

RESOLUTION 15-104

BE IT RESOLVED that the appropriate officers of the City are authorized but not required to execute and deliver on behalf of the City that certain Horizontal Infrastructure Completion Agreement between the City and Alvin Gary Walsingham; Marion C. Walsingham, Individually and as Trustee of the W. Alvin Walsingham Revocable Trust U/T/A dated July 1, 1990, and as Trustee of the Marion C. Walsingham Revocable Trust U/T/A dated October 10, 1990; and Sylvia Jean Walsingham as Personal Representative of the Estate of W. M. Walsingham a/k/a William Myron Walsingham, Deceased (collectively the “Developer”), relating to the installation and construction of a stormwater treatment facility and appurtenances, sidewalk and driveway improvements within road right-of-ways, and water and sewer utilities improvements in Moonlight Bay at Colony Club - Phase 1, which improvements shall be secured by a performance bond in the amount of Thirty One Thousand Dollars (\$31,000) in substantially the form attached and presented to the Council today, with such changes, insertions or omissions as may be approved by the City Manager, whose execution of such agreement shall be conclusive evidence of such approval.

THIS RESOLUTION shall be effective immediately upon passage.

PASSED in regular session this 26th day of May, 2015.

CITY OF PANAMA CITY BEACH

By: Gayle F. Oberst
Gayle F. Oberst, Mayor

ATTEST:

Holly White
Holly White, City Clerk

HORIZONTAL INFRASTRUCTURE COMPLETION AGREEMENT

THIS HORIZONTAL INFRASTRUCTURE COMPLETION AGREEMENT (“HICA”) made and entered into this ___ day of _____, 2015, by and between Alvin Gary Walsingham; Marion C. Walsingham, Individually and as Trustee of the W. Alvin Walsingham Revocable Trust U/T/A dated July 1, 1990, and as Trustee of the Marion C. Walsingham Revocable Trust U/T/A dated October 10, 1990; and Sylvia Jean Walsingham as Personal Representative of the Estate of W. M. Walsingham A/K/A William Myron Walsingham, Deceased (collectively the “Developer”), and THE CITY OF PANAMA CITY BEACH (the “City”);

WITNESSETH:

WHEREAS, the Developer is requesting final approval from the City Council of Panama City Beach, Florida for a plat of Moonlight Bay at Colony Club—Phase 1, (the “Plat”) a proposed subdivision located on the westernmost boundary of Colony Club neighborhood, west of Moonlight Bay Drive and south of Powerline Road (the “Subdivision”), and

WHEREAS, the City intends to provide water and utility service within the Subdivision, and

WHEREAS, the Developer intends to complete construction of a stormwater treatment facility and appurtenances, sidewalk and driveway improvements within road right-of-ways, and water and sewer utilities (the “Horizontal Infrastructure”) as specified in the plans and specifications titled “Moonlight Bay at Colony Club Panama City Beach Area” prepared and sealed by SCR & Associates, Job No. 11731, submitted on behalf of the Developer and approved by the City on March 13, 2015 (the “Plans”), and

WHEREAS, City policy requires Developer’s dedication and the City’s acceptance of the Horizontal Infrastructure within the Subdivision before providing service, and

WHEREAS, the City has reviewed the Plans for construction and design of the Horizontal Infrastructure, but the City is unwilling to accept the Horizontal Infrastructure pending the completed construction, inspection and approval of the Horizontal Infrastructure, and

WHEREAS, the Developer desires immediate Plat approval prior to the Developer's construction and City's acceptance of the Horizontal Infrastructure, and

WHEREAS, the City is unwilling to approve the Plat unless the Developer covenants to construct the Horizontal Infrastructure to City standards, maintain and repair the Horizontal Infrastructure until City acceptance and post an unconditional Performance Bond and Maintenance Bond to secure performance of these covenants; and

WHEREAS, the Developer and the City wish to document the obligations and conveyances contemplated by each party, and the order and procedure by which these obligations shall be discharged;

