

**DEVELOPER'S AGREEMENT**

**FOR**

**WATER, WASTEWATER, AND RECLAIMED WATER SERVICES**

This **AGREEMENT** is made this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between the **UTILITIES COMMISSION**, City of New Smyrna Beach, Florida, hereinafter referred to as the **COMMISSION**, and \_\_\_\_\_, (OWNER), (GENERAL PARTNER), (AUTHORIZED AGENT), (CORPORATION), LICENSED IN THE STATE OF FLORIDA and authorized to do business in the State of Florida and hereinafter referred to as the **DEVELOPER**.

**RECITALS**

The **DEVELOPER** (owns) (is the contract purchaser of) certain property located in Volusia County, Florida, and hereinafter referred to as the **DEVELOPER's property**.

**Should the DEVELOPER's property lie outside the limits of the Utilities Extension Map as incorporated in City of New Smyrna Beach Ordinance No. 41-00, approval of said utility service extension by the City Commission will be required.**

Water, wastewater, and reclaimed water service for the **DEVELOPER's property** shall be provided in the manner described below and subject to the terms and conditions described herein.

The **COMMISSION** is willing to provide water, wastewater, and reclaimed water service to the **DEVELOPER** in accordance with and subject to the terms and conditions of this

**AGREEMENT** and applicable rules, regulations, laws and requirements. Any changes, additions or deletions made to the language in this **AGREEMENT** are shown in the attached Exhibit "B".

The **DEVELOPER** represents that he expects to develop the property in (\_\_\_) phases. The **COMMISSION** agrees to provide service for (\_\_\_\_\_) phases.

The **DEVELOPER** agrees that the total cost of water, wastewater, and reclaimed water facilities to be constructed will be paid for by the **DEVELOPER**.

The parties agree that all terms and conditions of this **AGREEMENT** shall be performed within four (4) years of the date of execution by all parties.

Accordingly, in consideration of the **RECITALS** hereof, for and in consideration of the mutual understanding and **AGREEMENT** herein contained and assumed, and other good and valuable considerations received by each party from the other, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

## **SECTION 2**

### **DEFINITIONS**

The parties agree that in construing this **AGREEMENT**, the following words, phrases, and terms shall have the following meanings unless the context requires otherwise:

2.1 **AGREEMENT**

means this **DEVELOPER'S AGREEMENT FOR WATER, WASTEWATER, AND RECLAIMED WATER SERVICE**, as it may be amended from time to time.

2.2 \_\_\_\_\_ is the trade name or commercial name of the improvements described herein, which are to be constructed on the **DEVELOPER's property**.

2.3 **"Collection Facilities"**

means the lines, pipes, and appurtenant equipment used to collect sanitary sewage from building sewers and to convey such sewers to wastewater transmission facilities.

2.4 **"Rate Resolutions"**

means all resolutions or tariffs either currently in effect or to be adopted in the future by the **COMMISSION**, which establish or fix rates, fees, charges and deposits for the water, wastewater, and reclaimed water system of the **COMMISSION**.

2.5 **"Developer's Facilities"**

means those collection facilities and distribution facilities necessary to provide water and wastewater service capacity for \_\_\_\_\_ equivalent residential units, WATER, estimated to be \_\_\_\_\_ gallons per average day for any total flow and \_\_\_\_\_ equivalent residential units, WASTEWATER, estimated to be

\_\_\_\_\_ gallons per average day total flow, and/or those collection facilities and distribution facilities to provide reclaimed water for primary tier users, to be designed and constructed by the **DEVELOPER**, pursuant to SECTION 3 of this **AGREEMENT**.

2.6 **"DEVELOPER'S Property"**

means that land described in EXHIBIT "A" hereof.

2.7 **"Distribution Facilities - Water and Reclaimed Water"**

means all lines, pipes, and appurtenant equipment to be located on the **DEVELOPER'S property** and which are necessary to distribute water from the water transmission facilities and to distribute reclaimed water from the reclaimed water transmission facilities to the properties to be served. Distribution facilities include individual laterals up to the meters, but do not include (1) meters and meter boxes, which the **COMMISSION** shall provide in accordance with the terms and provisions set forth in SECTION 5 hereof, and do not include (2) individual service lines from the meter to the customer, which shall be installed by each property owner, its successors or assigns.

2.8 **"GPD"**

means gallons per day on an average annual basis.

