City Copy

85- 418

ASSIGNMENT OF DEVELOPER RIGHTS

THIS ASSIGNMENT OF DEVELOPER RIGHTS is made and entered into this 12th day of December, 1984, by and between the undersigned Transferor and Transferee.

W I T N E S S E T H :

WHEREAS, the undersigned Transferor is the Developer under the terms of a certain Developer Agreement and Addendum to Developer Agreement dated the 29th day of March, 1983 by and between itself and the City of Margate, providing for utility service and a reservation of capacity therefor for that certain real property described upon Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, the undersigned Transferee has acquired title to the aforedescribed real property; and

WHEREAS, the undersigned Transferor wishes to assign its rights and obligations under the terms of that certain Developer Agreement and Addendum to Developer Agreement described above and a portion of its reserved capacity as provided for thereunder; and

WHEREAS, the undersigned Transferee is desirous of accepting such assignment and assuming the obligations attendant thereto.

NOW, THEREFORE, in consideration of the mutual convenants herein contained and other good and valuable considerations, the parties hereto agree as follows:

1. That that which is set forth above is true and correct and incorporated herein as if fully set forth herein.

2. That the undersigned Transferor does hereby transfer and assign its right, title and interest, duties and responsibilities, as contained in the Developer Agreement and Addendum to Developer Agreement, copies of which are attached hereto and made a part of this document and referred to as Exhibit "B".

3. The undersigned Transferee accepts the aforedescribed assignment and agrees to assume those obligations attendant thereto under the provisions of the aforedescribed Developer Agreement and Addendum to Developer Agreement.

JAN 7 AM 8 08 AM '85

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5790 MARGATE BLVD.
MARGATE, FL 33063

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4. The undersigned Transferee recognizes and acknowledges that in connection with the aforedescribed assignment of reserve capacity, since the Transferor elected the deferred payment alternative provided for under the Developer Agreement and Addendum to Developer Agreement, it is the undersigned Transferee's obligation to provide a letter of credit/certificate of deposit to the City of Margate which shall be assigned to the Florida Coast Bank as security for the undersigned Transferee's assumption of obligations in connection with the aforedescribed reserve capacity.

5. The undersigned Transferor and Transferee each represent to the City that this assignment of capacity is being transferred "at cost" as that term is defined under the provisions of the aforedescribed Developer Agreement and Addendum to Developer Agreement.

6. The undersigned Transferor and Transferee understand and acknowledge that this assignment and transfer of capacity shall only be effective upon the satisfaction of the following items:

A. The City of Margate's consent to the agreement in writing.

B. The Transferee has furnished a letter of credit/certificate of deposit and same has been accepted by the Florida Coast Bank.

IN WITNESS WHEREOF, Transferor has executed this agreement this 7th day of December, 1984.

Witnesses:

Thomas S. Zalewski

Martha R. Allord

1957 MARGARET WOODSON FISHER TRUST

By: _____
SAN W. ORR, JR., as Trustee

"Transferor"

STATE OF WISCONSIN
COUNTY OF MARATHON

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgements, personally appeared SAN W. ORR, JR., as Trustee, to me well known to be the person who executed the foregoing instrument as an officer of 1957 MARGARET WOODSON FISHER TRUST, and he acknowledged before me that he executed the same for the purposes set forth herein.

WITNESS my hand and official seal this 7th day of December, 1984.

Notary Public
State of Wisconsin
My commission expires 8/28/88

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Witnesses:

441 SOUTH LTD., II, a Florida Limited Partnership

By: _____
ROBERT W. BUCK, sole general partner "Transferree"

STATE OF FLORIDA
COUNTY OF

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgements, personally appeared ROBERT W. BUCK, to me well known to be the person who executed the foregoing instrument as an officer of 441 South Ltd., II, a Florida Limited Partnership and he acknowledged before me that he executed the same for the purposes set forth herein.

WITNESS my hand and official seal this 12 day of December, 1984.

Notary Public
State of Florida At Large

My Commission Expires: _____

Notary Public, State of Florida
My Commission Expires Oct. 22, 1985
Bonded Thru Troy Fain-Insurance, Inc.

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CONSENT TO ASSIGNMENT OF DEVELOPER RIGHTS

The undersigned consent to the foregoing instrument as set forth above and more specifically consent to the assignment and transfer of 139 Equivalent Residential Connections of reserve capacity by the aforesaid Transferor to the aforedescribed Transferee and further acknowledges the release of the Transferor as to those obligations attendant to the assigned reserve capacity.

