

**SECOND AMENDMENT TO THE SECOND DEVELOPER'S AGREEMENT
BETWEEN THE CITY OF NORTH PORT, FLORIDA
AND MARSH CREEK HOLDINGS, LTD.
AND HERON CREEK ASSOCIATES, LTD.**

This is to amend the Second Developer's Agreement, entered into on June 16, 2000, between the City of North Port (City) and Marsh Creek Holdings, LTD (Developer) that amends Exhibit B of the first Developer's Agreement (entered into on August 31, 1998).

1. Whereas the Developer has paid for and thus reserved water and sewer capacity for 670 ERCs of which 30 water ERCs and 26 wastewater ERCs remain unconnected as of June 1, 2004. Provided that the Developer shall comply with the requirements recited herein, the Developer is hereby granted capacity and the right to obtain permits for and to receive water and wastewater services for their development in Heron Creek under the following conditions:

- a. On or before July 1, 2004, Developer shall pay the adopted Water Capital Charge and Wastewater Capital Charge for 100 ERCs.
- b. On or before October 1, 2004, Developer shall pay the adopted Water Capital Charge and Wastewater Capital Charge for 55 ERCs.
- c. On or before October 1, 2005, Developer shall pay the adopted Water Capital Charge and Wastewater Capital Charge for 125 ERCs.
- d. On or before October 1, 2006, Developer shall pay the adopted Water Capital Charge and Wastewater Capital Charge for 50 ERCs.
- e. On or before October 1, 2007, and each October thereafter until build out of the Development, Developer shall pay the adopted Water Capital Charge and Wastewater Capital Charge for 25 ERCs.
- f. If the Developer's incremental need exceeds the yearly assigned increment for water and wastewater capacity for the Development, Developer may request to accelerate future incremental payments of Water and Wastewater Capital Charges. The Utilities Department and the City Manager may approve an accelerated payment for future scheduled increments if water and wastewater capacity is available.
- g. Performance Bond or Letter of Credit. In order to secure the payment of Water Capital Charges and Wastewater Capital Charges as referenced in this subsection, the Developer shall obtain a bond or other security or assurances acceptable to the City securing the Developer and the City in an amount equal to 100% of the amount for all ERCs to be purchased under this Agreement in order to guarantee payment of said ERCs. In lieu of providing said bond as set forth within this subsection, the Developer may, at its option, provide irrevocable letters of credit drawn on a bank located and doing business in Sarasota

County, Florida, made payable to the City in an amount equal to 100% of the cost of the purchase of the ERCs under this Agreement in a form acceptable to the City on or before August 15, 2004.

- h. On October 1st of each year, beginning October 1, 2005, Developer shall pay the adopted applicable Guaranteed Revenue Charge for each of the unconnected or unused potable water and sanitary sewer ERCs that have been purchased up to that date, pro-rated based upon the period of time during the year when such ERCs 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.
- i. The Developer shall have a five (5) day grace period before a failure to make payment as required herein shall constitute an event of default under this agreement. The Developer shall be assessed a five percent (5%) late fee to be calculated on any delinquent payment if made after the expiration of the five (5) day grace period. In the event of the Developer's failure to make timely payment as set forth herein and upon the expiration of the five (5) day grace period, the City shall, prior to declaring an event of default, provide the Developer with written notice of the City's intent to declare an event of default. The Developer shall have an additional twenty (20) days from the date the Developer receives the City's written notice within which to make the specified payment. Should the Developer fail to cure a default upon its receipt of proper notices, the City may undertake the appropriate legal actions it deems necessary to enforce its right and remedies as provided under this Agreement and Florida Law.
- j. The Developer remains responsible for planning, designing, permitting, constructing and certifying all on-site and off-site water transmission and distribution systems and wastewater collection and transmission systems, including lift stations, to support the proposed development. This includes, but is not limited to the following:
 - 1. Pursuant to the original Developer's Agreement, the Developer remains committed to provide a 12" looping potable water main through Heron Creek from North Port Boulevard and Appomattox Drive along North Port Boulevard to connect to the water main on Price Boulevard. This construction will be required when engineering calculations or actual demands show the need for the main. It has been determined that this line will be needed in the future to provide adequate fire protection and looping of the potable water service to the Heron Creek development. Developer will provide engineering calculations every two years as new phases of development commence or as requested by the City. Furthermore, the Developer agrees to pay for the 12-inch watermain oversizing cost on Appomattox Drive. It is understood that an independent developer has agreed to install a new 12-inch watermain on Appomattox Drive. This watermain will complete the loop that services the Heron Creek Development and direct benefit shall be offered to Heron Creek. The cost for the oversizing shall be \$60,000 and shall be paid to the City on July 1, 2004.
 - 2. Pursuant to the original Developer's Agreement, the Developer remains committed to make a payment of 70.4% of total construction costs of \$262,428, which represents Heron Creek's portion of the hydraulic share, for a 12" potable water main along Price

Boulevard from the intersection of Sumter Boulevard and Price Boulevard to connect to the City's 12" water main on the west side of the Myakkahatchee Creek on Price Boulevard. However, it is mutually agreed that if there is any change in the pattern of development in the vicinity of this new 12" water main and if a new development connects directly to this line, Heron Creek Development may be reimbursed based on and as part of the new hydraulic share calculations. This payment has been estimated to be \$184,750 and shall be made to the City on or before February 1, 2005.

