along the arc of said curve, through a central angle of 85°42'32", a distance of 37.40 feet to a point of reverse curvature of a 1650.00 foot radius curve to the left, with the center point bearing S.18°50'24"E.; thence Southwesterly along the arc of said curve, through a central angle of 22°20'06", a distance of 643.20 feet to a point of tangency; thence S.48°49'30"W., a distance of 408.66 feet to the point of curvature of a 1950.00 foot radius curve to the right, with the center point bearing N.41°10'30"W.; thence Westerly along the arc of said curve, through a central angle of 71°11'22", a distance of 2422.85 feet; thence leaving said Northerly Right-of-Way Line of Price Boulevard N.29°59'32"E., a distance of 1198.77 feet; thence N.15°00'00"W., a distance of 1800.00 feet to the South Line of the aforesaid Snover Waterway (O.R. Book 1941, Page 6); thence along said South Line, S.89°16'51"E., a distance of 2953.00 feet to the Point of Beginning.

Containing 170.30 Acres, more or less.

DESCRIPTION OF REAL ESTATE:

TRACT "B": A portion of Sections 21 and 22, Township 39 South, Range 21 East, Sarasota County, Florida, more particularly described as follows:

Commencing at the Northeast corner of the Fifty-Sixth Addition to Port Charlotte Subdivision, per plat thereof, recorded in Plat Book 28, Pages 50 and 50-A, Public Records of Sarasota County, Florida, said corner also being on the centerline of the Snover Waterway as shown on the Plat of the Eighteenth Addition to Port Charlotte Subdivision, per plat thereof, recorded in Plat Book 14, Pages 6, 6-A through 6-V, Public Records of Sarasota County, Florida; thence S.00°43'08"W., along the Easterly Boundary Line of said Fifty-Sixth Addition to Port Charlotte Subdivision, also being the Easterly Right-of-Way Line of Sumter Boulevard (200' wide) a distance of 700.00 feet to the POINT OF BEGINNING; thence leaving the said Westerly Right-of-Way Line, S.89°16'51"E., a distance of 606.00 feet, thence N.00°43'09"E., a distance of 600.00 feet to the Southerly Right-of-Way Line of the Snover Waterway (O.R. Book 1941, Page 6); thence S.89°16'51"E. along said Southerly Right-of-Way Line, a distance of 880.95 feet to the Northwestern corner of North Port Water Control District property (O.R. Book 2357, Page 382); thence leaving said Southerly Right-of-Way Line, and along the Westerly Boundary Line of the said North Port Water Control District Property, S.00°43'09"W., a measured distance of 1052.76 feet (Deed 1050.00') to the Southwest corner of said North Port Water Control District property; thence along the Southerly Boundary of said North Port Water Control District property S.89°16'51"E., a distance of 1028.67 feet to the Westerly Boundary Line of the Blueridge Waterway (100 feet wide) (O.R. Book 1941, Page 6), said point also being a point on the arc of a 1000.00 foot radius curve with the center point of said curve bearing N.77°26'14"W.; thence along the Westerly Right-of-Way Line of said Blueridge Waterway the following two courses; Southwesterly along the arc of said curve, through a central angle of 55°49'01", a distance of 974.19 feet to a point of reverse curvature of a 1150.00 foot radius curve to the left, with the center point bearing S.21°37'14"E.; thence Southwesterly along the arc of said curve, through a central angle of 32°16'11", a distance of 647.69 feet to the intersection of said Westerly Right-of-Way Line with the Northerly Right-of-Way Line of Price Boulevard (100' wide); thence along the Northerly Right-of-Way Line of said Price Boulevard the following three courses; N.56°24'18"W., a distance of 131.21 feet to the point of curvature of a 1650.00 foot radius curve to the left, with the center point bearing S.33°35'42"W., thence along the arc of said curve, through a central angle of 43°52'31", a distance of 1263.51 feet to a point of reverse curvature of a 25.00 foot radius curve to the right with the center point bearing N.10°16'49"W.; thence along the arc of said curve through a central angle of 85°43'55", a distance of 37.41 feet to a point in the aforesaid Easterly Right-of-Way Line of Sumter Boulevard and the Easterly Boundary Line of the aforesaid Fifty-Sixth Addition to Port Charlotte Subdivision, said point is also the point of compound curvature of a 1900.00 foot radius curve to the right, with the center point bearing N.75°27'06"E.; thence along the said Easterly Right-of-Way Line for the following two courses; Northerly along the arc of said curve through a central angle of 15°16'02", a distance of 506.28 feet to the point of tangency; thence N.00°43'08"E. a distance of 746.71 feet to the Point of Beginning.

