

The Washington City Council met in a continued session on Thursday, July 6, 2006 at the Municipal Building at 12:00 Noon. Present were: Judy Jennette, Mayor; Darwin Woolard, Mayor Pro tem; Ed Gibson, Councilman; Richard Brooks, Councilman; Mickey Gahagan, Councilman; Archie Jennings, Councilman; James Smith, City Manager (by conference call); Fred Holscher, City Attorney; and Reatha B. Johnson, Assistant City Clerk.

Also present were: Carol Williams, Finance Director; Allen Lewis, Public Works Director; Paul Spruill, County Manager; and Mike Voss, of the Washington Daily News.

Mayor Jennette called the meeting to order.

Councilman Gibson delivered the invocation.

**AGREEMENT BETWEEN GREENVILLE TIMBERLINE AND THE CITY OF
WASHINGTON REGARDING WATER AND SANITARY SEWER SERVICE
AND EASEMENT**

Mr. Chip Watkeys, representative from Greenville Timberline/North Carolina Land Partners, introduced himself and thanked Council for allowing this meeting on such short notice. Mr. Watkeys stated they had reviewed the document and agree with most of everything, but would like a little clarification on item # 4.

Mr. Holscher, City Attorney, stated he would like to make it clear that everyone understood his position. He also represents Greenville Timberline and does just as much for them folk as he does for the City, and because of that the City Manager (and rightly so) hired another lawyer to prepare this document on behalf of the City. Mr. Holscher explained that he could not give Greenville Timberline any advice on this agreement as to what he believes to be good or bad. Mr. Holscher said he had spoken briefly this morning with Michelle Manners, their attorney in Massachusetts, who had looked over the agreement and had express some concerns to him. On item # 4, having closed both the loans that they have on this property, (which is over \$10 million) he doubted very seriously that any lender is going to subordinate the \$10 million loan to this agreement with such a short notice. Also, he doubted if a local lender is going to lend anyone \$200,000 on a lot subject to this agreement.

Mr. Holscher, City Attorney, and James Smith, City Manager made it clear that this agreement only covered the 55 lots and does not cover any of the Condominiums.

Mr. Watkeys stated he wired Mr. Fred Holscher \$69,000 to pay for the engineering fees; and Mr. Holscher said he received the funds in his office that morning.

Mr. Spruill, County Manager, stated that the County will be the regulator of any fire issues for at least the next 3- 5 years.

Mr. Spruill also stated that one significant detail that needed clarification with the developer was the fact that Exhibit "B" is missing and that the specific location of the lift station has not been determined yet. One reference in the document that is causing concern is the statement saying the privately constructed condos sewer system (which you and I both know will be behind the lift station) would be gravity construction regardless of the lift station location. If the developers are not able to satisfy the City, then the City will have access maximum 24/7 on a permanent basis to the lift station that would be located behind the gate and they will not be able to satisfy this, but if it is located on the public side then they have no problem. Mr. Smith stated he understand it from an engineering standpoint in that the location of the lift station would cause you to have to pump, the City would be willing to do an addendum to the agreement.

Council convened for a break so that each party could contact their lawyer, and reconvened at 1:00 p.m.

The City Council and the developer reached an agreement that calls for the City to provide water and wastewater-treatment services for the project. The developer will build the wastewater-treatment infrastructure, which includes sewer lines and a pump station, to city-approved specifications. After five years, the city acquires the infrastructure for \$1.

Listed below are the items the City and Greenville Timberline agreed on:

1. All exhibits attachments are due on Monday 7-10-2006
2. All amendments made within 30 days (by August 14th, 2006 City Council meeting).
3. A complete agreement will be prepared for execution.

On motion of Councilman Gahagan, seconded by Mayor pro-tem Woolard, Council authorized Mayor Jennette to entered into an agreement with Greenville Timberline/NC Land Partners with respect to water and sanitary sewer service and easement agreement to the old Whichard's Beach property, that the agreement presently does not contain the attached exhibit, however, the exhibits will be provided to the Council meeting on Monday night and all parties agree to the execution today and then again Monday of the document.