2.9 **"COMMISSION Reclaimed Water System"**

means all facilities and interests in real and personal property owned, operated, managed or controlled by the **COMMISSION**, now and in the future, and used to

provide reclaimed water service to existing and future customers, or the service area of the **COMMISSION**.

2.10 **"COMMISSION Wastewater System"**

means all facilities and interests in real and personal property owned, operated, managed or controlled by the **COMMISSION**, now and in the future, and used to provide sewer or wastewater service to existing and future customers, or the service area of the **COMMISSION**.

2.11 **"COMMISSION Water System"**

means all facilities and interests in real and personal property owned, operated, managed or controlled by the **COMMISSION** now and in the future and used to provide water service to existing and future customers, or service area of the **COMMISSION**.

2.12 **"Plans and Specifications"**

means those documents and drawings prepared by the **DEVELOPER's** engineer in compliance with the **COMMISSION's** requirements for the construction of the **DEVELOPER's** facilities.

2.13 **"Reclaimed Water Capacity Fees"**

means those fees and charges established and collected by the **COMMISSION** to pay for or recover the capital costs of reclaimed water facilities as set forth from time to time in the **COMMISSION's** resolutions.

2.14 **"Reclaimed Water Transmission Facilities"**

means those **lines, pipes, mains, pumps, and appurtenant equipment used to transmit reclaimed water from the Water Reclamation Facility to the point of connection with the distribution facilities** which are to be constructed by the **DEVELOPER** and such facilities are depicted on \_\_\_\_\_ and are incorporated herein by reference.

2.15 **"Water Reclamation Facility"**

means those treatment and disposal facilities owned by the **COMMISSION** to treat sewage to acceptable levels and then to detain, transmit, and dispose of said treated waste materials in accordance with applicable governmental requirements.

2.16 **"Water Treatment Plant"**

means those treatment facilities and rights owned by the **COMMISSION** and used to treat raw water and produce potable water in accordance with applicable governmental requirements.

2.17 **"Sewage"**

means water-carried waste from residential homes, business buildings, institutions, industrial establishments and other customers of the **COMMISSION's** wastewater system.

2.18 **"Wastewater Capacity Fees"**

means those fees and charges established and collected by the **COMMISSION** to pay for or recover the capital costs of water reclamation facilities as set forth from time to time in the **COMMISSION**'s resolutions.

2.19 **"Wastewater and Reclaimed Water Service Capacity"**

means the rate of sewage flow measured in GPD, for which water reclamation facilities are designed and are capable of transmitting, treating, and disposing, in accordance with applicable governmental requirements and regulations.

2.20 **"Wastewater Transmission Facilities"**

means those lines, pipes, force mains, pumps, and appurtenant equipment used to transmit sewage from the point of connection with the collection facilities which are to be constructed by the **DEVELOPER** and such facilities are depicted on \_\_\_\_\_ and are incorporated herein by reference.

2.21 **"Water Capacity Fees"**

means those fees and charges established and collected by the **COMMISSION** to pay for or recover the capital costs of water facilities necessary to serve the property to be connected, as set forth from time to time in the **COMMISSION**'s Rate Resolutions.

2.22 **"Water Service Capacity"**

means the rate at which water can be pumped from the ground, treated, transmitted and distributed, where such amount is measured in gallons per day,

based upon a maximum daily domestic demand, and gallons per minute for a given duration of fire flows.

2.23 **"Water Transmission Facilities"**

means those lines, pipes, mains, and appurtenant equipment used to transmit potable water from the Water Treatment Plant to the point of connection with the distribution facilities to be constructed by the **DEVELOPER** and such distribution facilities are depicted on the \_\_\_\_\_ and incorporated herein by reference.

2.24 **"Business Day and Working Day"**

These terms are used interchangeably and shall mean weekdays Monday through Friday, 8:00 a.m. to 5:00 p.m., inclusive, excluding legal holidays.

2.25 **"Final Acceptance"**

means the **OWNER/DEVELOPER** has complied with all the requirements per Developer's Agreement Section 3.5.5, 3.6.1, 3.6.2, 3.7.2 or 3.7.3 and 3.7.4 and with all the requirements included in the Water Service Rules & Standards, Wastewater Service Rules & Standards, and Reclaimed Water Service Rules and Standards.

