

NEW MARKET RESIDENTIAL, LLC

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

THIS NEW MARKET WATER SERVICE AREA MULTI-YEAR WATER 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, under the terms of the WSAA, Owner could ultimately be allocated one hundred twenty (120) water taps from the Town's supply system described in the WSAA (hereinafter the "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 water taps to be allocated to it from the System by way of the WSAA; and

WHEREAS, pursuant to the WSAA, the County will own and operate the water distribution system within the municipal boundaries of the Town of New Market and the sale of the water taps for the System shall be administered by the County, following distribution of the water taps by the Town;

WHEREAS, the Town of New Market (hereinafter "Town") will, by its execution of this document, provide its concurrence to the provision of 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 TAPS. Based upon the request by Owner and the Town's determination that it is appropriate to provide water to the Subject Property in accordance with plans approved by the Town, the Town and the County have agreed to: (a) an initial allocation of seventy (70) taps pursuant to Paragraph 8 of the WSAA, and (b) upon completion of items set forth in

Paragraph 9 of the WSAA, the County and Town agree to provide an additional allocation of fifty (50) taps to the Subject Property. Owner hereby agrees to purchase from the County/Town all taps as allocated to the Subject Property pursuant to the terms of the WSAA and this Agreement, the number of taps to be allocated and purchased shall not exceed a total of one hundred twenty (120) water taps.

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

A. Water taps shall be 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:

1. During "Year 1", Owner shall record twenty (20) residential building lots and purchase twenty (20) water taps allocated in the WSAA and hereunder for Owner. "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.
2. During "Year 2", Owner shall record twenty-five (25) residential building lots and purchase twenty-five (25) water taps. "Year 2" is defined as the period commencing upon the expiration of Year 1 and ending on the 365th day thereafter.
3. During "Year 3", Owner shall record twenty-five (25) residential building lots and purchase twenty-five (25) water taps. "Year 3" is

defined as the period commencing upon the expiration of Year 2 and ending on the 365th day thereafter.

The parties hereto acknowledge that only seventy (70) water taps have been allocated in Paragraph 2 above and are available from existing water system capacity.

B. After the County receives an increase in its Water Appropriation Permit for the Potomac River, completes its Potomac River water transmission projects, and expands the treatment capacity of the New Design Road Water Treatment Plant to 26 MGD, then an additional fifty (50) water taps will become available as contemplated in the WSAA, and upon recordation of plats to create the corresponding number of residential building lots from the Subject Property, taps will be allocated and purchased as follows:

1. During "Year 4", Owner shall record twenty-five (25) residential building lots and purchase twenty-five (25) water taps. "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 projects identified in subparagraph B above, and ending on the 365th day thereafter.
2. During "Years 5 through 10", Owner shall record twenty-five (25) residential buildings lots and purchase the final twenty-five (25) water taps. "Years 5 through 10" is defined as the period commencing upon the expiration of Year 4 and ending on the 5 years thereafter.

The remaining fifty (50) water taps to be allocated as described in this subsection B are not available until specific capital projects detailed above and in Paragraph 9 of the WSAA have been completed and are operational.

In the event any of the fifty (50) water taps reserved in this subsection B do not become available for allocation in accordance with Paragraph 9 of the WSAA and the terms set forth herein, the schedule set forth above will be extended, up to the date of expiration of this Agreement, to facilitate Owner's ability to purchase the additional fifty (50) water taps as set forth in this Paragraph 3. Furthermore, in the event that the facilities to provide the water taps referenced in this Tap Agreement are available, but the corresponding wastewater taps 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 water taps.

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, 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 water taps in the amount of Three Hundred One Thousand Dollars (\$301,000.00) which shall represent 100% of the anticipated cost of the seventy (70) taps allocated in the WSAA and hereunder for Years 1 through 3. After each year's allotment of the taps allocated in paragraph 3.A. have been purchased by Owner, the Letter of Credit will be reduced on a dollar-for-dollar basis in minimum amount of Forty Thousand Dollars (\$40,000.00), or quarterly at the County's convenience, to reflect subsequent water tap purchases.

Owner shall also herewith post with the County a Letter of Credit guarantee for water taps in the amount of One Hundred Seven Thousand Five Hundred Dollars (\$107,500.00) which shall represent 50% of the anticipated cost of the fifty (50) taps reserved for future allocation in the WSAA and hereunder for Years 4 through 10. The Letter of Credit will not be reduced until after 50% of the taps allocated in paragraph 3.B. have been purchased. After 50% of the taps allocated in paragraph 3.B. have been purchased by Owner, the Letter of Credit may be reduced on a dollar-for-dollar basis in minimum Twenty Thousand Dollar (\$20,000.00) increments, or quarterly at the County's convenience, to reflect subsequent water 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 taps allocated in paragraph 3.A., and 50% of the cost of the taps to be allocated under paragraph 3.B. but unpurchased, 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, or 50% of the taps reserved for future

allocation, at which time the County shall reduce the Letter of Credit in accordance with the provisions hereof. 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 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 but a subdivision plat to create the corresponding lots to utilize the water 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.

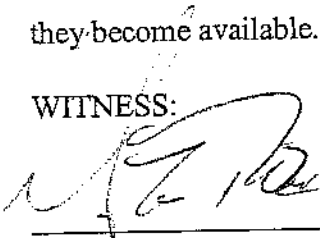
10. READY TO SERVE CHARGE. The Owner of each unimproved lot that has a water supply line in the front, side or rear of the property shall be required to pay a "ready to serve" charge beginning with the next billing cycle that starts following the plat recordation or installation of water lines whichever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

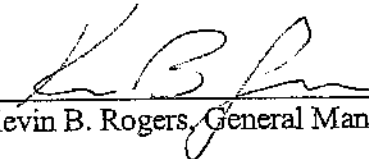
12. IMPROVEMENT PLANS AND PUBLIC WORKS AGREEMENTS. Owner shall, as appropriate from time to time, have improvement plans prepared and submitted (along with applicable review fees) to the County for review and approval, and shall execute Public Works Agreements with the County, as agreed to by the Town, 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 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 water taps so required, in which event the balance of water taps due Owner shall be provided immediately after they become available.


WITNESS:




NEW MARKET RESIDENTIAL, LLC

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

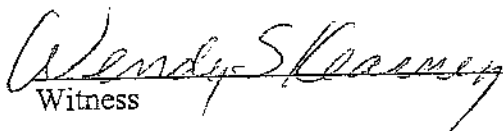
ATTEST:


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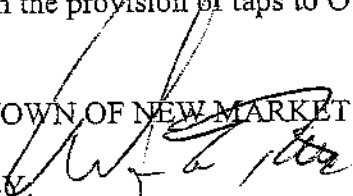
BOARD OF COUNTY COMMISSIONERS
OF FREDERICK COUNTY, MARYLAND

BY:  (SEAL)
John L. Thompson, President
^
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 Burkans
Title: Mayor