Witness:

Shirley J. Laughman

Gertrude Levin

CITY OF MARGATE

BY: Louis Jenning
Mayor

BY: Hamner H. Fraser
City Manager

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EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY WHICH
CONSTITUTES THE SUBJECT MATTER OF THIS AGREEMENT

The South 672.85 feet (as measured at right angles) of Tract "C" of a subdivision of Section 1, Township 49 South, Range 41 East, according to the plat thereof recorded in Plat Book 26, page 21, of the public records of Broward County, Florida, containing 40 acres, and known as the Riding Stable.

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EXHIBIT "B"

CITY OF MARGATE

DEVELOPER AGREEMENT

THIS AGREEMENT made and entered into this 29th day of March, 1983, by and between 1957 Margaret Woodson Fisher Trust hereinafter referred to as "Developer" and the CITY OF MARGATE, a municipal corporation organized and existing under the laws of the State of Florida, hereinafter referred to as "City".

WHEREAS, Developer owns or controls lands located in Broward County, Florida, and described in Exhibit "A", attached hereto and made a part hereof as if fully set out in this paragraph and hereinafter referred to as "Property" and Developer has or is about to develop the Property by erecting thereon such improvements as are in accord with the zoning laws an land use plans of the City of Margate, Broward County or City of Coconut Creek, and

WHEREAS, in order to meet the financing and general requirements of certain private agencies and certain Federal, State and Local government agencies, such as but not limited to, the State Board of Health, the Department of Environmental Regulations, the Veterans' Administration, the Federal Housing Administration, and private lending institutions, it is necessary that adequate water and sewage facilities and services be provided to serve the Property and to serve the occupants of each residence building, or unit constructed or located on the Property, and

WHEREAS, Developer is not desirous of providing water and sewage facilities to serve the Property, but is desirous of promoting the construction of central water and sewage facilities by City so occupants of each residence, building, or unit constructed or located thereon will receive adequate water and sewage service, and

WHEREAS, City is the owner and operator of public water treatmen and/or sewage treatment plant, together with water distribution and/or sewage collection facility, and City is willing to operate such facilities so that the occupants of each residence, building, or unit constructed on the property will receive an adequate water supply and sewage disposal service from City for the benefit of the public as determined by the City, and

WHEREAS, Developer is desirous of the City to expand its central water and sewage facilities so as to serve the property of the developer, a

WHEREAS, it is the intention of the City to provide exclusive water and sewage facilities within the service area wherein the Property of Developer lies,

NOW, THEREFORE, for and in consideration of the mutual covenants and undertakings of the parties hereto, and other good and valuable considerations, the parties hereto covenant and agree, each with the other as follows:

1. The foregoing statements are true and correct and are incorpo ated herein by reference.

2. The following definitions and references are given for the purpose of interpreting the terms as used in this agreement and apply unles the context indicates a difference meaning:

a. Property - All the land described in Exhibit "A" and all the land to which City shall provide water and sewage service.

b. Stage Area - Refers to a part of the Property which is being or is to be developed as a unit.

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c. Lot or Tract - Each building site as platted for record or as shown on the master plan and plat.

d. Service - The readiness and ability on the part of the City to furnish water or sewage service to each lot. Thus, the maintenance by City of adequate pressure at the point of delivery shall constitute the rendering of water service, and the maintenance of a connection providing for the removal and disposal of sewage service. Sewage service refers to sanitary sewer service.

e. Point of Delivery - The point where the pipes or meters of City are connected with the pipes of the consumer. Unless otherwise indicated, point of delivery shall be at the point on the consumer's lot line.

f. Consumer Installation - All facilities on the consumer's side of the point of delivery.

g. Contribution in Aid-of-Construction - The sum of money and/or the value of propery represented by the cost of the water distribution and sewage collection systems including lift stations and treatment plants by a Developer, or owner, of the utility, which Developer or owner transfer, or agrees to transfer, to City in order to induce City to provide utility service to the Property.

h. Water and Sewer Extension Policy - The Document creating a uniform method of determining the contribution in aid of construction to be borne by property owners, builders or developers within the service area, all as more particularly set forth in Exhibit "B" attached hereto and made a part hereof by reference and as same may be amended from time to time.

i. Developer - The owner of the parcel of land described in Exhibit "A".

ARTICLE I

(A) It will be the obligation of the Developer, at his expense to design, construct and install water distribution and sewage collection lines, over, through, under and across Developer's Property in accordance with plans, specifications and engineering data as submitted by a Florida registered engineer, to be approved by the City's engineers and/or administrator and said water distribution and sewage collection lines will be installed and connected to City's existing water and sewage collection lines, all of which work shall be paid for by Developer. Such water facilities to be installed at Developer's expense shall include, but not be limited to all services, distribution mains, and transmission mains required for the furnishing of service to Developer's Property. Such sewage facilities to be installed at Developer's expense shall include, but not be limited to all, services, gravity flow mains, force mains and lift stations required for the furnishing of service to Developer's Property.

