

The Washington City Council met in a continued session on Monday, October 29, at the Municipal Building at 4:30 P.M. Present were: Judy Jennette, Mayor; Darwin Woolard, Mayor Pro tem; Ed Gibson, Councilman; Richard Brooks, Archie Jennings, Councilman; Mickey Gahagan, Councilman; James Smith, City Manager; and Rita A. Thompson, City Clerk; and Franz Holscher, City Attorney.

Also present were: Carol Williams, Finance Director; Keith Hardt, Electric Director, Bobby Roberson, Planning and Community Development Director; Lynn Lewis, Tourism Development Authority Director; Allen Lewis, Public Works Director; Mike Voss of the Washington Daily News.

Mayor Jennette called the meeting to order and Councilman Gibson delivered the invocation.

APPROVAL/AMENDMENTS TO AGENDA

On motion of Mayor Pro tem Woolard, seconded by Councilman Brooks, Council unanimously approved the agenda, as submitted.

TOURISM DEVELOPMENT AUTHORITY – EVENTS MEETING FOLLOW UP

Lynn Lewis, Tourism Development Authority Director, stated that in August a meeting was held with city departments, special event planners and the County Health Inspection Office so everyone could talk about issues involved in special events. A number of areas looked at were parking, opportunities for growth for future events, security, restrooms, cleanup, mapping, etc. The overall conclusion was that there are great partnerships between the event planners and the city departments. They decided to work together on future projects.

Kristi Hardison, Events Planner with the Recreation Department, stated that they are trying to put a list together of tangible needs, specifically, barricades when alcohol is being served. Another need is mapping for Public Works since areas are being extended outside the downtown area. Also, the Special Events Policy created by Carolyn Stroud needs to be reviewed for any new changes or modifications. They are also looking for consistencies for every event.

Mayor Jennette asked that public statements be made before an event that bathrooms are only open for the boaters. Ms. Lewis stated they are hoping that permanent bathrooms will be added to the priority list. Councilman Jennings asked that the sign be changed to “guests” not “guest.” Ms. Hardison pointed out that two bathrooms are open to the public if there is not a special event going on because the bathrooms cannot handle that much traffic other than Music in the Streets.

Councilman Gibson stated that this is something Council needs to take action on and not wait. He pointed out that Council turned a grant back we had for the amount of \$100,000.

JAMES TRIPP, ENTERPRISE FUNDS CONTROLLER – CITY FINANCIALS

James Tripp stated that two areas that can be looked at to increase revenues and decrease expenditures is: (1) hangar rental and (2) fuel sales. He stated they have done some work in the hangar area. Tradewinds has indicated they would like to see some self service fuel tanks for pilots. That would bring in additional revenues after hours. The fuel trucks are \$1400 a month and by the time you finish paying for the insurance and repairs, it almost eats up the net profit from the fuel sales. We have a five year contract and there is three more years left of the contract. If we can get some grant funding, Council could

choose if they would like to have an option of purchasing the self serving fueling system prior to the expiration of the fuel contract which will help reduce some of the expenses. The fuel trucks also have a hazard that comes with them. We have two 12,000 gallon tanks and two trucks that hold a few thousand gallons. The objective would be to get rid of those two trucks that are costing us \$1400 a month in rental fees. A self serving fuel farm would cost about \$50,000 plus insurance.

Councilman Gahagan questioned whether this is done a lot. Mr. Tripp stated there are not a whole lot of airports that do it, but that is the way it is going now. We have been subsidizing Tradewinds operations, but it appears that Tradewinds is losing money. If we run the program ourselves without subsidizing Tradewinds, for the same number of hours, it would be about \$4,000 to \$6,000 a month loss. Mr. Smith stated that it will take some time to get the business up and we need more hangars. To pay for hangars over 20 years we would have to pay \$250.00 a month which is well above the market. We need to sell more fuel which means we need to drop the price to be more competitive. The only way to drop the price is to get rid of some of the expense.

Councilman Jennings stated that we need to look at this before making a decision. One idea would be to sell gas much more cheaper, attracting more activity and capture some of the market. He asked what a truck would cost. Mr. Tripp did not know.