2.26 **"Inspection Fee"**

Per **COMMISSION** Resolution 1-06, an Inspection Fee will be charged to a **DEVELOPER** at a rate of \$50/ERU for water, \$50/ERU for wastewater, and

\$50/PTU for reclaimed water for inspection services rendered by the **COMMISSION** for the development referenced herein.

2.27 **"Disclosure of Beneficial Interest Pursuant to Florida §286.23 Form"**

Pursuant to Florida §286.23 (1), any person or entity holding real property in the form of a partnership, limited partnership, corporation, trust or any form of representative capacity whatsoever for others, shall, before entering into any contract whereby such real property held in representative capacity is sold, leased or taken by eminent domain, or otherwise conveyed to the state or any local governmental unit, make a public disclosure in writing, under oath, and subject to the penalties described for perjury, stating the name and address of any and every person having a beneficial interest in the real property, however small or minimal. The written disclosure shall be made to the local government unit, in this case, General Manager/CEO, Utilities Commission, City of New Smyrna Beach, Florida, P.O. Box 100, New Smyrna Beach, Florida 32170-0100. Said disclosure will be made an integral part of this **AGREEMENT** and will be referred to as Exhibit "C".

**SECTION 3**

**DESIGN AND CONSTRUCTION OF DEVELOPER'S FACILITIES**

The **DEVELOPER** agrees as a condition precedent to its receipt of water service capacity, wastewater service capacity, and reclaimed water service capacity by the **COMMISSION** for the \_\_\_\_\_ to do the following:

3.1 **Design of DEVELOPER's Facilities**

As a condition precedent to this right to receive water service capacity, wastewater service capacity, and reclaimed water service capacity from the **COMMISSION**, the **DEVELOPER** shall, at its expense, cause its own engineer of record to design, produce and submit to the **COMMISSION** for its review, and approval or rejection, prior to construction, graphic plans and written specifications for the construction of the **DEVELOPER's** facilities to serve the

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3.2 **Approval of Plans and Specifications for DEVELOPER's Facilities**

The **COMMISSION** shall review, and approve or reject, any such plans and specifications submitted pursuant to subsection 3.1 hereof within forty-five (45) days after receipt of said plans and specifications. At the **DEVELOPER's** expense, the **DEVELOPER's** Engineers shall make corrections or modifications to any portion of the plans and specifications which are unacceptable to the **COMMISSION**, and shall resubmit the corrected or modified plans and specifications to the **COMMISSION** for further review until the **COMMISSION** approves the plans and specifications. The **COMMISSION** shall have, in each case, thirty (30) additional days within which to approve or reject any such revisions to said plans and specifications.

3.3 **Permitting**

The **DEVELOPER** shall, at its expense, obtain all necessary federal, state and local permits or approvals required for the construction of the **DEVELOPER's**

facilities to be constructed pursuant to this **AGREEMENT**. The **DEVELOPER** shall send written copies of all permit applications filed with federal, state or local governmental entities to the **COMMISSION** and shall also provide the **COMMISSION** with copies of all written permits, approvals, requests for additional information, or denials received by the **DEVELOPER** in connection with such permit applications.

#### 3.4 **Construction of DEVELOPER's Facilities**

After the **COMMISSION's** approval of the plans and specifications for any phase or portion of the **DEVELOPER's** facilities, the **DEVELOPER** shall, at its expense, construct and install that phase or portion of the **DEVELOPER's** facilities as the same are depicted in the **COMMISSION's** approved plans and specifications therefor. The **DEVELOPER** warrants that the **DEVELOPER's** facilities to be constructed by it pursuant to this **AGREEMENT** shall be constructed in accordance with the approved plans and specifications, and also in accordance with all their applicable state, federal and local laws regulations, rules and ordinances.

#### 3.5 **Inspection and Approval of Construction**

1. The **COMMISSION** shall have the continuing right to enter upon the described easement areas within which the **DEVELOPER's** facilities are constructed to inspect the construction of any such facilities at any time without prior notice. The **COMMISSION** shall have the right to disapprove all or any portion of the **DEVELOPER's** facilities which are not constructed

in accordance with the approved plans and specifications thereof and shall give notice within one working day of any construction deficiencies discovered during the course of any such inspection. Within ten (10) days after the date the **COMMISSION** inspects any such facilities, the **COMMISSION** shall give written notice to the **DEVELOPER** of the existence of construction deficiencies.