(B) Developer shall, at his expense, retain the services of a registered professional engineer for the purpose of providing necessary inspection and supervision of the construction work to insure that construction is at all times in compliance with accepted sanitary engineering practices and the approved plans and specifications.

(C) Prior to approval of said plans and specifications, however the City shall receive written verification that:

(1) If the Property is required by law to be platted prior to building construction, the platted area which the water and sewer facilities are to serve has been approved by all required City and County agencies and recorded in the Official Records of Broward County, Florida.

(2) If the property is not required to be platted, a Property Development Plan or similar plan has been approved by the City of Margate or the City of Coconut Creek or Broward County for the Property in question.

(D) The work to be performed by Developer, as above provided for, may not be commenced until all plans and specifications covering the work to be performed are approved in writing by City's engineers and/or administrator

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(E) The work to be performed by Developer, pursuant to the provisions set forth herein, shall be in accordance with all requirements of the regulatory agencies having jurisdiction of the subject matter of this agreement.

(F) Developer will notify City before any construction is begun and at the times when inspections will be required. Said notification shall be made in writing and shall be received by the City at least twenty-four (24) hours in advance.

(G) During construction and at the time when periodic inspections are required, City's engineers and/or administrator, or his authorized representative, together with Developer's engineer, will be present to observe and jointly witness tests for determination of conformance to approved plans and specifications.

(H) As and when the water service and sewage collection systems have been satisfactory installed, inspected, tested and approved in writing by the Developer's engineer, together with the City's engineers and/or administrator, the City will thereafter maintain the water service system and sewage collection system without cost to Developer; provided, the obligation of the City to maintain the water service system and sewage collection system will not take affect until such time as Developer has conveyed title to said systems to City and furnished the As-Built drawings described in Paragraph (I below.

(I) Developer will, at his expense, furnish to the City one complete set of reproducible as-built drawings prepared by the engineer who designed the water service and sewage collection systems. Said as-built drawings shall also be certified by the engineer and must show all pertinent information as to the correct location of all mains, services, pumps, valves, manholes, laterals, easements, etc. affecting the water service and sewage collection systems as constructed in the field.

(J) The Developer will pay to the City the applicable charges (as set by City from time to time) for water meters and meter installations, meter security deposits, connection charges and capacity reservation charges and contributions in aid-of-construction as set forth in the Water and Sewer Extension Policy (Attached as Exhibit "A") as same may be modified from time to time. Schedules of current meter fees and connection charges are attached as Exhibits "C"

(K) Failure of the Developer to execute this agreement within thirty (30) days after submission to the Developer, shall result in its withdrawal.

(L) Under no circumstances shall the City provide water and sewer service to a stage area encompassed under a Developer's agreement when, in fact, that stage area has not been completed, tested, as-built drawings provided, certified, approved and accepted by City.

(M) Developer hereby agrees to make full disclosure to any party purchasing all or any part of the Property encompassed by this agreem as to the terms hereof, with particular reference to the charges set forth and of the rates set forth in Exhibits "B", and C, attached hereto and made a part hereof.

(N) If for unseen circumstances including, but not limited to actions of any other governmental or regulatory agency, the proposed development is abandoned, terminated or caused to be cancelled short of full completion, it is mutually agreed by the parties hereto that the monies paid to City shall constitute liquidated damages to City. No refund of any type, monstary or otherwise, shall be made to Developer and this agreement shall be thereafter null and void. Failure to continue or proceed with constructic in a meaningful manner for a consecutive period of one hundred and eighty (180) days shall be deemed to be an abandonment or termination. "Meaningful' as used herein is defined as proceeding with construction in the normal manne customary and common to the trade.

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ARTICLE II

Upon completion, approval and acceptance of the work required to be done, Developer will, without cost to City:

(1) Within a period of thirty (30) days after the execution of this contract, at the expense of Developer, Developer agrees to either deliver to City an Abstract of Title brought up to date, which abstract shall be retained by City and remain the property of City, or to furnish City an opinion of title from a qualified attorney with respect to the Property, which opinion shall include a current report on the status of the title setting out the name of the legal title holders, the outstanding mortgages, taxes liens and covenants. The Developer agrees to provide City at the expense of Developer, title insurance in connection with all Warranty Deed conveyances of lift station sites or easements covering areas in which water or sewer lines have been installed. The provisions of this paragraph are for the purpose of evidencing Developer's legal right to grant the exclusive rights of service contained in this agreement. Any mortgage or lien holder having an interest in the property shall be required to join in the grant of exclusive service rights set forth in this agreement.

