

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is entered into by and between Martin County, a political subdivision of the State of Florida (“County”) and Eagle Marsh Golf Club, LLC, a limited liability company of the State of Florida (“Eagle Marsh”) (collectively, the “Parties”). The Agreement is effective on the date last signed by the Parties (the “Effective Date”).

This Agreement is made as a compromise between the Parties for the complete and final settlement of all of their claims, differences, and causes of action as follows:

RECITALS

WHEREAS, County owns and operates wastewater treatment systems that are capable of producing reclaimed water as that term is defined by the Florida Department of Environmental Protection of irrigation quality (“IQ Water”) or use on golf courses and related areas;

WHEREAS, County and Eagle Marsh entered into a Reclaimed Water Agreement dated November 11, 2013, in which County agreed to supply IQ Water to Eagle Marsh and Eagle Marsh agreed to pay for the same as specifically set forth therein (the “Reclaimed Water Agreement”);

WHEREAS, the terms and conditions of the Reclaimed Water Agreement are incorporated by reference herein; and

WHEREAS, County is claiming Eagle Marsh is in breach of the Reclaimed Water Agreement because Eagle Marsh is allegedly delinquent in paying Eagle Marsh’s invoices for IQ Water, and Eagle Marsh is claiming County allegedly overcharged Eagle Marsh for IQ Water (the “Dispute”); and

WHEREAS, the Parties agree that Eagle Marsh was current with all bills with the county as of November 1, 2017; and

WHEREAS, IQ Water is a necessary expense of the golf course;

WHEREAS, County is claiming as of June 11, 2019, Eagle Marsh owes County the amount of \$91,420.64 for IQ Water; and

WHEREAS, Eagle Marsh is disputing County's claim and asserts Eagle Marsh overpaid County in an amount of \$32,000.00; and

WHEREAS, Eagle Marsh is claiming County should credit Eagle Marsh the amount of \$32,000.00 toward the outstanding amount due for the IQ Water to resolve the Dispute; and

WHEREAS, Eagle Marsh requested County create a new account for potable water to Eagle Marsh's clubhouse due to the eviction of Eagle Marsh's former tenant that was operating the clubhouse (and golf course) and failed to pay for the IQ Water thereby creating the problem; and

WHEREAS, County refused to create a new potable water account until Eagle Marsh pays the outstanding IQ Water balance; and

NOW THEREFORE, in consideration of the foregoing recitals, and the mutual promises, covenants and undertakings contained herein and incorporated into this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree to the following terms and conditions as a full and complete settlement of the dispute and any and all claims related thereto:

1. **Recitals.** The aforementioned Recitals are incorporated into this Agreement.
2. **Credit.** County agrees to credit Eagle Marsh the amount of \$32,000.00 toward Eagle Marsh's outstanding debt for IQ Water retroactive to May 30, 2019 (the "Credit").
3. **Potable Water.** County agrees to create a potable water account for Eagle Marsh within 5 days after the execution of this Agreement (if not already activated by County prior to the full execution of this Agreement) and to supply Eagle Marsh with potable water. Eagle Marsh

agrees to pay its invoices for such potable water within thirty (30) days after the issuance of such invoices. Payment for potable water shall be made in the same manner as for IQ Water. As a condition precedent to County creating a potable water account for Eagle Marsh, Eagle Marsh agrees to remit to the County a deposit in the amount of \$170.00. Failure to comply with this provision shall constitute a breach of this Agreement but the Parties agree to abide by the enforcement and cure provision set forth below.

4. **Payment Installments:** Eagle Marsh agrees to pay County the outstanding balance after the Credit, that is, \$59,420.64, in installments of \$5,000 per month, with the first installment due within 30 days after the approval of this Agreement by County's Board of County Commissioners or November 1, 2019, whichever is later, and subsequent payments due within 30 days after the due date for the first installment payment, the last installment being slightly less than \$5,000. No interest shall be assessed on these installment payments. Failure to comply with this provision shall constitute a breach of this Agreement and the Parties agree to abide by the enforcement and cure provision set forth below.

5. **Future IQ Water Invoices.** Eagle Marsh agrees to pay future invoices for IQ water, that is, all invoices for IQ water separate from the outstanding balance, within thirty (30) days after being invoiced (in addition to the installment payments for the outstanding balance). Failure to comply with this provision shall constitute a breach of this Agreement and the Parties agree to abide by the enforcement and cure provision set forth below.

6. **Water Meter.** Eagle Marsh agrees to install at its own cost a water meter (such as the unconnected meter presently in the pump house) for measuring the IQ water extracted for the golf course pursuant to Section 7.2 of the Reclaimed Water Agreement. Eagle Marsh will allow

County access to the pump house, as previously agreed to by the Parties in Section 8.6 the Reclaimed Water Agreement.

