

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

This Fifth Amendment to the Second Developer Utility Agreement ("Fifth Amendment") is made on November 9, 2009, 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 May 24, 2004;
- (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.
- (6) A Fourth Amendment to the Second Developer Utility Agreement dated February 09, 2009.

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 1,000 of the original 2,350 ERCs, of which 103.50 water ERCs and 99.50 wastewater ERCs remain unconnected as of September 30, 2009; 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 as originally scheduled for 2009 be adjusted, and that the payment schedule also be adjusted.

D. The parties desire to further amend the Developer Utility Agreements between them for the purpose of modifying Exhibit B to the Second 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 0 (zero) ERCs.
 - (d) On or before October 1, 2010, and each October thereafter until satisfaction of the originally granted schedule of 2,350 ERCs, 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, 2009 (revised by this Fifth Amendment to state that payment will be delayed until the end of the reservation schedule) shall be waived by City.
 3. The parties hereto agree that an executed copy of this Fifth Amendment to the Second Developer Utility Agreement shall be recorded in the Public Records of Sarasota County, Florida at the expense of Developer.
 4. Except as specifically set forth in this Fifth Amendment to the Second Developer Utility Agreement, all other provisions of the Second Developer Utility Agreement dated June 05, 2000, as amended, remain unchanged and in full effect.
 5. This Fifth Amendment to the Second Developer Utility 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:

CITY OF NORTHPORT, FLORIDA

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

David J. Garofalo, Sr.
DAVID J. GAROFALO, SR.,
COMMISSION CHAIR

Approved as to form and correctness:

Robert K. Robinson
ROBERT K. ROBINSON
CITY ATTORNEY

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

Paul Barone
Witness Signature

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

PAUL BARONE
Print Witness Name

As: General Partner

Sheila Denis
Witness Signature

By: *Hans-Jurgen Reichardt*

SHEILA DENIS
As: President
Print Witness Name

Print Name: Hans-Jurgen Reichardt

Title

STATE OF FLORIDA
COUNTY OF SARASOTA

The foregoing instrument was acknowledged before me this 29 day of October, 2009, by Hans-Jurgen Reichardt, as 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

Richelle A. Taylor Harris
Notary Public