WATER AND SANITARY SEWER SERVICE AND EASEMENT AGREEMENT

THIS WATER AND SANITARY SEWER SERVICE AND EASEMENT AGREEMENT (the "Agreement") is entered into and made as of the _____ day of _____, 2006, by and between the **CITY OF WASHINGTON, NORTH CAROLINA**, a municipal corporation (hereinafter referred to as the "**City**"), and [**GREENVILLE TIMBERLINE – Insert correct name and legal status of the Developer**] (hereinafter referred to as the "**Owner/Developer**").

W I T N E S S E T H

WHEREAS, the Owner/Developer warrants that it holds legal title to the property described in Paragraph 2 below (the "Subject Property") and that the holders of any and all liens and encumbrances affecting such property will subordinate their interests to this Agreement; and

WHEREAS, the Owner/Developer intends to develop a portion of the Subject Property as single family residential building lots containing approximately 55 lots (the "Single Family Development") and the balance of the Subject Property as an approximately 300 to 450 unit residential condominium project (the "Condominium Development"); and

WHEREAS, Subject Property is in an unincorporated part of Beaufort County, North Carolina (the "County"); and

WHEREAS, the County has conditioned the issuance of its development approvals for the Subject Property on Owner/Developer entering into an agreement whereby the City supplies water and sanitary sewer service to the Subject Property; and

WHEREAS, pursuant to North Carolina General Statute Sections 160A-312, the City may provide water and sanitary sewer service outside of its corporate limits; and

WHEREAS, the Owner/Developer desires that the City provide water and sanitary sewer service to the Subject Property, in compliance with the laws and regulations of the City, and of all other governmental authorities; and

WHEREAS, the City is authorized to enter into contracts for providing water and sanitary sewer service pursuant to North Carolina General Statutes Section 160A-322; and

WHEREAS, the City is authorized to contract with the Owner/Developer for improvements to water and sanitary sewer systems pursuant to North Carolina General Statutes Section 160A-320; and

WHEREAS, it is the purpose of this Agreement to clearly set forth the understanding and agreement of the parties concerning the matters contained herein.

1. **Incorporation.** The recitals herein contained and true and correct and are incorporated herein by reference.

2. **Ownership.** The Owner/Developer represents that it is the present owner of the following described property (hereinafter referred to as the "Subject Property") which is described on **Exhibit "A"** attached hereto and incorporated by reference

3. **Title Opinion/Certification.** The Owner/Developer will provide to the City, in advance of the City's execution of this Agreement, a title opinion of an attorney licensed in North Carolina, or a certification by a title company authorized to do business in North Carolina, showing marketable title to the Subject Property to be in the name of the Owner/Developer and showing all liens, mortgages, and other encumbrances.

4. **Subordination/Joinder.** All liens, mortgages, and other encumbrances not on the Subject Property, must be subordinated to the terms of this Agreement. It shall be the responsibility of the Owner/Developer to promptly obtain the said subordination, in form and substance acceptable to the City, prior to the City's execution of the Agreement.

5. **Sewer Improvements and Sewer Service.**

5.1 **Septic Tank/Pumps.** With respect to the Single Family Development, each individual lot will be served by a septic pump for sanitary sewer purposes. Each tank will be emptied by use of an ejector pump which will pump the sewage from each septic tank into a force main to be owned by the Single Family Development Home Owners Association (hereinafter referred to as the "Association Force Main") which will connect to the New Pump Station, which is described in Section 5.3 below. The septic tanks, injection pumps and force mains with respect to the Single Family Development described in this Section 5.1 are collectively referred to as the "Tank and Pump Collection System". The Tank and Pump Collection System will transport sanitary sewage from the Single Family Development to the New Pump Station. The Tank and Pump Collection System will be sealed in accordance with plans and specifications approved by the Inspecting Engineers (as defined in Section 5.4 below) so as to ensure that the Tank and Pump Collection System will not be invaded by floodwater or ground water or any material other than sanitary sewerage.

5.2 **Condominium Gravity Flow System.** Owner/Developer will design and install a gravity flow sanitary sewer line as approved by the Inspecting Engineer from the Condominium Development to the New Pump Station which will provide sanitary sewer service for the Condominium Development (the "Condominium Gravity Line"). The Condominium Gravity Line will be in the location shown on **Exhibit "B"** attached hereto and incorporated by reference.