7. **Enforcement and Cure Period.** If either Party breaches this Agreement or any portion of it, the Party alleging the breach shall give written notice (including reasonable particulars) of such violation to the Party alleged to be in breach. The Party alleged to be in breach of this Agreement must respond to such written notice of breach no later than ten (10) calendar days thereafter (“Cure Period”). If the Parties are unable to reach a mutually acceptable resolution during the Cure Period, or any extension thereof mutually agreed to by the Parties in writing, the Party alleging a breach of the Agreement may file suit. With regard to the deposit for potable water, if Eagle Marsh fails to pay an invoice for potable water as set forth herein and the Parties are unable to reach a mutually acceptable resolution during the Cure Period, or any extension thereof mutually agreed to by the Parties in writing, County may, in its sole discretion, withdraw the deposit to pay for the outstanding invoice, and Eagle Marsh agrees to replenish the deposit within ten (10) days after being notified of the County’s withdrawal of the deposit. If either Party brings an action to enforce this Agreement, the Court shall, in its discretion, award reasonable attorneys’ fees and costs to the prevailing Party in any such enforcement action. County reserves the right to seek interest at the statutory rate for any delinquent amounts owing in breach of this Agreement.

8. **Temporary Reduction of IQ Water.** Section 5.3 of the Reclaimed Water Agreement authorizes the parties to temporarily reduce the Allocated Amount of IQ Water. Accordingly, the parties agree that the Allocated Amount of IQ waters set forth in section 5.1 shall be reduced as of June 11, 2019 to two hundred twenty five thousand (225,000) gallons per day,

with a corresponding reduction in the amount charged until such time as the outstanding balance set forth in paragraph 4 has been paid.

9. **General Releases.**

- i. These releases are designed to include the outstanding amounts that County claims Eagle Marsh owes County for IQ Water and Eagle Marsh's claims that County overcharged Eagle Marsh for IQ Water.
- ii. **Eagle Marsh's Release of County.** In consideration for County entering into this Agreement, and for such other good and valuable consideration received from County, the receipt and sufficiency of which is hereby acknowledged, Eagle Marsh, on behalf of itself and any of its agents, assigns, employees, officers, owners, representatives, trustees or anyone else acting on Eagle Marsh's behalf, hereby fully releases, acquits, satisfies, and forever discharges County, together with County's Board of County Commissioners, agents, attorneys, commissioners, employees, and other representatives from: (1) any and all claims, demands, liabilities, debts, judgments, expenses, actions, causes of action, and suits of any kind whatsoever in connection with the Dispute; (2) reimbursement of any attorneys' fees and any legal costs; and (3) any compensatory or any other damages, if any; and (4) all other legal responsibilities arising from or relating to the Dispute, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, real or imaginary, actual or potential, excluding any obligations or claims under this Agreement and the incorporated Reclaimed Water Agreement.

iii. **County's Release of Eagle Marsh.** In consideration for Eagle Marsh entering into this Agreement, and for such other good and valuable consideration received from Eagle Marsh, the receipt and sufficiency of which is hereby acknowledged, County, on behalf of itself and any of its agents, assigns, employees, officers, representatives, or anyone else acting on County's behalf, hereby fully releases, acquits, satisfies, and forever discharges Eagle Marsh, together with its agents, attorneys, commissioners, employees, and other representatives from: (1) any and all claims, demands, liabilities, debts, judgments, expenses, actions, causes of action, and suits of any kind whatsoever in connection with the Dispute; (2) reimbursement of any attorneys' fees and any legal costs; and (3) any compensatory or any other damages, if any; and (4) all other legal responsibilities arising from or relating to the Dispute, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, real or imaginary, actual or potential, excluding any obligations or claims under this Agreement and the incorporated Reclaimed Water Agreement.

10. **Invalidation.** If any provision of this Agreement is invalidated by a court of competent jurisdiction, then all of the remaining provisions of this Agreement shall remain in full force and effect, provided that the Parties may still effectively realize the complete benefit of the promises and considerations conferred hereby.

11. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties hereto with respect to the matters set forth herein and supersedes in its entirety any and all agreements and communications, whether written or oral, previously made in connection with such matters. Any agreement to amend or modify the terms or provisions of this Agreement must be in

writing and executed by both of the Parties hereto. No waiver of any provision of this Agreement will be valid unless it is in writing and signed by the Party against whom such waiver is charged.

12. **Non-Admission of Liability.** This Agreement is the result of a compromise and settlement and shall never be construed as an admission of any liability, wrongdoing, responsibility, or unlawful conduct by County or Eagle Marsh. The Parties acknowledge that this Agreement has been entered into by the Parties to avoid the costs and uncertainty of litigating the Dispute.

13. **Binding Nature of Agreement.** This Agreement shall be binding upon each of the Parties and upon their any successors and assigns, and shall inure to the benefit of each Party and to its successors and assigns.

