

**CROSS CREEK
DEVELOPMENT AGREEMENT**

This Development Agreement ("Agreement") is made and entered into between WHC at Gamble Creek, LLC, a Florida Limited Liability Company, its successors and assigns, whose address is 714 Manatee Avenue East, Bradenton, Florida, 34208 ("Company") and Manatee County, a political subdivision of the State of Florida, whose address is 1112 Manatee Avenue West, Bradenton FL 34205 ("County").

WITNESSETH

WHEREAS, Company is the owner of a project currently known as Cross Creek (the "Project"), which is proposed for approval pursuant to a preliminary site plan and Manatee County Ordinance No. PDMU-03-57(Z)(P), attached hereto as Exhibit "C", (collectively, the "Development Order"); and

WHEREAS, the County's Comprehensive Plan and the County's Land Development Code ("LDC") state that development agreements may be entered into by a Company and the Board of County Commissioners to guarantee that the requirements of the Florida Local Comprehensive Planning Act and the Florida Local Government Development Agreement Act are followed; and

WHEREAS, it has been determined by Manatee County that, without entering into this Development Agreement, the impacts caused by the development of the Project will not be adequately addressed; and

WHEREAS, with the commitment by Company to undertake various improvement projects contained herein, and the expenditures of funds and dedications of lands therefor, Company shall be entitled to an extended Certificate of Level of Service ("CLOS"); and

WHEREAS, Company has agreed to construct, cause to be constructed or participate in certain transportation improvements and dedications as each is hereinafter defined, within the time periods set forth herein; and

WHEREAS, certain of the above stated projects create additional capacity above that required by the Project and are therefore eligible for impact fee credits, pursuant to County Ordinance No. 04-19, as amended (the "Impact Fee Ordinance"); and

WHEREAS, the County intends to grant to Company transportation impact fee credits (excluding water and wastewater Facility Investment Fees) for the design, permitting and construction of said projects, in such amounts as are

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authorized by the County's Impact Fee Ordinance, except to the extent Company waives the right to receive them pursuant to this Agreement.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1.0 **WHEREAS Clauses.** The parties find the WHEREAS clauses contained above to be true and accurate and are hereby incorporated by reference into this Agreement.

2.0 **Legal Description and Legal and Equitable Interests.** The legal description of the land subject to this Development Agreement is attached as Exhibit "A" and incorporated herein by reference. The list of names of all persons with a legal or equitable interest in such land is attached as Exhibit "B" and incorporated herein by reference.

3.0 **Duration.** The duration of this Agreement shall be for a period of six and one half (6.5) years from the effective date hereof.

4.0 **Means of Relief.** The sole means of relief from this Development Agreement shall be by an action for injunctive relief filed in the Circuit Court of Manatee County and any appropriate appeal thereof. However, enforcement of other zoning and land use permits and approvals (including, without limitation, the Development Order) shall be as provided by LDC and general law.

5.0 **Maximum Permitted Development.** The development uses permitted on the land, including population and unit densities, and building intensities and height, shall be as set forth in the Development Order, as may be amended or supplemented from time to time.

6.0 **Required Dedication of Land.** Necessary reservation, dedication, and acquisition of the right of way for the Project are as outlined in the Development Order for the Project and this Agreement.

7.0 **Required Development Permits and Approvals.** The County has approved the Development Order concurrently with the approval of this Agreement. Company shall obtain the following required permits or approvals from Manatee County.

- a. Final Site Plan (for each phase or subphase);
- b. Final Subdivision Plat;
- c. Construction Drawing Approval;
- d. Building Permits;

- e. Certificates of Occupancy;

8.0 **Construction Projects.** In order to successfully mitigate the impacts of the Project and to assist the County in providing better public facilities to the citizens of Manatee County, the parties agree to the completion of the following projects:

A. **TRANSPORTATION IMPROVEMENTS, DEDICATIONS AND EASEMENTS:** In order to mitigate the impacts of the Project on the transportation system in Manatee County, Company shall construct the following roadway intersection improvements at the stated level of development of the Project and dedications:

i. **INTERSECTION OF FT. HAMER ROAD AND OLD TAMPA ROAD.** At any time subsequent to final site plan approval for any phase of the project, Company will construct signalization of intersection upon request of Manatee County.

ii. **RIGHT OF WAY DEDICATION.** To allow for future widening of Ft. Hamer Road, the Company shall dedicate sufficient right of way in order to provide Manatee County with a 75' half section from the existing centerline of pavement on Ft. Hamer Road for the portion of the property which is adjacent to Ft. Hamer Road. The Company hereby waives the right to receive impact fee credits for such dedication.