2. The written notice of construction deficiencies shall specify the nature of the particular construction deficiencies. All corrective action shall be done by the **DEVELOPER** at its expense. Upon correction of such deficiencies, the **DEVELOPER** shall notify the **COMMISSION** of the correction(s) and the **COMMISSION** shall thereafter reinspect the construction within five (5) business days from the receipt of said notice.
3. Prior to application for a City or County building permit for any structures within the \_\_\_\_\_, the **DEVELOPER** shall give written notice to the **COMMISSION** of an anticipated completion of construction of those **DEVELOPER's** facilities necessary to enable the **COMMISSION** to provide water, wastewater, and reclaimed water service to said structures. Said notice shall specify a date for the **COMMISSION's** acceptance inspection (also to be the date when the pressure test, bacteriological test and any other tests shall be performed), and shall not be less than thirty (30) days from the date of said notice, provided said date shall not fall on a Saturday, Sunday, or legal holiday. The **COMMISSION** shall inspect the construction of, and witness the tests for, any such

**DEVELOPER's** facilities for which it has received said written notice. As soon as possible after the **COMMISSION** receives notification of all such test results, the **COMMISSION** shall prepare and send written notice to the **DEVELOPER** of acceptance or the rejection of said facilities.

4. Upon correction of any construction deficiencies discovered during the inspection referred to in subsection 3.5 (3) hereof, the **DEVELOPER** shall notify the **COMMISSION** of the correction(s) and the date when new tests and another inspection shall be performed, which date shall be no less than five (5) business days from the date of receipt of said notice. Upon passage of all necessary tests, the **COMMISSION** shall approve the **DEVELOPER's** compliance with all other applicable regulations and subsection 3.8 hereof, assume ownership, control and responsibility for the operation and maintenance of the same pursuant to SECTION 4 hereof.
5. The **DEVELOPER** shall dedicate or grant to the **COMMISSION** such easements as may be acceptable to the **COMMISSION** and reasonably necessary for the operation and maintenance of the **DEVELOPER's** facilities for which the **COMMISSION** accepts operation and maintenance responsibility pursuant to this **AGREEMENT**.
6. The time limits for the **COMMISSION** inspections, reviews, approvals and rejections of design and construction, set forth herein, shall apply to inspections, reviews, approvals, and rejections of the **DEVELOPER's** facilities only, and shall not bind the **COMMISSION** with respect to any

other inspections, reviews, approvals and rejections concerning the **DEVELOPER's** property.

7. If the **DEVELOPER** desires to carry on work at night or outside the **Business Day**, the **DEVELOPER** shall submit application to the **COMMISSION**, but **DEVELOPER** shall allow ample time to enable satisfactory arrangements to be made for inspecting the work in progress. The **COMMISSION** will grant permission unless local regulations prohibit such work or work continues outside the **Business Day** for extended periods, at which time **DEVELOPER** shall reimburse the **COMMISSION** for overtime incurred by its inspection personnel. If granted permission, **DEVELOPER** shall comply with all regulations and legal requirements.

### 3.6 **Conveyance or Dedication of Facilities and Easements**

1. No later than ten (10) days after request by the **COMMISSION** (but prior to the **COMMISSION's** final acceptance of any phase of the **DEVELOPER's** facilities), the **DEVELOPER** shall provide the **COMMISSION** an opinion from **DEVELOPER's** counsel to the **COMMISSION**, upon which the **COMMISSION** will rely, to the effect that the lands to be encumbered by all easements to be conveyed or dedicated by the **DEVELOPER** to the **COMMISSION** pursuant to this **AGREEMENT** with respect to that phase or portion of the **DEVELOPER's** facilities to be accepted by the **COMMISSION** for ownership, operation and maintenance are, in fact, owned by the **DEVELOPER**, free and clear of all liens (including mechanics' liens) and encumbrances. In the event that liens and encumbrances exist, they

shall be listed in the opinion, other than those acceptable and approved, in writing, by the **COMMISSION**. Such opinion of counsel, when rendered, may reflect that the lands involved are encumbered by a development mortgage or mortgages, but any such mortgage or mortgages must be subordinated to or released from the lands upon which easements are to be granted to the **COMMISSION** pursuant to this **AGREEMENT** at the time such **DEVELOPER's** facilities and easements are granted to the **COMMISSION**.

