

**MARLEY SQUARE  
MULTI-YEAR WATER TAP AGREEMENT**

THIS MULTI-YEAR WATER TAP AGREEMENT, ("Agreement") is made this 17th day of February 2011 (the "Effective Date"), by and between THE TOWN OF NEW MARKET, MARYLAND, a body politic and corporate of the State of Maryland ("Town"), and Marley Gate LLC, a Maryland Limited Liability Company, and / or their successors and assigns (the "Owner").

WHEREAS, Owner is the fee simple owner of property known as Marley Square (the "Property") located in the New Market Election District No. 9, Frederick County, Maryland, containing 5.0 acres of land, more or less, as more particularly described by the approved Site Plan, a copy of which is attached hereto and made a part hereof as Exhibit A (the "Site Plan"); and

WHEREAS, the Town and the County entered into a Water Service Area Agreement ("Initial WSAA"), dated April 29, 2003; as amended by a First Amendment to Water Service Area Agreement ("First Amended WSAA") dated November 25, 2003; and as further amended by a Second Amendment to Water Service Area Agreement ("Second Amended WSAA") dated May 5, 2005, whereby the County allocated 120 sewer taps and 64 water taps to the Town for properties located within the municipal boundaries of the Town; and as further amended by a Third Amendment to Water Service Area Agreement ("Third Amended WSAA") dated July 29, 2009, whereby the County has agreed to allocate to the Town 150 water and sewer taps that were restricted for allocation until the completion of the Bush Creek Interceptor and the Ballenger- McKinney WWTP project (the Initial WSAA, First Amended WSAA, Second Amended WSAA and Third Amended WSAA are hereinafter sometimes collectively referred to as the "WSAA")

WHEREAS, pursuant to the WSAA, the County owns and operates the water and sewer system within the Town (the "Systems") and the sale and distribution of the water and sewer taps for the Systems shall be administered by the County following the allocation of the sewer taps by the Town;

WHEREAS, the Town has agreed to allocate thirty (30) water and thirty (30) sewer taps from the water and sewer taps allocated to the Town pursuant to the WSAA for distribution by the Town to property owners within the municipal boundaries of the Town; and

WHEREAS, the Town has further agreed to allocate fifteen (15) water and fifteen (15) sewer taps for immediate purchase under the terms of the WSAA, the remaining fifteen (15) water and fifteen (15) sewer taps which the Town has committed to the Owner is restricted from final allocation and purchase until the completion of the Bush Creek Interceptor and the Ballenger-McKinney WWTP project as more fully set forth in Paragraph 2 Third Amended WSAA; and

WHEREAS, in order to memorialize the agreement by and between the Owner and the Town to allocate and reserve for purchase all thirty (30) water taps and thirty (30) sewer taps, the Owner and the Town agree to enter into this Multi-Year Water Tap Agreement ("MYWTA") and a corresponding Multi-Year Sewer Tap Agreement ("MYSTA") to ensure that the taps will be allocated, reserved and set aside for the Owner to purchase and to ensure that the Owner will purchase such taps; and

NOW, THEREFORE, WITNESSETH: That for and in consideration of the mutual covenants and promises herein contained, and other good and valuable consideration, the parties agree as follows:

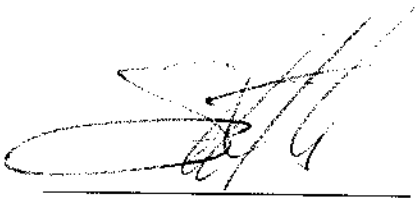
1. RECITALS. The recitals set forth above are incorporated herein and made a part hereof as herein fully set forth.
2. ALLOCATION OF TAPS. Based upon the request by Owner and the Town's determination that it is appropriate to provide water and sewer to the Property in accordance with the plans approved by the Town, the Town has agreed to an allocation of (a) fifteen (15) water taps to the Property for immediate purchase by the Owner subject to the terms and conditions set forth in this Agreement (the "Initial 15 Water Taps"); and (b) upon completion of the items set forth in Paragraph 2 of the Third Amended WSAA, the Town has agreed to provide an additional allocation of fifteen (15) water taps to the Property for purchase by the Owner (the "Remaining 15 Water Taps"). Owner hereby agrees to purchase from the County/Town all taps as allocated to the Property pursuant to the terms of the WSAA and this Agreement.
3. ALLOCATION AND PURCHASE SCHEDULE. Owner agrees to purchase the Initial 15 Water Taps and the Remaining 15 Water Taps. for the Property based on the following schedule:
  - A. Initial Allocation: Owner shall, within fifteen (15) days after receipt of all approvals necessary of the issuance of a Building Permit, other than the actual payment therefore, purchase the Initial 15 Water Taps. In the event a Building Permit for the construction of the improvements shown on the Site Plan is not issued on or before September 1, 2013, except where such failure to obtain the Building Permit is the result of any action or inaction of the Town or the County or any other entity other than the Owner (collectively an "Event of Delay"), Owner's right to purchase the Initial 15 Water Taps shall (a) terminate and be of no further force and effect and thereafter the Town shall have the right to reallocate and sell the Initial 15 Water Taps or (b) be extended for an additional year upon the mutual agreement of the Town and the Owner. Notwithstanding the foregoing, in the event of an Event of Delay, the time period for Owner to purchase water taps shall be extended day for day after the Event of Delay shall have been removed or satisfied.
  - B. Second Allocation: Owner shall purchase the Remaining 15 Water Taps within thirty (30) days after receipt of written confirmation from the Town of the completion of the items set forth in Paragraph 2 of the Third Amended WSAA by the County.
4. TAP FEES. The Purchase Price per water tap may be amended from time to time in the future by the County, and Owner shall pay the then prevailing purchase price at the time said taps are purchased. The present purchase price of each water tap is four thousand three hundred dollars (\$4,300.00) and this amount will be used to calculate the initial amount of the guarantee to be provided by Owner. The foregoing tap purchase price does not include inspection fees or use and occupancy permit fees, if any.