5.3 **New Pump Station and 8" Force Main.** Owner/Developer will design and construct a new pump station (the "New Pump Station") and an 8" force main (the "8" Force Main") which connects the New Pump Station to the City's pump station located at Fountain Boat Works in the location shown on **Exhibit "B"**. The New Pump Station will be designed and constructed so that it will have adequate capacity to pump all of the sanitary sewage generated by the Single Family Development and the Condominium Development when both are fully built out and operational, together with handling the sanitary sewage from certain additional existing developments which are listed on **Exhibit "C"** attached hereto and incorporated by reference. The New Pump Station will be sealed in accordance with plans and specifications approved by the Inspecting Engineers so as to ensure that the New Pump Station will not be invaded by floodwater or ground water or any material other than sanitary sewerage.

The New Pump Station will also be designed to include a supplemental chemical feed system in connection with the processing of the sanitary sewage from the Single Family Development and the Condominium Development as approved by the Inspecting Engineer.

5.4 **General Construction Requirements.** The Tank and Pump Collection System, the Condominium Gravity Line, the New Pump Station and the 8" Force Main (collectively the "New Sewer Improvements") shall be constructed at the sole

cost and expense of the Developer and pursuant to engineering plans and specifications which are to be reviewed and approved by Rivers & Associates, Inc. of Greenville NC (the "Inspecting Engineers") and in accordance with all applicable local, state and federal environmental and public health laws, ordinances and regulations. Owner/Developer will provide reasonable access at all times to Inspecting Engineers to permit thorough inspections of the work in order to ensure that the work is being done in accordance with the approved plans and specifications and applicable laws, ordinances and regulations. The cost of the Inspecting Engineers for their work in reviewing the plans and inspecting the construction of New Sewer Improvements will be borne by the Owner/Developer in accordance with the fee schedule attached hereto as **Exhibit "D"**. Owner/Developer will be responsible for obtaining all required construction and operational permits as well as all easements necessary for the location, installation, maintenance or repair and replacement of the New Sewer Improvements. Upon request by the City, Owner/Developer will provide certified true copies of all permits which it has obtained in connection with the New Sewer Improvements to the City. The Owner/Developer will provide easements for the placement of all facilities to be owned by the City which will be in form and substance reasonably satisfactory to the City and will contain an express provision providing that such easements may be assigned to the City and that whether assigned or not, the City has the right to utilize such easements for the purposes for which they were granted. All costs incurred in connection with such easements shall be borne by the Owner/Developer.

5.5 Completion of Construction. All improvements to be owned by the City will be constructed within five years of the execution hereof or sufficiently in advance of the issuance of a certificate of occupancy for the structures to be served to allow testing and approval but in no case less than 90 days before issuance of any certificate of occupancy..

5.6 Operation of the Pump and Tank Collection System. Prior to conveying any lot in the Single Family Development, Owner/Developer will form a homeowner's association (the "Association") which shall expressly assume all costs in connection with the operation, maintenance, repair and replacement of the Pump and Tank Collection System including, without limitation, the establishment, as part of the annual assessments payable by the owners of the lots in the Single Family Development, a charge to be placed in a reserve account for the purposes of operating, maintaining, repairing and replacing the Pump and Tank Collection System. The property covenants, conditions and restrictions and bylaws and articles of incorporation establishing the Association (collectively, the "Organizational Documents") shall be subject to the review of the City with respect to those provisions dealing with the Pump and Tank Collection System and in addition to providing for the reserve account referenced above, will also (i) require that each septic tank be pumped out at least once each calendar year and (ii) that in the event the City exercises its rights under this Section 5.6, that it will have the power to place a lien against all the property in the Single Family Development for its costs incurred in exercising any such rights to the extent such costs are not promptly reimbursed by the Association. The City or its agents shall at all times have the right to enter the Single Family Development to review and inspect the operation of the Pump and Tank Collection System to ensure that the requirements set forth herein are being complied with, to ensure that the Pump and Tank Collection System is being properly maintained, repaired and, replaced as necessary, and to ensure that all applicable governmental laws, ordinances and regulations, and the conditions of all permits, are being fully complied with. If, in the exercise of its reasonable judgment, City determines that the requirements hereunder are not being complied with or that the Pump and Tank Collection System is not being appropriately maintained, repaired or replaced or that any applicable laws and regulations or permit conditions are not being complied with, then in addition to all other rights and remedies that City may have, it will also have the right to cause such conditions to be remedied and to be promptly reimbursed for all cost incurred by the City in remedying such conditions from the Owner/Developer or from the Association. Owner/Developer will include in the Organizational Documents that the Association will agree to promptly reimburse City for all such costs.