2. Prior to final acceptance of the **DEVELOPER's** facilities for ownership, operation and maintenance by the **COMMISSION** the **DEVELOPER** shall:
  - (a) convey, grant or dedicate to the **COMMISSION**, free and clear of all liens and encumbrances, such easements as are necessary for the **COMMISSION** to own, operate, maintain, repair, expand and replace the **DEVELOPER's** facilities accepted by the **COMMISSION**, including all **DEVELOPER's** facilities constructed thereon, and (b) transfer and convey to the extent that the same are transferable all governmental approvals and permits that will enable the **COMMISSION** to operate the applicable phase or portion of those **DEVELOPER's** facilities and provide water service capacity, wastewater service capacity, and reclaimed water service capacity (as appropriate) to the **DEVELOPER's** property, and notify all governmental agencies of such transfer and conveyance as may be required by law. The **COMMISSION** shall review and approve or reject within twenty-one (21)

days after receipt thereof, all documents submitted by the **DEVELOPER** pursuant to this subsection 3.6(2).

### 3.7 **Performance and Maintenance Bonds**

1. Prior to the construction of the **DEVELOPER's** facilities pursuant to subsection 3.4 hereof, the **DEVELOPER** shall obtain from the person undertaking such construction (e.g., the **DEVELOPER's** contractor) a performance bond or other security or assurances acceptable to the **COMMISSION** securing the **DEVELOPER** and the **COMMISSION** in an amount equal to one hundred percent (100%) of the amount of the Construction Contract for said facilities in order to guarantee that said facilities shall be constructed in accordance with the plans and specifications approved by the **COMMISSION**.
2. Upon the final acceptance by the **COMMISSION** of said phase or portion of said facilities, the **DEVELOPER** shall obtain a maintenance bond for the period of one (1) year from acceptance in a form acceptable to the **COMMISSION**, made payable to the **COMMISSION**, in an amount equal to twenty-five percent (25%) of the construction cost of said phase or portion of said facilities in order to guarantee the correction of any defects in workmanship or materials of said facilities.
3. In lieu of providing maintenance bonds as set forth in this subsection 3.7, the **DEVELOPER** may, at its option, provide irrevocable letters of credit, drawn on a bank located and doing business in Volusia County, Florida, made payable to the **COMMISSION** in an amount equal to twenty-five percent

(25%) of the construction cost of said phase or portion of said facilities and in a form acceptable to the **COMMISSION**.

4. The **DEVELOPER** shall submit an itemized estimate of construction costs for the **DEVELOPER's** facilities prior to final acceptance or approval of such facilities. This itemized estimate of construction costs submitted from time to time for the facilities shall be used to determine the amount of the bond or letter of credit for purposes of this subsection 3.7.

### 3.8 **Effect of Reviews, Inspections, Approvals and Acceptances**

Any reviews, inspections, approvals, and acceptances or the absence thereof by the **COMMISSION** of the plans and specifications and construction shall not constitute a waiver of any claims arising from (1) faulty or defective design, (2) faulty or defective construction, (3) unsettled liens and encumbrances, and (4) tort claims.

### 3.9 **Expansion and Interconnection by the COMMISSION**

The **COMMISSION** may expand any of the **DEVELOPER's** facilities which it accepts pursuant to this **AGREEMENT**, or interconnect said facilities with other portions of the **COMMISSION's** water system, wastewater system, or reclaimed water system (as appropriate) at any time at its expense.

### 3.10 **Save Harmless Clause**

The **DEVELOPER/OWNER** covenants and agrees to indemnify and save harmless the **COMMISSION** and to defend it from all costs, expenses, damages, attorney's fees, injury or loss, to which the **COMMISSION** may be subjected by

any person, firm, corporation or organization by reason of any wrongdoing, misconduct, want or need to care of skill, negligence or default or breach of Contract, guaranty, or warranty, by the **DEVELOPER/OWNER**, his employees, his agent or assigns.

