

**FOURTH AMENDMENT TO THE AMENDED AND RESTATED  
UTILITY AGREEMENT  
BETWEEN THE CITY OF NORTH PORT, THE WEST VILLAGES IMPROVEMENT  
DISTRICT AND FOURTH QUARTER PROPERTIES XXXII, LLC.**

This Fourth Amendment (the "Fourth Amendment") to the Amended and Restated Utility Agreement is made on September 13<sup>th</sup>, 2010, by and between the City of North Port, Florida, a municipal corporation of the State of Florida (hereinafter "CITY"), West Villages Improvement District, an independent special district of the State of Florida (hereinafter "District") and Fourth Quarter Properties XXXII, LLC (hereinafter "Fourth Quarter"), a Georgia limited liability company, all of the foregoing being collectively referred to as "the parties," for the purpose of modifying the Amended and Restated Utility Agreement, dated February 27, 2007, as amended by the First Amendment, dated May 29, 2007, and by the Second Amendment, dated June 23, 2009 and by the Third Amendment, dated July 12, 2010, effective on August 16, 2010.

**Recitals**

- A.** WHEREAS, under the Amended and Restated Utility Agreement, water and sewer capacity has been paid for and thus reserved by Fourth Quarter or Village Developers for 1,350 water and wastewater ERCs; and
- B.** WHEREAS, the Amended and Restated Utility Agreement, as amended by the First Amendment, addressed only the construction schedule of the interconnect and water and sewer capacity reserved by Fourth Quarter or Village Developers for 1,350 water and wastewater ERCs remained unchanged; and
- C.** WHEREAS, the Amended and Restated Utility Agreement, as amended by the Second Amendment, addressed only the schedule of future water and wastewater ERC capacity allocation and water and sewer capacity reserved for 1,350 water and wastewater ERCs remained unchanged (950 ERCs at the current rate of \$4,123 per ERC and 400 ERCs at the previous rate of \$2,140 per ERC), of which 953 water and wastewater ERCs (comprised of: 62 ERCs at \$2,140 and 350 ERCs at \$4,123 paid for by DiVosta Homes, LP; 250 ERCs paid for by Fourth Quarter Properties XII, LLC at \$4,123; 103 ERCs paid for by Lee Wetherington Development, Inc., at \$4,123; and 188 ERCs paid for by Gran Paradiso I, LLC and Gran Paradiso II, LLC at \$4,123) remain unconnected as of June 1, 2010; and
- D.** WHEREAS, the Amended and Restated Utility Agreement, as amended by the Third Amendment, addressed relinquishing (forty-two) 42 of the prepaid water and wastewater ERC capacity (comprised of: (nineteen) 19 from Fourth Quarter, (fifteen) 15 from Gran Paradiso I, LLC and Gran Paradiso II, LLC and (eight) 8 from Lee Wetherington) to pay for the balance of guaranteed revenues due on July 1, 2009, thus amending the water and sewer capacity reserved to 1,308 water and wastewater ERCs (908 ERCs at the current rate of \$4,123 per ERC and 400 ERCs at the previous rate of \$2,140 per ERC), of which 910 water and wastewater ERCs (comprised of: 61 ERCs at \$2,140 and 350 ERCs at \$4,123 paid for by DiVosta Homes, LP; 231 ERCs paid for by Fourth Quarter Properties XII, LLC at \$4,123; 95 ERCs paid for by Lee Wetherington Development, Inc., at \$4,123; and 173 ERCs paid for by

Gran Paradiso I, LLC and Gran Paradiso II, LLC at \$4,123) remain unconnected as of August 1, 2010; and

- E. WHEREAS, the Amended and Restated Utility Agreement, as amended by the Third Amendment, also addressed separating out DiVosta Homes, LP from the original agreement, thus amending the water and sewer capacity reserved to 558 water and wastewater ERCs (558 ERCs at the current rate of \$4,123 per ERC), of which 231 water and wastewater ERCs paid for by Fourth Quarter Properties XII, LLC; 95 ERCs paid for by Lee Wetherington Development, Inc.; and 173 ERCs paid for by Gran Paradiso I, LLC and Gran Paradiso II, LLC) remain unconnected as of August 1, 2010 for a total of 499 ERCs which remain unconnected as of August 1, 2010; and
- F. WHEREAS, the parties wish to further amend the Amended and Restated Utility Agreement in recognition of changed economic circumstances; and
- G. WHEREAS, the parties acknowledge that concurrent with this Fourth Amendment Gran Paradiso I, LLC and Gran Paradiso II, LLC has requested to enter into a separate standard developer's utility agreement with CITY.

**NOW, THEREFORE**, for and in consideration of the mutual understandings and agreements herein contained, the parties agree as follows:

1. The above Recitals are true and correct to the best knowledge of the parties, and are incorporated herein and made a part hereof.
2. Fourth Quarter and the District hereby acknowledge that Gran Paradiso I, LLC and Gran Paradiso II, LLC has requested to enter into a separate standard developer's utility agreement with CITY (a copy of which is attached hereto as Exhibit A) and to have the water and wastewater capacity needs for Gran Paradiso I, LLC and Gran Paradiso II, LLC addressed in that agreement and removed from the water and wastewater capacity reserved to Fourth Quarter in the Amended and Restated Utility Agreement dated February 27, 2007, as amended by the First Amendment, dated May 29, 2007, and as amended by the Second Amendment, dated June 23, 2009 and amended by the Third Amendment, dated July 12, 2010, effective on August 16, 2010.
  - (a) Fourth Quarter and the District hereby join in and consent to the request of Gran Paradiso I, LLC and Gran Paradiso II, LLC, and agree that upon approval of such separate agreement by CITY, Fourth Quarter and the Village Developers other than Gran Paradiso I, LLC and Gran Paradiso II, LLC will have 326 prepaid water and wastewater ERCs remaining for their developments, and Gran Paradiso I, LLC and Gran Paradiso II, LLC will have a balance of 173 prepaid water and wastewater ERCs for its development, plus such additional ERCs as are provided for in the separate standard developer's utility agreement between Gran Paradiso I, LLC and Gran Paradiso II, LLC and CITY.
  - (b) If CITY and Gran Paradiso I, LLC and Gran Paradiso II, LLC are unable to agree to the separate standard developer's utility agreement contemplated in this section, CITY shall have no obligation to provide additional water and wastewater capacity to

Gran Paradiso I, LLC and Gran Paradiso II, LLC beyond such capacity as has been prepaid by Gran Paradiso I, LLC and Gran Paradiso II, LLC directly to CITY.

