

**AMENDED AND RESTATED DEVELOPER AGREEMENT AND RIGHT OF ENTRY
MAJOR PUBLIC WATER SYSTEM
HOWARD COUNTY, MARYLAND**

THIS AMENDED AND RESTATED DEVELOPER AGREEMENT AND RIGHT OF ENTRY FOR A MAJOR PUBLIC WATER SYSTEM (the "Agreement") is made this _____ day of _____, _____, by and between **ELLICOTT MEADOWS, LLC** ("Developer") a Maryland limited liability company, and **HOWARD COUNTY, MARYLAND** ("County") a body corporate and politic.

WHEREAS, Developer is the fee simple owner of certain real property located in the Second Election District of Howard County, Maryland and described in a Deed dated October 31, 2011, and recorded among the Land Records of Howard County, Maryland (the "Land Records"), at Liber 13551, folio 244.

WHEREAS, Developer has undertaken to subdivide the Property by Final Plan Number F-11-087 titled "Orchard Meadows, Parcels D1, D2, D3, A Resubdivision of Hoenes Property, Parcel D, Plat No. 9419" dated _____ (the "Plat") which plat has been recorded among the Land Records upon the execution of this Agreement as Plat Numbers _____ thru _____ on _____ (the "Subdivision"). The Property is located within the Howard County Metropolitan District for public water and sewer service.

WHEREAS, the development of the Property requires Developer to design and construct the Orchard Meadows 12-inch Water Main to serve the Project, the remainder of the Property, and the surrounding area, as shown on Exhibit A, the Orchard Meadows Service Area (the "Service Area").

WHEREAS, in order to connect the Subdivision to the public water system and in accordance with the Howard County Code's requirements for a subdivision of land, Developer is required to construct the Orchard Meadows 12-inch Water Main to serve the Subdivision, the remainder of the Property, and the surrounding area, at its expense and in a timely manner in compliance with the provisions of the Howard County Code and the Howard County Design Manual. The work includes all labor, equipment and materials necessary to construct, complete in place, the Orchard Meadows 12-inch Water Main and all appurtenances as specified in the approved construction drawings and Special Provisions and Technical Specifications dated _____, for Contract No. 14-4711-D (the "Project").

WHEREAS, Developer and the County entered into a Developer Agreement and Right of Entry dated December ____, 2011 (the "Original Agreement") and the parties now desire to enter into this Agreement to amend and restate the Original Agreement to evidence the Reimbursement (as defined herein) to the Developer in accordance with

Section 14 hereof and authorized by the County Council of Howard County in Council Bill No. _____ - _____.

NOW, THEREFORE, in accordance with Section 16.130 and 16.156(k) of the Howard County Code and in consideration of the foregoing recitals which are incorporated herein and the covenants and agreements, hereinafter expressed, Developer and County agree Developer shall construct the Project as defined herein in accordance with the following terms and conditions:

SECTION 1: DEFINITIONS

The capitalized terms used in this Agreement shall have the meanings set forth in this Section 1 or in the recitals immediately preceding this Section 1.

Agreement – means this Developer Agreement and Right of Entry Major Water System by and between County and Developer for Developer’s design and construction of the 12-inch water system for the Property as required by the Code and which shall be recorded among the Land Records.

Approved Plans and Specifications – means the construction and technical drawings and the technical specifications titled “Orchard Meadows, Contract No. 14-4711-D” received by the Department of Planning and Zoning on November 3, 2011, which have been prepared in accordance with the Design Manual and the Code and which have been approved by County for the construction of the Public Improvements in accordance with this Agreement, as amended from time to time. The Approved Plans and Specifications are hereby incorporated into this Agreement by this reference.

CID – means the Construction Inspection Division of County’s Bureau of Engineering, Department of Public Works.

Code – means the Howard County Code, as amended.

County – means Howard County, Maryland, a body corporate and politic and its successors and assigns.

Design Manual – means the Howard County Design Manual Volumes I through IV, as amended.

Developer – means Ellicott Meadows, LLC, a limited liability company, formed under the laws of the state of Maryland, and duly authorized to conduct business in the state of Maryland and in good standing with the Maryland State Department of Assessments and Taxation, and its successors and assigns.

Developer's Engineer – means KCI Technologies, a duly licensed engineering firm in accordance with the laws of Maryland and in good standing with the State Department of Assessments and Taxation, and its successors and assigns, engaged by Developer to prepare the Approved Plans and Specifications for the Project.

Director – mean the Director of the County's Department of Public Works.

DPW – means the County's Department of Public Works.

Final Acceptance of the Project - means the date the Director executes the Final Inspection for Water and Sewer Acceptance form in accordance with this Agreement.

Financial Security – means the required monetary obligation provided by Developer to ensure the completion and operation of the Project as set forth in this Agreement, which shall be in the form of (i) cash, (ii) a bond issued by a bonding company authorized to do business by the Maryland Surety Association, or (iii) a letter of credit from a bank conducting business in Maryland, as agreed upon by Developer and County. If the Financial Security is cash, the check shall be made to the order of "Howard County Director of Finance" and deposited into a non-interest bearing account by County. If the Financial Security is either a bond or letter of credit, it shall be kept on file in the Real Estate Services Division of DPW. County reserves the right to reject bonds or letters of credit which are not issued by companies which do not meet the foregoing County standards.

Land Records – means the Land Records of Howard County, Maryland.

Maximum Reimbursement – means the reimbursement to the Developer equaling the Developer's actual construction costs of the Project determined in accordance with Section 12.1 of this Agreement and which shall be paid to the Developer from the in-aid-of-construction charges and ad valorem charges collected by the County for properties located in the Reimbursement Service Area.

Project – means Developer's design and construction of the Public Improvements for the Property at its expense. The Project shall be designed in accordance with the Code and the Design Manual and constructed by Developer in a timely manner in accordance with the Approved Plans and Specifications.

Public Improvements – means the 12-inch water main to be constructed in accordance with this Agreement.

Reimbursement Service Area – means the lots within the Subdivision and the lots which are within the geographic area served by the Orchard Meadows 12 inch Water Main as shown on Exhibit B and listed by tax account number.

Regulations – means the Howard County, Maryland Subdivision and Land Development Regulations, as amended.

Site Development Plan (SDP) – means the Site Development Plan (SDP-11-052) designated by the Howard County Department of Planning and Zoning for the development of the Property and titled “Orchard Meadows, Parcels D-1, D-2, D-3” and signed by, the Director of Planning and Zoning. A copy of the Site Development Plan shall be kept on file by County and is incorporated herein by reference. All construction shall also be in accordance with the approved Site Development Plan and shall further conform with the Design Manual except to the extent that the Approved Plans and Specifications vary from the Design Manual, in which event the Special Provisions of the Approved Plans and Specifications shall be deemed controlling.