Containing 72.12 Acres, more or less.

DESCRIPTION OF REAL ESTATE:

TRACT "C": A portion of Sections 21 and 28, Township 39 South, Range 21 East, Sarasota County, Florida, more particularly described as follows:

Beginning at a concrete monument at the Northwest corner of the Right-of-Way of North Port Boulevard as shown on the Plat of the Fifty-Sixth Addition to Port Charlotte Subdivision, per plat thereof Recorded in Plat Book 28, Pages 50 and 50-A, Public Records of Sarasota County, Florida, thence S.82°01'05"W. (S.82°00'00"W. Plat bearing) along the Northerly Right-of Way of said North Port Boulevard (Myakkahatchee Boulevard) as shown on the Plat of the Fifty-Second Addition to Port Charlotte Subdivision per plat thereof recorded in Plat Book 21 Pages 13, 13-A through 13-NN, Public Records of Sarasota County, Florida, a distance of 947.20 feet (946.95 feet plat distance) to a concrete monument at the Southeast corner of Block 2653 in said Fifty-Second Addition to Port Charlotte Subdivision; thence leaving said Northerly Right-of-Way Line and along the Northeastery Boundary Line of said Block 2653 the following four courses; N.08°00'00"W., a distance of 955.00 feet; thence S.82°00'00"W., a distance of 365.00 feet; thence N.08°00'00"W., a distance of 630.90 feet; thence S.82°00'00"W., a distance of 150.00 feet; thence leaving said Boundary Line, N.29°59'32"E., a distance of 1080.80 feet to the Southerly Right-of-Way Line of Price Boulevard (100' Wide); thence along said Southerly Right-of-Way Line the following five courses; S.59°55'11"E., a distance of 23.99 feet to the point of curvature of a 2050.00 foot radius curve to the left with the center point bearing N.30°04'49"E.; thence Easterly along the arc of said curve, through a central angle of 71°15'19", a distance of 2549.46 feet to a point of tangency; thence N.48°49'30"E., a distance of 408.68 feet to the point of curvature of a 1550 foot radius curve to the right, with the center point bearing S.41°10'30"E.; thence Northeasterly along the arc of said curve, through a central angle of 22°06'43", a distance of 598.19 feet to a point of compound curvature of a 25 foot radius curve to the right with the center point bearing S.19°03'47"E.; thence Easterly and Southerly along the arc of said curve through a central angle of 90°27'50", a distance of 39.47 feet to a point on the Westerly Right-of-Way Line of Sumter Boulevard as shown on the aforesaid Plat of the Fifty-Sixth Addition to Port Charlotte Subdivision, said point also being a point of reverse curvature of a 2100.00 foot radius curve to the left, with the center point bearing N.71°24'03"E.; thence along said Westerly Right-of-Way Line of Sumter Boulevard the following four courses; Southerly, along the arc of said curve through a central angle of 00°13'14", a distance of 8.09 feet to a point of reverse curvature of a 1300.00 foot radius curve to the right, with the center point bearing S.71°10'49"W.; thence Southerly along the arc of said curve, through a central angle of 77°57'00", a distance of 1768.63 feet to a point of reverse curvature of a 1600.00 foot radius curve to the left, with the center point bearing S.30°52'11"E.; thence Southwesterly along the arc of said curve through a central angle of 59°57'23", a distance of 1674.30 feet to a point of reverse curvature of a 50.11 foot radius curve to the right, with the center point bearing S.89°10'26"W.; thence Southwesterly along the arc of said curve through a central angle of 86°32'36", a distance of 75.69 feet to the aforesaid Northerly Right-of-Way Line of North Port Boulevard; thence along the said Northerly Right-of-Way Line the following three courses; S.85°43'11"W., a distance of 208.42 feet to the point of curvature of a 2750.00 foot radius curve to the left, with the center point bearing S.04°16'49"E.; thence Southwesterly along the arc of said curve, through a central angle of 03°42'20", a distance of 177.85 feet to a point of tangency; thence S.82°00'51"W., a distance of 355.73 feet to the Point of Beginning.

Containing 140.58 Acres, more or less.