14. **Notice.** Whenever either party desires to give notice to the other, such notice must be in writing in at least one of the following methods:

- (a) Certified United States Mail, postage prepaid, return receipt requested; or
- (b) Overnight courier, such as by FedEx or UPS, with a request for receipt acknowledgment; or
- (c) Hand-delivery to a person authorized to accept delivery of notice with a request for a receipt acknowledgment; or
- (d) Email if and only if agreed to in advance by County and Eagle Marsh in writing specifying the email addresses, and if so agreed, the email shall a request receipt acknowledgement.

The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

FOR COUNTY:

Sam Amerson, PE
Director
Martin County Utilities & Solid Waste Department
3473 SE Willoughby Boulevard, Suite 102
Stuart, FL 34994

FOR EAGLE MARSH:

Veronique Howley
13340 Alton Road
Palm Beach Gardens, Florida 33418

and

Paul Howley
3869NW Royal Oak Drive
Jensen Beach, Florida 34957

Eagle Marsh shall be required to notify the County, in writing, whenever there is a change in the address of Eagle Marsh (to the place) for which notice is to be sent (giving notice), as required in this section. In the event Eagle Marsh fails to maintain a current address on record with the County as required herein, County shall be deemed to have notified Eagle Marsh by using the last known address on record and County shall not have any responsibility or obligation to investigate the validity of the address that Eagle Marsh has provided. As a result, Eagle Marsh agrees to hold County harmless and defend same for any action or occurrence or non-occurrence as a result of Eagle Marsh not receiving notice due to Eagle Marsh's failure to update its address for notification. All notices sent in accordance with this section shall be deemed to be effective upon receipt or refusal of same unless otherwise expressly provided in this Agreement.

15. **Authority.** Each Party represents that each person, or authorized counsel, executing this Agreement on its behalf has been authorized to sign on behalf of the respective Party and to fully bind it to the terms of this Agreement and that the respective Parties have the power and authority to perform their respective obligations as provided by this Agreement.

In the event of a breach by Eagle Marsh and the expiration of the cure period as provided above, the County Administrator and the County Administrator's designee if any is authorized to enforce this Agreement by filing a lawsuit.

16. **Law, Jurisdiction, Venue, Waiver of Jury Trial.** This agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Nineteenth Judicial Circuit in and for Martin County, Florida, except that nothing herein shall prevent County from filing pleadings, including but not limited to a proof of claim, in United States Bankruptcy Court if necessary. **BY ENTERING INTO THIS AGREEMENT, COUNTY AND EAGLE MARSH HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

17. **Counterparts.** The Parties agree that this Agreement and any and all other documents in connection with settlement of this matter may be executed in exact counterparts, each of which shall be deemed an original but both of which taken together shall constitute one and the same instrument. Any signature page delivered by facsimile transmission or e-mail shall be treated in all manner and respects as an original document.

18. **Effective Date.** This Agreement is not effective until approved by County's Board of County Commissioners and signed by the Parties, and the effective date of this Agreement is

the date of the last signature as set forth below. If County's Board of County Commissioners rejects this Agreement, Eagle Marsh is not bound by any terms and conditions as set forth herein even if Eagle Marsh signs this Agreement first.

19. **Time**. All time periods in this Agreement are for calendar days, however, if last day of any time period in this Agreement falls on a Saturday, Sunday or legal holiday, the last day is extended to the next day that is not a Saturday, Sunday or legal holiday.

20. **Force Majeure**. The Parties shall not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is beyond the reasonable control of a party, materially affecting the performance of any of its obligations under this Agreement, and could not reasonably have been foreseen or provided against, for example, an extreme weather event such as a hurricane, but will not be excused for failure or delay resulting from only general economic conditions or other general market effects. If either party to this Agreement invokes this provision to avoid performance of any obligation under this Agreement and a Court determines that party wrongfully invoked this provision to evade performance of such an obligation, the aggrieved party shall be entitled to its reasonable attorney's fees and costs for obtaining the Court's determination of the same.

21. To the extent this Agreement conflicts with any other Agreement between the Parties, the terms of this Agreement control.

22. Time is of the essence for any deadline or extension thereof.

[This space is left blank intentionally.]

IN WITNESS THEREOF, the Parties have executed this Agreement on the dates indicated below.

EAGLE MARSH GOLF CLUB, LLC

Clair Howley Sabin
Witness Signature for
Paul Howley

By: [Signature]
Paul Howley, Manager

Date:

07/11/2019

Clair Howley Sabin
Witness Printed Name

Clair Howley Sabin
Witness Signature for
Veronique Howley

By: [Signature]
Veronique Howley, Manager

Date:

07/11/2019

CLAIRE HOWLEY SABIN
Witness Printed Name

IN WITNESS WHEREOF, this Settlement Agreement and Release has been executed by and on behalf of Martin County, Florida, by its Chairman of its Board of County Commissioners, its seal affixed hereto, as attested by its Clerk as of the _____ day of _____, 2019.

(SEAL)

BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA

ATTEST:

By: _____
Edward V. Ciampi, Chairman

By: _____
Carolyn Timmann, Clerk of the
Circuit Court and Comptroller

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY

By: _____
David Arthur
Senior Assistant County Attorney