Councilman Gibson asked how can you increase traffic if you don't have hangars? Mr. Tripp stated they might stop in Washington to fuel up if its cheaper. He stated we need some large jets to fuel up.

Mr. Tripp stated that, in regards to what Council wants as a financial prospective, is to show a 12 month period on what expenses might be on a revenue over expenditures basis, and he will continue to work on that. Councilman Jennings stated he would love to see a P&L showing a rolling twelve might be helpful, but a year to date to show where we stand. Some data Council receives by the calendar year is a year old, and then fiscal year data is received and it is mixed and matched. He stated he would like to see a consistent report, either fiscal year or calendar year, and at least year to date.

Mr. Smith stated that staff can produce either one internally, but if you want to see what comparable, they have to get that from Electricities, etc. and it is usually a year old. Councilman Jennings stated that in the snapshot last month, there were payments that didn't show up in those trends so it could be more harmful than helpful.

Councilman Gahagan stated he would like to see a year to date instead of budgeted numbers with the Enterprise Fund Manager pointing out extraordinary expenses, or extraordinary revenues as well so we can anticipate shortfalls, surprises, etc.

BOBBY ROBERSON – UPDATE ON US17 SOUTH WETLANDS PARK

Bobby Roberson, Planning and Development Director, passed out a map on the property the City of Washington currently owns. The Singleton Property is the small portion that contains approximately 2 acres. The McMullan tract contains approximately 160 acres, a gift from our previous City Attorney. The other portion is 114 acres of the Bargar Property. (Fred Holscher has been trying to converse with the owner for about four and one-half months). A grant has been filed with Cleanwater Trust Fund to reimburse the City for the grant, and there has been a problem with the communication with the legal lady who is staffing it at Cleanwater Trust Fund. One of the conditions of the grant was to file a preliminary application to close the property. A preliminary application has

been sent in to close on the property and she has not responded. The summary is we have approximately 276 acres in control by the City.

The City applied for another \$100,000 grant to upgrade the Singleton Property. By the time we went for RFP's, the price of \$256,000 came in. If you exceed the amount of the CAMA, the City would have to pick up the difference. Mr. Roberson stated he considered eliminating the bathrooms and attendant. Originally they said yes, and then the State sent a letter back and said that because of the amount of money involved, the best thing for the City to do is to return the \$100,000 and re-apply for a different application.

Mr. Smith stated they have had two meetings with the grant agencies and they have laid out a good program for the City to maximize the amount of money available. All the grants the State gave out have run over, so he thinks that we are one of the several grants that ran over, and the State will use that to finish other grants and give us a larger amount next year. The parking and landscaping was the minimum and include restrooms, board walk and canoe and kayak launching area. The Committee of 100 would like other facilities added either now or in the future with a larger boardwalk complex, access to the river, a fishing pier, picnic areas, camping, etc., but our share of that is not presently available.

Councilman Jennings and Councilman Gahagan stated that Partnership for the Sounds might be a viable partner. Mayor Jennette stated she would bring it up to them.

Councilman Jennings mentioned a bike/pedestrian bridge that runs long the old 17 Bridge to get people on foot or on bike across the river safely, and all this could be tied in.

Mayor Jennette stated we might need to find someone to do a plan for this. Mayor Jennette stated she would get information from Columbia.

Mr. Roberson stated this project is called the Tar River Nature Park. Mayor Jennette suggested that since Mr. McMullan donated the property, something there should be named after the McMullan's.

Councilman Gahagan stated he would like a report on this every month.

BOBBY ROBERSON – UPDATE ON 2007 CDBG (COMMUNITY DEVELOPMENT BLOCK GRANT)

Mr. Roberson stated that our application was rated number one in the State of North Carolina funding cycle. The total amount of the grant is \$850,000. It is a two part program, "A" (West 7th Street) is where 5 houses will be rehabbed, replacing the existing 4" waterline with an 8" waterline, and replace substandard 6" V.C.P. sewer line and resurface the street. Subarea "B" (West 6th Street) will include rehabbing 5 houses and acquiring 3 houses and relocating residents. The 2" waterline will be replaced with a 8" waterline, and the substandard 6" V.C.P. sewer line will be replaced and the street resurfaced.