DESCRIPTION OF REAL ESTATE:

TRACT "D": A portion of Sections 21 and 22, Township 39 South, Range 21 East, Sarasota County, Florida, more particularly described as follows:

Commencing at the Northeasterly corner of the Fifty-Second Addition to Port Charlotte Subdivision per plat thereof recorded in Plat Book 21, Pages 13, 13-A through 13-NN, Public Records of Sarasota County, Florida, said corner also being on the centerline of the Blueridge Waterway (100' wide)(O.R. Book 1941, Page 6); thence leaving the said centerline and along the Northerly Boundary Line of the said Fifty-Second Addition to Port Charlotte Subdivision, N.84°56'11"W., a distance of 50.00 feet to the POINT OF BEGINNING, said point also being on the Westerly Right-of-Way Line of the said Blueridge Waterway; thence leaving said Westerly Right-of-Way Line and along the Northerly Boundary Line of said Fifty-Second Addition the following three courses; N.84°56'11"W., a distance of 1375.64 feet to the point of curvature of 400 foot radius curve to the right, with the center point bearing N.05°03'49"E., thence along the arc of said curve, through a central angle of 29°49'49", a distance of 208.26 feet to a point of tangency; thence N.55°06'22"W., a distance of 442.85 feet to a corner on the Boundary Line of the Fifty-Sixth Addition to Port Charlotte Subdivision, per plat thereof recorded in Plat Book 28, Pages 50 and 50-A, Public Records of Sarasota County, Florida, said point is also on the arc of a 2350.00 foot radius nontangent curve with the center point bearing N.55°05'20"W.; thence Southwesterly along the Westerly Boundary Line of Tract "D" as platted in said Fifty-Sixth Addition and the arc of said curve, through a central angle of 10°06'22", a distance of 414.51 feet to a point on the Easterly Right-of-Way Line of Sumter Boulevard (200' wide) as platted in said Fifty-Sixth Addition with said point also being on the arc of a 1400.00 foot radius nontangent curve with the center point bearing S.73°36'02"E.; thence Northeasterly along said Easterly Right-of-Way Line, the following three courses; along the arc of said curve, through a central angle of 42°43'51", a distance of 1044.11 feet to a point of reverse curvature of a 1500.00 foot radius curve to the left, with the center point bearing N.30°52'11"W.; thence along the arc of said curve through a central angle of 77°31'15", a distance of 2029.49 feet to a point of reverse curvature of a 25.00 foot radius curve to the right, with the center point bearing N.71°36'34"E., thence along the arc of said curve through a central angle of 98°45'30", a distance of 43.09 feet along the Southerly Right-of-Way Line of Price Boulevard (100' wide), to a point of compound curvature of a 1550.00 foot radius curve to the right with the center point bearing S.09°37'56"E., thence along the said Southerly Right-of-Way Line for the following two courses; along the arc of said curve through a central angle of 43°13'39", a distance of 1169.42 feet to a point of tangency; thence S.56°24'18"E., a distance of 131.17 feet to a point on the aforesaid Westerly Right-of-Way Line of the Blueridge Waterway, said point also being on the arc of a 1150.00 foot radius curve, with the center point bearing S.58°52'26"E.; thence along said Westerly Right-of-Way Line the following two courses; Southwesterly along the arc of said curve through a central angle of 26°04'14", a distance of 523.27 feet to a point of tangency; thence S.05°03'20"W. a distance of 1932.28 feet to the Point of Beginning.

Containing 83.90 Acres, more or less.

A parcel of land in Sections 20, 21, 28, and 29, Township 39 South, Range 21 East, Sarasota County, Florida (said parcel being formerly a portion of the plat of Fifty-Second Addition to Port Charlotte Subdivision recorded in Plat Book 21, page 13, Public Records of Sarasota County, Florida, and a portion of the plat of Fifty-Sixth Addition to Port Charlotte Subdivision recorded in Plat Book 28, page 50, Public Records of Sarasota County, Florida), more particularly described as follows:

Beginning at the point of intersection of the centerline of North Port Boulevard (formerly Myakkahatchee Boulevard) with the Northerly line of Appomattox Drive as platted in said Fifty-Second Addition; thence South $45^{\circ}34'35''$ East, along said Northerly line of Appomattox Drive a distance of 1833.51 feet to the point of curvature of a curve to the left, having: a radius of 260.00 feet, a central angle of $23^{\circ}13'38''$, a chord bearing of South $57^{\circ}11'24''$ East, and a chord length of 104.68 feet; thence along the arc of said curve, an arc length of 105.40 feet to the point of tangency of said curve; thence South $68^{\circ}48'13''$ East, along said Northerly line a distance of 2715.05 feet to the point of curvature of a curve to the left, having: a radius of 260.00 feet, a central angle of $17^{\circ}44'15''$, a chord bearing of South $77^{\circ}40'20''$ East and a chord length of 80.17 feet; thence along the arc of said curve, an arc length of 80.49 feet to the point of tangency of said curve; thence South $86^{\circ}32'28''$ East, along said Northerly line a distance of 403.32 feet to the point of curvature of a curve to the left, having: a radius of 25.00 feet, a central angle of $89^{\circ}58'27''$, a chord bearing of North $48^{\circ}28'18''$ East and a chord length of 35.35 feet; thence along the arc of said curve, an arc length of 39.26 feet to the point of tangency of said curve; thence North $03^{\circ}29'05''$ East, along the Westerly line of Sumter Boulevard (200 feet wide) a distance of 7.66 feet to the point of curvature of a curve to the right, having: a radius of 1524.84 feet, a central angle of $26^{\circ}10'34''$, a chord bearing of North $16^{\circ}34'22''$ East and a chord length of 690.60 feet; thence along the arc of said curve, an arc length of 696.64 feet to the point of tangency of said curve; thence North $29^{\circ}39'39''$ East, along said Westerly line of Sumter Boulevard a distance of 1900.39 feet to the point of curvature of a curve to the left, having: a radius of 949.64 feet, a central angle of $35^{\circ}45'49''$, a chord bearing of North $11^{\circ}46'44''$ East and a chord length of 583.18 feet; thence along the arc of said curve, an arc length of 592.76 feet to the point of tangency of said curve; thence North $06^{\circ}06'10''$ West, along said Westerly line a distance of 682.16 feet to the Southeast corner of Tract "A" as platted in said Fifty-Sixth Addition; thence North $06^{\circ}06'10''$ West, along said Westerly line of Sumter Boulevard a distance of 405.72 feet to a point on a curve to the right, having: a radius of 1600.00 feet, a central angle of $05^{\circ}18'00''$, a chord bearing of North $03^{\circ}27'41''$ West and a chord length of 147.95 feet; thence along the arc of said curve, an arc length of 148.01 feet to a point of cusp with a curve to the right, having: a radius of 50.00 feet, a central angle of $86^{\circ}32'01''$, a chord bearing of South $42^{\circ}27'20''$ West and a chord length of 68.54 feet; thence along the arc of said curve, an arc length of 75.51 feet to the point of tangency of said curve; thence South $85^{\circ}43'21''$ West, along the North line of aforesaid North Port Boulevard (100 feet wide) a distance of 208.40 feet to the point of curvature of a curve to the left, having: a radius of 2750.00 feet, a central angle of $03^{\circ}42'18''$, a chord bearing of South $83^{\circ}52'12''$ West and a chord length of 177.80 feet; thence along the arc of said curve, an arc length of 177.83 feet to the point of tangency of said curve; thence South $82^{\circ}01'03''$ West,