Subdivision – means the plat of final subdivision for the Property designated by the Howard County Department of Planning and Zoning as Plan Number F-11-087 and titled “Orchard Meadows, Parcels D1, D2, D3, A Resubdivision of Hoenes Property, Parcel D, Plat No. 9419” which plat shall be recorded among the Land Records upon the execution of this Agreement and the plat’s approval and signature by County. The plats for the Subdivision are hereby incorporated herein by this reference.

SECTION 2: DESIGN OF THE PROJECT

2.1. Plans. Developer has engaged Developer’s Engineer to prepare the Approved Plans and Specifications for the Project.

2.2. Revisions. Developer shall cause the Developer’s Engineer to prepare, in accordance with the Howard County Code and the Howard County Design Manual, the construction drawings and Special Provisions and Technical Specifications for the 12 inch water main to serve the Property and the surrounding areas, which shall be submitted to the County for its approval. The County shall review the construction drawings and Special Provisions and Technical Specifications and the Developer shall cause Developer’s Engineer to make any required changes to the Approved Plans and Specifications for the Project as the construction of the Project progresses. The Project’s construction drawings and the Special Provisions and Technical Specifications received by the Department of Planning and Zoning on November 3, 2011, which have been approved by the County are “Approved Plans and Specifications.”

2.3. Certification. The Developer shall require the Developer’s Engineer to provide the County with as-built drawings upon the completion of the Project. The County shall retain the original copy of the Approved Plans and Specifications.

2.4. Developer’s Engineer. Developer shall require Developer’s Engineer to complete shop drawing review and coordination, attend progress and start-up meetings, respond to requests for interpretation and during the construction of the Project certify Project’s construction. Developer shall engage an engineer to stake-out the Project.

SECTION 3: FINANCIAL SECURITY

3.1. Performance Financial Security. Pursuant to the Code and the terms of this Agreement, Developer has delivered to County Financial Security in the amount of **Eighty-six Thousand Seven Hundred Sixty-six Dollars (\$86,766.00)**, which is equal to 100% of the estimated cost of construction of the Project and which guarantees completion of the Project in a timely and satisfactory manner in accordance with the terms and conditions of this Agreement.

3.2. Payment Financial Security. Pursuant to the Code, Developer has delivered to County, Financial Security in the amount of **Forty-three Thousand Three Hundred Eighty-three Dollars (\$43,383.00)**, which is equal to 50% of the estimated cost of construction of the Project and which guarantees the payment of debts owed for the labor and materials used in the construction of the Project required under the terms and provisions of this Agreement.

3.3. Maintenance Financial Security. Prior to the Final Acceptance of the Project and in accordance with Section 9, Developer shall provide the Maintenance Financial Security in the amount of **Eight Thousand Six Hundred Seventy-seven Dollars (\$8,677.00)**, which is equal to ten percent (10%) of the original amount of the Performance Financial Security.

SECTION 4: CONSTRUCTION OF PROJECT

4.1. Construction and Completion Date. Developer, at its sole cost and expense, shall construct the Project in accordance with the Approved Plans and Specifications. Developer shall obtain all permits and approvals which are required for the construction of the Project. Developer shall provide all labor, materials and equipment necessary to complete the construction of the Project in a timely manner no later than three (3) years of the date of execution of the Original Agreement (the "Completion Date").

4.2. Notice to Proceed, Commencement of Construction, and Red-line Approval. Developer agrees that the construction of the Project covered by this Agreement shall not begin until the Developer receives the notice to proceed letter. Developer shall notify CID of the proposed commencement date by Developer and arrange for and coordinate the inspection services with CID at least two (2) weeks prior to the proposed commencement date. Construction of the Project may commence at any time after CID issues the notice to proceed letter to Developer. Developer shall request County's red-line approval of any proposed change to or deviation from the Approved Plans and Specifications. Developer shall not proceed with any construction that is not on the Approved Plans and Specifications as amended by any red-line change from time to time. Work shall be continuously performed until final acceptance,

as specified in the Approved Plans, Special Provisions and Technical Specifications, from the notice to proceed with the Project.

4.3. Compliance with Design Manual. The construction of the Project shall be conducted in accordance with the standards of the Design Manual unless otherwise specified on the Approved Plans and Specifications. It is understood and agreed that Developer is responsible for all land development operations on the Property. Developer may construct other required improvements in conjunction with the construction of the Project; all work shall be performed and completed in accordance with the appropriate standards, plans and specifications. However, in accordance with Maryland Department of the Environment Article 9-512(b), a building permit may not be issued unless the water and sewerage system is constructed and is adequate to serve the proposed construction.

4.4. Damage During Construction. The Developer shall be required to repair damage to any County facilities and improvements at its own expense if, as a result of grading or construction activities, these facilities have been damaged by the Developer, builder, contractor, subcontractors, material suppliers or any other agents of the Developer. If in the judgment of the County the damage presents an imminent threat to the public health, safety or welfare, the Developer shall repair the damage immediately upon the request of the County. If Developer fails to make such repair, County shall have the right to (i) enter the Property, repair the damage, and recover the cost of the repair from Developer, including but not limited to court costs, reasonable attorneys' fees and direct administrative and overhead costs, (ii) pursue a default under this Agreement, or (iii) pursue any other remedy available to County, at law or in equity.

SECTION 5: DEEDS OF EASEMENT, FEE SIMPLE GRANTS AND RIGHT OF ENTRY

Developer shall deliver to County at the time of execution of this Agreement, without any cost or expense to County, the executed deeds of easement and fee simple deeds to the County for the Associated Improvements, and any lots designated as open space pursuant to Section 16.121 of the Code which deeds to the County shall be recorded by County in the Land Records at the time of or after recordation of the Subdivision's final plat. Recordation of the Deeds of Easement and Deed shall not constitute acceptance of the Project by County. Developer, and its successors and assigns, shall have the right to enter upon the dedicated easement areas and fee simple areas during the term of this Agreement for the purpose of constructing the Project. Pursuant to the Code, Developer is required to ensure the satisfactory condition of all lots designated as open space prior to the release of the Performance Financial Security. Any encroachments to the easements and open space lots dedicated to County shall be resolved by Developer, at its expense, prior to the Final Acceptance of the Project. Developer hereby grant County, and its successors and assigns, a right of entry through the Property to inspect, and if necessary, construct, repair, and replace the Public Improvements, the Associated Improvements, and the

Private Improvements. If there is no default by Developer under this Agreement, the foregoing rights of entry shall terminate upon the date the Maintenance Financial Security herein is released.