3. Fourth Quarter has requested, and CITY and the District agree, that fifteen (15) ERCs of the 200 ERCs shown in Table 6.2 of the Third Amendment for the year 2014 be reallocated from Fourth Quarter to Gran Paradiso I, LLC and Gran Paradiso II, LLC, and shall be paid for by Gran Paradiso I, LLC and Gran Paradiso II, LLC with the ERC payment currently due July 1, 2014, as provided in a separate standard developer's utility agreement between CITY and Gran Paradiso I, LLC and Gran Paradiso II, LLC executed contemporaneously with this Fourth Amendment.
4. The Capacity Allocation Schedule set forth in Table 6.2 of the Amended and Restated Utility Agreement dated February 27, 2007, as amended by the Second Amendment to the Amended and Restated Utility Agreement, and amended by the Third Amendment, is hereby further amended as follows:

**TABLE 6.2 CAPACITY ALLOCATION SCHEDULE**

<b>Year</b>	<b>Water ERCs</b>	<b>Wastewater ERCs</b>	<b>Delivery Date</b>
2005	400 *	400 *	July 1, 2005
2006	850 **	850 **	July 3, 2006
2007	100 ***	100 ***	July 2, 2007
2008	0	0	July 1, 2008
2009	0	0	July 1, 2009
2010	(42) ****	(42) ****	July 1, 2010
2011	0	0	July 1, 2011
2012	0	0	July 1, 2012
2013	0	0	July 3, 2013
2014	185 *****	185 *****	July 2, 2014
2015	250	250	July 1, 2015
2016	300	300	July 1, 2016
2017	400	400	July 1, 2017
2018	400	23	July 1, 2018
2019	400	0	July 1, 2019
2020	400	0	July 1, 2020
2021	400	0	July 1, 2021
2022	400	0	July 1, 2022
2023	23	0	July 1, 2023
<b>Total</b>	<b>4,466</b>	<b>2,466</b>	

\* 400 ERCs paid for by DiVosta

\*\* Includes: 237 ERCs paid for by Gran Paradiso I, LLC and Gran Paradiso II, LLC  
 350 ERCs paid for by DiVosta  
 113 ERCs paid for by Lee Wetherington  
 150 ERCs paid for by Fourth Quarter

\*\*\* 100 ERCs paid for by Fourth Quarter

\*\*\*\* 42 ERCs relinquished by Fourth Quarter per the Third Amendment

\*\*\*\*\* 15 ERCs of the 200 ERCs shown for 2014 in Table 6.2 of the Third Amendment have been reallocated from Fourth Quarter by separate agreement to Gran Paradiso I, LLC and Gran Paradiso II, LLC per this Fourth Amendment

Total Capacity Allocations (5,600 water) and (3,600 wastewater) have been reduced to accommodate DiVosta's and Gran Paradiso I, LLC and Gran Paradiso II, LLC's requests for a separate standard developer's utility agreement.

5. The Guaranteed Revenue Payment Schedule set forth in Table 7.1 of the Amended and Restated Utility Agreement dated February 27, 2007, as amended by the Second Amendment to the Amended and Restated Utility Agreement, and amended by the Third Amendment, is hereby amended as follows:

**TABLE 7.1**  
**GUARANTEED REVENUE PAYMENT SCHEDULE**

Capacity Reservation Date	Capacity Reserved		Guaranteed Revenue Payment Date
	Water ERCs	Wastewater ERCs	
July 1, 2005	400	400	July 3, 2006
July 3, 2006	850	850	July 2, 2007
July 2, 2007	100	100	July 1, 2008
July 1, 2008	0	0	July 1, 2009
July 1, 2009	0	0	July 1, 2009
July 1, 2010	(42)	(42)	July 1, 2011
July 1, 2011	0	0	July 1, 2012
July 1, 2012	0	0	July 3, 2013
July 3, 2013	0	0	July 2, 2014
July 2, 2014	185	185	July 1, 2015
July 1, 2015	250	250	July 1, 2016
July 1, 2016	300	300	July 1, 2017
July 1, 2017	400	400	July 1, 2018
July 1, 2018	400	23	July 1, 2019
July 1, 2019	400	400	July 3, 2020
July 1, 2020	400	400	July 2, 2021
July 1, 2021	400	400	July 1, 2022
July 1, 2022	400	400	July 1, 2023
July 1, 2023	23	400	July 1, 2024
July 1, 2024	1,000	1,000	July 1, 2025
July 1, 2025	1,000	1,000	July 1, 2026
July 1, 2026	1,000	1,000	July 1, 2027
July 1, 2027	1,000	500	July 1, 2028
July 1, 2028	1,000	0	July 1, 2029
July 1, 2029	1,000	0	July 1, 2030
July 1, 2030	1,000	0	July 1, 2031
July 1, 2031	1,000	0	July 1, 2032

6. Fourth Quarter shall pay to CITY the One Hundred Dollar (\$100.00) fee required for amendments to agreements as set forth in the Citywide Miscellaneous Fee Schedule within fifteen (15) days of execution of this Amendment by CITY. Fourth Quarter's failure to

timely make such payment shall, upon written notice from CITY to all the parties, render this Fourth Amendment null and void *ab initio*; provided, however, that such written notice must be given by CITY within thirty (30) days of such non-payment, otherwise, this Fourth Amendment shall continue in full force and effect.

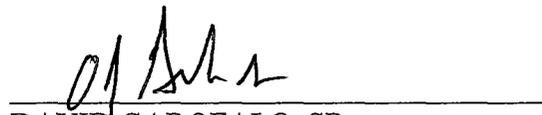
7. Except as specifically set forth in this Fourth Amendment to the Amended and Restated Utility Agreement, all other provisions of the Amended and Restated Utility Agreement, dated February 27, 2007, as amended by the First Amendment, dated May 29, 2007, and the Second Amendment, dated June 23, 2009, and the Third Amendment dated July 12, 2010, effective on August 16, 2010, remain unchanged and in full effect.
8. The Agreement, as herein and previously amended, may be modified only by a written instrument executed by all of the parties.
9. This Fourth Amendment shall be effective as of the date it has been signed by all of the parties.

IN WITNESS WHEREOF, West Villages Improvement District, Fourth Quarter and CITY have executed or have caused this Fourth Amendment, with the named Exhibits attached, if any, to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Fourth Amendment.

ATTEST:

CITY OF NORTH PORT, FLORIDA

  
HELEN M. RAIMBEAU, MMC  
CITY CLERK

  
DAVID GAROFALO, SR.  
COMMISSION CHAIR

Approved as to form and correctness:

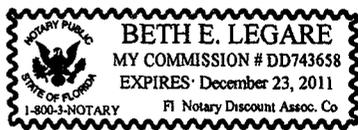
  
ROBERT K. ROBINSON  
CITY ATTORNEY

STATE OF FLORIDA  
COUNTY OF SARASOTA

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of September 2010 by the Commission Chair of THE CITY OF NORTH PORT, FLORIDA, on behalf of THE CITY OF NORTH PORT. He/She is personally known to me and did not take an oath.