Mayor Jennette asked that home ownership be encouraged in that area.

Mr. Roberson will look into charging more for cutting the vacant lots.

Councilman Jennings asked is this could become more than a lien against the property, like a civil offense. Mr. Holscher stated he would have to look into this again. Also, a code amendment was done so a notice did not have to be sent out each time the lot was cut. Mr. Roberson stated that fourteen years ago, when a lien became half of the appraised value, we went after collections and received \$65,000. He stated we could look at that again.

**DISCUSSION - DRAFT ORDINANCE CREATING THE WASHINGTON
UTILITY COMMISSION**

Mr. Smith stated this is an issue that Councilman Gibson asked that another Utility Commission be put together. He stated he has laid out some recommendations: (7) members, (4) residents, (2) Washington Park (1) Bath and (1) at large, a Council liaison, and the City Manager or his designee; people appointed get a fundamental understanding of the utilities and its relationship with the Power Agency, interagency agreements, tour of the facilities; meetings would be open to the public; non-voting positions, but come to a consensus, or report the majority and minority recommendations.

The Commission would convey information to the community. They would not deal with individual utility bill problems. Councilman Jennings questioned quarterly meetings. Mr. Smith stated they could have meetings more often if they wanted to.

Mayor Pro tem Woolard suggested it be an "Advisory Board" instead of a "Commission." Council agreed.

Franz Holscher will re-draft the information into ordinance form.

DISCUSSION – NC LAND PARTNERS WATER SEWER AGREEMENT

Mr. Holscher stated that on October 8th, Council approved this agreement. After the City Manager met with the County Manager, it was recommended that the County impact fee, required for each water contract in order to allow the County to pay its related debt service on the impact infrastructure, be more clear in the agreement. As a result, a section has been added to cover that. Mr. Holscher referred to the highlighted changes.

Councilman Jennings asked if there is anything else that is inconsistent, like annexation, if we couldn't really annex them. Mr. Lewis stated that if and when we desire to annex, that language is still in there.

Discussion was held on whether to go ahead and approve this now. It was pointed out the lots go on the market next weekend. Mr. Holscher stated this agreement was approved on October 8th, and this is an amendment.

After discussion, on motion of Councilman Gahagan, seconded by Mayor Pro tem Woolard, Council unanimously approved the NC Land Partners Water Sewer Agreement, as amended, subject to receiving an updated title and receipt of lien subordination.

Councilman Jennings agreed this is a positive turn of events, but reminded Council that we didn't exactly wind up with what we thought we would wind up with last time. This time, by virtue of the relationship Franz's Office has with NC Land Partners, we have basically brought this agreement to bear without Counsel representation. He thinks we need to be very sure of exactly what we think we are getting, and all the questions answered.

**MODIFIED WATER AND SANITARY SEWER
SERVICE AND EASEMENT AGREEMENT**

THIS MODIFIED WATER AND SANITARY SEWER SERVICE AND EASEMENT AGREEMENT (the "Modified Agreement") is entered into and made as of the 31 day of October 2007, by and between the **CITY OF WASHINGTON, NORTH CAROLINA**, a municipal corporation (hereinafter referred to as the "City"), and **NC LAND PARTNERS, LLC**, a Delaware Limited Liability Company, whose address is: 665 Simonds Road,

Williamstown, Ma. 01267 (hereinafter referred to as the "Owner/Developer").