(2) Convey to City, in a form acceptable to City's attorney, by good and sufficient easement deed a perpetual right, easement and privilege to operate and maintain all water and sewer mains, pipes, connections, pumps and meters, in connection with supplying water and sewer service to the inhabitants, occupants and customers in Developer's property, together with a perpetual right, easement and privilege unto City and its successors and assigns, to go in, under and upon the land or lands where said water and sewer mains, pipes, connections, pumps and pumping stations, if any, are located in order for City and its successors and assigns, to maintain, repair or replace the same.

(3) Transfer to City by Bill of Sale Absolute all Developer's right, title and interest in and to all of the water and sewer supply lines, mains, pumps, connections, pipes, valves, meters and equipment installed within the lands described in Exhibit "A" attached hereto and made a part hereof for the purpose of supplying of water service and sewage collection for the inhabitants, occupants, and customers in Developer's Property.

(4) Furnish construction costs of all utility facilities constructed by Developer and proposed to be transferred to City.

(5) Furnish City with an affidavit that all persons, firms, or corporations who furnished labor or material used directed or indirectly in the prosecution of the work required to be performed by this agreement have been paid.

(6) Furnish City with a satisfactory warranty or bond guaranteeing the facilities installed pursuant to this agreement against defects in materials, equipment or construction for a period of not less than one (1) year from date of acceptance of same by City.

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ARTICLE III

City further convenants and agrees with Developer as follows:

City shall provide service meeting the standards required by the Florida Department of Health and Rehabilitative Services, Department of Evironmental Regulation, and any other regulatory agency having jurisdiction. The obligation of the City to furnish service other than construction water shall not arise until Developer has performed pursuant to this Agreement.

ARTICLE IV

It is mutually convenanted and agreed by and between the parties hereto, as follows:

(1) City shall have the exclusive right to furnish water and sewer collection service to consumers within the area covered by this agreement; and

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(2) Developer shall do all things and make all installations and perform all work in accordance with the terms of this agreement; and

(3) Any sale, assignment or transfer of Developer's interest in this agreement is hereby prohibited without written consent of the City; and

(4) Developer, his successors and assigns, and the owners and occupants of buildings on Developer's Property are hereby prohibited from installing or maintaining any water wells except for irrigation purposes; and

(5) Developer, his successors and assigns, and the owners and occupants of buildings on Developer's Property are hereby prohibited from installing, maintaining or using septic tanks in connection with the disposal of sewage from said buildings; and

(6) City shall have the right to promulgate from time to time reasonable rules and regulations relating to the furnishing of water service and sewage collection service to consumers within the area encompasse by this agreement. Such rules and regulations may relate to but are not limited to, rates, desposits, connection charges, prepayment of connection charges, capacity reservation charges and the right to discontinue services under certain conditions.

(7) City shall not be liable or responsible for the maintenance or operation of any pipes, pipelines, valves, fixtures or equipment on any of the properties of the Developer or customer.

(8) Each customer of water service and/or sewage collection service on Developer's Property shall keep all water pipes, service lines, connections and necessary fixtures and equipment on the premises occupied by said customer; and within the interior lines of the lot occupied by the customer in good order and condition. The sale of water by City to the customer shall occur at the customer's side of the meter; and

(9) No water from City's water distribution system is to be used or disbursed through fire hydrants or water mains by any person, firm, corporation or agency, public or private, unless there has first been made adequate provisions for compensating City for such water; and

(10) Any temporary cessations or interruptions of the furnishing of water and sewer service to the property described herein at any time caused by an Act of God, fires, strikes, casualties, accidents, power failures, necessary maintenance work, breakdowns, damage to equipment or mains, Civil or Military authority, riots or other cause beyond the control of the City shall not constitute a breach of the provisions contained herein or impose liability upon the City by the Developer, his successors and assigr nor shall any cessation of service or additional connections for service due to action by any governmental regulatory agency having jurisdiction over the City constitute said breach or impose liability upon City; and

(11) If any section, subsection, sentence, clause, phrase or portion of this agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate distinct and independent provision and such holding shall in no way affect the validity of the remaining portions hereof.

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ARTICLE V

(A) The provisions of this Agreement shall be binding upon and inure to the benefits of the successors and assigns of the parties hereto.