3. The Developer agrees to procure and install Remote Transmitter Unit (RTU) on all lift stations within the project that have not been dedicated to the City as of July 1, 2004. It is understood that the City is currently researching an acceptable SCADA system that will service the City's wastewater system. Furthermore, the City plans to install RTU devices on all lift station within the City's service area. The RTU unit will meet the standards as described by the central system and the cost for the RTU device should not exceed \$8,000.00 per lift station. The Developer will be given a three (3) month notice to procure and install the RTU device after the City establishes the SCADA system.
2. With regard to reclaimed water service, Developer agrees to the following:
 - a. In lieu of a standardized connection fee for reclaimed water (not yet adopted by the City), Developer agrees to pay a Contribution-in-Aid-of-Construction of \$348,984.47 (to participate in the installation of a high level disinfection system to include disc filters at the City's WWTP) to receive a reclaimed water allotment of up to 1.2 million gallons per day, dependent upon flow conditions. This payment shall be made to the City on or before February 1, 2005. Upon receipt of this Contribution-in-Aid-of-Construction, City shall allow the Developer to purchase reclaimed water, subject to priorities established solely by the City and availability thereof, at the adopted rate (currently \$0.23 per 1,000 gallons, subject to change based on Rate Study).
 - b. Developer agrees to plan, design, construct and certify all reclaimed water infrastructure necessary for their development in compliance with all applicable City and State standards. At the City's discretion, the City may elect to provide additional capacity in the reclaimed water mains by sharing the construction cost. The Developer further agrees to coordinate the extension of a proposed reclaimed water main during future design and construction efforts at the Sumter Boulevard entrance located West of the new City Complex.
 - c. Developer agrees to implement and follow all local, State and Federal guidelines, Rules and Regulations as amended regarding the storage and utilization of reclaimed water for irrigation. Developer further agrees to provide the City with any and all reclaimed water data and information requested for planning or permitting needs.
3. City shall have no obligation to sell reclaimed water to Developer until 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.
4. The off-site improvements required in subparagraph 1 above, are required for Developer to connect to the City's existing utility systems or to augment City's utility capacity in order to efficiently serve

Developer's demands. Such off-site improvements shall be in addition to the on-site utility facilities the Developer shall construct in order to provide utility service to the Heron Creek development. Developer shall be responsible for planning, designing, obtaining permits, constructing, certifying these on-site and off-site improvements.

5. 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 co-insured on all such policies. The Developer shall furnish a Certificate of Insurance 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.

6. 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 Heron 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 shall disclose in writing to any grantee, lessee or assignee, the Developer's entitlement to receive from City and the City's right to collect from the grantee, lessee or assignee 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, attorney's fees 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 assigns 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.

7. The Developer agrees to the working hours as set forth in this agreement. Normal working hours are defined as Monday through Friday 7:00AM to 3:30PM. Work outside of the normal working hours will constitute an "Overtime" rate, which will be reimbursed to the City. The Overtime rate will be calculated by the City on a time and a half rate plus all overhead fees. Should work be conducted on scheduled holidays, the Developer will be responsible to reimburse on a double time and a half rate plus all overhead fees. The City will invoice for such fees and payment must be made within a two-week period.

8. The Developer agrees to provide water and wastewater services to each and every lot within the development. More specifically, each service will be installed at the location prescribed by the Developer's Engineer of Record within the project plans. The Developer agrees to relocate and pay any and all associated costs for any service that is found to be installed at a location that does not match the prescribed location.

9. This Amendment to the Second Developer's Agreement and Special Conditions thereto may be modified by mutual written consent of the parties.

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.

ATTEST:

Helen M. Raimbeau
Helen M. Raimbeau, City Clerk

THE CITY OF NORTH PORT, FLORIDA


By: Barbara L. Gross
Barbara L. Gross, Commission Chairperson

Approved as to form and correctness:

Robert K. Robinson
Robert K. Robinson, City Attorney

STATE OF FLORIDA
COUNTY OF SARASOTA

The foregoing instrument was acknowledged before me this 6th day of October 2004 by Barbara L. Gross, Commission Chairperson of THE CITY OF NORTH PORT, FLORIDA, on behalf of THE CITY OF NORTH PORT. He/She is personally known to me and did (did not) take an oath.

Notary Public
WITNESS:  SUE D. HALL
MY COMMISSION # CC 989271
EXPIRES: Dec 19, 2004
X: 1-800-3-NOTARY FL Notary Service & Bonding, Inc.

By: Sue D. Hall

STATE OF FLORIDA
COUNTY OF SARASOTA

DEVELOPER:

MARSH CREEK HOLDINGS, LTD.

A Florida limited partnership
By: Marsh Creek Properties, Inc
A Florida corporation,
As General Partner

x: *AMMarian*
By: *Hans Jürgen Reichardt*

The foregoing instrument was acknowledged before me this 6 day of October, 2004 by *Hans Jürgen Reichardt General Partner* of *Marsh Creek Holdings* a *Florida Corporation* authorized to do business in the State of Florida, on behalf of the corporation. He/She is personally known to me or has produced _____ as identification and did (did not) take an oath.

Richelle A. Taylor Harris
Signature of Person Taking Acknowledgment

Richelle A. Taylor Harris
Name of Acknowledger Typed, Printed or Stamped

Notary Public
Title or Rank

Commission No DD293720
Serial Number, if any