W I T N E S S E T H

WHEREAS, the City and the Owner/Developer entered into that certain Water and Sanitary Sewer Service and Easement Agreement (the "Original Agreement") dated July 6, 2006 and recorded in Deed Book 1558, Page 460, Beaufort County Registry. As more specifically provided for therein, said Original Agreement established the respective rights, obligations, and responsibilities of the parties associated with, among other things, the design, installation, construction, inspection, maintenance, and ownership of both sewer improvements as well as sewer service and water service infrastructure necessary in order for the City to supply sanitary sewer and water service to the Subject Property, as therein and hereafter defined, and the previous as well as subsequent development of said Subject Property; and

WHEREAS, the Owner/Developer originally intended 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, Owner/Developer has developed as single family residential building lots and conveyed to third party individual lot owners approximately 40 of said 55 lots in the Single Family Development portion of the Subject Property; and

WHEREAS, Owner/Developer has abandoned its intention to develop said balance of the Subject Property as an approximately 300 to 450 unit Condominium Development and now intends to develop said balance of the Subject Property into approximately 58 single family residential building lots; and

WHEREAS, Owner/Developer and the City desire said Original Agreement, except as may be modified herein, to continue in force, run with the land, and control their respective rights, obligations, and responsibilities thereunder as the same pertain to said Single Family Development as originally intended. The parties also desire said Original Agreement, except as may be modified herein, to continue in force, run with the land, and control the rights, obligations and responsibilities of those third party individual lot owners, their respective successors and assigns, of said lots heretofore and hereafter conveyed by Owner/Developer in the Single Family Development as originally intended; and

WHEREAS, Owner/Developer and the City desire to nullify and void the respective rights, obligations, and responsibilities under said Original Agreement that pertain to the intended Condominium Development which Owner/Developer has now abandoned. The parties further desire to expand their respective rights, obligations, and responsibilities as well as the rights, obligations, and responsibilities of those third party individuals to whom said lots have been or will be conveyed thereunder and hereunder that pertain to the Single Family Development as originally intended under said Original Agreement to said balance of the Subject Property. Hereinafter, Single Family Development shall mean and refer to both the Single Family Development as originally intended under the Original Agreement as well as said balance of the Subject Property that Owner/Developer now intends to develop as single family residential building lots; and

WHEREAS, save and excepting those lots heretofore conveyed to third party individual owners and which continue to be governed by said Original Agreement, except as may be modified herein, 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 Modified Agreement; and

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

WHEREAS, the County has conditioned the issuance and additional 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 Section 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 Statute 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 Statute Section 160A-320; and

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

NOW, THEREFORE, in consideration of ten dollars (\$10.00) and other valuable considerations, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereto do agree as follows.

1. **Incorporation.** The recitals herein contained are true and correct and are incorporated herein by reference.
2. **Ownership.** Save and excepting those lots heretofore conveyed to third party individual owners consistent with and continuing to be governed by said Original Agreement, except as may be modified herein, Owner/Developer represents that it is the present owner of the following described property (heretofore and hereinafter referred to as the "Subject Property") which is described on Exhibit "A" attached hereto and incorporated herein by reference.
3. **Title Opinion/Certification.** Owner/Developer will provide to the City, in advance of the City's execution of this Modified 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 now on the Subject Property, must be subordinated to the terms of this Modified Agreement. It shall be the responsibility of the Owner/Developer to promptly obtain the said subordination(s), in form and substance acceptable to the City, prior to the City's execution of this Modified Agreement.
5. **Sewer Improvements and Sewer Service.**

5.1 Grinder Pump/Grinder Pump System. With respect to the Single Family Development, each individual lot will be served by a grinder pump for sanitary sewer purposes. Each grinder pump will utilize a grinder pump system to pump the sewage from each individual lot 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 grinder pumps, grinder pump systems and force mains with respect to the Single Family Development described in this Section 5.1 are collectively referred to as the "Grinder Pump Collection System". The Grinder Pump Collection System will transport sanitary sewage from the Single Family Development to the New Pump Station. The Grinder 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 Grinder Pump Collection System will not be invaded by floodwater or ground water or any material other than sanitary sewage.

5.2 Paragraph 5.2 of the Original Agreement is hereby deleted in its entirety and nullified. It is hereby expressly acknowledged by the parties that the respective rights, obligations, and responsibilities under said Original Agreement, except as may be modified herein, that pertain to the Single Family Development as originally intended by the parties shall survive and be incorporated into this Modified Agreement and that the respective rights, obligations, and responsibilities under said Original Agreement which pertain to the intended Condominium Development are hereby voided and nullified.