(B) This agreement is being recorded among the public records of Broward County, Florida, for the particular purpose of placing all owners or occupants of properties in Developer's Property connected to or to be connected to said water and sewer systems of City upon notice of each every one of the provisions herein contained to the same extent and with the same force and effect as if said owners and occupants had joined with the parties to the Agreement in the execution thereof; and the acquisition or occupancy of property in Developer's property connected to or to be connected to the said water and sewage systems of City shall be deemed conclusive evidence of the fact that the said owners or occupants have consented to and

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and accepted the agreement herein contained and have become bound thereby.

ARTICLE VI

Whenever either party desires to give notice unto the other, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified as the place for giving of notice, shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for the giving of notice; to wit:

For City: 5790 Margate Boulevard
Margate, Florida 33063

For Developer: P. O. Box 65
Wausau, Wisconsin 54401

Notice so addressed and sent by registered mail, with return receipt requested, shall be deemed given when it shall have been so deposited in the United States Registered Mail.

ARTICLE VII

(A) It is mutually agreed that the City shall be held harmless from any and all liability for damages if City's obligations under this agreement cannot be fulfilled as a result of any ruling or order by any other governmental or regulatory agency having jurisdiction over the subject matter hereof; and in such event this agreement shall be null and void, and unenforceable by either party.

(B) The rights, privileges, obligations and covenants of Developer and City shall survive the completion of the work of Developer with respect to completing the water and sewer facilities and services to any stage area and to the Property as a whole.

(C) This agreement supersedes all previous agreement or representations, either verbal or written heretofore in effect between the Developer and City made with respect to the matters herein contained, and when duly executed, constitutes the agreement between the Developer and City. No additions, alterations or variations of the terms of this agreement shall be valid, nor can provisions of this agreement be waived by either party unless such additions, alterations, variations or waivers are expressed in writing and duly signed by both parties.

ARTICLE VIII

That the City reserves unto itself the right to increase plant capacity deemed necessary in order to provide water and/or sewer services for new users. In so doing the City shall require specific reservation of capacity and prepayment of such connection charges as are necessary to construct expanded facilities along with a procedure to implement same. Same shall be attached and made a part of this agreement as an addendum.

IN WITNESS WHEREOF, Developer and City have executed or have caused this agreement, with the named Exhibits attached, to be duly executed in several counterparts, each of which counterpart shall be considered an original copy of this agreement.

Witnesses:

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CITY OF MARGATE, FLORIDA

BY _____
Mayor

BY _____
City Manager

Developer: 1957 Margaret Woodson Fisher Trust

BY _____
San W. Orr, Jr., Trustee

BY _____

Approved as to Form:

EUGENE M. STEINFELD, City Attorney

Notice to Developer: _____

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EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY WHICH
CONSTITUTES THE SUBJECT MATTER OF THIS AGREEMENT

The South 672.85 feet (as measured at right angles) of Tract "C" of a subdivision of Section 1, Township 49 South, Range 41 East, according to the plat thereof recorded in Plat Book 26, page 21, of the public records of Broward County, Florida, containing 40 acres, and known as the Riding Stable.

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...RN TO:
...TY CLERK
...Y OF MARGATE
...32 MARGATE BLVD.
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12/17/82

ADDENDUM TO DEVELOPER AGREEMENT

THIS ADDENDUM to Agreement made and entered into this 29th day of March, 1983, by and between 1957 Margaret Woodson Fisher Trus hereinafter referred to as "Developer" and the City of Margate, a municipal corporation, organized and existing under the laws of the State of Florida, hereinafter referred to as "City"

WHEREAS, Developer entered into a Developer Agreement with the City of Margate or its predecessor in interest, the Margate Utility Authority, Inc. or one of its predecessors in interest, and

WHEREAS, City has the exclusive right to provide water and sewer services within the service area of the Utility Department of the City of Margate, Florida, and

WHEREAS, the City Commission of the City of Margate, Florida, has commissioned a study in order to properly provide for the planning and implementation of the construction of water and sewer services in the service area of the Utility Department of the City of Margate, Florida, and

WHEREAS, the City Commission of the City of Margate, Florida, has determined that the cost of the construction of the expanded water and sewer facilities for the service area of the Utility Department of the City of Margate, Florida shall not be at the cost of nor subsidized by the rates of the present users in the system, and

WHEREAS, the Florida Supreme Court in Contractors and Builders vs. the City of Dunedin, 329 So.2d 314 (Fla. 1976), has stated that a municipality need not resort to deficit financing in order to raise capital, and

WHEREAS, the City of Margate or its predecessor in interest has contracted with Developer to provide water and sewer facilities for certain properties which are more properly described in the Developer Agreeme between the City and/or its predecessor in interest which this Addendum shall be attached, and

