

NEW MARKET RESIDENTIAL, LLC

**NEW MARKET WATER SERVICE AREA MULTI-YEAR SEWER TAP
AGREEMENT - RESIDENTIAL**

NEW MARKET WWTP

THIS NEW MARKET WATER SERVICE AREA MULTI-YEAR SEWER TAP AGREEMENT, ("Tap Agreement") is made this 5th day of February, 2004, by and between the BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND, a body politic and corporate of the State of Maryland (hereinafter the "County"), and NEW MARKET RESIDENTIAL, LLC, a Maryland Limited Liability Company, and/or its successors and assigns, ("Owner").

WHEREAS, Owner is the fee simple owner of property known as the Royal Oaks Subdivision (the "Subject Property") located in the New Market Election District No. 9, Frederick County, Maryland, containing 99.2343 acres (more or less), and as more particularly described in a Confirmatory Deed to Owner from NML Corp. by deed dated February 28, 2002, and recorded among the Land Records of Frederick County, Maryland, in Liber 3089, folio 1148, containing 99.2343 acres of land as shown on Exhibit A hereto; and

WHEREAS, the Town and the County have entered into a Water Service Area Agreement dated April 29, 2003, as shown on Exhibit B hereto, (hereinafter the "WSAA") whereby the County has agreed to provide a certain limited public water supply for properties located within the municipal boundaries of the Town and the Town has agreed to provide for the purchase of the water supply from the County through the purchase of water taps by property owners within the municipal boundaries of the Town; and

WHEREAS, pursuant to the terms of the WSAA “[e]ach property the Town authorizes to connect to the water system must have a corresponding sewer capacity allocation from the county,” and this Tap Agreement shall provide the terms under which sewer taps are to be allocated by and purchased from the County, and the utilization of such sewer taps as may have already been purchased from the County; and

WHEREAS, consistent with the terms of the WSAA, Owner is to be allocated sewer taps from the County’s sewerage system, (hereinafter the “Sewage System”); and

WHEREAS, the WSAA requires that Owner shall enter into a Multi-Year Water Tap Agreement to ensure that the Owner will purchase such taps; and

WHEREAS, the Owner desires to comply with such provision of the WSAA and further to ensure by this Tap Agreement that it will receive the sewer taps to be allocated to it from the Sewage System as contemplated by the WSAA; and

WHEREAS, the County has and will continue to own and operate the sewerage collection sewerage system and treatment facilities to provide sewer service within the municipal boundaries of the Town of New Market and the sale and allocation of the sewer taps from the Sewage System shall be administered by the County;

WHEREAS, the Town of New Market (hereinafter “Town”) will, by its execution of this document, provide its concurrence to the provision of sewer taps to Owner as specified herein;

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 if herein fully set forth.

2. ALLOCATION OF SEWER TAPS. Owner is the successor/assignee under the "New Market Sewer System Multi-Year Agreement" dated May 17, 1988, originally entered into between the Board of County Commissioners and Route 75 Partnership, hereinafter the "1988 MYTA".

The "1988 MYTA" memorialized the allocation of one-hundred twenty (120) sewer taps to serve the subject property, known as the Royal Oaks subdivision from the New Market Wastewater Treatment Plant and, by maintaining the requisite financial guarantees provided therein the sewer taps have been "guaranteed" for service to the subject property. Pursuant to the terms of the 1988 MYTA seventy-two (72) of the one-hundred and twenty (120) sewer taps have already been purchased, but not yet utilized on the Subject Property.

3. PURCHASE SCHEDULE. Owner agrees to utilize taps already purchased, and purchase all taps covered by this Tap Agreement on or before November 30, 2012 on which date this Tap Agreement shall terminate.

Sewer taps shall be utilized/ purchased for the Subject Property based on the following schedule, provided plats are simultaneously recorded to create the corresponding number of residential lots from the Subject Property:

- A. During "Year 1", Owner shall record twenty (20) residential building lots and utilize 20 sewer taps previously allocated and purchased pursuant to the 1988 MYTA for the Subject Property. "Year 1" is defined as the one year period commencing after the completion of the construction of the Connection or the Second Connection (as those terms are defined in the WSAA) within the Town's municipal boundaries.