SECTION 6: INDEMNIFICATION AND INSURANCE

6.1. Indemnification. Developer covenant(s) to indemnify, defend and hold harmless County, its officials, agents, employees, contractors, invitees, licensees, successors and assigns against and with respect to all losses, damages, suits, claims, judgments and expenses whatsoever (collectively the "Losses"), including, without limitation, costs of investigation, litigation and reasonable attorney's fees, arising directly or indirectly from performance by Developer or Developer's agents, employees, contractors, subcontractors, material suppliers, or builders or otherwise arising directly or indirectly from the work to be performed under this Agreement, regardless of whether the Losses are sustained by County directly, or by its officials, agents, employees, contractors, invitees, licensees, successors and assigns, except only when the Losses are solely attributable to and proximately caused by the sole negligence or the willful, malicious, or wanton misconduct of County or its officials, agents, employees or contractors. The foregoing shall apply, without limitation, to Losses of all types including destruction or degradation of the environment, including, without limitation, land, air, water, wildlife or vegetation, and all costs, fines, penalties, and other expenses related to the abatement of the destruction or degradation of the environment. This indemnification is not to be deemed as a waiver of any immunity that may exist in any action against County. Developer bears the risk of loss of all material, equipment, property, or work to be provided by Developer under this Agreement until Final Acceptance of the Project. Until that time, Developer or Developer's contractor will replace, at Developer's expense, all material, equipment, property, or work damaged or destroyed by any cause whatsoever. This indemnification shall terminate, if there is no default under this Agreement, upon the release of all Financial Security provided to County pursuant to this Agreement.

6.2. Insurance. The insurance which shall be obtained and maintained during this Agreement is as follows:

6.2.1. Developer shall, if Developer has employees, maintain and require all of its contractors and subcontractors performing work under this Agreement to maintain Worker's Compensation Insurance with limits of coverage as follows: Coverage A: Statutory, covering Maryland jurisdiction and Coverage B: \$100,000.00.

6.2.2. Developer shall maintain and require all of its contractors and subcontractors performing work under this Agreement to maintain Commercial General Liability Insurance issued by a company licensed to do business in the state of Maryland and having an AM Best rating of B+ or better with limits of \$5,000,000.00 per occurrence, covering bodily injury or property damage, and naming "Howard County, Maryland" as an additional insured.

6.2.3. Developer's Engineer shall maintain Professional Liability/Errors and Omissions Insurance issued by a company licensed to do business in the state of Maryland and having an AM Best rating of B+ or better with limits of \$1,000,000.00 per claim, covering incidents occurring or claims made for a period of three (3) years after the Final Acceptance of the Project.

6.2.4. Developer shall indemnify County for any uninsured losses relating to the construction of the Project under this Agreement. Evidence of the required insurance shall be provided to County upon the execution of this Agreement and later upon request by County.

6.3. Safety. Developer shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the completion of Developer's obligations under this Agreement. Developer shall comply, and shall secure compliance by Developer's agents, employees, contractors, subcontractors, material suppliers, or builders with all federal, state, and local health and safety laws and regulations. If, at any time, or from time to time, work is not conducted on the site, Developer shall take appropriate safety measures to secure the site. Developer shall report to County any governmental inspections or inquiries at the job site. The reason for the inspection and the results of the inspection shall be shared with County as soon as possible but no later than the next business day. County reserves the right to audit Developer's safety related records at any time.

SECTION 7: INSPECTION

7.1. County Inspections. The County will inspect all phases of construction of the Project to the extent it deems necessary to satisfy itself that the construction is performed in accordance with the Approved Plans and Specifications, the Plat, the SDP and the Design Manual. Developer and Developer's employees, contractors, subcontractors, and builders shall cooperate with County in the conduct of such inspections. The County agrees to advise Developer of any deficiencies noted during the inspections. The Developer shall promptly take the necessary actions to correct the noted deficiencies.

7.2. Construction Inspection Services. Construction inspection services will be required on a full-time basis during the construction of the Project. The estimated cost of the inspection services during construction of the Project is assessed to the Developer prior to the execution of this Agreement. Should additional funds be required to pay for the cost of construction inspection services, the Developer will be notified of the additional construction inspection costs required to continue inspection services through the completion of the Project. If the Developer shall fail to pay the additional costs of construction inspection services within two (2) working days after notification by the County, then the County shall issue a stop work order on the Project. If the actual

cost of the construction inspection services for the Project is less than the estimated construction inspection costs, the difference shall be returned to the Developer.

7.3. County Approval. Any and all changes and/or deviations from the Approved Plans and Specifications must be approved in writing by County prior to implementation.

7.4. Developer Responsible for Development. It is understood and agreed that Developer is responsible for all construction and development operations on the Property. Developer may construct other required improvements in conjunction with the construction of the Project and all work shall be performed and completed in accordance with the appropriate standards and Approved Plans and Specifications.

7.5. Developer Request Final Inspection. Upon completion of the Public Improvements, Developer shall notify County thereof and County will promptly thereafter make an inspection of the construction and advise Developer of its approval or of any deficiencies.

SECTION 8: FINAL APPROVAL, DEDICATION, AND FINAL ACCEPTANCE OF THE PROJECT

8.1. Conditions for Final Acceptance of the Project. The County agrees that upon completion of the Project in accordance with the Approved Plans and Specifications, the Project may be accepted by the County only if the following requirements have been met:

8.1.1 The County shall have received a Maintenance and Repair Financial Security executed by Developer in accordance with the Agreement.

8.1.2. Developer and Developer's contractors shall each have provided to CID a notarized affidavit which certifies that all contractors, subcontractors and materials suppliers have been paid in full for all work satisfactorily completed and materials furnished with respect to the Project at the time of the Final Inspection;

8.1.3. The County shall have received a notarized waiver of lien executed by each contractor, subcontractor and materials supplier dated as of the Final Inspection;

8.1.4. Developer shall have reimbursed the County for all costs associated with repairs undertaken by the County pursuant to this Agreement;

8.1.5. The County shall have confirmed that the interior and exterior condition of the station are restored to a good condition; and

8.1.6. The Final Inspection is conducted by CID and CID is satisfied with the Project as constructed, Developer's Engineer has certified, and CID concurs, that the Project is completed in accordance with the Approved Plans and Specifications, as amended by all County approved modifications.

8.2. Final Acceptance of the Project. Final Acceptance of the Project occurs on the date which the Director executes the Final Inspection for Water and Sewer Acceptance form.

8.3. Final Acceptance of the Project by County. Upon the Acceptance of the Project under this Agreement and the posting of the Maintenance and Repair Financial security to secure Developer's warranty required under this Agreement, the Developer shall be released from any further obligations under the Performance Financial security. Notwithstanding the release of the Performance Financial Security, Developer shall be responsible for (i) Developer's warranty under Section 9 and Maintenance Financial Security, and (ii) Developer's obligations with respect to the Payment Financial Security in Section 11 of this Agreement.

8.4. Ownership of the Project. Developer agrees that upon Final Acceptance of the Project by the County, title to the Project under this Agreement shall be vested in Howard County, Maryland.

