

WATER DISTRIBUTION SYSTEM AGREEMENT

THIS AGREEMENT, made and entered into, in triplicate, this 6th day of June, 2003, by and between the CITY OF PETERSBURG, a municipal corporation of the Commonwealth of Virginia, hereinafter referred to as the "City", the COUNTY OF PRINCE GEORGE, a political subdivision of the Commonwealth of Virginia, hereinafter referred to as the "County", and MPC ASSOCIATES, LLC, a Virginia limited liability company, hereinafter referred to as the "MPC".

WHEREAS, the MPC is the owner of certain real property located in Prince George County, Virginia, adjacent to the Country Club of Petersburg golf course, which property MPC plans to develop for multi-family residential condominium units (the "Development"); and,

WHEREAS, the MPC, the City, and the County desire to enter into an agreement for the construction, maintenance, service, and operation of the water distribution system for said Development.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements herein contained, the parties hereto do mutually covenant and agree as follows:

Section 1. Terms of Agreement. The term of this Agreement shall be for a period of twenty-five (25) years, commencing upon the date of the execution of this Agreement by all parties hereto, and shall be automatically renewed for successive 25 year periods at the expiration of the original term

unless notice by the County to the City is given of its intention to terminate this Agreement. Notwithstanding any of the foregoing provisions of this Section of this Agreement, it is understood by the parties hereto that in the event the County becomes able and desires to furnish that portion of the Development within the County with water, this Agreement may be terminated by the County upon giving notice of such termination to the City.

Section 2. Connection Points. Water supplied to the County hereunder shall be provided by the City through the City's water supply system located at or near the intersection of Johnson Road and Flank Road and within the City, and shall be known as the "Johnson Road Connection". It is understood and agreed that this Agreement contemplates water distribution service only to the Development, and no additional connections or service shall be allowed without prior written approval of the City.

Section 3. Water Supply. (a) The City shall only be obligated to supply that amount of water which will be available due to the extension of the City's 12" line along Johnson Road to the City limits and necessitated by the Development. Additional facilities, such as storage tanks and pumping stations, to provide additional domestic supply, pressure or fire protection for the Development shall be the responsibility of the developer. ~~and for the County.~~ The City shall have the right to connect, at no cost to the City, to the Johnson Road Extension at any point(s) within the City limits. Such connection(s) shall in no

Matt C. [unclear]

by [unclear]
M.R.S.
W.S. [unclear]

way obligate the City to provide additional water supply to the County which is not necessitated by the Development.

(b) The City shall maintain and operate a recording meter at the connection point to measure and record the water supply flow to the County from the City's water supply system. If the meter at the Development connection point becomes inoperative, the water supply flow at that connection point shall be based on the total water supply flow obtained by reading all of the meters serving each individual unit within the Development in the County and any future connections approved by the City. It shall be the obligation of the MPC to provide a meter for each multi-family residential condominium unit to measure and record the water consumption and supply flow for the particular lot or unit.

(c) Unless otherwise specified herein, the City may, to the extent practical, take water samples from any customer of the County's water supply at the Johnson Road Connection. Moreover, the City may inspect the individual dwelling units for cross connection control.

Section 4. Service Fees. The County shall pay the City service fees for water quantity supplied by the City to the Development at rates as established by the City's Water Use Ordinance (Chapter 38 of the 1982 Code of the City of Petersburg), as may be amended from time to time. Such amendments shall be binding upon the County and shall become effective as specified by the City's ordinance. Fees based upon average usage of individual dwelling units shall apply in

accordance with the City's Water Use Ordinance.

Section 5. Invoices and Payments. The City shall prepare and submit a monthly invoice to the County for payment of all charges payable by the County hereunder. The County shall pay the amount invoiced within thirty (30) days after the date of the issuance of such invoice. Failure to pay any invoice within thirty (30) days of the date of issuance shall cause the County to be liable for a late charge of ten percent (10%) of the unpaid amount.

Section 6. Reports and Records. The City shall keep accurate and complete books of account, records, documents and other evidence related to this Agreement or any modification hereto. The County may examine such accounts, records, documents and other evidence at a mutually agreed upon time in order to ascertain the correctness of the computation of compensation and other charges called for by this Agreement.

The City shall have such audit and inspection rights as are specified elsewhere in this Agreement.