- B. During "Year 2", Owner shall record twenty-five (25) residential building lots and utilize 25 sewer taps previously allocated and purchased pursuant to the 1988 MYTA. "Year 2" is defined as the period commencing upon the expiration of Year 1 and ending on the 365th day thereafter.
- C. During "Year 3", Owner shall record twenty-five (25) residential building lots and utilize twenty-five sewer taps previously allocated and purchased pursuant to the 1988 MYTA. "Year 3" is defined as the period commencing upon the expiration of Year 2 and ending on the 365th day thereafter.
- D. During "Year 4", Owner shall record twenty-five (25) residential building lots and utilize two (2) sewer taps previously allocated and purchased pursuant to the 1988 MYTA; and shall purchase an additional twenty-three (23) sewer taps as allocated pursuant to the 1988 MYTA and this Tap Agreement. "Year 4" is defined as the period commencing upon the later of: (a) the expiration of Year 3, or (b) the completion of construction of all the Potomac River water projects identified in the WSAA, and the allocation of the water taps to the subject property pursuant to the terms of the WSAA, and ending on the 365th day thereafter.
- E. During "Years 5 through 10", Owner shall record twenty-five residential buildings lots and purchase the final twenty-five (25) taps previously allocated pursuant to the 1988 MYTA and this Sewer Tap

Agreement. "Years 5 through 10" is defined as the period commencing upon the expiration of Year 4 and ending on the 5 years thereafter.

The utilization and purchase of sewer taps as described in subparagraphs 4 and 5 above are linked to the completion specific capital projects detailed in Paragraph 9 of the WSAA and the allocation of the corresponding water taps.

In the event that the facilities to provide the water taps referenced in the corresponding Water Tap Agreement are not available, the schedule set forth above will be extended up to the expiration date of this Agreement, to facilitate Owner's ability to purchase the remaining sewer taps.

4. TAP FEES. The purchase price per sewer 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 sewer tap is Six Thousand Dollars (\$6,000.00) 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, use and occupancy permit fees, or meter fees if any.

5. TAP CREDITS. This Tap 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.

6. GUARANTEE. The Town/County requires Owner to guarantee the performance by Owner under the terms of this Tap Agreement as follows:

Owner shall herewith post with the County a Letter of Credit guarantee for sewer taps in the amount which shall represent 100% of the anticipated cost of the 48 of the 120 sewer taps allocated in the MYTA and hereunder for Years 1 through 10, but not yet purchased, in the amount of Two Hundred Eighty-eight Thousand Dollars (\$288,000.00). After each year's allotment of the 48 taps have been purchased by Owner, the Letter of Credit will be reduced on a dollar-for-dollar basis in minimum Fifty Thousand Dollar (\$50,000.00) increments, or quarterly at the County's convenience, to reflect subsequent sewer tap purchases.

Provided, however, that in the event the County increases the tap fee and such increase causes the remaining amount of the Letter of Credit to be insufficient to guarantee at least 100% of the 48 taps allocated but not yet purchased, then: (1) the County may require developer to revise or supplement its Letter of Credit to provide the agreed upon percent of guarantees, or (2) at its option, the County may choose to not reduce the Letter of Credit until such time as the Owner has purchased enough taps so that the remaining amount of the Letter of Credit guarantees 100% of the then cost of the remaining allocated but unpurchased taps. Owner shall keep the Letter of Credit in effect until all taps have been purchased by Owner. Until Owner shall have purchased all taps as set forth in the Purchase Schedule of paragraph 3 above, Owner shall provide a renewal document or notify the County no less than thirty (30) days prior to the expiration of the Letter of Credit that said Letter of Credit will not be renewed, in which case County may declare a default under this Tap Agreement and call upon the Letter of Credit for payment of damages. Owner agrees that in the event it breaches this Tap Agreement, County is authorized to draw on the remaining amount of the Letter of Credit and shall retain the sum as liquidated damages, and Owner shall forfeit all rights to purchase taps to be allocated in the 1988 MYTA, this MYTA and the WSAA.

7. ASSIGNMENT AS SECURITY. This Tap Agreement may be assigned by Owner to Owner's lender as security for any of Owner's legitimate development financing purposes for the Subject Property or any part thereof.