8.5. Notice to Claimants. Within four weeks of the date of Final Acceptance of the Project, Developer, at its expense, shall publish in a newspaper of general circulation in Howard County, a notice to contractors, subcontractors, and materials suppliers that claims under the Payment Financial Security must be filed with County within ninety (90) days of Final Acceptance of the Project.

SECTION 9. WARRANTY, MAINTENANCE AND REPAIR FINANCIAL SECURITY

9.1. Developer's Warranty. Developer warrants to the County that the completed Project: (a) shall be constructed and installed in accordance with the Approved Plans and Specifications; (b) shall be free from any defects in materials and/or workmanship; and (c) shall be free from any damage which occurs subsequent to Final Acceptance of the Project by the County and which results from the Developer's activities in constructing the improvements.

9.2. Damage to Project by Developer. If, following Final Acceptance of the Project by the County, any work covered by this Agreement is defective in materials and/or workmanship or is damaged as a result of the Developer's activities in completing the public improvements serving the Subdivision, or is otherwise not in conformity with the Approved Plans and Specifications, the Developer shall promptly and faithfully repair and correct such damage, non-conformity or defects.

9.3. Maintenance and Repair Financial Security. Developer further agrees to furnish an irrevocable maintenance and repair financial security in a form acceptable to the County (the "Maintenance and Repair Financial Security") guarantying Developer's obligation to complete and repair and correct any damage, defects in materials and/or workmanship, or non-conformity as provided above. The Maintenance and Repair Financial Security shall be in the amount of Eight Thousand Six Hundred Seventy-seven Dollars (\$8,677.00), which is equal to ten percent (10%) of the original amount of the Performance Financial Security. The Developer's obligation under the Maintenance and Repair Financial security shall remain in full force and effect until the later of: (a) the first anniversary of Acceptance of the Project, or (b) the date of the satisfactory correction and repair of any damage, defects, and non-conformities identified within the year commencing on the date of Acceptance of the Project.

SECTION 10: HOUSE CONNECTIONS AND WATER METERS

10.1. Application for House Connections. At the time Developer applies for permits for house connections, Developer shall provide DPW, the Department of Inspections, Licenses and Permits, and Department of Finance the Agreement Number assigned to this Agreement.

10.2. Water Meters. County shall install one inch (1") size water meters at a flat fee to Developer or Developer's builder based on actual cost to County for such installation. The flat fee shall be computed based on the prevailing costs to County for meters, accessories, equipment and labor costs plus overhead charges. Water meters larger than one inch (1") size shall be installed by County pursuant to a separate agreement to be prepared by DPW based upon cost estimates approved by the Bureau of Utilities. No meters shall be installed until satisfaction of conditions for connection to the public water and/or sewer facilities set forth in this Agreement.

10.3. Payment of Charges. Developer shall pay all meter setting charges, water and sewer service charges, front-foot benefit assessment charges, in-aid-of-construction charges, and ad valorem charges with respect to the Property.

SECTION 11: FIRE HYDRANTS

11. Developer may furnish all fire hydrants to be used in the installation of the public improvements provided that such are approved by DPW.

SECTION 12: DEFAULTS AND REMEDIES

12.1. Default by Developer. Developer shall be deemed to be in default under the terms and provisions of this Agreement under the following conditions:

12.1.1. Developer fails to construct the Project in a timely manner; or

12.1.2. Developer fails to construct the Project in accordance with the Approved Plans and Specifications; or

12.1.3. Developer fails to take appropriate action within thirty (30) days after notification by the County of unsatisfactory progress in constructing the required Project; and thereafter Developer fails to maintain satisfactory progress in construction of said improvements; or

12.1.4. Developer fails to commence appropriate and effective corrective action within thirty (30) days after notification by the County of non-compliance with specified engineering requirements during the construction of the Project; and thereafter Developer fails to diligently pursue and complete such corrective action.

12.1.5. Developer fails to commence appropriate and effective corrective action within fifteen (15) days after written notification by the County under Section 4.4 hereof to repair damage to County property.

12.2. County's Rights upon Default. In the event of any default by Developer in its performance of this Agreement, the County shall have the right to enforce this Agreement, as provided by law, shall give Developer written notice of said default, and shall have the following rights which may be exercised cumulatively:

12.2.1. If a bond has been provided as Performance Financial Security, written notice of said default shall be given to the bonding company issuing the Performance Financial Security, requiring the company to acknowledge receipt of the County's demand and to elect, in writing and within forty-five (45) days, to either:

(a) Complete the Project in accordance with the Approved Plans and Specifications by the date determined by County; or

(b) Pay to County the penal sum of the bond.

12.2.2. If a check or irrevocable letter of credit has been provided as Performance Financial Security, County has the right to draw upon the Performance Financial Security to guarantee Developer's obligation under this Agreement. The sum or sums withdrawn by County pursuant to the Performance Financial Security shall be retained and used by County for the costs and expenses to County arising out of the failure of Developer to complete the Project as required by the terms of this Agreement, which expenses shall include, but not be limited to, costs for engineering, inspection, reasonable overhead and administrative as well as direct construction expenses.

12.2.3. The right to withhold or suspend building permits, temporary use and occupancy permits and/or final use and occupancy permits for structures within the service area of the Project until such time as the default has been cured;

12.2.4. The right to recover from the Developer all such additional costs as may be incurred by the County in order to complete the Project in accordance with the Approved Plans and Specifications.

SECTION 13: CLAIMS UNDER PAYMENT FINANCIAL SECURITY

13.1. Claimant. Any person who has not been paid for work done or materials provided for the construction of the Project (a "Claimant") may seek payment under the Payment Financial Security in accordance with this Section 13. Upon request by such person, County will provide a copy of this Agreement.

13.2. Bonds. If the Payment Financial Security is a bond, the person seeking payment under the Payment Financial Security shall provide information directly to the bonding company.

13.3. Letter of Credit or Check. If the Payment Financial Security is either a letter of credit or check, the Claimant shall proceed as follows:

13.3.1. The Claimant shall submit to County within ninety (90) days of Final Acceptance of the Project (the "Claim Notice Date") an affidavit executed by the Claimant under penalties of perjury, stating: (a) the Claimant has not been paid in full for work done or materials provided for or about the construction and installation of the Project; (b) the Claimant has given Developer a written notice of its intention to (i) claim a lien under Sections 9-101 *et seq.* of the Real Property Article of the Annotated Code of Maryland (the "Mechanics' Lien Statute"), or (ii) file a suit or a petition pursuant to the Mechanics' Lien Statute or other applicable law within the period of time permitted by such statute or law for the giving of such notice or filing of such suit or petition and is diligently pursuing its claim under such law or statute; and (c) the amount of the Claim which is the subject of such suit or petition.

13.3.2. A Claimant obtaining either (a) a final judgment awarding payment to the Claimant for a debt owed for work done or materials provided for the construction of the Project, or (b) a final order establishing a mechanics' lien for work done or materials provided for the construction of the Project, may request payment from County under the Payment Financial Security in the amount of the judgment or lien plus accrued judgment interest thereon from the date of such judgment or order.