WHEREAS, the City Commission of the City of Margate, the policy and rate-making body controlling the service area of the Utility Department of the City of Margate, wishes to only construct that water and sewer capacit which is necessary as determined by the Developers who have signed a Developer Agreement with the City of Margate or its predecessors, and

WHEREAS, the City Commission of the City of Margate, wishes to construct water and sewer facilities in a phase constructed manner at the time that the Developers in the Margate service area have need of said water and sewer services with enough time for the City of Margate to construc facilities for said water and sewer services with the understanding that the cost of construction of said facilities for expanded water and sewer services shall not be paid for nor supported by a pledge against the rates of the present water and sewer users, and

WHEREAS, the City of Margate by ordinance has provided for establishment of rates and charges intended to defray the costs of construc of expanded water and sewer facilities in the service area of the Utility Department of the Cityof Margate, and

WHEREAS, the City Commission of the City of Margate wishes at all times to foster the orderly development of land within the City of Margate, and to foster the construction of only those water and sewer facilit which are specifically needed and to have the prospective users of the anticipated expanded constructed facilities for water and sewer within the Utility System of the Utility Department of the City of Margate pay the cost of the construction of said facility, and

WHEREAS, the Developer herein wishes to reserve specific capacity for all or a certain portion of the property which is described in the original Developer Agreement with the City of Margate or its predecessors in interest, and

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WHEREAS, the Developer wishes to have the City of Margate construct that specific capacity which it wishes to reserve with the understanding that the City of Margate is at or near capacity for sewer and/or water service presently within the service area,

NOW, THEREFORE, for and in consideration of the mutual covenants and undertakings of the parties hereto and other good and valuable considerations, the parties hereto covenant and agree each with the other as follows:

The foregoing statements are true and correct and are incorporated herein by reference.

A. CONNECTION CHARGES - PREPAYMENTS

The parties recognize that pursuant to the City's Uniform Extension Policy, and the ordinances of the City, the City has established a uniform connection charge to defray the cost corresponding to and allocable to each equivalent residential connection (ERC) proposed to be added to the system and for which capacity is herein expressly reserved. As of the date of the agreement, said connection charges are:

Water ERC -	$ 450.00
Sewer ERC -	$ 800.00
Total	$1,250.00

Developer herein agrees to pay said connection charges in accordance with the terms and conditions and at the times set forth herein.

Further, pursuant to the ordinances of the City same requires the advance payment of said connection charges if it deems the same to be necessary in conjunction with the construction of utility facilities. City has advised Developer herein, and Developer acknowledges, that City has deemed that it requires that a portion of the connection charge be prepaid in order that a fund may thereby be created from which the immediate construction of new wastewater treatment plant facilities and the longer term construction of certain other utility facilities may be accomplished. Accordinly, Developer shall be obligated to prepay the sum of $940.00 for each ERC reserved pursuant to the terms of this Agreement.

Be these presents, Developer herein expressly reserves 139 ERC's of water and sewer treatment plant capacity for its project, calculated as follows:

Unless the deferred payment alternatives set forth herein are adopted by Developer concurrently with the signing of this Agreement, Developer shall pay to City, the sum of $940,00 x _____ equalling _____.

The parties further recognize that the sum of $310.00 per ERC reserved will remain to be paid by Developer to City in order that the full connection charge be ultimately collected. Developer agrees to pay said remaining sum of $310.00 per ERC as and when it requests of City, a building permit for buildings, units or residences, and such payment shall be for that number of ERC's corresponding to the improvement proposed to be constructed.

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B. DEFERRED PAYMENT ALTERNATIVE

Developer is hereby advised that City has entered into a loan agreeemnt with the Florida Coast Banks, the terms and conditions of which are designed to afford developers participating in the City's Phase I capacity reservation program to obtain the benefits of deferred payment of the protion of the connection charges ($940.00 per ERC) to which developer is obligated to City. Developer may elect to defer to City, an irrevocable letter of credit issued by a banking institution approved by Florida

Coast Banks. Said letter of credit shall be issued on Forms approved by counsel to Florida Coast Banks. Said letter of credit will indicate their assignability by the City to Florida Coast Bank. City agrees to borrow from Florida Coast Bank, a principal sum of money which corresponds to $940.00 for each ERC reserved, which reservation shall be supported by the promises contained in this agreement and by the said letter of credit guaranteeing payment therefore.

Developer's letter of credit may be for a term not to exceed five years and may contain a schedule of partial payments to be made on any anniversary date during said five (5) year period.