AFFIX SEAL

  
Notary Public



**FOURTH QUARTER  
PROPERTIES XXXII, LLC,**  
a Georgia limited liability company.

Margaret Muise  
Witness

Margaret Muise  
Print Name

Witness

Min Lee  
Print Name

By: [Signature]

As: Authorized Representative

STATE OF ~~FLORIDA~~ Georgia  
COUNTY OF ~~SARASOTA~~ Forsyth

The foregoing instrument was acknowledged before me this 9 day of September, 2010 by J. Bruce Williams, Jr., as Authorized Repres of FOURTH QUARTER PROPERITES XXXII, LLC, a Georgia limited liability Company on behalf of the limited liability company. He/She is personally known to me and did not take an oath.

AFFIX SEAL

Cardace Rose  
Notary Public

WEST VILLAGES IMPROVEMENT DISTRICT,  
an independent special district  
of the State of Florida

ATTEST:

T. Wodraska  
Secretary

By: [Signature]  
Its: Chairman

{AFFIX DISTRICT SEAL}

STATE OF FLORIDA  
COUNTY OF SARASOTA

The foregoing instrument was acknowledged before me this 28 day of September, 2010 by Eric Anderson, as Chairman of WEST VILLAGES IMPROVEMENT DISTRICT, an independent special district of the State of Florida, on behalf of the District. He/She is personally known to me or produced \_\_\_\_\_ as identification, and did not take an oath.

AFFIX SEAL

T. Wodraska  
Notary Public

NOTARY PUBLIC-STATE OF FLORIDA  
Todd R. Wodraska  
Commission # DD964923  
Expires: MAR. 01, 2014  
BONDED THRU ATLANTIC BONDING CO., INC.

## EXHIBIT A

### CITY OF NORTH PORT, FLORIDA and GRAN PARADISO I, LLC AND GRAN PARADISO II, LLC WATER AND WASTEWATER SYSTEM STANDARD DEVELOPER'S AGREEMENT

THIS AGREEMENT made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between Gran Paradiso I, LLC and Gran Paradiso II, LLC, Florida limited liability companies, hereinafter collectively referred to as "Developer", and the City of North Port, Florida, an incorporated municipality located within the State of Florida, hereinafter referred to as the "City".

#### RECITALS

1. The Developer owns or controls lands ("Property") located in North Port, Florida, the boundary description of which is set forth in Exhibit A-1 and a map of which is attached as Exhibit A-2, both of which are incorporated herein.
2. The Developer has commenced or is about to commence development of the Property, by erecting thereon, residential or commercial improvements.
3. The Developer is desirous of prompting the construction and/or maintenance of central water and wastewater facilities so occupants of each residence or commercial improvement constructed will receive adequate water and wastewater services.
4. The City is willing to provide, in accordance with the provisions and stipulations hereinafter set out, and in accordance with all applicable laws, central water and wastewater facilities, and to have extended such facilities by way of water and wastewater mains, and to thereafter operate such facilities so the occupants of each residence or commercial improvement constructed on the Property will receive adequate water and wastewater services from the City.
5. The City is also willing to provide reclaimed water service, if applicable and economically feasible and subject to City regulation.
6. This Agreement is entered into between the City and Developer as contemplated by Section 9 of the Amended and Restated Utility Agreement among the City, West Villages Improvement District and Fourth Quarter Properties XII, LLC, dated February 27, 2007.

ACCORDINGLY, for and in consideration of the Recitals, the mutual undertakings and agreements herein contained and assumed, and other good and valuable

consideration the receipt and sufficiency of which are acknowledged by the parties, the Developer and the City hereby covenant and agree as follows:

SECTION 1. RECITALS. The above Recitals are true and correct, and form a material part of this Agreement.

SECTION 2. DEFINITIONS. The definitions set forth in the chapter entitled "Public Utilities" found in the North Port City Code shall apply in this Agreement unless otherwise specified below. The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning:

- (1) "Service": The readiness and ability on the part of the City to furnish water and wastewater services to each lot.
- (2) "Point of Delivery or Collection": The point where the pipes of utility are connected with the pipes of the customer. Unless otherwise indicated, the point of delivery shall be the point on the customer's lot line.
- (3) "Contribution-In-Aid-Of-Construction": The sum of money, and/or property represented by the value of the water distribution and wastewater collection systems constructed by Developer, which Developer covenants and agrees to pay to the City as a contribution-in-aid-of-construction, to induce the City to continuously provide water and wastewater services to the Property.

SECTION 3. EASEMENT AND RIGHT OF ACCESS. Developer hereby grants and gives the City the exclusive right or privilege to construct, own, maintain, and operate the water and wastewater facilities in, under, over and across the present and future streets, roads, easements, reserved utility sites and public places as provided and dedicated to public use in the record plats, or as provided for in agreements, dedications or grants made otherwise and independent of said record plats. Developer acknowledges that the City will possess the right of ingress and egress to carry out these utility functions through the recording of the final plat. The foregoing grants shall be for such period of time, as the City requires such rights, privileges or easements in the ownership, maintenance, operation or expansion of the water and wastewater facilities. The City hereby agrees that all easement grants will be utilized in accordance with the established and generally accepted practices of the water and wastewater industry with respect to the installation of all its water and wastewater facilities in any of the easement areas; and the Developer in granting easements herein, or pursuant to the terms of this instrument, shall have the rights to grant exclusive or non-exclusive rights, privileges and easements to other entities to provide the Property any utility services other than water and wastewater services.

SECTION 4. PROVISION OF SERVICE. Upon the continued accomplishment of all the prerequisites contained in this Agreement to be performed by the Developer, the City covenants and agrees that it will allow the connection of the water distribution and

wastewater collection facilities installed by Developer to the central water and wastewater facilities of the City in accordance with the terms and intent of this Agreement. Such connection shall be in accordance with rules and regulations of the Department of Health and Rehabilitative Services and the Florida Department of Environmental Protection. The City agrees that once it provides water and wastewater services to the Property and Developer or others have connected customer installations to its system, that thereafter, the City will continuously provide in return for payment of all applicable rates, fees, and charges and in accordance with the other provisions of this Agreement, and of applicable laws, including rules and regulations and rate schedules, water and wastewater services to the Property in a manner to conform with all requirements of all governmental agencies having jurisdiction over the water distribution and wastewater collection operations of the City.

SECTION 5. DESIGN, REVIEW, CONSTRUCTION, INSPECTION AND CONVEYANCE OF FACILITIES.