NOW THEREFORE, in consideration of the mutual covenants hereinafter expressed, and the City's reliance upon those presents, the parties agree and commit themselves as follows:

1. The foregoing recitals are true, correct and complete.
2. Term and Termination. This Agreement shall commence immediately upon execution by both parties and thereafter shall terminate upon the acceptance of the Horizontal Infrastructure, at which time the Performance Bond shall be released.
3. Required Bonds.
 - A. Prior to the recording of the Plat, the Developer shall provide a performance bond in the amount of Thirty One Thousand Dollars (**\$31,000**) (110% of the cost to construct the Improvements) in favor of the City issued by a surety reasonably acceptable to the City to secure the full and timely performance of Developer's covenants set forth in this Agreement (the "Performance Bond").
 - B. Prior to the City's release of the Performance Bond, the Developer shall provide a maintenance bond in the amount of Three Thousand Dollars (**\$3,000**) (10% of the cost to construct the Improvements) in favor of the City issued by a surety reasonably acceptable to the City to secure the full and

timely performance of Developer's covenants set forth in this Agreement (the "Maintenance Bond").

4. The Plat. Concurrent with execution of this agreement, the City will approve the Plat, in the form reviewed and approved by City staff and presented to the Council for consideration simultaneous with this Agreement. The promise of Developer's timely and proper completion of construction of the Horizontal Infrastructure and its maintenance and repair until acceptance by the City is a material covenant upon which reliance is placed by the City in making this Agreement and approving the Plat.
5. The Horizontal Infrastructure. Within twelve (12) months of the City's execution of this Agreement, and prior to requesting any Certificate of Occupancy for any structure within the Plat boundary, the Developer will complete construction of the Subdivision's Horizontal Infrastructure as specified in the Plans. All construction shall be performed in accordance with sound engineering practices and according to the Plans, all as determined and interpreted by the City using its reasonable discretion. Developer shall timely and properly secure all applicable local, county, state and federal permits to construct the Horizontal Infrastructure and shall pay any fees or costs associated therewith. Developer, his agents, subcontractors and the employees of any one of them, shall comply with all applicable laws, regulations and permit conditions related to the construction of the Horizontal Infrastructure. The Developer agrees to dedicate to the City, by Plat dedication, the Horizontal Infrastructure constructed and installed on Developer's property, at no cost to the City. Developer shall ensure that no potable water service shall be provided through the Horizontal Infrastructure to any third party user or occupant of the Subdivision until all bacteriological and pressure testing has been completed and the Horizontal Infrastructure have been approved for such use by the Department of Environmental Protection.
6. City Acceptance of Infrastructure. Upon completion of the Horizontal Infrastructure in accordance with the Plans, and inspection by the City, the City will accept, maintain and repair the Horizontal Infrastructure, together with all easements necessary for the City's use, access and maintenance thereof, in a

manner consistent with the maintenance of other City streets and City infrastructure similarly situated. The Developer or its assignee shall be responsible for maintenance and repair of the Horizontal Infrastructure until acceptance of Horizontal Infrastructure by the City. The City shall not accept stormwater treatment or attenuation facilities within the Subdivision, even if the City constructs these improvements, unless such stormwater facilities are located within right of ways or easements dedicated to the City.