along said North line a distance of 355.74 feet to the Northwest corner of said Fifty-Sixth Addition; thence South $82^{\circ}01'01''$ West, along the North line of said North Port Boulevard as platted in said Fifty-Second Addition a distance of 947.20 feet; thence North $08^{\circ}00'00''$ West, along the East line of Block 2653 a distance of 955.00 feet; thence South $82^{\circ}00'00''$ West, along the North line of Block 2653 a distance of 365.00 feet; thence North $08^{\circ}00'00''$ West, along the East line of Block 2653 a distance of 630.90 feet; thence South $82^{\circ}00'00''$ West, a distance of 150.00 feet to the Northwest corner of Lot 39 in said Block 2653; thence South $08^{\circ}00'00''$ East, along and extending the West line of said Lot 39 a distance of 175.00 feet to the cul-de-sac center at the North end of Fleetway Road (50 feet wide); thence South $07^{\circ}57'17''$ East, along the centerline of said Fleetway Road a distance of 605.90 feet to a point of intersection with the centerline of Camero Street (50 feet wide); thence South $82^{\circ}00'00''$ West, along said centerline of Camero Street a distance of 1636.11 feet to the point of curvature of a curve to the left, having: a radius of 100.00 feet, a central angle of $90^{\circ}00'00''$, a chord bearing of South $37^{\circ}00'00''$ West and a chord length of 141.42 feet; thence along the arc of said curve, an arc length of 157.08 feet to the point of tangency of said curve; thence South $08^{\circ}00'00''$ East, along the centerline of Damon Avenue (50 feet wide) a distance of 185.03 feet; thence South $82^{\circ}00'00''$ West, along the line dividing Lots 7 and 8 in aforesaid Block 2653 a distance of 150.11 feet to the West line of said Block 2653; thence South $08^{\circ}00'00''$ East, along said West line of said Block 2653 a distance of 606.62 feet to a point on the Northwesterly line of aforesaid North Port Boulevard; thence South $19^{\circ}45'51''$ East, a distance of 50.00 feet to the centerline of said North Port Boulevard and a point on a curve to the left, having: a radius of 4070.00 feet, a central angle of $16^{\circ}49'34''$, a chord bearing of South $61^{\circ}49'22''$ West and a chord length of 1190.95 feet; thence along the arc of said curve, an arc length of 1195.24 feet to the point of compound curvature of a curve to the left, having: a radius of 700.00 feet, a central angle of $18^{\circ}24'35''$, a chord bearing of South $44^{\circ}12'17''$ West and a chord length of 223.95 feet; thence along the arc of said curve, an arc length of 224.92 feet to the point of reverse curvature of a curve to the right, having: a radius of 1422.00 feet, a central angle of $09^{\circ}25'25''$, a chord bearing of South $39^{\circ}42'43''$ West and a chord length of 233.62 feet; thence along the arc of said curve, an arc length of 233.88 feet to the point of tangency of said curve; thence South $44^{\circ}25'25''$ West, along said centerline a distance of 203.96 feet to the Point of Beginning.

EXHIBIT B

SPECIAL CONDITIONS

Pursuant to paragraph 20, the following are the Special Conditions mutually agreed upon between the Developer and the City. To the extent that these Special Conditions may conflict with the recitals or provisions contained within the Standard Developer's Agreement, these Special Conditions shall prevail.

1. Provided that Developer shall comply with the requirements recited herein, the Developer is hereby granted the right to obtain permits for and to receive water and wastewater service to the extent of 150 ERCs (Equivalent Residential Connections), and any available reclaimed water, for the proposed Marsh Creek development, Phase I, which is limited to the Welcome Center, Marsh Creek Drive, Golf Course, Club House, Maintenance Facility, Parcel "C", and Parcel "D", under the following conditions:

- (a) On or before September 1, 1998, Developer shall pay the adopted Water Capital Charge (\$860) and Wastewater Capital Charges (\$1,280) for each of the 150 ERCs.
- (b) On or before September 1, 1999, and on each anniversary date thereafter, Developer shall pay the adopted Guaranteed Revenue Charge for unconnected or unused potable water and sanitary sewer ERC's, pro-rated based upon the period of time during the year when such ERC's were unconnected or unused. This charge is currently \$85 for potable water and \$205 for sanitary sewer per ERC, however, the City reserves the right to adjust the charge (up or down) in the future. The Developer shall pay the charge in effect at the time of payment.

(c) Developer shall participate in the cost of design and construction of the following infrastructure improvements which shall be designed to and built in accordance with City's specifications:

(1) On or before September 1, 1998, Developer shall pay the City \$10,000 for the rehabilitation of the existing City Lift Station "L" located to the south and west of the Sumter Boulevard/Appomattox Drive intersection, which represents an approximation of the cost attributable to Developer's hydraulic share of said facility.

(2) On or before September 1, 1998, Developer shall pay the City \$11,086.92 to be applied to the cost of design and construction of the master wastewater re-pump station located at the new City Complex. In consideration for this payment, Developer shall have the ability to use the City Complex Lift Station up to 176 ERCs, in order to serve Developer's proposed commercial development adjacent to the City Complex.

(d) The off-site improvements required in subparagraphs 1.(c)(1), (2) and (3) herein, shall be in addition to the on-site utilities that Developer shall construct to provide utility service to its proposed residential units and recreational facilities. Developer shall be responsible for planning, designing, permitting and constructing of these on-site facilities.

(e) The improvements listed in subparagraphs 1.(c)(1), (2) and (3) herein, are required for Developer to connect the City's existing utility systems or to augment City's utility capacity in order to efficiently serve Developer's demands.

- (f) In no event shall this Agreement entitle Developer to obtain more than 150
ERC's for the above referenced improvements.