5.3 New Pump Station and 8-inch Force Main. Owner/Developer will design and construct a new pump station (the "New Pump Station") and an 8-inch force main (the "8-inch Force Main") which connects the New Pump Station to the City's pump station located at Fountain Power Boats 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 when said Single Family Development is fully built out and operational, together with handling the sanitary sewage from all existing structures as of the date of the execution of this Modified Agreement located east of the Fountain Power Boat Pump Station. 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 sewage. If required by the City in its sole discretion, the New Pump Station will also be designed and constructed to include a supplemental chemical feed system in connection with the processing of the sanitary sewage from the Single Family Development as approved by the Inspecting Engineers.

5.3.a. It is expressly understood and acknowledged by the parties hereto that the force main herein referred to as "8-inch Force Main" imposed a requirement upon the Owner/Developer to design and construct a force main of eight (8) inches to connect the New Pump Station to the City's pump station located at Fountain Power Boats in order to adequately provide the sewer improvements and sewer service, including such improvements and service to the Condominium Development, contemplated by the Original Agreement. In consideration of Owner/Developer's abandonment of the Condominium Development, the parties recognize that a smaller force main may be sufficient and adequate to provide the sewer improvement and sewer service contemplated by this Modified Agreement. Therefore, upon submission of the requisite plans by the Owner/Developer, the Inspecting Engineers, in their sole discretion, will make a determination concerning the appropriate size required for said force main to adequately provide the sewer improvement and sewer service contemplated by this Modified Agreement. In the event the Inspecting Engineers determine a force main that is smaller than eight (8) inches is sufficient and adequate to provide the sewer improvement and sewer service contemplated by this Modified

Agreement, then Owner/Developer shall design and construct said force main in accordance with the size determined by the Inspecting Engineers and all references herein to the 8- inch Force Main, including all requirements related thereto, shall be deemed to be altered and changed to said size.

Owner/Developer expressly acknowledges that said determination by the Inspecting Engineers will be final and that Owner/Developer shall be bound by said determination.

5.4 General Construction Requirements. The Grinder Pump Collection System, the New Pump Station and the 8-inch Force Main (collectively the "New Sewer Improvements") shall be constructed or caused to be constructed (i) at the sole cost and expense of the Developer and its successors (except for the grinder pumps and grinder pump systems on the individual lots in the Single Family Development, which will be at the expense of the lot owners), and (ii) 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 in conjunction with the Original Agreement will be borne by the Owner/Developer in accordance with the fees provided in the Whichards Beach Service Area Study and Design Review Agreement ("Review Agreement") attached hereto as Exhibit "C". Owner/ Developer expressly acknowledges, accepts and understands that, due to its abandonment of its intention to develop said balance of the Subject Property as a Condominium Development, its commitment to develop said balance of the Subject Property as single family residential building lots, and the corresponding passage of time as well as the significant change in the scope of the project as more specifically described herein, the cost of the Inspecting Engineers for their work in reviewing the new and/or modified plans and inspecting the new and/or modified construction of the New Sewer Improvements in conjunction with this Modified Agreement will increase beyond those amounts contemplated and estimated in said Review Agreement. In any event, Owner/Developer shall bear the cost of the Inspecting Engineers for their work in reviewing the plans and inspecting the construction of New Sewer Improvements in conjunction with this Modified Agreement in accordance with the then current and customary rates and fees charged by the Inspecting Engineers for rendering such services.