iii. **OVERSIZE SOUTHERN RETENTION POND.** The retention pond identified as the Southern Pond on the Preliminary Site Plan and located adjacent to Ft. Hamer Road shall be oversized in size and depth to accommodate future off site retention resulting from the future widening of Ft. Hamer Road. Said oversizing shall be based on the preliminary engineering study prepared by PBS&J on behalf of the County, provided that said oversizing does not cause the loss of any lots on the approved Preliminary Site Plan. To the extent authorized by, and in accordance with the requirement of, the Impact Fee Ordinance, impact fee credits shall be granted to the Company based upon the pro rata development costs, including but not limited to permitting, dewatering, excavation, compaction, sodding, piping, and control structure, for the percentage of the retention pond attributable to the oversizing.

iv. **ACCESS EASEMENT AND DRAINAGE COMPENSATION EASEMENT POND ON AND ADJACENT TO MULHOLLAND ROAD.** The Company shall dedicate to the County a twenty five (25') foot access easement ("access easement") through the Compensation Storage Pond to the Floodway Area for purposes of the

County's maintenance activities within Gamble Creek, with Manatee County having no responsibility to maintain the access easement area. An additional easement through and over the compensation storage pond acreage in the floodway on Mulholland Road will be dedicated to the County for the purpose of compensation for drainage ("drainage compensation easement") resulting from Manatee County's future improvement of the Mulholland Bridge. The acreage for said drainage compensation easement shall not exceed ten (10) acres. The Company shall review and approve the location of the proposed drainage compensation easement area prior to the Final Plat submission for the nine lots on Mulholland Road located in neighborhood J to assure that the location shall not unreasonably interfere with the quiet and beneficial enjoyment of adjacent residential properties. Said approval shall not be unreasonably withheld. Said access and compensation drainage easements and notice of the County's future construction activities associated with the compensation easement area shall be disclosed and provided for in the homeowner association/subdivision documents including the Notice to Buyers.

v. **RETENTION POND FOR RIGHT OF WAY STORMWATER AT NORTHWEST CORNER OF PROJECT.** The Company shall dedicate or convey to the County necessary and appropriate easements in order for the County to locate and construct a stormwater retention site at the northwest corner of the Project where it abuts Ft. Hamer Road and Golf Course Road. Said easement shall be configured in such a way to allow the Company to design and construct the multi-purpose path (enhanced sidewalk) to the south and east of the pond outside of wetlands, wetland buffers and the pond site.

9.0 **Consistency.** The Board of County Commissioners hereby finds that the Project, as approved in the Development Order, is consistent with the Manatee County Comprehensive Plan and the LDC.

10.0 **Additional Conditions.** In consideration for the completion and commitment to complete the required improvements and dedications hereunder, subject to any conditions imposed by the County's Transportation Department based upon applicable State or County road standards, a CLOS for the Project shall be issued on or about the date on which this Agreement becomes legally effective pursuant to Section 18 hereof, in accordance with the LDC and the terms of this Agreement, with an expiration date of six and one half (6.5) years from the date of issuance. Said CLOS shall not extend beyond October 31, 2011, and shall be conditioned upon Company complying with the provisions of this Agreement. In the event the preliminary or final site plan is allowed to expire prior to six and one half (6.5) years from the date of issuance of the CLOS, the CLOS shall also expire. The rights granted to the Company pursuant to this Agreement are conditioned upon

the compliance by the Company with the provisions of the Development Order, as may be amended or supplemented from time to time. The dedications and easements described in Sec. 8.0,A. above applicable to transportation and stormwater improvements shall occur prior to final plat approval or upon the written request of the County, whichever occurs first, with the exception of the drainage compensation easement required by the deadline as otherwise specified in Sec. 8.0,A.,iv of this Agreement

11.0 **Omission from Agreement.** The failure of this Agreement to address a particular permit, condition, term, or restriction shall not relieve the Company or any of its affiliates or successors and assigns of the necessity of complying with the law (including, without limitations the applicable provisions of the County's Comprehensive Plan and LDC), governing said permitting requirements, conditions, terms or restrictions.

12.0 **Agreement Runs with the Land and Binding Effect.** This Agreement shall run with the land and the burdens and benefits of this Development Agreement shall be binding upon, and shall inure to all successors in interest, including all mortgagees, to the parties of this Agreement.