- 5.1 So that the City may provide water and wastewater facilities, and to continuously provide customers located on the Property with water and wastewater services, Developer hereby covenants and agrees to pay for the construction and to transfer ownership and control to the City as a contribution-in-aid-of-construction, the on-site and off-site water distribution and wastewater collection systems referred to herein.
- 5.2 Developer shall provide the City with engineering plans and specifications of the type and in the form as prescribed by the City, showing the on-site and off-site water distribution and wastewater collection systems proposed to be installed to provide service to the subject Property. The City Engineer will advise Developer's engineer of any sizing requirements as mandated by the City's system policies and utility standards for the preparation of plans and specifications of facilities within the Property. If applicable, such detailed plans may be limited to a phase of the Property, and subsequent phases may be furnished from time to time. However, each such phase, if applicable, shall conform to a master plan for the development of the Property and such master plan shall be submitted to the City concurrent with or prior to submission of plans for the first phase. All such plans and specifications shall be submitted to the City and no construction shall commence until the City has approved such plans and specifications in writing. After approval, Developer shall cause to be constructed, at Developer's expense, the water distribution and wastewater collection systems as shown on all plans and specifications except as may be modified pursuant to other provisions herein including, but not limited, to Exhibit B.
- 5.3 During the construction of the water distribution and wastewater collection systems by Developer, the City shall have the right to inspect such installation to determine compliance with plans and specifications, adequacy of the quality of the installation, and further, shall be entitled to perform standard tests for pressure, infiltration/vacuum, line and grade, and all other normal engineering

tests required by specifications and/or good engineering practices. Complete as-built plans shall be submitted to the City upon completion of construction.

- 5.4 By these presents, Developer hereby transfers to the City, title to all water distribution and wastewater collection systems installed by Developer's contractor, pursuant to the provisions of this Agreement. Such conveyance is to take effect without further action upon the acceptance by the City of said installation. As further evidence of said transfer to title, and upon the completion of the installation and prior to the rendering of service by the City, Developer shall convey to the City, by bill of sale, or other appropriate documents, in a form reasonably satisfactory to the City's counsel, the complete on-site and off-site water distribution and wastewater collection systems as constructed by Developer and approved by the City. Developer shall further cause to be conveyed to the City, all easements and/or rights-of-way covering areas in which water distribution and wastewater collection lines are installed by recordable document in a form reasonably satisfactory to the City's counsel. All conveyance of easements and/or rights-of-way shall be accompanied by a title policy or other evidence of title, satisfactory to the City, establishing Developer's rights to convey such continuous enjoyment of such easements or rights-of-way for those purposes set forth in this Agreement to the exclusion of any other person in interest. The use of easements granted by Developer shall include the use by other utilities so long as such uses by electric, telephone, gas utilities, or cable television do not unreasonably and materially interfere with use by the City. The City agrees that the acceptance of the water distribution and wastewater collection systems, installed by Developer, for service, or by acceptance of the bill of sale, shall constitute that assumption of responsibility by the City for the continuous operation and maintenance of such systems from that date forward.
- 5.5 All installations by Developer or its contractor shall have at least a one-year warranty from the date of acceptance by the City. Mortgagee(s), if any, holding prior liens on such properties shall be required to release such liens, subordinate their position and join in the grant or dedication of the easements or rights-of-way. All water distribution and wastewater collection facilities shall be covered by easements if not located within platted or dedicated rights-of-way.
- 5.6 Whenever the development of the subject Property involves one customer or a unity of several customers, and in the opinion of the City ownership by the City of the internal water distribution and wastewater collection systems is not necessary, then at the sole option of the City, Developer, or its successor or assigns, shall retain ownership and the obligation for maintenance of such on-site facilities.
- 5.7 Payment of the contribution-in-aid-of-construction does not and will not result in the City waiving any of its rates, rate schedules or rules and regulations, and their enforcement shall not be affected in any manner whatsoever by Developer making the contribution. The City shall not be obligated for any reason whatsoever to pay, nor shall the City pay, any interest or rate of interest upon the

contribution. Except as otherwise required if the City, pursuant to Section 5.6, elects to have the Developer retain ownership and maintenance responsibility for some portion of the system built by Developer, neither Developer nor any person or other entity holding any of the Property by, through or under Developer, or otherwise, shall have any present or future right, title, claim or interest in and to the contributions or to any of the water and wastewater facilities and properties transferred by Developer to City, and all provisions of this section applicable to Developer shall be applicable to all persons or entities claiming under or through Developer. Any user or customer of water and wastewater services shall not be entitled to offset any bill or bills rendered by the City for water and wastewater service against the contributions. Developer shall not be entitled to offset the contributions against any claim or claims of the City unless specified in the Special Conditions of this Agreement.

SECTION 6. EVIDENCE OF TITLE. Within a period of thirty (30) days after the execution of this Agreement, at the expense of the Developer, Developer agrees to either deliver to the City an Abstract of Title, brought up to date, which abstract shall be retained by the City and remain the property of the City, or to furnish the City an opinion of title from a qualified attorney at law or a qualified title insurance company with respect to the Property, which opinions 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 provisions of the Section are for the exclusive rights of service contained in the 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. Title standards shall be the same as those applicable to real estate generally adopted by the Florida Bar and in accordance with Florida law.

SECTION 7. OWNERSHIP OF FACILITIES. Except as otherwise required if the City, pursuant to Section 5.6, elects to have the Developer retain ownership and maintenance responsibility for some portion of the system built by Developer, Developer agrees with the City that all water and wastewater facilities conveyed to the City for use in connection with providing water and wastewater services to the Property, shall at all times remain in the complete and exclusive ownership of the City, and any entity owning any part of the Property or any residence or building constructed or located thereon, shall not have the right, title, claim or interest in and to such facilities, or any part of them, for any purpose, including the furnishing of water and wastewater services to other persons or entities located within or beyond the limits of the Property.

SECTION 8. APPLICATION OF RULES, REGULATIONS, AND RATES. Notwithstanding any provision in this Agreement, the City may establish, revise, modify and enforce rules, regulations and rates covering the provision of water and wastewater services to the Property. Such rules, regulations and rates are subject to the approval of the City of North Port, Florida. Such rules and regulations shall at all times be reasonable and subject to regulations as may be provided by law or under contract. Rates charged to Developer or customers located upon the Property shall be identical to rates charged for the same classification of service. All rules, regulations and rates in effect, or placed into

effect in accordance with the preceding, shall be binding upon Developer, upon any other entity holding by, through or under Developer; and upon any customer of the water and wastewater services provided to the Property by the City.

SECTION 9. PERMISSION TO CONNECT REQUIRED. Developer, or any owner of any parcel of the Property, or any occupant of any residences or buildings located thereon, shall not have the right to and shall not connect any customer installation to the water and wastewater facilities of the City until the City has granted approval for such connection and shall be subject to illegal connection fee in effect at the time of discovery.

SECTION 10. BINDING AGREEMENT; ASSIGNMENTS BY DEVELOPER. This Agreement shall be binding upon and shall inure to the benefit of Developer, the City and their respective assigns and successors by merger, consolidation or conveyance. This Agreement shall not be sold, conveyed, assigned or otherwise disposed of by Developer without the written consent of the City first having been obtained. The City agrees not to unreasonably withhold such consent.