13.3.3. On or before one year of the Claim Notice Date, the Claimant shall provide County with the following documents (copies of each of which shall be provided to Developer) (collectively the "Claim"):

13.3.3.1. A formal request for payment, in the form of an affidavit executed by the Claimant under penalties of perjury, setting forth (a) the Claimant's name and address; (b) the date of and the amount of the judgment or order and of any judgment interest; (c) a statement that judgment or order (i) was not appealed and is

final with all applicable appeal times expired, and (ii) has not been satisfied within thirty (30) days after the entry of such final judgment or order and the amount that remains unpaid as of the date of the affidavit; and (d) a request that County withdraw under the Payment Financial Security the amount of the unpaid judgment or order (plus any judgment interest) and pay over the amount so withdrawn to the Claimant.

13.3.3.2. A true test copy of such final order or judgment.

13.3.3.3. Satisfactory evidence that such judgment or order constitutes a final judgment or order pursuant to the Mechanics' Lien Statute or other applicable law, and that all applicable appeal times have expired.

13.3.4. Upon receipt of the Claim from the Claimant, County shall be entitled to withdraw under the Payment Financial Security the amount of the unpaid award in such judgment or order together with any judgment interest if so requested, and pay over the amount to the Claimant the proceeds of the Payment Financial Security in full or partial satisfaction of such judgment or order. County shall promptly notify Developer whenever it takes any such action.

13.4. Extension of Payment Financial Security. In the event that County receives notice from a Claimant by the Claim Notice Date and if at any time thereafter the Payment Financial Security will, in County's judgment, expire or be terminated before the pending claim has been paid, dismissed or otherwise satisfied, County shall be entitled to require Developer to extend or replace the Payment Financial Security, as County deems necessary. Developer's failure to extend or replace the Payment Financial Security when requested by County shall entitle County to withdraw the funds then available under the Payment Financial Security in an amount sufficient to pay all pending claims and place the withdrawn funds in an escrow account for the benefit of any Claimant who has given notice of a pending claim.

13.5. Release of Payment Financial Security. County will release the Payment Financial Security and will not require that the Payment Financial Security be extended for a period beyond the original or any future expiration date if all of the following conditions are satisfied:

13.5.1. The Final Acceptance of the Project by County pursuant to Section 8 of this Agreement.

13.5.2. Developer has published a notice to contractors, subcontractors and material suppliers to file claims for payment on or before the Claim Notice Date as provided in Section 8.6 of this Agreement.

13.5.3. At least one hundred twenty (120) days have passed since the Final Acceptance of the Project.

13.5.4. County has not received notice of any claim prior to the Claim Notice Date or, if notice has been received, County has paid all Claims and Judgment Interest, if any.

13.5.5. Upon the request of Developer, if all of the above conditions are satisfied, County will notify Developer that County will release the Payment Financial Security.

13.5.6. County's right to withdraw under the Payment Financial Security shall not be extinguished or otherwise affected by any foreclosure under a deed of trust, mortgage, or other similar instrument on all or any portion of the Property.

14. REIMBURSEMENT FOR MAJOR PUBLIC WATER FACILITIES.

14.1 Maximum Reimbursement. County desires to acquire the Project constructed under this Agreement and the Developer has requested the County to reimburse the Developer up to one hundred percent (100%) of the actual construction costs of the Project as approved by the Department, excluding the costs of (i) rights-of-way acquisition, (ii) house connections, (iii) engineering, and (iv) County's review and inspection fees (the "Maximum Reimbursement"). Upon the County's acceptance of the Project in accordance with this Agreement, Developer shall submit copies of the Developer's paid invoices for the Project to evidence the actual costs of constructing the Project. This Agreement shall be amended to reflect the Maximum Reimbursement and the County's fee for preparing the amendment shall be paid by the Developer.

14.2 Source of Funds for Reimbursement. The County's obligation to reimburse the Developer is limited to the sum of the (i) water in-aid-of-construction charge applicable for a commercial water meter and (ii) ninety percent (90%) of the ad-valorem charges, levied upon and collected from lots within the Reimbursement Service Area and which have connected to the Project during the ten (10) year period commencing on the date of this Agreement. The in-aid-of-construction charges are defined in Section 20.611 of the Code and the ad valorem charges are defined in Section 20.613 of the Code. If six (6) months prior to the end of the tenth year (or a renewal year, as the case may be) the Developer has not received reimbursements equaling the Maximum Reimbursement, the Developer may request a renewal of this Agreement for one additional year and up to a maximum of five (5) renewals may be agreed upon by the County and Developer. Upon any such renewal, this Agreement shall be amended and the County's fee for preparing the amendment shall be paid by the Developer.

14.3 Developer's Request for Reimbursement. After the County's acceptance of the Project, the Developer may request a reimbursement. Developer shall submit Contractor's Monthly Application and Certificate for Payment, AIA Document G702 or similar, Exhibit C attached hereto and made a part hereof, to the County for the Project

for approval to evidence and document the actual costs of constructing the Project up to the Maximum Reimbursement.

14.4 Payment of Reimbursement. On or before July 31 of each year, County shall compute the amount of the water in-aid-of-construction charges collected and ninety percent (90%) of the ad-valorem charges collected for each lot connecting to the Project within the Reimbursement Service Area during the prior fiscal year. To the extent the Developer has not received the Maximum Reimbursement, the amount of the water in-aid-of-construction charges collected and ninety percent (90%) of the ad-valorem charges collected on such lots shall be remitted to the Developer at the address set forth in Section 15.8 hereof.

14.5 Termination of Reimbursement Obligation. Upon the earlier to occur of (i) payment of the Maximum Reimbursement or (ii) the expiration of the term of this Agreement, this Agreement shall terminate and the County shall have no authority to pay a Reimbursement to the Developer.

SECTION 15: GENERAL PROVISIONS

15.1. Waiver. Developer agrees to waive all right of appeal as to the issue of the necessity and requirement for construction or maintenance of the Project shown and described on the Approved Plans and Specifications.

15.2. Issuance of Building Permits. The issuance of building permits pursuant to this Agreement is subject to possible interruption or suspension by reason of State and Federal action, such as a moratorium imposed for environmental or health reasons, and the time within which the Project is to be constructed hereunder shall be extended by the length of any such interruption, suspension or moratorium.