Prior to the closing of said loan between City and Florida Coast Bank, Developer shall be advised of the revised amount of the connection charges which shall have been calculated after adding interest and financing costs, taking into account, the date or dates of payment specified by Developer and included in said letter of credit.

Notwithstanding the payment provisions contained in said letter of credit, Developer may, at any time, elect to prepay the then remaining amount due to City and City and Bank shall allow to Developer, a credit on the amount of connection charges corresponding to the savings in interest cost enuring to the benefit of the City by virtue of said prepayment.

C. CONNECTIONS AVAILABLE

Notwithstanding that Developer may have elected to participate in the "Deferred Payment Alternative", the connection charges corresponding to the number of ERC's reserved herein shall be deemed to be prepaid based upon Developer's posting of said irrevocable letter of creeit. Further, notwithstanding that Developer's letter of credit may have provided for actual payment in the fifth year, Developer shall be entitled to connect ERC's at a prior date without accelerating said payment.

Developer expressly recognizes, however, that the portion of the total connection charge ($310.00 per ERC) which will not have been prepaid pursuant to the terms of this agreement shall be paid as each buildin permit is requested from City in accordance with the provisions hereof.

D. CONNECTION CHARGE COST FOR PHASE I FIXED

Developer herein and other developers reserving capacity in the City's Phase I expansion program will not be subject to escalation in the cost of connection charges which may occur subsequent to the date hereof, but at all times limited to that number of ERC's specifically reserved herein. In the event that City shall reduce the cost of connection charges for others not participating in the Phase I expansion program, then, in that event, only Developer herein shall be entitled to a retroactive adjustment in said connection charge cost. Developer shall never be entitled to retroactive adjustments for interest which may have been paid or accured upon the payment or prepayment of connection charges.

E. INTERIM AND PERMANENT CAPACITY

Developer herein (and all other developers participating in the Phase I expansion program) recognizes that the ultimate and permanent capacity reserved is represented by and part of the construction of new wastewater treatment facilities which City commits to build for and on behalf of participants in said Phase I expansion program. City has advised participating developers that the design and construction of expanded facilities will commence immediately following the execution of Phase I Developer Agreements and the closing of the City's loan pertaining thereto. City has estimated that expanded wastewater treatment facilities will be completed in approximately 18 months, subject always to matters of force majeure. City recognizes that the prepayment of connection charges in cash or pursuant to the deferred payment alternative, constitutes valuable consideration, without which City would not have undertaken said expansion. Accordingly, City grants to Developer, full and complete rights and benefits to that portion of the plant facilities corresponding to the capacity reserved herein, and in no event will City permit any diversion or use of said capacity to the detriment of Developer herein. It is the intention of the City to confer upon the Developer herein, the benefits of third party beneficiary status in the construction of Phase I expansion facilities to the end that Developer may be absolutely assured that such

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permanent capacity belongs to Developer, its successors and assigns in proportion to the total capacity to be available out of said Phase I expansion.

City further agrees that it will cause said expanded facilities to be continually operated in accordance with the rules and regulations of regulatory agencies having jurisdiction over such matters, and to be maintained in such a manner so as to preserve and protect the capacities reserved to Developer herein, and the City will take no action which would in any way impair the reservation or ability of the capacity granted herein.

City declares to Developer that the basic City policy shall be that capacity shall not be available generally, except to those who have subscribed for same in the Phase I expansion program. City has advised all owners, developers and prospective consumers within its service area that it has effectively reached the limit of its present treatment plant capabilities and has offered equally and uniformly to all such property owners, developers and prospective consumers, the opportunity to participate on an equal basis in the reservation of capacity in this Phase I expansion program.

Developer herein understands that City cannot guarantee the availability of interim capacity in any specific quantity prior to the completion of Phase I expanded facilities. Any capacities which may be available subsequent to the execution of these agreements and prior to the completion of expanded facilities shall be made availble to participating developers on a first come, first serve basis for as long as such capacities may remain available. Such interim capacities will only be made available in quantities corresponding to actual construction proposed to be immediately commenced. City agrees to use its best efforts to conserve available capacities for and utilization in connection with this provision, and will further seek to obtain from regulatory agencies, temporary advance capacity allocations for the system in contemplation of the completion of Phase I expanded facilities. Developer herein recognizes that it has been given the opportunity to independently assess the prospects of the availability of interim capacity and has elected to proceed with this agreement with knowledge of such facts.