5.7 Ownership of Sewer Improvements. The Pump and Tank Collection System shall at all times be owned by either the Owner/Developer or by the Association and shall not be considered part of the City's public sewer system. Upon

completion of the Condominium Gravity Line and the New Pump Station, those facilities except those located on the property of the Condominium Development will be conveyed to the City, together with any easements associated therewith, for the sum of One Dollar (\$1.00) and from and after the date of such conveyance, the City will be responsible for all maintenance, repair and replacement obligations with respect to the Condominium Gravity Line and the New Pump Station, except within the property of the Condominium Development.

5.8 Rights and Charges. Owner/Developer will be required to pay all customary impact fees and connection fees on a per unit basis related to the provision of sewer service by City regardless of whether any groups of units or buildings are served by a master meter. Each owner of a lot in the Single Family Development and each condominium association or facility owner will pay a monthly sanitary sewer collection charge which is equal to twice the then current rate charged to regular residential customers residing inside the City limits.

6. Water Service.

6.1 Construction Obligations. Owner/Developer shall be responsible installing water lines in public and private streets throughout the Single Family Development and connecting them to properly working water meters placed in a conveniently accessible location on each lot within the Single Family Development and to conveniently accessible master water meters for each building in the Condominium Development. Such water lines shall be of sufficient diameter to provide full residential water service to each home to be built in the Single Family Development and each condominium unit to be constructed in the Condominium Development. Additionally, if determined by the Inspecting Engineers that upgrades to existing portions of the City water lines are needed in order to provide adequate fire service to multi-story condominium buildings, Owner/Developer will be responsible for such upgrades. All construction work required for the installation of the water lines and all water meters including any fire protection upgrades, shall be done in accordance with plans and specifications approved by the Inspecting Engineers and all applicable governmental laws and regulations and shall all be done at the sole cost and expense of Owner/Developer. Owner/Developer shall provide such access to the Inspecting Engineers may be reasonably required for the Inspecting Engineer to confirm that all such construction is in accordance with the approved plans and specifications and all applicable laws and regulations. Owner/Developer will be responsible for paying all costs of the Inspecting Engineer for reviewing such plans and specifications and conducting such inspections in accordance with the rate schedule set forth on **Exhibit "D"**. The ownership of all water lines up to the individual meters and the meters on lots in the Single Family Development and all water lines up to the master meter for each building in the Condominium Development and all master meters will be conveyed to the City for One Dollar (\$1.00) upon the completion of such lines and after such conveyance, the operation, maintenance and repair of such lines up to such meters shall be the responsibility of City. Owner/Developer shall be responsible, at its sole cost and expense, for obtaining all necessary easements as may be necessary to allow the installation, operation, maintenance and repair of such lines. All such easements shall be in form and substance reasonably satisfactory to the City and shall expressly provide that they will be assigned to the City.

All improvements to be owned by the City will be constructed within five years of the execution hereof or sufficiently in advance of the issuance of a certificate of occupancy for the structures to be served to allow testing and approval but in no case less than 90 days before issuance of any certificate of occupancy.

Costs. Owner/Developer will be responsible paying all impact fees, and connection fees customarily charged by the City with the extension of water service to new customers on a per unit basis regardless of whether any groups of units or buildings are served by a master meter. Monthly water fees will be charged by the City to each user in accordance with its customary rate schedule for supplying water service to residential users outside the City's limits.

7. Obligations. Should the Owner/Developer fail to undertake and complete its obligations as described in this Agreement, to the City's specifications, then the City shall give the Owner/Developer thirty (30) days written notice to commence and ninety

(90) days to complete said required obligation. If the Owner/Developer fails to complete the obligations within the ninety (90) day period then the City, without further notice to the Owner/Developer, or its successors in interest, may, without prejudice to any other rights or remedies it may have, perform any and all of the obligations described in this Agreement. Further, the City is hereby authorized to assess the actual and verified cost of completing the obligations required under this Agreement against the Subject Property. The lien of such assessments and the liens referred to in Section 5.6 hereof shall be superior to all others, and all existing lienholders and mortgagees, by their execution of the subordination or joinder documents, agree to subordinate their liens or mortgages to the City's said liens or assessments.