2. Developer may purchase reclaimed water from the City at the prevailing rate. However, City shall sell reclaimed water to Developer only after City has satisfied all existing reclaimed water demands. The quality of reclaimed water shall meet the requirements of FDEP 62-610.460. The City shall be held harmless and indemnified by the Developer for the resulting water quality after mixing in Developer's storage pond. Prior to the purchase of reclaimed water, Developer shall, at Developer's sole expense, extend the City's irrigation main along the west side of Sumter Boulevard, from Appomattox Drive, northerly to the proposed Marsh Creek irrigation lake.

3. To the extent that Developer may undertake any construction of utility improvements within City right-of-way or upon City property, Developer shall provide the following insurance coverage: a public liability insurance policy with limits of no less than \$1 million combined single limits, and \$3 million for aggregate coverage. City shall be named as an additional or co-insured on all such policies. A certificate of insurance shall be furnished by Developer to the City Auditor and Clerk prior to the date upon which Developer commences construction of the utility improvements. Said certificate shall provide that the insurance coverage shall not be canceled or reduced by the insurance carrier without the City Manager having been given at least 30 days prior written notice thereof.

4. It is anticipated that the Marsh Creek development, upon complete buildout, may include as many as 1,970 residential units, 750,000 square feet of office and retail space, a 27 hole golf course, maintenance facilities, two club houses, and 12 tennis courts. This Agreement only provides for the first 150 ERCs of that total development. City, by executing this

Agreement, makes no commitments to provide water or wastewater service to the Marsh Creek development beyond the first 150 ERCs. Any service desired by the Developer to serve the balance of the Marsh Creek project, shall be the subject of another developer's agreement (herein referred to as "Second Developer's Agreement"), to be executed by the parties hereafter. The parties anticipate that the Second Developer's Agreement will address Developer's utility requirements for the remaining development in its entirety (not merely portions of it) and shall specify Developer's obligation to participate in the cost of further infrastructure improvements, which may include the following:

- (a) A wastewater force main from the Marsh Creek master pump station along Appomattox Drive, to the City's wastewater treatment plant.
- (b) A 12" potable water main along the north side of Appomattox Drive, from Sumter Boulevard to Myakkahatchee Creek.
- (c) A 12" potable water main along the ^{North}~~South~~ side of Price Boulevard from the Sumter intersection to the Myakkahatchee Creek.
- (d) A 12" potable water main along the west side of the Marsh Creek development, connecting Appomattox Drive to Price Boulevard.
- (e) High level disinfectant systems at the City's wastewater treatment plant.
- (f) Extension of the irrigation main from the Marsh Creek irrigation lake, northerly to the Sumter/Price intersection.

5. Notwithstanding the provisions for Developer's payment of Water and Wastewater Capital Charges set forth in subparagraph 1(a) above, the parties acknowledge and agree that the City may, in fact, demand and collect payment of those charges (in whatever amounts may be adopted by the City from time to time) from the Developer's grantees, lessees,

or assignees (e.g. purchasers, contractors, etc.) for water and wastewater services to lots/parcels within the Marsh Creek development, which amounts shall be paid by said third parties prior to the connection of lots/parcels to the utility system. Within 60 days after the City receives such third-party payment, the City shall remit to the Developer the Water and Wastewater Capital Charges previously paid by the Developer to the City for the ERCs represented by such connection. Developer agrees to disclose in writing to any grantee, lessee or assignee, the Developer's entitlement to receive from City remittance of the Water and Wastewater Capital Charges. Developer, on behalf of itself and its successors and assigns, hereby further agrees to indemnify, defend, save and hold harmless City from and against any and all suits, actions, claims, demands, liabilities, judgments and costs of any nature whatsoever arising as a result of City's remittance to Developer of the previously paid Water and Wastewater Capital Charges by Developer and/or the City's receipt of payment from Developer's grantees, lessees or assignees of new Water and Wastewater Capital Charges at the time of application for connection of the proposed ERC. In the event City is made a party to any litigation arising as a result of such remittance, City shall have the option of providing for its own defense in said litigation and billing Developer, its successors and/or assigns, for all expenses of litigation, including its direct costs, commercially recognized rate for attorneys fees, inclusive of paralegal or legal assistant services, which expenses Developer shall pay promptly upon demand or designating Developer, its successors and/or assigns, to defend City at the expense of said Developer, successor and/or assigns.

6. The parties understand and agree that this Agreement may be modified by mutual written consent.