15.3. Public Water and Sewer Capacity. The parties acknowledge that the execution of this Agreement does not grant or create in any manner a vested right to gain access to public water and/or sewer facilities, said right being solely provided under Section 18.122B of the Code. The parties further acknowledge that public water and/or sewer capacity to be created by expansion of current facilities, or construction of new facilities, is contingent on the availability of State and Federal funds for Water and Sewer Capital Programs. The parties agree that County shall not have any liability or any responsibility to provide allocations due to the inability of County to obtain necessary Federal or State funds or to acquire, in a reasonable time, easements necessary for construction of water and/or sewer projects or for Federal or State action, including operational moratoria, which may suspend, delay, or otherwise affect the allocation. It is understood that an allocation of capacity is not assignable or transferable from one development or section of a development to another except as provided in Section 18.122B of the Code. Developer hereby acknowledges that the conditions imposed in this section are established by Section 18.122B of the Code.

15.4. Force Majeure. In the event Developer is delayed or prevented from commencing construction of the Project provided by this Agreement within the period hereinabove specified by reason of war, riot, insurrection, strikes, epidemics, earthquakes, tornadoes, floods, explosions, governmental restraints, restrictions or limitations, or the unavailability of materials due to strikes or for any other reasonable delays (collectively "Force Majeure"), the performance required of Developer shall be excused for as long as such event of Force Majeure shall continue and the period of time specified herein for performance by the Developer shall be automatically extended by the number of days during which performance was precluded by the continuance of such event of Force Majeure.

15.5. No Use and Occupancy. No Certificate of Occupancy for any improvements within the property shown and described on the Approved Plans and Specifications shall be issued without the prior approval by the County of the adequacy of access, drainage and other essential public improvements pertinent to the property being certified, and compliance with all other applicable requirements of the building code.

15.6. Payment of Assessments and Charges. Nothing herein shall be construed as relieving Developer from the payment of all meter setting charges, water and/or sewer charges, front foot benefit assessment, in-aid-of-construction assessment, ad valorem taxes, supplemental in-aid-of-construction assessments (where applicable) and/or supplemental ad valorem taxes (where applicable), nor shall Developer be entitled to any set off on this account.

15.7. Assignment. Any assignment or pledge of this Agreement must be assented to, in writing, by the County prior to such assignment or pledge; otherwise, said assignment or pledge shall be invalid.

15.8. Notice. All correspondence regarding this Agreement and the work to be performed hereunder shall be mailed or personally delivered to the Developer, Orchard Meadows, LLC, 5032 Dorsey Hall Drive, Ellicott City, Maryland 21042; and to the County, the Director of Public Works, George Howard Building, 3430 Court House Drive, Ellicott City, Maryland 21043. Either party to this Agreement may change its address by written notice to the other party.

15.9. Exhibits. Each writing or plat referred to in this Agreement as an exhibit is hereby made a part of this Agreement.

15.10. Laws of Maryland. This Agreement was made and entered into in Maryland and is to be construed under the Laws of Maryland. As to Developer, this Agreement is intended to be a contract under seal and a specialty.

15.11. Recordation. This Agreement shall be recorded among the Land Records and Developer shall pay all taxes and costs related to the recording, if any.

15.12. Affidavit of Conflict. The Developer shall disclose any conflict of interest existing with the County or execute the Affidavit attached as Exhibit D.

IN WITNESS WHEREOF, Developer and County have caused their duly authorized officer, under seal, to execute this Amended and Restated Developer Agreement and Right of Entry Major Public Water System on the date first above written.

**DEVELOPER:
WITNESS/ATTEST:**

ELLCOTT MEADOWS, LLC
a Maryland limited liability company

BY: ODC-MEADOWS, LLC
a Maryland limited liability company
Managing Member

BY: _____ (SEAL)
L. Earl Arminger
Managing Member and
Authorized Signatory

STATE OF MARYLAND, _____ COUNTY, TO WIT:

I HEREBY CERTIFY that on this ____ day of _____, _____, before me, the subscriber, a Notary Public of the State of Maryland, in and for County aforesaid, personally appeared L. Earl Armiger, Managing Member and Authorized Signatory of ODC-Meadows, LLC, a Maryland limited liability company, Managing Member of ELLCOTT MEADOWS, LLC, a Maryland limited liability company, (the "Corporation"), and that he, as such officer being authorized so to do, executed the within Amended and Restated Developer Agreement and Right of Entry for the purposes therein contained by signing the name of the Corporation by himself as such officer and certified that this conveyance is not part of a transaction in which there is a sale, lease, exchange, or other transfer of all or substantially all of the property and assets of the Corporation.

AS WITNESS my Hand and Notarial Seal.

Notary Public

My Commission Expires: _____

[Signatures continue on the following page.]

ATTEST:

HOWARD COUNTY, MARYLAND

Lonnie R. Robbins
Chief Administrative Officer

BY: _____(SEAL)
Ken Ulman
County Executive

APPROVED:

James M. Irvin, Director
Department of Public Works

APPROVED FOR SUFFICIENCY OF FUNDS:

Stanley J. Milesky
Director of Finance

APPROVED FOR FORM AND LEGAL SUFFICIENCY

on this _____ day of _____, _____:

Margaret Ann Nolan
County Solicitor

STATE OF MARYLAND, _____ COUNTY, TO WIT:

I HEREBY CERTIFY that on this _____ day of _____, _____, before me, the subscriber, a Notary Public of the State of Maryland, in and for County aforesaid, personally appeared Ken Ulman, County Executive for Howard County, Maryland, a party to the within Amended and Restated Developer Agreement and Right of Entry who acknowledged the same to be the act of County.

AS WITNESS my Hand and Notarial Seal.

Notary Public

My Commission Expires: _____

THIS IS TO CERTIFY that this Developer Agreement and Right of Entry was prepared by Howard County, Maryland, a party to the Amended and Restated Developer Agreement and Right of Entry.

Tina D. Hackett, Chief
Real Estate Services Division

After Recording, Return To:

Howard County, Maryland
Real Estate Services Division
3430 Courthouse Drive
Ellicott City, Maryland 21043

