

**FOURTH AMENDMENT TO THE SECOND DEVELOPER UTILITY AGREEMENT  
BETWEEN THE CITY OF NORTH PORT, FLORIDA  
AND MARSH CREEK HOLDINGS, LTD.**

This Fourth Amendment to the Second Developer Utility Agreement ("Fourth Amendment") is made on February 9, 2009, by and between the City of North Port, Florida, a municipal corporation of the State of Florida ("City"), and Marsh Creek Holdings, LTD ("Developer"), a Florida limited partnership.

**Recitals**

A. The parties have, as of this date, entered into the following Developer Utility Agreements, and amendments thereto:

- (1) An initial Developer Utility Agreement dated August 31, 1998;
- (2) A Second Developer Utility Agreement dated June 5, 2000;
- (3) A First Amendment to the Second Developer Utility Agreement dated June 16, 2000;
- (4) A Second Amendment to the Second Developer Utility Agreement dated October 6, 2004;
- (5) A Third Amendment to the Second Developer Utility Agreement dated September 16, 2005.

B. The Second Developer Utility Agreement granted Developer a total of 2,350 Equivalent Residential Connections ("ERCs"), and Developer has paid for, and thus reserved, water and sewer capacity for only 950 of the original 2,350 ERCs, of which 124 water ERCs and 120 wastewater ERCs remain unconnected as of July 31, 2008; and

C. Due to delays in construction scheduling and demand for utility services, Developer has requested that the annual payment for Water and Wastewater Capital Charges scheduled for 2007 be decreased, and that the payment schedule be adjusted.

D. The parties desire to further amend the Developer Utility Agreements between them for the purpose of modifying Exhibit B to the Developer Utility Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the parties agree as follows:

1. Provided that Developer complies with the requirements recited herein, City hereby grants Developer capacity and the right to obtain permits for and to receive water and wastewater services for its development in Heron Creek under the following conditions:
  - (a) On or before October 1, 2007, Developer shall pay the adopted Water Capital Charge

and Wastewater Capital Charge for 0 (zero)ERCs.

- (b) On or before October 1, 2008, Developer shall pay the adopted Water Capital Charge and Wastewater Capital Charge for 0 (zero) ERCs.
  - (c) On or before October 1, 2009, Developer shall pay the adopted Water Capital Charge and Wastewater Capital Charge for 50 ERCs.
  - (d) On or before October 1, 2010, 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.
  - (e) If 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 or the City Manager may approve an accelerated payment for future scheduled increments if water and wastewater capacity is available.
  - (f) On or before the first day of October of each year, 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 \$160 for potable water and \$150 for sanitary sewer per ERC; however, City reserves the right to adjust the charge (up or down) in the future. Developer shall pay the charge in effect at the time of payment.
- 2. Late fees that would have otherwise been due from Developer as a result of Developer's failure to make the scheduled payment of the adopted Water Capital Charge and Wastewater Capital Charge for the block of 50 ERCs due on October 1, 2007 (revised by this Fourth Amendment to state that payment will be received by City by October 1, 2009) shall be waived by City.
  - 3. The Developer recognizes that the City will begin implementation of the mandatory Cross Connection Control Program and agrees to support assist City with this program by assisting with the coordination of a meeting between City meeting and Heron Creek Community Association, Inc.
  - 4. The parties hereto agree that an executed copy of this Fourth Amendment to the Second Developer Utility Agreement shall be recorded in the Public Records of Sarasota County, Florida at the expense of Developer.
  - 5. Except as specifically set forth in this Fourth Amendment to the Second Agreement, all other provisions of the Second Agreement dated June 16, 2000, as amended, remain unchanged and in full effect.
  - 6. This Fourth Amendment to the Second Developer's Agreement and Special Conditions thereto may only be modified by mutual written consent of the parties.

IN WITNESS WHEREOF, Developer and 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 shall be considered an original executed copy of this Agreement.

ATTEST:

*Helen M. Raimbeau*  
HELEN M. RAIMBEAU, MMC  
CITY CLERK

CITY OF NORTH PORT, FLORIDA

*[Signature]*  
VANESSA CARUSONE, COMMISSION  
CHAIR

Approved as to form and correctness:

*Robert K. Robinson*  
ROBERT K. ROBINSON  
CITY ATTORNEY

*Christa L. Folkers*  
Witness Signature

Christa L. Folkers  
Print Witness Name

*Lizabeth Berg*  
Witness Signature

Lizabeth Berg  
Print Witness Name

MARSH CREEK HOLDINGS, LTD.,  
a Florida limited partnership.

By: Marsh Creek Properties, Inc.,  
a Florida corporation.

As: General Partner

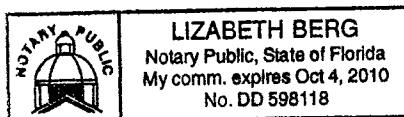
By: *[Signature]*  
Print Name: J. Michael Hartenstein

As: Vice President  
Title

STATE OF FLORIDA  
COUNTY OF SARASOTA

The foregoing instrument was acknowledged before me this 20 day of January, 2009, by J. Michael Hartenstein, as <sup>vice</sup>President of Marsh Creek Properties, Inc., a Florida corporation, as General Partner of Marsh Creek Holdings, Ltd., a Florida limited partnership, on behalf of the limited partnership. He is [☒] personally known to me or [☐] produced \_\_\_\_\_ as identification.

AFFIX SEAL



*Lizabeth Berg*  
Notary Public      Lizabeth Berg