4. TAP CREDITS. This Agreement creates no rights in Owner to receive credit against connection charges by reason of expenditures for any lines or facilities. To the extent Owner may be entitled to such credits pursuant to the County's Water and Sewer Regulations, it must be expressly addressed in a separate agreement.
5. GUARANTEE. The Town requires Owner to guarantee the performance by Owner under the terms of this Tap Agreement as follows:
  - A. Allocation Bond. Owner shall, within 3 business days following final approval of the water/ sewer category change for the Property from W-5/S-5 to W-3/S-3, post with the Town a surety bond guarantee for the Initial Allocation of water taps in the amount of sixty-four thousand five hundred sixty dollars (\$64,500.00) which shall represent 100% of the anticipated cost of the Initial 15 Water Taps allocated to the Owner pursuant to Paragraph 2 of this Agreement.
  - B. Modifications to the Bonds. After each allotment of taps has been purchased by Owner, the surety bond will be reduced on a dollar-for-dollar basis to reflect the water tap purchases. In the event the County increases the tap fee and such increase causes the remaining amount of the surety bond to be insufficient to guarantee no more than 100% if the taps allocated, but not purchased, then the Town may, at its option, choose to require Owner to replace the surety bond with a surety bond of higher value. Owner shall keep the surety bond in effect until all taps have been purchased by Owner.
6. ASSIGNMENT AS SECURITY. This Agreement may be assigned by Owner to Owner's lender as security for any of Owner's legitimate development financing purposes for the Property.
7. REALLOCATION. Town and Owner recognize that the development of the Property pursuant to the existing land use zoning (MRS) may require fewer than 30 taps. Any taps allocated to Owner in the Agreement, but not purchased by Owner may be re-allocated by the Town.
8. ASSIGNMENT. Owner shall have the right to assign the taps allocated to it herein in whole or in part or in many parts, but such assignment shall be in writing and restricted to subsequent owners of, or contract purchasers of the Property, provided, however, no such assignment shall exceed the allocation set forth in this Agreement nor relieve Owner of its obligations contained herein. Notwithstanding the above, to the extent any assignee posts a surety bond in the same amount held by the Town, from a financial institution acceptable to Town, then the Town shall release and discharge the surety bond posted by Owner in favor of the replacement surety bond posted by assignee.
9. RESERVATION OF TAPS. At all times during the course of this Tap Agreement, the Town shall reserve taps in accordance with the WSAA as amended and this Agreement.

10. HEALTH EMERGENCY / PUBLIC USE. The reservation or allocation of taps hereunder or any additional taps shall be subject to any requirement by the Town for a public need or to respond to a health emergency within the Town. In such circumstances, the Town shall have the right, upon notice to owner, to take priority over Owner as to any such taps so required, in which event the balance of the water taps due Owner shall be provided immediately as they become available.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

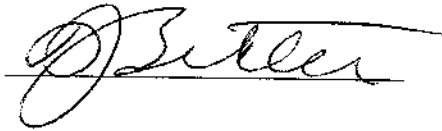
Witness:



Marley Gate LLC, a Maryland limited liability company

By: Main Street Development, LLC, a Maryland limited liability company

By: Bradley Tavel (SEAL)  
Bradley Tavel, Manager



Town of New Market, Maryland, a body politic and corporate of the State of Maryland

By: Winslow F. Burhans III (SEAL)  
Winslow F. Burhans III, Mayor

My W<sub>ta</sub>