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 Grinder Pump Collection System. Prior to conveying any additional lot in the Single Family Development, Owner/Developer will take such steps as are necessary to continue the homeowner's association (the "Association") formed pursuant to Paragraph 5.6 of the Original Agreement and require all owners of subsequent lots conveyed in the Single Family Development to become members of said Association consistent with the terms and provisions for membership therein. Said Association shall expressly continue to assume and will assume all costs in connection with the operation, maintenance, repair and replacement of the Grinder Pump Collection System (other than the grinder pumps and grinder pump systems serving individual lots, the costs of which will be borne by the lot owner) 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 Grinder Pump Collection System (other than the grinder pumps and grinder pump systems to be maintained by the lot owners). The property covenants, conditions and restrictions and bylaws and articles of incorporation establishing the Association shall be amended, if necessary, for consistency herewith (collectively, the "Organizational Documents") and shall be subject to the review of the City with respect to those provisions dealing with the Grinder Pump Collection System as well as the reserve account referenced above. 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 Grinder Pump Collection System to ensure that the requirements set forth herein are being complied with; to ensure that the Grinder Pump 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 Grinder Pump 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 the City may have, it will also have the right to cause such conditions to be remedied and to be promptly reimbursed for all costs incurred by the City in remedying such conditions from (i) the lot owner, if noncompliance relates to the lot owner's grinder pump or grinder pump system or (ii) the Owner/Developer or from the Association if noncompliance relates to (A) any other portion of the Grinder Pump Collection System or (B) a lot owner's grinder pump or grinder pump systems if the applicable lot owner fails to reimburse the City within sixty (60) days following written demand under clause (i) of this sentence. As may be necessary, Owner/Developer will amend the Organizational Documents to reflect that (i) the Association and lot owners, as applicable, will agree to promptly reimburse the City for all such costs and (ii) in the event the City exercises its rights under this Section 5.6, it will have the power to place a lien against the lot of any lot owner who fails to reimburse the City as required above or against all of the common area of the Single Family Development to the extent such costs are required to be reimbursed by the Association and the Association fails to do so within sixty (60) days following its receipt of a written demand from the City.

5.7 Ownership of Sewer Improvements. The Grinder Pump Collection System (other than the grinder pumps and grinder pump systems that are to be the property of lot owners) 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 New Pump Station and the 8-inch Force Main, said New Pump Station and said 8-inch Force Main 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 New Pump Station.

5.8 Rights and Charges. Owner/Developer will be responsible for paying all impact fees and connection fees customarily charged by the City in conjunction with the extension of sewer service to new customers on a per unit basis. Monthly sewer fees, including but not limited to monthly sanitary sewer collection charges, will be charged by the City to each user in accordance with its customary rate schedule for supplying sewer service to residential users outside the City's limits.

6. Water Service.

6.1 Construction Obligations. Owner/Developer shall be responsible for installing water lines in public and private streets throughout the Single Family Development and connecting them to both the existing water lines that will supply the water service contemplated herein and to properly working water meters placed in a conveniently accessible location on each lot within the Single Family 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. 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 the Single Family Development, 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. It is expressly understood and acknowledged by Owner/Developer that any improvements and upgrades associated with fire service and fire protection required and/or made pursuant to the Original Agreement or this Modified Agreement does not and will not obligate or place any responsibility upon the City to render fire service or fire protection to the Subject Property beyond its current duty, if any, to provide the same under mutual aid. Owner/Developer shall provide such access to the Inspecting Engineers as may be reasonably required for the Inspecting Engineers 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 Engineers for reviewing such plans and specifications and conducting such inspections in accordance with the rate schedule set forth in Exhibit "C", subject to its modified applicability as established in Section 5.4 of this Modified Agreement.

6.2 Ownership of Water Improvements. The ownership of all water lines up to the individual meters as well as the individual meters on the lots in the Single Family Development 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.

6.3 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.

6.4 Rights and Charges. Owner/Developer will be responsible for paying all impact fees and connection fees customarily charged by the City in conjunction with the extension of water service to new customers on a per unit basis. 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. Owner/Developer also will be responsible for and shall reimburse the City for any other costs incurred by the City in connection with assuring continued water service to customers located in the vicinity of the Single Family Development and served by the Beaufort County Water System (other than the cost of such customers' actual water usage), including, without limitation, the cost for the City to purchase approximately 113 water service contracts from Beaufort County for customers located in the Single Family Development to defray Beaufort County's debt service incurred in constructing the related existing water infrastructure at a cost of one thousand one hundred dollars (\$1,100.00) per contract. Owner/Developer shall convey all lots in the Single Family Development subject to the Original Agreement as amended by this Modified Agreement. All purchasers/owners of a lot in the Single Family Development shall pay all costs and fees, including but not limited to impact fees, connection fees, and costs to acquire Beaufort County water service contracts, contemplated hereunder and associated with their respective lot upon application for connection to City sewer and water services by said purchaser/owner.