F. EXPANSION SIZE - REQUIRED CASH FLOW

City hereby advises Developer that the Phase I expanded facilitie proposed to be constructed have been sized as nearly as practicable to provide for the capacity reservations which in the aggregate have been subscribed to by Phase I participants. Excess capacities which, of engineering necessity, may remain over and above Developers' subscriptions shall be considered to be in the capacity portfolio of City and shall be utilized at the discretion of the City Commission only in such circumstances where great public interest, preservation of the integrity of its service area and equity to individual applicants requires that capacity be allocated from such City portfolio. City has advised Developer herein that it is not the intention of City to reserve substantial capacities for the potential benefit of non-participating developers. Subject only to the exceptions set forth herein, non-participating developers shall be afforded capacity from subsequent expansions to utility facilities which will, from time to time, be undertaken by City after analyzing such requests and aggregating subscriptons therefor.

City has used its best efforts to match the anticipated cost of construction with the aggregate total of connection charge advances. In the event that the cost of the construction program exceeds the aggregate value or prepaid connection charges, then such excess constructio cost shall be advanced by City and no further advance shall be required by Developer herein.

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J. CAPACITY RESERVATION FEES

In accordance with the ordinances of the City, same requires the payment of capacity reservation fees in order to fully or partially defray City's cost in maintaining and administering to plant facilities held for future use. Such fees are payable until such time as an ultimate owner/occupant connects to the system and commences paying revenue to the system.

City has recognized that Developer herein and all developers participating in the Phase I expansion program have prepaid (in cash or credit) connection charges corresponding to the determined cost of facilities to be constructed in the future. Such prepayment will relieve City of the burden of carrying the captial cost of reserved future facilities. Accordingly, City has determined that the portion of the total fixed and non-variable cost of administering to and maintaining plant facilities held for future use is a sum equal to forty seven percent (47%) of its service availability (monthly minimum) charge to consumers. City further recognizes that it has encouraged the participation of developers in its Phase I expansion program in order that the most cost effective level of new capacity can be constructed. In recognition of the participation of developers whose projects and capacity utilization may extend over a term of years, the City has established the following formula for the calculation of capacity reservation fees:

1. All capacity reserved is subject to capacity reservation fees.

2. The first 100 ERC's or part thereof reserved by Developer shall be charged one hundred percent (100%) of the capacity reservation fee.

3. ERC's 101 to 200 reserved by Developer shall be charged fifty percent (50%) of the capacity reservation fee.

4. All ERC's above 200 shall be charged one-third (1/3) of the capacity reservation fee.

Capacity reservation fees shall be calculated and prepaid on the quarterly date (January 1st, April 1, July 1st or October 1st) most nearly corresponding to the date of this agreement. On such date, one year's capacity reservation fees thus calculated shall be prepaid. Thereafter on each succeeding anniversary date, Developer's capacity reservation shall be reviewed and recalculated in accordance with the formula set forth above, and the new capacity reservation charges thus calculated shall be prepaid for the next succeeding year. City has advised Developer that it will not commence the imposition of capacity reservation charges for Developer herein until such time as the quarterly date following the completion of the Phase I construction program, said date being the date on which permanent capacity reserved hereunder may be fully enjoyed by Developer.

The prepayment of capacity reservation fees one year in advance as provided for herein contemplates and allows for partial refunds to Developer equal to the number of ERC's actually connected during said twelve (12) month period and the number of actual whole months that each of such ERC's and the consumers occupying the premises shall have paid actual revenues to the City.

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K. CONSTRUCTION OF PHASE II

City agrees that should a Developer, individually or along with any other developers who have signed developer agreements with City and who are willing to commit to plant capacity of 3,000 ERC's or more show interest commiting to a prepayment program of similar nature as set forth in this addendum, City represents that it will cause a program to be implemented similar to this one providing for the additional plant capacity for users over and above that requested in Phase I. Same shall be based upon such requirements and costs as are determined by City at the time of the implementation of the Phase II program and shall be manifested in additional addendums to developer agreements.

Notwithstanding the above, City reserves the right to commence Phase II of expansion of its plant with commitments of developers evidencing less than 3,000 ERC's.

IN WITNESS WHEREOF, Developer and City have executed or have caused this Addendum to Developer Agreement to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Addendum to Developer Agreement.

ATTEST:

CITY OF MARGATE, FLORIDA

BY _____
MAYOR

BY _____
CITY MANAGER

WITNESS:

Marian A. Barske

DEVELOPER:
1957 Margaret Woodson Fisher Trust

BY _____
San W. Orr, Jr., Trustee

BY _____

APPROVED AS TO FORM:

EUGENE M. STEINFELD
City Attorney

RECORDED IN THE OFFICIAL RECORDS BOOK
OF BROWARD COUNTY, FLORIDA
F. T. JOHNSON
COUNTY ADMINISTRATOR

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CITY OF MARGATE
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