#### **SECTION 4**

#### **OPERATION AND MAINTENANCE OF DEVELOPER'S FACILITIES**

Subject to the **DEVELOPER's** compliance with SECTIONS 3, 5, and 7 hereof, the **COMMISSION** or its successors shall accept ownership and assume responsibility for the operation and maintenance of those **DEVELOPER's** facilities for which the **COMMISSION** has approved the design, construction, and documents specified in subsection 3.6, up to, including, but not further than, the location of each individual water meter, sanitary sewer service connection cleanout, or individual reclaimed water meter. The number and size of water meters necessary to provide water service capacity to the **DEVELOPER's** property shall be determined by the **COMMISSION** in accordance with the **COMMISSION's** rate resolutions. The **COMMISSION** shall not be responsible for the operation and maintenance of any **DEVELOPER's** facilities located outside easements granted to the **COMMISSION** pursuant to subsection 3.6 hereof. Upon acceptance of ownership and assumption of the responsibility for the operation and maintenance of any such **DEVELOPER's** facilities by the **COMMISSION** as contemplated in this **AGREEMENT**, all customers of those facilities shall be deemed customers of the **COMMISSION's** water system, wastewater system, and reclaimed water system, and the **COMMISSION** shall set and collect all water, wastewater, and reclaimed water rates, fees, charges and deposits for those facilities, without exception, in accordance with **COMMISSION**

rate resolutions. In addition to other applicable requirements, all property owners and customers must provide at their expense necessary individual service lines as a condition precedent to receiving water service capacity, wastewater service capacity, and reclaimed water service capacity from the **COMMISSION**.

Applicable capacity fees for water, wastewater and reclaimed water services will be paid prior to issuance of building permits.

The **DEVELOPER**'s contractual rights, duties and responsibilities herein shall not be assignable unless agreed to, in writing, by the **COMMISSION**.

**SECTION 5**

**CAPACITY FEE PAYMENTS**

**TOTAL NUMBER ERU'S & PTU'S:**

WASTEWATER \_\_\_\_\_ x \$1,250.00 per ERU = \$\_\_\_\_\_

WATER \_\_\_\_\_ x \$1,250.00 per ERU = \$\_\_\_\_\_

RECLAIMED WATER \_\_\_\_\_ x \$ 970.00 per PTU = \$\_\_\_\_\_

**TOTAL CAPACITY FEES** \$\_\_\_\_\_

**INSPECTION FEE -**

Water \_\_\_\_\_ x \$ 50.00 per ERU = \$\_\_\_\_\_

**INSPECTION FEE -**

Wastewater \_\_\_\_\_ x \$ 50.00 per ERU = \$\_\_\_\_\_

**INSPECTION FEE -**

Reclaimed Water \_\_\_\_\_ x \$ 50.00 per PTU = \$\_\_\_\_\_

**TOTAL INSPECTION FEES** \$\_\_\_\_\_

**TOTAL CAPACITY AND INSPECTION FEES** \$\_\_\_\_\_

**PAYMENT FOR ALL INSPECTION FEES SHALL BE DUE AND PAYABLE UPON EXECUTION OF THIS AGREEMENT.**

**APPLICABLE CAPACITY FEES FOR WATER, WASTEWATER, AND RECLAIMED WATER SERVICES WILL BE PAID PRIOR TO ISSUANCE OF BUILDING PERMITS.**

**THE DEVELOPER'S CONTRACTUAL RIGHTS, DUTIES AND RESPONSIBILITIES HEREIN SHALL NOT BE ASSIGNABLE UNLESS AGREED TO, IN WRITING, BY THE COMMISSION.**

**SECTION 6**

**REBATES, CREDITS, AND/OR COMMISSION PARTICIPATION**

**REBATES:**

TOTAL REBATES \$     N/A

**CREDITS:**

TOTAL CREDITS \$     N/A

**COMMISSION PARTICIPATION:**

TOTAL COMMISSION PARTICIPATION \$     N/A

**COMMISSION PARTICIPATION IS AN ESTIMATED AMOUNT PURSUANT TO THIS AGREEMENT AND SHALL BE NON-BINDING ON THE COMMISSION UNTIL FINAL COMMISSION PARTICIPATION HAS BEEN DETERMINED AFTER FINAL ACCEPTANCE AND AS-BUILT PLANS HAVE BEEN SUBMITTED TO THE COMMISSION.**

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed in their respective name, by their proper officers and their seals to be affixed this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

Signed, Sealed and  
Delivered in the presence of:

FOR THE DEVELOPER:

Company Name:

\_\_\_\_\_  
Name:  
Title:

(CORPORATE SEAL)

STATE OF FLORIDA  
COUNTY OF VOLUSIA

Before me, personally appeared \_\_\_\_\_, Agent of \_\_\_\_\_ Corporation, well known and known to be the person acknowledged to and before me that he/she executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal in the County and State last aforesaid, this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Notary Public, State of Florida

My commission expires:

UTILITIES COMMISSION, CITY OF  
NEW SMYRNA BEACH, FLORIDA

\_\_\_\_\_  
GENERAL MANAGER/CEO

Approved as to form and correctness:

\_\_\_\_\_  
UTILITIES COMMISSION ATTORNEY

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

**EXHIBIT "B"**

**EXHIBIT "C"**

**DISCLOSURE OF BENEFICIAL INTEREST PURSUANT TO  
FLORIDA §286.23**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Before me, the undersigned authority, personally appeared \_\_\_\_\_, who, being by me first duly sworn, on oath deposes and says:

1. That my name is \_\_\_\_\_ and my address is \_\_\_\_\_.

2. That the names and addresses of every person having a beneficial interest in the real property described in Exhibit "A" attached hereto, are as follows:

3. That this disclosure is made pursuant to §286.23, Florida Statutes, and under oath and subject to the penalties prescribed for perjury.

\_\_\_\_\_

Sworn to and subscribed before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Notary Public

My commission expires:

## **ADDENDUM TO THE DEVELOPER AGREEMENT**

This **ADDENDUM TO THE DEVELOPER AGREEMENT** is made this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between the **UTILITIES COMMISSION**, City of New Smyrna Beach, Florida, hereinafter referred to as the **COMMISSION**, and \_\_\_\_\_, (OWNER), (GENERAL PARTNER), (AUTHORIZED AGENT), (CORPORATION), LICENSED IN THE STATE OF FLORIDA and authorized to do business in the State of Florida and hereinafter referred to as the **DEVELOPER**.

**WHEREAS**, the **COMMISSION** and **DEVELOPER** entered into a **DEVELOPER'S AGREEMENT FOR WATER, WASTEWATER, RECLAIMED WATER, AND ELECTRIC ENERGY SERVICES** on \_\_\_\_\_, 2010 which provides for services to the Developer by the Commission;

**WHEREAS**, the utility infrastructure (involving electric, water, wastewater, and reclaimed water supply facilities herein referred to as utility infrastructure) of the **COMMISSION** to support growth as planned is impacted by the aggregate of all surrounding development;

**WHEREAS**, to apportion the costs for the utility infrastructure needs to support a given area, the **COMMISSION** desires to fairly apportion costs to the **DEVELOPER** for the future or existing infrastructure to meet needs to serve multiple developments of differing size, use, and scope; and,

**WHEREAS**, in recognition of the benefits of conceptual long-range planning for the build out of an area pursuant to the comprehensive plan, and detailed planning for specific areas, consistent with the comprehensive plan; to further the intent of Florida Statutes s. 163.3177(11) which supports innovative and flexible planning and development strategies, and the purposes of Chapter 163, Florida Statutes, and to avoid the disproportionate distribution of costs upon existing customers for necessary services for new customers;

**ACCORDINGLY**, in consideration of the **RECITALS** hereof, for and in consideration of the mutual understanding and agreement herein contained and assumed, and other good and valuable considerations received by each party from the other, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby **AGREE** as follows:

### **ARTICLE I DEFINITIONS**

The parties agree that in construing this **ADDENDUM**, the words, phrases, and terms herein shall have the same meanings as defined in the **DEVELOPER'S AGREEMENT FOR WATER, WASTEWATER, RECLAIMED WATER, AND ELECTRIC ENERGY SERVICES** except as provided below:

- 1.1. ERU means the equivalent residential unit and is defined as used in UCNSB "Rates Charges and Fees Summary" as follows; **SECTION II** for water, **SECTION III** for waste water, and **Section IV** for reclaimed water. For electric energy an ERU is

defined as a single phase service with a Main Breaker rating of up to 200 amps, each additional 100 amps of rated capacity or fraction thereof is an additional ERU. Three phase service is calculated the same multiplied by a factor of 3.0. EXAMPLE: a 300 amp service is 2.0 ERU if single phase, 6.0 ERU if 3 phase.

- 1.2. FINAL PERMIT – This is the time when the applicant and the UC have both approved and formally executed this agreement

## ARTICLE II INFRASTRUCTURE PAYMENTS

DEVELOPER shall pay into an interest bearing escrow account the amount as set forth below in the DEVELOPER CONTRIBUTIONS TO INFRASTRUCTURE to pay for such infrastructure improvements necessary to support the planned growth. The UTILITIES COMMISSION shall use all or a portion of such escrowed monies at any time for said utility infrastructure improvements as deemed necessary by said UTILITIES COMMISSION.