8. **Enforcement.** In the event that enforcement of this Agreement by the City becomes necessary, and the City is successful in such enforcement, the Owner/Developer shall be responsible for all costs and expenses, including attorneys' fees whether or not litigation is necessary and if necessary, both at trial and on appeal, incurred in enforcing or ensuring compliance with the terms and conditions of this Agreement which costs, expenses and fees shall also be a lien upon the Subject Property superior to all others. Should this Agreement require the payment of any monies to the City the recording of this Agreement shall constitute a lien upon the property for said monies, until said are paid, in addition to such other obligations as this agreement may impose upon the Subject Property and the Owner/Developer. Interest on unpaid overdue sums shall accrue at the rate of eighteen percent (18%) compound annually or at the maximum rate allowed by law.

9. **Indemnification.** The Owner/Developer shall indemnify and hold harmless the City from and against all claims, demands, disputes, damages, costs, expenses (to include attorneys' fees whether or not litigation is necessary and if necessary, both at trial and on appeal), incurred by the City as a result, directly or indirectly, of the use or development of the Subject Property, by the City or by third parties, except those claims or liabilities caused by or arising from the gross negligence of the City, or its employees or agents.

10. **Notices.** Where notice is herein required to be given, it shall be by certified mail return receipt requested, hand delivery or by reputable overnight courier service. Any notice given pursuant to provisions hereof shall be deemed given on the date such notice is received if delivered by hand or by reputable overnight courier service and on the second business day after it is mailed if sent by certified mail, return receipt requested. Said notice shall be sent to the following, as applicable:

OWNER/DEVELOPER'S REPRESENTATIVES:

CITY'S REPRESENTATIVES:

Should any party identified above change, it shall be said party's obligation to notify the remaining parties of the change in a fashion as is required for notices herein. It shall be the Owner/Developer's obligation to identify its lender(s) to all parties in a fashion as is required for notices herein.

11. **Captions.** The captions used herein are for convenience only and shall not be relied upon in construing this Agreement.

12. **Binding Effect.** This Agreement shall run with the land, shall be binding upon and inure to the benefit of the Owner/Developer and its assigns and successors in interest including, without limitation, the individual owners of lots in the Single Family Development and owners of units in the Condominium Development, as well as the Association and any association formed by or on behalf of the owners of units in the Condominium Development, and the City and its assigns and successors in interest. The Owner/Developer agrees to pay the cost of recording this document in the Public Records of Beaufort County, North Carolina, and shall reimburse the City for the preparation of this Agreement in such amount to be determined by the City. This Agreement does not, and is not intended to, prevent or impede the City from exercising its legislative authority as the same may affect the Subject Property.

13. **Severability.** If any part of this Agreement is found invalid or unenforceable in any court, such invalidity or unenforceability shall not affect the other

parts of this Agreement, if the rights and obligations of the parties contained herein are not materially prejudiced and if the intentions of the parties can be affected.

14. **Construction of Agreement.** This Agreement concerns property situated in the State of North Carolina and shall be deemed to be a contract made under the laws of said State and interpreted in accordance with said laws.

15. **Amendment and Waiver.** This Agreement may not be amended or modified in any way except by instrument in writing executed by all parties hereto.

The remainder of this page intentionally left blank.

IN WITNESS WHEREOF, the Owner/Developer and the City have executed this Agreement as of the day and year first above written.

OWNER/DEVELOPER

s/Chip Watkeys
CHIP WATKEYS

ACCEPTED FOR THE CITY OF WASHINGTON

s/Judy Jennette
JUDY JENNETTE
MAYOR

Date: 7/06/2006

ATTEST:

s/Reatha B. Johnson
REATHA B. JOHNSON
ASSISTANT CITY CLERK

Beaufort County, North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

Judy Jennette & Reatha B. Johnson

s/Diana J. Toler
Diana J. Toler
Notary Public

On motion of Councilman Gahagan, seconded by Councilman Brooks, Council unanimously adjourned the meeting at 1:15 p.m.

Rita A. Thompson, CMC
City Clerk

Notes taken by Reatha B. Johnson, Assistant City Clerk