SECTION 11. NOTICES. Until further written notice by either party to the other, all notices provided for herein shall be in writing and delivered by courier service or by US Mail to:

As to Developer:

If by US Mail or by courier service: Gran Paradiso I, LLC and Gran Paradiso II, LLC  
PO Box 558  
Venice FL 34284  
Attn: Sam Rodgers  
941-584-8655

As to City:

If by US Mail or by courier service: City of North Port Utilities Department  
Attention: Utilities Director  
6644 W. Price Boulevard  
North Port, FL 34291  
(941) 240-8000

SECTION 12. SURVIVAL OF COVENANTS. The rights, privileges, obligations and covenants of Developer and the City shall survive the completion of work of Developer with respect to completing the water and wastewater facilities and services to any phase area and to the Property as a whole.

SECTION 13. ENTIRE AGREEMENT, AMENDMENTS, APPLICABLE LAW, ATTORNEY'S FEES. This Agreement supersedes all previous agreements or

representations either verbal or written, heretofore in effect between Developer and the City, made with respect to the matters herein contained, and when duly executed, constitutes the Agreement between Developer and the City. No additions, alterations or variations of the terms of this Agreement shall be valid, nor can either party waive provisions of the Agreement, unless such additions, alterations, variations or waivers are expressed in writing and duly signed by both parties. This Agreement shall be governed by the laws of the State of Florida, as well as all applicable local ordinances of the City and it shall be and become effective immediately upon execution by both parties hereto. In the event that the City or Developer is required to enforce this Agreement by court proceedings or otherwise, by instituting suit or otherwise, then the prevailing party in such suit shall be entitled to recover all reasonable costs incurred, including reasonable attorney's fees.

SECTION 14. DISCLAIMERS; FORCE MAJEURE; LIMITATIONS ON LIABILITY; REMEDIES; INSURANCE.

14.1 STATUS. The parties deem each other to be independent contractors, and not agents of the other.

14.2 INDEMNITY. In consideration of Ten Dollars and other good and valuable consideration from the City to Developer, the adequacy and receipt of which is hereby acknowledged by Developer, Developer shall indemnify the City, its respective agents, commissioners and employees, from and against any and all claims, liability, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions and fees, including reasonable attorney's fees, for injury (including death) to persons or damage to property or property rights that may arise from or be related to acts, errors, or omissions of Developer, its agents, employees, servants, licensees, invitees, or contractors or by any person under the control or direction of Developer, or by Developer's connection to and use of the City's system, and Developer shall indemnify and hold harmless the City as aforesaid from all liability, claims and all other items above mentioned, arising or growing out of or connected with any default, breach, violation or nonperformance by Developer of any covenant, condition, agreement or provision contained in this Agreement concerning all or any part of the City's system. Such indemnification shall include costs for physical repair of the City's system.

14.3 FORCE MAJEURE.

(a) Neither party shall be liable to the other in any way whatsoever for any failure or delay in performance of any of the obligations under this Agreement (other than obligations to make payment) arising out of any event or circumstance beyond the reasonable control of such party ("force majeure event"), including without limitation, acts of God, hurricanes, earthquakes, fires, floods, washouts, power outages, explosions, interruptions in telecommunications or internet or network provider services, acts of governmental entities (provided, however, that a legislative or executive act of the City shall not constitute a force majeure event

as to the City except in the case of a declared emergency), war, terrorism, civil disturbance, insurrection, riots, acts of public enemies, epidemics, strikes, lockouts or other labor disputes, inability of City to obtain necessary materials, supplies, labor, or permits whether due to existing or future rules, regulations, orders, laws or proclamations, either federal, state or county (but not any such rules, regulations, orders, laws or proclamations by the City, except as set forth above relating to declared emergencies), civil or military, or otherwise, and other causes beyond the reasonable control of either party, whether or not specifically enumerated herein.

(b) Failure or delay of performance by either party due to a force majeure event shall not be deemed a breach of this Agreement, and neither party shall have the right to terminate this Agreement on account of non-performance of the other party based on a force majeure event.

(c) Furthermore, any temporary cessation or interruption of water and/or sewer services to the Property by the City resulting from necessary maintenance work, breakdown of, or damages to, machinery, pumps or pipelines shall not constitute a breach of this Agreement by the City nor shall it impose liability upon the City by the Developer, its successors or assigns.

#### 14.4 LIMITATION OF LIABILITY; AVAILABLE REMEDIES.

(a) IN NO EVENT SHALL THE CITY HAVE ANY LIABILITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, HOWEVER CAUSED AND ON WHATEVER THEORY OF LIABILITY, ARISING OUT OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS OR BUSINESS INTERRUPTION, EVEN IF THE CITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) DEVELOPER'S REMEDIES AGAINST THE CITY FOR CITY'S FAILURE TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT, IF NOT EXCUSED ON THE BASIS OF A FORCE MAJEURE EVENT OR AS OTHERWISE PROVIDED IN THIS AGREEMENT, SHALL BE LIMITED TO SPECIFIC PERFORMANCE, INJUNCTION OR OTHER EQUITABLE RELIEF.

(c) NOTHING CONTAINED IN THIS AGREEMENT IS INTENDED TO BE, OR SHALL BE CONSTRUED IN ANY MANNER AS, A WAIVER BY THE CITY OF ITS SOVEREIGN IMMUNITY.

14.5 DISCLAIMER OF THIRD PARTY BENEFICIARIES. This agreement is solely for the benefit of, and shall be binding upon, the named parties which are signatories hereto, and their respective authorized successors and assigns, and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit

of any third party not a party to this agreement or an authorized successor or assignee thereof.

14.6 DISCLAIMER OF SECURITY. Notwithstanding any other provision of this agreement, Developer expressly acknowledges (1) that it has no pledge of or lien upon any real property (including, specifically, the City's system), any personal property, or any existing or future revenue source of the City (including, specifically, any revenue or rates, fees, or charges collected by the City in connection with the City's system) as security for any amounts of money payable by the City under this agreement; and (2) that its rights to any payments or credits under this agreement are subordinate to the rights of all holders of any stocks, bonds, or notes of the City, whether currently outstanding or hereafter issued.

14.7 CERTIFICATE OF INSURANCE. Developer shall furnish the City with a certificate(s) of insurance prior to the date upon which Developer is to commence construction of any On-Site Facilities, Off-Site Facilities or Treatment Facilities which shall comply with the insurance requirements set forth in Exhibit "C" and incorporated herein by reference. Said certificate shall provide that insurance coverage shall not be canceled or reduced by the insurance carrier without at least thirty (30) days prior written notice to the City. The City reserves the right to reasonably alter or amend the insurance requirements from time to time based on scope of the contract and risk factors. Insurance policies must be written on companies licensed to do business in the State of Florida and reasonably acceptable to the City. The City must be named an additional insured on all policies except worker's compensation. Commercial general liability insurance coverage must be written on an occurrence form and shall include bodily injury and property damage liability for premises, operations, independent contractors, products and completed operations, contractual liability, broad form property damages, and property damage resulting from explosion, collapse or underground exposures, personal injury and advertising injury. Fire damage liability shall be included at \$100,000.