8. REALLOCATION. Any taps allocated to Owner in this Tap Agreement and not purchased by Owner within the period established by the Purchase Schedule of paragraph 3 above, may be reallocated by County; provided, however, there shall be no reallocation of a tap once it has been assigned to an individual recorded subdivision lot which is a part of the Subject Property. In the event taps are purchased subsequent to the date of this Tap Agreement, but a subdivision plat to create the corresponding lots to utilize the sewer taps is not recorded within one hundred twenty (120) days of the tap purchase, the taps shall revert to the County for reallocation and the fees shall be forfeited by Owner.

9. 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 to contract purchasers of, the Subject Property or recorded lots being a part thereof; provided, however, no such assignment shall exceed the allocation set forth in paragraph 2 hereof. Any unilateral assignment of taps by Owner will not relieve Owner of its obligations to comply with the terms of this Tap Agreement. To the extent County honors assignment of taps by Owner to purchasers of parts of the Subject Property, Owner agrees to defend and indemnify County against, and to hold County harmless from, any claim or request for taps made by any such assignee purchaser that cannot be granted by County because it exceeds Owner's allocation under the terms of this Tap Agreement. If any assignee of all of Owner's remaining property and taps posts an appropriate financial guarantee for the assigned taps with the County, and the County, in its

sole discretion, consents thereto, County may release Owner from its obligations hereunder as to those remaining taps and release the Letter of Credit applicable thereto.

10. READY TO SERVE CHARGE. The Owner of each unimproved lot that has a sewer supply line in the front, side or rear of the property shall be required to pay a “ready to serve” charge beginning with the next billing cycle that starts following the plat recordation or installation of sewer lines whichever occurs last.

11. RESERVATION OF TAPS. At all times during the course of this Tap Agreement, the County shall reserve taps in accordance with the terms of the WSAA and this Tap Agreement.

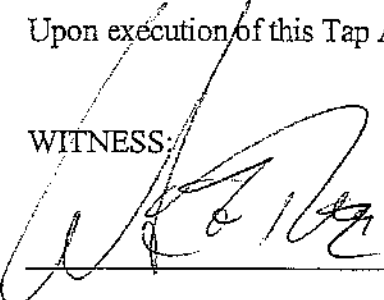
12. IMPROVEMENT PLANS AND PUBLIC WORKS AGREEMENTS. Owner shall, as appropriate from time to time, have improvement plans prepared and submitted (along with applicable review fees) to the County for review and approval, and shall execute Public Works Agreements with the County, as agreed to by the Town, in form and substance acceptable to the County, providing appropriate guarantees for the construction of lines and infrastructure to connect the Subject Property, or any part thereof, to the Sewerage System.

13. RESERVATION FOR HEALTH EMERGENCY/PUBLIC USE. The reservation or allocation of taps hereunder or any additional taps shall be subject to any requirement by the County for a public need (e.g., public school or other public service facility) or to respond to a health emergency within or outside the Town of New Market. In such circumstances, the County shall have the right, upon notice to Owner, to take priority over Owner as to any such sewer taps so required, in which event the balance of sewer taps due Owner shall be provided immediately after they become available.

14. This Tap Agreement is intended to and does supercede and replace the 1988 MYTA.

Upon execution of this Tap Agreement the 1988 MYTA shall terminate and no longer be in effect.

WITNESS:




NEW MARKET RESIDENTIAL, LLC


BY:  (SEAL)
Kevin B. Rogers, General Manager

ATTEST:

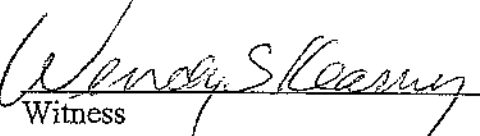
BOARD OF COUNTY COMMISSIONERS
OF FREDERICK COUNTY, MARYLAND



WK 25104 2-5-04


BY:  (SEAL)
John L. Thompson, President
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 Jr.

The Town of New Market concurs with the provision of taps to Owner as set forth in this document.



Witness

TOWN OF NEW MARKET

BY:  (SEAL)
Printed Name: Winslow Burhans
Title: Mayor