**AMENDED AND RESTATED DEVELOPER AGREEMENT AND RIGHT OF ENTRY
MAJOR PUBLIC WATER SYSTEM
HOWARD COUNTY, MARYLAND**

Exhibit A

Orchard Meadows Service Area

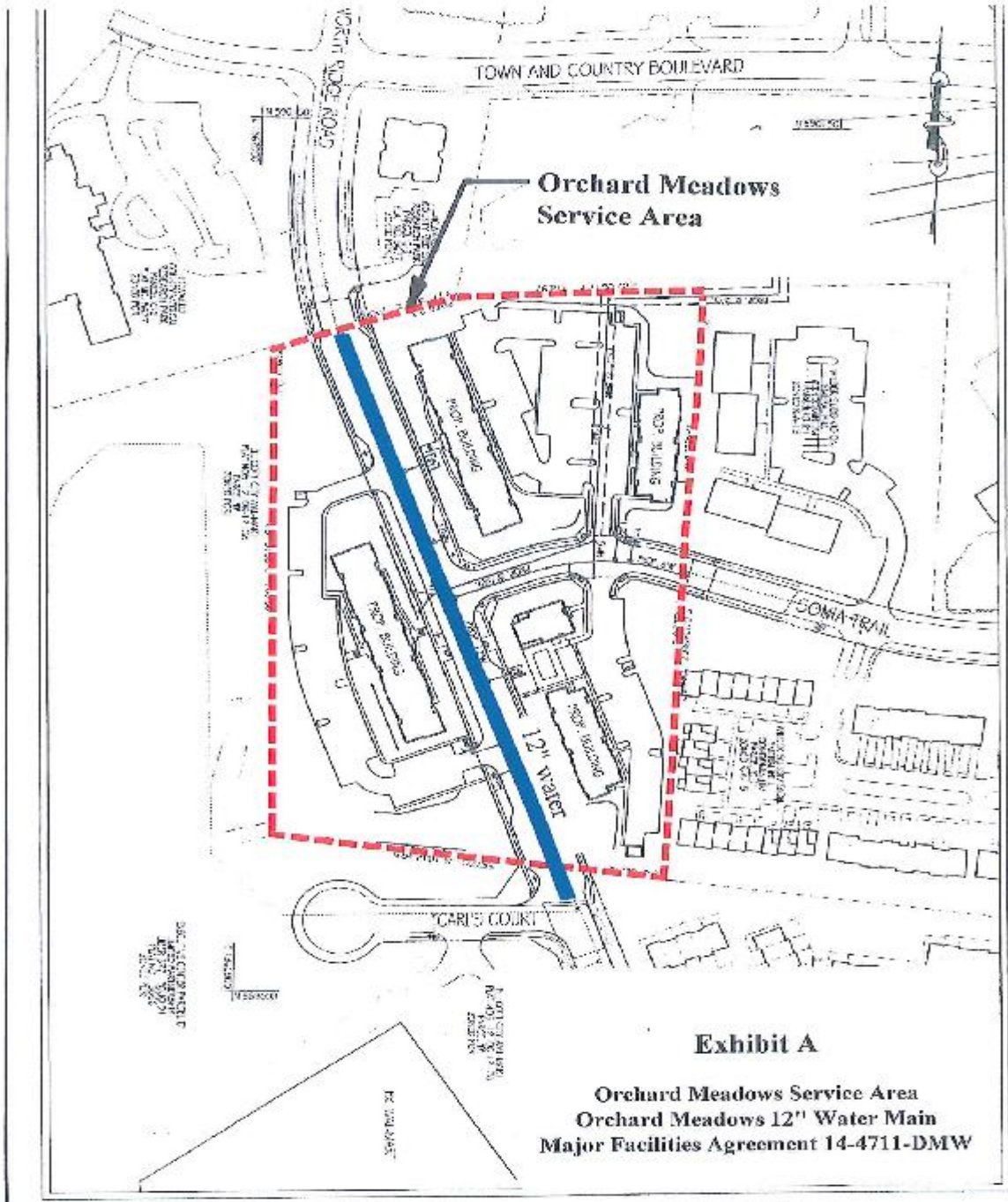


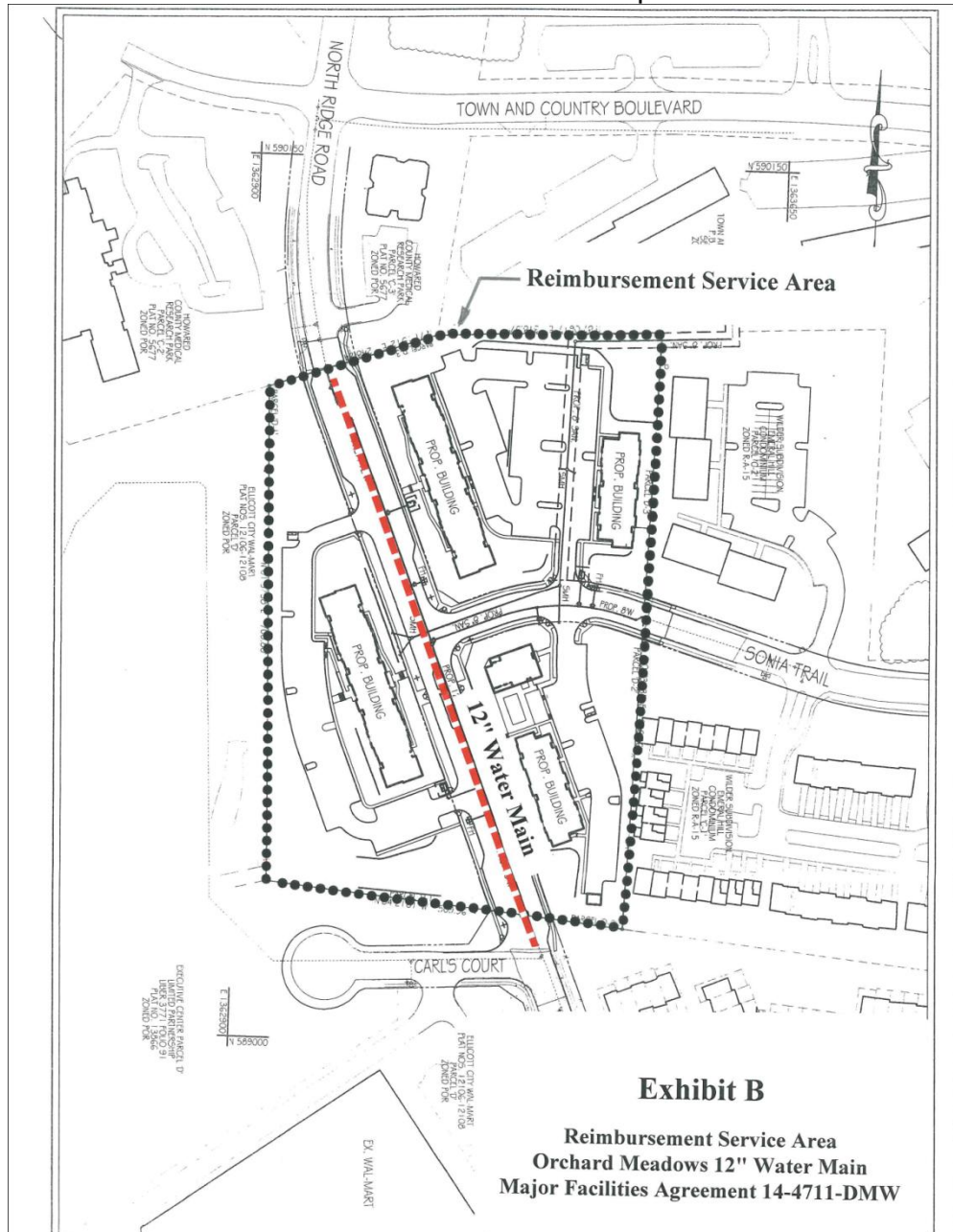
Exhibit A

**Orchard Meadows Service Area
Orchard Meadows 12" Water Main
Major Facilities Agreement 14-4711-DMW**

**AMENDED AND RESTATED DEVELOPER AGREEMENT AND RIGHT OF ENTRY
MAJOR PUBLIC WATER SYSTEM
HOWARD COUNTY, MARYLAND**

Exhibit B

Reimbursement Service Area Map and Lots



**AMENDED AND RESTATED DEVELOPER AGREEMENT AND RIGHT OF ENTRY
MAJOR PUBLIC WATER SYSTEM
HOWARD COUNTY, MARYLAND**

Exhibit C

Contractor's Monthly Application and Certificate for Payment,
AIA Document G702

APPLICATION AND CERTIFICATION FOR PAYMENT

AIA DOCUMENT G702

PAGE ONE OF

PAGES

TO OWNER: PROJECT: New Office & Warehouse

APPLICATION NO: 4

Distribution to:

0000 4th Street
Las Vegas, NV, 00000

VIA ARCHITECT:
Architects
000 Tropicana Blvd
Las Vegas, NV, 00000

PERIOD TO: 12/31/99

OWNER
 ARCHITECT
 CONTRACTOR
 GENERAL CONTRACTOR

FROM CONTRACTOR:
XYZ ELECTRIC

VIA ARCHITECT:
Architects
000 Tropicana Blvd
Las Vegas, NV, 00000

PROJECT NOS: NV000

000 Las Vegas Blvd.
Las Vegas, NV, 00000

VIA ARCHITECT:
Architects
000 Tropicana Blvd
Las Vegas, NV, 00000

CONTRACT DATE: 08/13/99

CONTRACT FOR: Elect. Systems VIA GENERAL CONTRACTOR: Burke And Associates

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract.
Continuation Sheet, AIA Document G703, is attached.

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: XYZ ELECTRIC

By: _____ Date: 12/31/99

State of: _____ County of: _____

Notary Public: _____

My Commission expires: _____

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, I, the undersigned Architect, certify that the Work for which the amount of \$_____ is being certified has been completed in accordance with the Contract Documents, and that the Contractor is entitled to receive the amount of \$_____ for the Work certified herein.

AMOUNT OF PAYMENT: \$_____

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this application and on the Continuation Sheet that are changed to conform with the amount certified.)

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA DOCUMENT G702 - APPLICATION AND CERTIFICATION FOR PAYMENT - 1992 EDITION - AIA ©1992
Users may obtain validation of this document by requesting a completed AIA Document D401 - Certification of Document's Authenticity from the Licensee.

Major Water Facilities
W/S Agreement No. 14-4711-DMW

CONTINUATION SHEET

AIA DOCUMENT G703

PAGE OF PAGES

AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT, containing
Contractor's signed certification is attached.
In tabulations below, amounts are stated to the nearest dollar.
Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 4
APPLICATION DATE: 12/31/99
PERIOD TO: 12/31/99
ARCHITECT'S PROJECT NO:

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		E THIS PERIOD	F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL		H BALANCE TO FINISH (C - G)	I RETAINAGE (IF VARIABLE RATE)
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD			COMPLETED AND STORED TO DATE (D+E+F)	% (G + C)		
1	Bid Depository Fee	\$1,500.00	\$1,500.00				\$1,500.00	100.00%	\$4,864.00	\$150.00
2	Equipment/Switch Gear (Materials Only)	\$14,871.00	\$9,607.00				\$9,607.00	66.39%	\$19,720.00	\$960.70
3	Light Fixtures (Materials Only)	\$22,087.00			\$2,367.00		\$2,367.00	10.72%	\$4,686.00	\$236.70
4	Fire Alarm - Rough	\$7,748.00	\$2,750.00				\$3,062.00	39.52%	\$2,082.20	\$306.20
5	Fire Alarm - Trim	\$2,082.00					\$21,110.00	100.00%	\$9,544.90	\$0.00
6	Office - Under Slab	\$21,110.00	\$10,555.00				\$5,850.10	38.00%	\$12,169.00	\$585.01
7	Office - Rough	\$15,395.00					\$7,634.00	100.00%	\$3,155.80	\$763.40
8	Office - Trim	\$12,169.00					\$1,934.20	38.00%	\$2,667.00	\$193.42
9	Warehouse - Under Slab	\$7,634.00					\$8,740.00		\$8,740.00	\$0.00
10	Warehouse - Rough	\$5,090.00			\$1,934.20		\$832.16		\$0.00	\$0.00
11	Warehouse - Trim	\$2,667.00								\$0.00
12	Site Underground	\$8,740.00								\$0.00
13	Subcontract Change Order # 1 - Add Lighting	\$832.16								\$0.00
GRAND TOTALS		\$121,525.16	\$34,412.00	\$26,285.30	\$2,367.00	\$53,064.30	43.67%	\$68,460.86	\$5,306.43	

SAMPLE

Users may obtain validation of this document by requesting of the licensee a completed AIA Document D401 - Certification of Documents' Authenticity

AA DOCUMENT G702 - CONTINUATION SHEET FOR G702 - 1992 EDITION - AA - ©1992
THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE, N.W., WASHINGTON, D.C. 20006-5232

G703-1992

**AMENDED AND RESTATED DEVELOPER AGREEMENT AND RIGHT OF ENTRY
MAJOR PUBLIC WATER SYSTEM
HOWARD COUNTY, MARYLAND**

Exhibit D
AFFIDAVIT

PURSUANT TO HOWARD COUNTY CODE SECTIONS 22.300 - 22.304 DISCLOSURE
OF INTEREST BY PERSONS DOING BUSINESS WITH HOWARD COUNTY

REFERENCE: Major Public Water System Developer Agreement
Orchard Meadows, Parcels D1, D2, D3, A Resubdivision of Hoenes Property, Parcel D,
(Contracts, Fee Simple Purchases or Sale of Land)

The undersigned do/does hereby declare that:

1. Neither he/she/they, nor any representative of his/her/their firm has/have provided, offered to provide, or will subsequently provide to any officer or employee of Howard County, whether elected or appointed, any benefits, monetary or otherwise, or material consideration from the profits or emoluments of the above-referenced contract, job, work or service for the County; and
2. No officer or employee of the County has accepted, received or will receive from the undersigned, any service or thing of value, directly or indirectly, upon more favorable terms than those granted to the public generally; and
3. No officer or employee of the County has received or will receive from the undersigned, directly or indirectly, any part of any fee, commission or compensation paid or payable by the County in connection with the above-referenced contract, job, work or service for the County, excepting, however, the receipt of dividends on corporation stock.

I/we do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing Affidavit are true and correct to the best of my/our knowledge, information, and belief.

DATE: _____

SIGNATURE: _____ **TITLE:** _____

FIRM: (If Applicable) _____

ADDRESS: _____