SECTION 15. COVENANT NOT TO ENGAGE IN UTILITY BUSINESS. The Developer, as a further consideration for this Agreement, agrees that it shall not (the words "shall not" being used in a mandatory definition) engage in the business of providing water and wastewater services to the Property during the period of time the City, its successors and assigns, provide water and wastewater services to the Property, it being the intention of the parties hereto that the foregoing provision shall be a covenant running with the land and under said provision and also under other provisions of this Agreement, the City (except as otherwise required if the City, pursuant to Section 5.6, elects to have the Developer retain ownership and maintenance responsibility for some portion of the system built by Developer) shall have sole and exclusive right and privilege to provide water and wastewater services to the Property and to the occupants of each residence, building or unit constructed thereon.

SECTION 16. RECORDATION. The parties hereto agree that an executed copy of this Agreement and Exhibits attached hereto shall be recorded in the Public Records of Sarasota County, Florida, at the expense of the Developer.

SECTION 17. SEVERABILITY. If any court finds any part of this Agreement invalid or unenforceable, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the parties contained therein are not materially prejudiced, and if the intentions of the parties can continue to be effected. To that end, this Agreement is declared severable.

SECTION 18. AUTHORITY TO EXECUTE AGREEMENT. The signature by any person to this Agreement shall be deemed a personal warranty by that person that he has the full power and authority to bind any corporation, partnership, or any other business entity for which he purports to act hereunder.

SECTION 19. CAPACITY. The execution of this Agreement between Developer and the City does not constitute a specific reservation of capacity by Developer, and the City does not hereby guarantee that capacity will be available for Developer's project on any later date. Any specific reservations of capacity must be detailed within the body of this Agreement under the heading "Special Conditions" and such capacity shall be so reserved, for a definite period of time only upon the payment of appropriate fees and charges or negotiated between the parties, by the Developer to the City. Said fees and charges shall also be set forth in Exhibit "B" hereof. Capacity fees that are paid for by the Developer are not refundable if the project is not realized.

SECTION 20. SPECIAL CONDITIONS. The following Special Conditions are mutually agreed between Developer and the City:

SEE EXHIBIT "B" ATTACHED TO AND INCORPORATED IN THIS AGREEMENT.

[SIGNATURES ON FOLLOWING PAGES]

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

ATTEST:

CITY OF NORTH PORT, FLORIDA

\_\_\_\_\_  
HELEN M. RAIMBEAU, MMC  
CITY CLERK

\_\_\_\_\_  
DAVID J. GAROFALO, SR.  
COMMISSION CHAIR

Approved as to form and correctness:

\_\_\_\_\_  
ROBERT K. ROBINSON  
CITY ATTORNEY

STATE OF FLORIDA  
COUNTY OF SARASOTA

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2010 by the Commission Chair of THE CITY OF NORTH PORT, FLORIDA, on behalf of THE CITY OF NORTH PORT. He/She is personally known to me and did not take an oath.

AFFIX SEAL

\_\_\_\_\_  
Notary Public

Kathleen Sue Dixon  
Witness

Kathleen Sue Dixon  
Print Name

Suzanne E Spurling  
Witness

Suzanne E Spurling  
Print Name

GRAN PARADISO I, LLC  
By: [Signature]

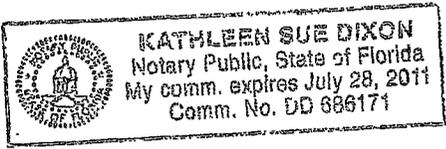
As: Manager

STATE OF FLORIDA  
COUNTY OF SARASOTA

The foregoing instrument was acknowledged before me this 26 day of August, 2010, by Richard D. Rodgers as Manager of Gran Paradiso I, LLC, a Florida limited liability company authorized to do business in the State of Florida, on behalf of the limited liability company. He/She is personally known to me or has produced \_\_\_\_\_ as identification and did not take an oath.

AFFIX SEAL

Kathleen Sue Dixon  
Notary Public



Kathleen Sue Dixon  
Witness

Kathleen Sue Dixon  
Print Name

Suzanne E Spurling  
Witness

Suzanne E Spurling  
Print Name

GRAN PARADISO II, LLC

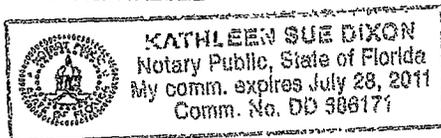
By: [Signature]

As: Manager

STATE OF FLORIDA  
COUNTY OF SARASOTA

The foregoing instrument was acknowledged before me this 26 day of August, 2010, by Richard D. Rodgers as manager of Gran Paradiso II, LLC, a Florida limited liability company authorized to do business in the State of Florida, on behalf of the limited liability company. He/She is personally known to me or has produced \_\_\_\_\_ as identification and did not take an oath.

AFFIX SEAL



[Signature]  
Notary Public

EXHIBIT A-1

BOUNDARY DESCRIPTION OF PROPERTY

WEST VILLAGES IMPROVEMENT  
DISTRICT UNIT 3  
SKETCH OF DESCRIPTION

DESCRIPTION (PARADISO)

A part of Sections 29 and 30, Township 39 South, Range 20 East, Sarasota County, Florida, described as follows:

BEGIN at the Northwest corner of Section 30, Township 39 South, Range 20 East, Sarasota County, Florida; thence S.89°53'13"E, along the North line of the Northwest Quarter of said Section 30, a distance of 2,585.33 feet to the North Quarter Corner of said Section 30; thence continue S.89°53'13"E, along the North line of the Northeast Quarter of said Section 30; a distance of 2,585.33 feet to the Northwest corner of Section 29, Township 39 South, Range 20 East; thence S.89°37'07"E, along the North line of the Northwest Quarter of said Section 29, a distance of 1,857.18 feet; thence along the North line of the Northeast Quarter of said Section 29, a bearing of South, a distance of 1,328.57 feet; thence S.22°49'39"W, a distance of 1,319.92 feet; thence N.89°48'27"E, a distance of 1,171.67 feet to a point on a non-tangent curve to the left, having a radius of 1,079.00 feet, a central angle of 20°09'50", a chord bearing of S.10°08'19"W, and a chord length of 377.77 feet; thence southwesterly along the arc of said curve, an arc length of 379.73 feet; thence S.00°01'36"E, a distance of 16.56 feet; thence S.89°52'29"W, a distance of 802.97 feet; thence S.43°53'57"W, a distance of 1,027.32 feet; thence S.43°11'09"W, a distance of 379.89 feet; thence S.44°11'28"W, a distance of 836.94 feet; thence S.32°40'52"W, a distance of 218.86 feet; thence S.28°34'57"W, a distance of 815.30 feet; thence S.13°10'59"W, a distance of 85.47 feet; to the North Right of Way line of U.S. Highway No. 41 (State Road No. 45); thence along said North Right of Way line of U.S. Highway No. 41, the following sixteen (16) courses: (1) N.80°32'30"W, a distance of 16.74 feet; (2) thence N.89°38'31"W, a distance of 75.08 feet; (3) thence S.81°16'04"W, a distance of 101.27 feet; (4) thence N.89°38'31"W, a distance of 889.50 feet; (5) thence N.80°33'08"W, a distance of 101.27 feet; (6) thence N.89°38'31"W, a distance of 74.93 feet; (7) thence S.81°07'09"W, a distance of 92.66 feet; (8) thence N.89°38'31"W, a distance of 826.17 feet; (9) thence N.80°33'06"W, a distance of 101.27 feet; (10) thence N.89°38'31"W, a distance of 74.93 feet; (11) thence S.81°17'32"W, a distance of 101.54 feet; (12) thence N.89°38'31"W, a distance of 2,873.19 feet; (13) thence N.80°32'00"W, a distance of 101.07 feet; (14) thence N.89°38'31"W, a distance of 82.07 feet; (15) thence S.81°18'37"W, a distance of 101.79 feet; (16) thence N.89°38'31"W, a distance of 1,684.53 feet, to the monumented boundary line of lands described in Official Records Book 1036, at Page 802 of the Public Records of Sarasota County, Florida; thence along said monumented boundary line of lands described in Official Records Book 1036, at Page 802, the following five (5) courses: (1) N.00°28'29"E, a distance of 850.78 feet; (2) thence S.89°42'21"E, a distance of 349.86 feet; (3) thence N.00°28'37"E, a distance of 400.03 feet; (4) thence N.89°43'04"W, a distance of 400.02 feet; (5) thence S.00°28'45"W, a distance of 1,250.07 feet to said North Right of Way line of U.S. Highway No. 41; thence along said North Right of Way line of U.S. Highway No. 41, N.89°38'31"W, a distance of 51.39 feet; thence continue along said North Right of Way line of U.S. Highway No. 41, N.80°31'12"W, a distance of 68.08 feet to the West line of the Southwest Quarter of said Section 30; thence N.00°02'57"W, along said West line of the Southwest Quarter of Section 30, a distance of 2,550.65 feet to the West Quarter corner of said Section 30; thence N.00°05'22"W, along the West line of the Northwest Quarter of said Section 30, a distance of 2,533.66 feet to the POINT OF BEGINNING.

Containing 1,058.0907 acres, more or less.

LESS AND EXCEPT attached Lee Wetherington Lots and West Villages Improvement District Tracts

**LEE WETHERINGTON LOTS**

(omitted from Gran Paradiso metes & bounds description)

Lots 63 through 125, Lots 224 through 286 and Lots 287 through 338, Phase 1, Gran Paradiso, as platted in Official Record Book 47, Pages 6 through 6-X, Sarasota County Public Records.

**WEST VILLAGES IMPROVEMENT DISTRICT TRACTS**

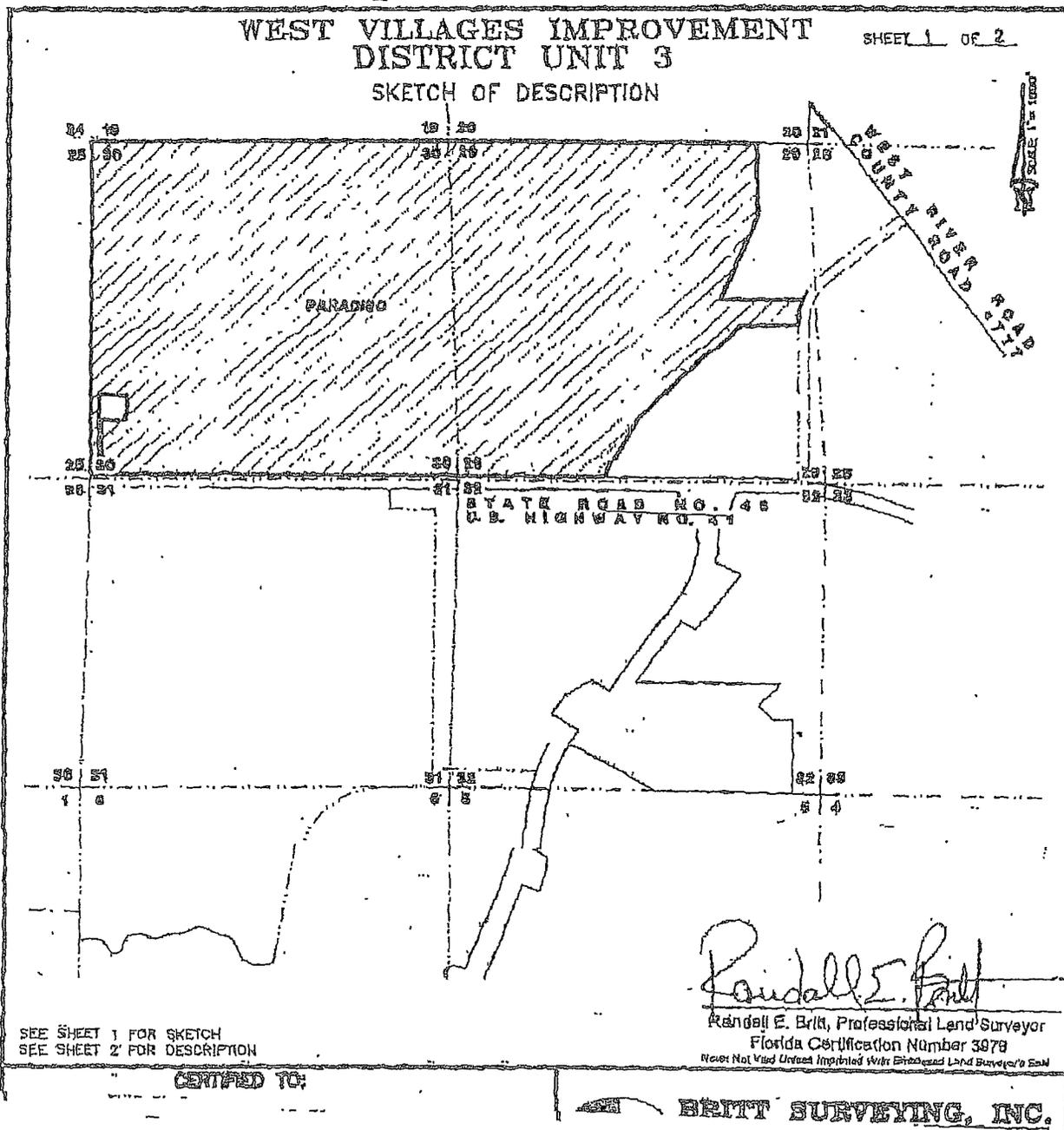
(omitted from Gran Paradiso metes & bounds description)