If an inspection by either the City or the County reveals an error or irregularity in the charges paid or payable by the County hereunder, then (1) if such error results in an overpayment to the City, the City shall, at the County's option, refund the amount of overpayment to the County within thirty (30) days after receiving notice of the error, or deduct this amount from the amount the County owes the City in the next billing period, or (2) if such error results in an underpayment to the City, the County shall pay this amount within thirty (30) days

after receiving notice of the error.

Section 7. Third Party Beneficiary. Nothing herein contained shall be constructed as giving any person not a party to this Agreement any rights, and no action based upon a contractual theory of recovery may be brought against any party hereto by any person not a party to this Agreement claiming as a third party beneficiary to this Agreement, except that none of the subsequent owners of condominium units within the Development shall be precluded from claiming as a third party beneficiary to this contract.

Section 8. Assignment. Neither the City nor the County shall assign any rights or delegate any decision or obligations hereunder, nor transfer or otherwise dispose of this Agreement or any part hereof, or any of the respective rights, title and interest herein, except with the prior written consent of the other. Any assignment by the City or the County made without the written consent of the other shall be null and void. No assignments of this Agreement by the City or the County so consented to shall relieve either of its responsibilities for the due and full performance hereof. Nothing contained herein shall preclude the MPC from assigning or conveying all or part of its interest in this Agreement, and such assignment or conveyance made by the MPC shall not require the consent of the City or the County.

Section 9. Correspondence and Notices. All copies or certificates, notices, correspondence and invoices issued pursuant to this Agreement shall be in writing and addressed to

the following representatives and addresses, unless all parties hereto are notified in writing of any change of representative and address:

City's Representative:	City Manager City Hall Petersburg, VA 23803
County's Representative:	County Administrator Prince George Courthouse Prince George, VA 23875
MPC Associates, LLC:	Matthew P. Carden 1001 E. Bank Street Petersburg, VA 23803

Any notice or communication required to be given hereunder shall be given by registered, certified, or first class mail. The date of receipt of such notices as may be sent by mail shall be the date the notice shall be deemed to have been given.

Section 10. Applicable Law. This Agreement and the rights of the parties hereunder shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Virginia.

Section 11. Waiver. The failure of any party hereto to enforce from time to time strict adherence to any of the provisions hereof, shall not be construed as a waiver of any such rights, or a consent to any continuing or subsequent failure or breach by a party hereto.

Section 12. Amendments. No modifications of or changes or amendments to any of the provisions herein shall be valid unless agreed to in writing and signed by the governing bodies of all parties hereto.

Section 13. Severability. In the event any provisions or any part of any provision hereof shall be held to be invalid, void or otherwise unenforceable, the obligations of the parties shall be reduced only as much as is required to remove the illegality.

Section 14. Survival. Neither expiration, termination or cancellation of this Agreement by a party hereto shall be deemed to relieve a party hereto of any obligation hereunder that by its nature survives expiration, termination or cancellation, including but not limited to all warranties, guarantees and promises of indemnity.

Section 15. Headings. Section and subsection headings contained herein are inserted for convenience and shall have no effect on the interpretation or construction of this Agreement.

Section 16. Successors and Assigns. This Agreement shall be binding on the parties hereto and their directors, officers, employees, agents, successors and assigns.

Section 17. Agreement. This Agreement embodies the entire agreement between the parties hereto with respect to the subject matter hereof, and parties shall not be bound by or be liable for any statement, representation, promise, warranty, inducement or understanding of any kind or nature not set forth or provided for herein.

Section 18. Limitations of Agreement. Nothing contained herein shall be construed to impose on the County any conditions, restrictions or requirements outside the area of the Development lying within the County. Nor shall this Agreement

invalidate or limit any agreement between the County and the MPC dealing with construction of facilities or distribution of water within the Development.

IN WITNESS WHEREOF:

CITY OF PETERSBURG

by: *Wendlandt*
City Manager

ATTEST:

Antonia M. Edison
Clerk of Council

PRINCE GEORGE COUNTY

by: *Jessy J. Skalsky*
Chairman, Board of Supervisors

ATTEST:

Karen E. Adams
Clerk *Deputy*

MPC ASSOCIATES, LLC

by: *Matthew P. Carden*
Matthew P. Carden, Manager/Member