7. Obligations. Should the Owner/Developer fail to undertake and complete its obligations as described in the Original Agreement or this Modified 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 the Original Agreement or this Modified Agreement. Further, the City is hereby authorized to assess the actual and verified cost of completing the obligations required under the Original Agreement or this Modified 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. Voluntary Annexation. Prior to transferring any additional lots, parcels, or common areas within the Subject Property, Owner/Developer shall impose a restrictive covenant (an additional restrictive covenant, if necessary) on the Subject Property which requires all subsequent owners of any portion of the Subject Property to agree that their property may be voluntarily annexed by the City at such time as the City shall determine. Such covenant shall be in form and substance satisfactory to the City and shall be recorded in the Beaufort County Registry.

9. Enforcement. In the event that enforcement of the Original Agreement or this Modified 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 the Original Agreement or this Modified Agreement which costs, expenses and fees shall also be a lien upon the Subject Property superior to all others. Should the Original Agreement or this Modified Agreement require the payment of any monies to the City, the recording of this Modified Agreement shall constitute a lien upon the property for said monies, until said monies are paid, in addition to such other obligations as the Original Agreement or this Modified 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%) compounded annually or at the maximum rate allowed by law.

10. **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.

11. **Release of Owner/Developer.** Upon the occurrence of both of the following conditions: (i) the completion of all of the improvements to be constructed by Owner/Developer pursuant to Sections 5 and 6 above as evidenced by the certification by the Inspecting Engineers that such improvements are complete and in compliance with all requirements set forth herein and (ii) the assumption by the Association, in writing of all of Owner/Developer's continuing obligations hereunder, in writing and in form and substance reasonably satisfactory to City, then City will release, in writing, Owner/Developer from all of Owner/Developer's continuing obligations hereunder.

12. **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:

Ms. Michelle Manners
Inland Management
665 Simonds Road
Williamstown, MA 01267

CITY'S REPRESENTATIVES:

Washington City Manager
P.O. Box 1988
102 East Second Street
Washington, NC 27889

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.

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

14. **Binding Effect.** This Modified Agreement shall run with the land, shall be binding upon and inure to the benefit of the Owner/Developer, the individual owners of lots in the Single Family Development, the Association, and the City, their respective 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 Modified Agreement in such amount to be determined by the City. This Modified 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.

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

16. **Construction of Agreement.** This Modified 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.

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

IN WITNESS WHEREOF, the Owner/Developer has caused this instrument to be executed in its name by its Operating Manager and the City has caused this instrument to be executed in its name by its Mayor, attested by its City Clerk and its municipal seal to be hereunto fixed, all by proper authority duly given. This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

s/Carol Williams
CAROL WILLIAMS
FINANCE DIRECTOR

s/Judy Jennette
JUDY JENNETTE
MAYOR

ATTEST:

s/Rita A. Thompson
RITA A. THOMPSON, CMC
CITY CLERK

NC LAND PARTNERS, LLC,
A Delaware Limited Liability Company
By: NATIONAL LAND PARTNERS, LLC,
A Delaware Limited Liability Company, as
Manager of NC Land Partners, LLC
By: AMERICAN LAND PARTNERS, INC.,
A Delaware Corporation,
As Manager of National Land Partners, LLC
By: Timothy D. Smith
Title: Treasurer

EXHIBIT "A"

**LYING AND BEING IN CHOCOWINITY TOWNSHIP, BEAUFORT COUNTY,
NORTH**

CAROLINA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING all of those certain Tracts A, B, C, D, E and F totaling 172.79 acres more or less as shown on that survey for Greenville Timberline, LLC dated December 16, 2005 by The East Group of record in Plat Cabinet G, Slides 70-4 and 70-5, in the office of the Register of Deeds of Beaufort County, to which reference is herein made for a more complete and adequate description.