7. City Performance. If for any reason the Developer fails to timely and substantially complete the installation, construction or maintenance of any element of the Horizontal Infrastructure and the City undertakes to complete such installation, construction or maintenance: (i) Developer hereby grants the City a construction license to use, access, construct and install the Horizontal Infrastructure, and (ii) Developer hereby agrees to reimburse the City for any cost differential between the amount of the applicable bond and the actual cost reasonably incurred by the City upon demand.
8. Fees and Costs. The Developer will pay the fees and costs reasonably incurred to effect the design, engineering and construction of the Horizontal Infrastructure, including but not limited to, any fees and costs imposed by City ordinance or resolution with respect to the review of the Plans, the inspection of the Horizontal Infrastructure or the preparation of the necessary instruments contemplated herein.
9. Developer's Warranty of Infrastructure. Developer warrants the workmanship and material of the Horizontal Infrastructure for a period of one year after the City's acceptance of the Horizontal Infrastructure. The Developer further warrants that said improvements are fit for use as part of the City's utility system, and the Developer agrees to defend, indemnify and hold harmless the City from any and all liability claims by a third party due to faulty workmanship and materials within the aforementioned one-year warranty period.
10. Notice of Changes. Each party shall have the obligation of notifying the other party of any events or circumstances that will affect either party's ability to carry out their duties under this Agreement.

11. Indemnification and Hold Harmless.
 - A. For a period of one year after City's acceptance of the Horizontal Infrastructure, Developer shall indemnify and hold harmless and defend the City and its officers, employees, agents and representatives from and against any and all damages, lawsuits, liabilities, claims, costs and expenses including reasonable attorney's fees ("Damages") arising in whole or in part from: (i) the construction, installation, maintenance or repair of the Horizontal Infrastructure by Developer; or (ii) the breach of any of Developer's representations, warranties, covenants or agreements hereunder. The covenants contained in this sub-paragraph shall survive the termination of this Agreement, but shall expire one year from the City's acceptance of the Horizontal Infrastructure.
 - B. If any third party claim is made against the City that, if sustained, would give rise to indemnification liability of the Developer under subsection A above, the City shall promptly cause notice of the claim to be delivered to the Developer and shall afford the Developer and its counsel, at the Developer's sole expense, the opportunity to join in defending or compromising the claim. The covenants contained in this sub-paragraph shall survive the termination of this Agreement, but shall expire one year from the City's acceptance of the Horizontal Infrastructure. .
12. Time. Time is of the essence in this Agreement.
13. Remedies. In the event Owner fails to comply with any term or condition of this Agreement, the City shall have the right to terminate utility service to the Owner's property in addition to any other remedies available to it. All rights and remedies conferred upon the parties in this Agreement shall be cumulative and in addition to those available under the laws of the State of Florida.
14. Attorney's Fees. In the event of any litigation hereunder, each party shall be responsible for its own attorney's fees and court costs at all trial and appellate levels and at any mediation or arbitration.
15. Assignment. This Agreement is not assignable, except to the extent that the assignee assumes the obligation to complete the Agreement and post the

appropriate performance bond or letter of credit to insure the Agreement's completion.

16. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
17. Modification. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the City and Owner.
18. Waiver. Failure by the City to enforce any provision of this Agreement shall not be deemed a waiver of the provision or modification of this Agreement. A waiver by the City of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.
19. Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supercedes all prior and contemporaneous agreements, understandings, negotiations and discussions of the parties, whether oral or written, and there are no representations, warranties, covenants or other agreements among them.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

Signed in the presence of:

ALVIN GARY WALSINGHAM

Print Name:

By: _____
Its

Print Name:

MARION C. WALSINGHAM,
INDIVIDUALLY, AND AS TRUSTEE OF
THE W. ALVIN WALSINGHAM
REVOCABLE TRUST U/T/A DATED JULY
1, 1990, AND AS TRUSTEE OF THE
MARION C. WALSINGHAM REVOCABLE
TRUST U/T/A DATED OCTOBER 10, 1990

Print Name:

By: _____
Its

Print Name:

SYLVIA JEAN WALSINGHAM AS
PERSONAL REPRESENTATIVE FO THE
ESTATE OF W. M. WALSINGHAM A/K/A
WILLIAM MYRON WALSINGHAM,
DECEASED

Print Name:

By: _____
Its

Print Name:

CITY OF PANAMA CITY BEACH
a municipal corporation

By Mario Gisbert, City Manager

ATTEST:

Holly J. White, City Clerk