## ARTICLE III ADJUSTMENTS TO INFRASTRUCTURE PAYMENTS

If the DEVELOPER alters the Plans and Specifications to the DEVELOPER's facilities and is re-permitted for such alterations, and the number of ERUs is affected, the amount paid hereby shall be adjusted upward or downward accordingly.

## ARTICLE IV TIME FOR PAYMENT

Payment shall be made, in full, at or before the time of the issuance of the Final Permit for construction. Upon payment, the Utilities Commission will issue paid receipts and execute permit applications for U.C. services (electric, water, wastewater and reclaimed water).

## ARTICLE V USE OF INFRASTRUCTURE PAYMENTS

The amounts collected shall be used for the design and improvement of the utility infrastructure and supporting systems.

## ARTICLE VI REVISION OF CALCULATION OF INFRASTRUCTURE PAYMENTS

If the calculation for each ERU shall be revised downward prior to Final Permit being issued to DEVELOPER, DEVELOPER shall be reimbursed any difference from the calculation thereof and the amount paid. If plans are changed resulting in a higher recalculated ERU count, the payment shall be revised upward accordingly at the rate in effect at the time of revision, and paid prior to revised construction proceeding.

ARTICLE VII  
COMMUNITY DEVELOPMENT DISTRICT

Should the Utilities Commission participate in the future in a Community Development District or other appropriate funding mechanism to finance such utility infrastructure, such remaining monies deposited in an escrow account herein referred will be returned after such contributing developer participates in such other funding mechanism whereby the Utilities Commission will be equally compensated for such utility infrastructure.

ARTICLE VIII  
ASSIGNMENT

Developer may assign all of the right, title and interest in and to and under this Addendum, subject, however, to the express condition precedent that the written consent is first obtained from the Utilities Commission. Assignee agrees to perform all of the duties and obligations of Developer under the agreement. If Developer has provided a Guarantee of Payment for the monies subject to this Addendum or its related Agreement in any form; (i.e. Irrevocable Letter of Credit), said Guarantee of Payment shall remain in effect until the obligations hereto have been paid in full or Assignee institutes a subsequent Guarantee of Payment to the Satisfaction of the Utilities Commission.

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**DEVELOPER CONTRIBUTIONS TO UTILITY INFRASTRUCTURE\***

**TOTAL NUMBER ERU'S & PTU'S:**

WASTEWATER Supply            \_\_\_\_\_ per ERU x \$ \_\_\_\_\_        = \$ \_\_\_\_\_

WATER Supply                    \_\_\_\_\_ per ERU x \$ \_\_\_\_\_        = \$ \_\_\_\_\_

RECLAIMED WATER Supply    \_\_\_\_\_ per ERU/PTU x \$ \_\_\_\_\_    = \$ \_\_\_\_\_

ELECTRICAL Supply            \_\_\_\_\_ per ERU x \$ \_\_\_\_\_        = \$ \_\_\_\_\_

\* Distances, water-related line size, and costs will be determined from published studies or existing infrastructure maps applied to meet code, standards, and UC requirements and use most recent costs for supply. Electrical distances, load ratings, and costs will be determined from published studies or existing infrastructure maps applied to meet code, standards, and UC requirements and use most recent costs for transmission and subtransmission supply circuits. The UC's utility cost infrastructure plan will be used to calculate the costs per ERU/PTU and exclusively reserves the right to change such plan for future applications. Rates may be adjusted by the UC after one year initially and as often as yearly thereafter.

**TOTAL DEVELOPER CONTRIBUTIONS TO UTILITY INFRASTRUCTURE\***

= \$ \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed in their respective name, by their proper officers and their seals to be affixed this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

Signed, Sealed and  
Delivered in the presence of:

FOR THE DEVELOPER:

Company Name:

\_\_\_\_\_  
Name:

Title:

(CORPORATE SEAL)

STATE OF FLORIDA  
COUNTY OF VOLUSIA

Before me, personally appeared \_\_\_\_\_, Agent of \_\_\_\_\_ Corporation, well known and known to be the person acknowledged to and before me that he/she executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal in the County and State last aforesaid, this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Notary Public, State of Florida

My commission expires:

UTILITIES COMMISSION, CITY OF NEW  
SMYRNA BEACH, FLORIDA

\_\_\_\_\_  
GENERAL MANAGER/CEO

Approved as to form and correctness:

\_\_\_\_\_  
UTILITIES COMMISSION ATTORNEY