13.0 **Notice.** Notices required to be given by this Agreement shall be in writing sent by certified United States mail, return receipt requested, addressed to the persons and places specified for giving notice below, or to such other person or place specified for giving notice, and shall be designated by written notice in the manner provided above:

FOR MANATEE COUNTY:

Chairman, Board of County Commissioners
1112 Manatee Avenue West
P.O. Box 1000
Bradenton, Florida 34206

With Copies to:

Manatee County Attorney
1112 Manatee Avenue West
P.O. Box 1000
Bradenton, Florida 34206

Director, Planning Department
ATTENTION: Carol Clarke
1112 Manatee Avenue West
P.O. Box 1000
Bradenton, Florida 34206

FOR COMPANY:

WHC at Gamble Creek, LLC

C/O Frank Herold
C/O Britton Williams
714 Manatee Avenue East
Bradenton, Florida 34208

With Copies to: HOLLAND & KNIGHT LLP
ATTENTION: Carol Masio McGuire
P.O. Box 1866
Bradenton, Fl 34205

14.0 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto. and supersedes any and all prior understandings, if any. There are no other oral or written promises, conditions, representations, understandings, or terms of any kind as conditions or inducements to the execution hereof, and none have been relied upon by either party. Any subsequent conditions, representations, warranties, or agreements shall not be valid and binding upon the parties unless they are in writing, signed by both parties, and executed in the same manner as this Agreement.

15.0 **Parties Drafted Equally.** The County and Company agree that both parties have played an equal and reciprocal part in drafting of this Agreement. Therefore, no provisions of this Agreement shall be construed by any court or other judicial authority against any party hereto because such party is deemed to have drafted or structured such provisions.

16.0 **Severability.** In the event any term or provision of this Agreement shall be held invalid by a court of competent jurisdiction, such invalid term or provision shall not affect the validity of any other term or provision hereof; and all such other terms and provisions hereof shall be enforceable to the fullest extent permitted by law as if such invalid term or provision had never been part of this Agreement; provided, however, if any term or provision of this Agreement is held to be invalid due to the scope or extent thereof, then, to the extent permitted by law, such term or provision shall be automatically deemed modified in order that it may be enforced to the maximum scope and extent permitted by law.

17.0 **Applicable Laws and Venue.** This Agreement shall be construed, and the rights and obligations of the parties hereunder shall be determined, in accordance with the laws of the State of Florida. Venue for any litigation pertaining to the subject matter hereof shall be exclusive in Manatee County, Florida, unless prohibited by law.

18.0 **Effective Date.** This Agreement shall become effective immediately upon the occurrence of all of the following: i) the adoption and approval of the

Development Order by the Board of County Commissioners, ii) the recordation of a fully executed original of this Agreement in the Official Records of Manatee County, Florida, at the expense of Company, iii) the expiration of any and all appeal periods for any challenge to the approval of the Development Order or this Agreement, and iv) thirty (30) days have expired since a copy of this Agreement has been received by the State Land Planning Agency pursuant to Florida Statutes 163.3239.

19.0 **Default.** In the event of a default hereunder by either party, the sole remedy available to the non-defaulting party shall be specific performance.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the date and year shown below, and the signatories do hereby confirm that the governing or managing body of each party has approved the content, form and manner of execution of this Agreement.

ADOPTED AND APPROVED with a quorum present and voting the 29th day of March, 2005.

MANATEE COUNTY FLORIDA

[Signature]
By: Board of County Commissioners

By: Ron Getman
Chairman

ATTEST:

R. B. SHORE
Clerk of the Circuit Court

By: [Signature]
Deputy Clerk



[Signature]
Witness PATRICIA ANN MARTINO
[Signature]
Witness SCOTT E. SALLER

WHC at Gamble Creek, LLC
A Florida Limited Liability Corporation

[Signature]
By: Frank L. Herold

STATE OF FLORIDA
COUNTY OF MANATEE

The foregoing instrument was acknowledged before me on this 5th day of April, 2005, by Frank L. Herold as a managing member of WHC at Gamble

Creek LLC, a Florida limited Liability Company, who is personally known to me or who has produced _____ as identification.



Robin L. Neidert
Commission # DD 070141
Expires Nov. 5, 2005
Bonded Thru
Atlantic Bonding Co., Inc.

Robin L. Neidert

Notary Public

ROBIN L. NEIDERT

Printed Name

My Commission Expires: *05-November-2005*

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