EXHIBIT "B"

Location of Fountain Power Boat Pump Station

EXHIBIT "C"

Whichards Beach Service Area Study and Design Review Agreement

2007 RESIDENTIAL WATER AND SEWER FACILITIES IMPACT FEE
SCHEDULE FEE SCHEDULE FOR WATER FACILITIES LAND USE TYPE
RESIDENTIAL STRUCTURE, INCLUDING: SINGLE FAMILY UNIT, MULTIPLE

FAMILY UNIT, MOBILE HOME EACH UNIT, HOTEL/MOTEL ROOM PER ROOM and INCLUDING CHURCHES: METER SIZE (INCHES) 1 OR SMALLER \$ 332.00

FEE SCHEDULE FOR SEWER FACILITIES LAND USE TYPE (UNIT) RESIDENTIAL STRUCTURE, INCLUDING: SINGLE FAMILY UNIT, MULTIPLE FAMILY UNIT, MOBILE HOME EACH UNIT, HOTEL/MOTEL ROOM PER ROOM and INCLUDING CHURCHES: METER SIZE (INCHES) 1 OR SMALLER \$ 588.00

NOTE: Future fees will be based upon the fee in effect upon the date of Occupancy Permit

CONSENT OF LIEN HOLDER

PPM Brokerage Services, Inc., a Florida corporation ("Second Lender") is the holder of the beneficial interest under that certain deed of trust dated May 2, 2006 given by Owner Developer for the use and benefit of Lender, covering all or portions of the Property and the Contiguous Property, and recorded on May 4, 2006, in Book 1519, at Page 660 in the office of the Register of Deeds of Beaufort County, North Carolina (said deed of trust, together with all amendments, modifications, extensions and supplements thereto and any and all other documents given to or made by the Declarant in connection with said deed of trust are hereinafter collectively called the "Second Security Agreement"). Lender hereby joins in the execution of this water and sewer agreement with the City of Washington North Carolina and consents to all terms, easements, obligations and other matters set forth in this Agreement, as the same may hereafter be amended, modified, supplemented, or changed.

CONSENT OF LIEN HOLDER

Wachovia Bank, National Association, a national banking association ("First Lender") is the holder of the beneficial interest under that certain deed of trust dated May 2, 2006 given by Owner/Developer for the use and benefit of Lender, covering all or portions of the Property and the Contiguous Property, and recorded on May 4, 2006, in Book 1519, at Page 648 in the office of the Register of Deeds of Beaufort County, North Carolina (said deed of trust, together with all amendments, modifications, extensions and supplements thereto and any and all other documents given to or made by the Declarant in connection with said deed of trust are hereinafter collectively called the "First Security Agreement"). Lender hereby joins in the execution of this Water and Sewer Agreement with the City of Washington North Carolina and consents to all terms, easements, obligations and other matters set forth in this Agreement, as the same may hereafter be amended, modified, supplemented, or changed.

EXTEND THE MEETING

On motion of Councilman Gahagan, seconded by Councilman Jennings, Council unanimously agreed to extend the meeting to 6:30 p.m. Councilman Jennings offered an amendment that his son's Boy Scout Troop is coming at 6:30 p.m. and he would like to extend an invitation to anyone that would like to stick around and offer them some words of wisdom.

**CLOSED SESSION – UNDER G. S. 143-318.11.(A)(3)
ATTORNEY/CLIENT PRIVILEGE**

On motion of Mayor Pro tem Woolard, seconded by Councilman Gibson, Council unanimously agreed to go into closed session under G. S. 143.318.11.(a)(3) Attorney/Client Privilege and 143.318.11(a)(6) Personnel.

On motion of Councilman Jennings, seconded by Councilman Brooks, Council unanimously agreed to come out of closed session at 6:55 p.m.

**ADJOURN UNTIL TUESDAY, NOVEMBER 13, 2007 AT 4:30 P.M.
(NOVEMBER 12TH IS VETERANS DAY)**

On motion of Councilman Jennings, seconded by Mayor Pro tem Woolard, Council unanimously adjourned the meeting until Tuesday, November 13, 2007 at 4:30 p.m. in the Council Chambers at the Municipal Building.

**Rita A. Thompson, CMC
City Clerk**