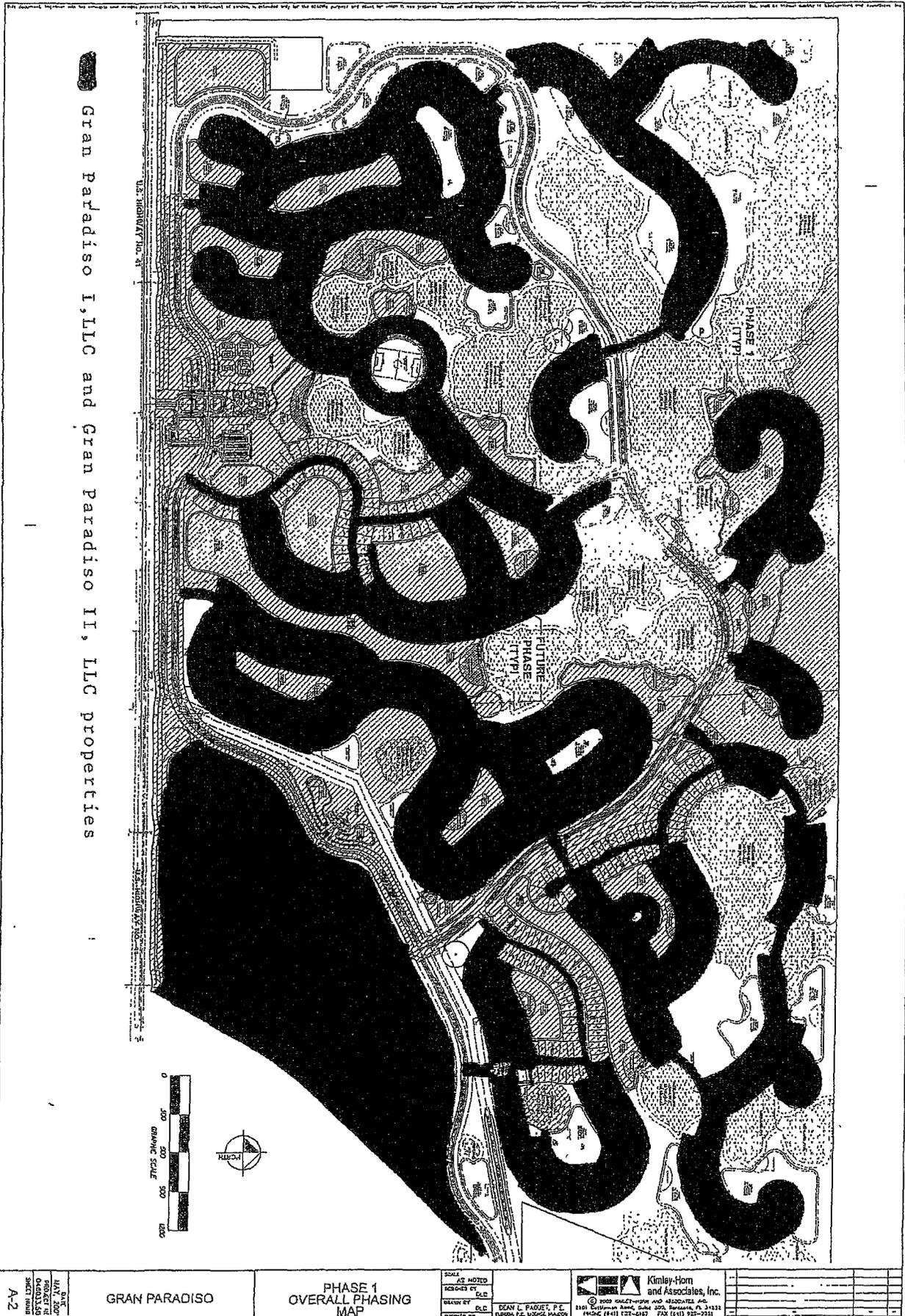
Tracts 101 and 102, Tracts 201 through 227, inclusive, Tract 407, Tracts 501 through 505, inclusive, Tracts 701 through 703, inclusive, Tracts 732 through 743, inclusive and the Gopher Tortoise Preserve Conservation Area as platted in the Gran Paradiso Phase 1 plat as recorded in Official Record Book 47, Pages 6 through 6-X, Sarasota County Public Records.

Tracts 103 through 117, inclusive, Tracts 228 through 258, inclusive, Tracts 408 and 409, respectively, Tracts 506 through 508, inclusive, Tracts 704 through 731, inclusive and Tracts 744 through 748, inclusive as platted in the Gran Paradiso Infrastructure plat as recorded in Official Record Book 47, Pages 5 through 5-HH, Sarasota County Public Records.

EXHIBIT A-2

MAP OF PROPERTY





**EXHIBIT B**

**SPECIAL CONDITIONS**

***GRAN PARADISO I, LLC AND GRAN PARADISO II, LLC***

Pursuant to Paragraph 20, the following are the Special Conditions mutually agreed upon between the Developer and the City. To the extent that these Special Conditions conflict with the recitals or provisions contained within the Standard Developers' Agreement, these Special Conditions shall prevail.

1. The Developer has already purchased and reserved 222 ERCs under the Fourth Quarter Properties XXXII, LLC and West Villages Improvement District's Amended and Restated Utilities Agreement dated February 27, 2007, as amended by the First Amendment, dated May 29, 2007, and by the Second Amendment, dated June 23, 2009 and by the Third Amendment, dated August 10, 2010. As of August 1, 2010, 49 ERC (Equivalent Residential Connections) have been connected, which leaves Developer a balance of 173 ERCs for its remaining development.
2. Provided Developer shall have complied with the requirements herein, the Developer is hereby granted the right to reserve an additional 15 ERCs of water and domestic wastewater capacity pursuant to the schedule set forth in Section 3.b. below, to be issued permits for and to receive water and wastewater services for the proposed residential development within the subject property.
3. The Developer agrees to the following conditions:

- a. Prior to the payment of reserved capacity, the Developer shall confirm that the City of North Port Utilities has the availability of capacity. Capacity is guaranteed only once payment is accepted for such capacity.
- b. Developer, or its individual lot transferees, shall pay the adopted Water Capital Charge and Wastewater Capital Charge for the sole purpose of reserving capacity as follows:
  - (i) Developer shall pay the adopted Water Capital Charge and Wastewater Capital Charge for a block of 15 ERCs on or before July 01, 2014.
- c. If Developer's incremental need exceeds the yearly assigned increment for water and wastewater capacity for the Development, Developer may request to accelerate future incremental payments of Water and Wastewater Capital Charges. The Utilities Director or the City Manager may approve an accelerated payment for future schedules increments if water and wastewater capacity is available, which approval shall not be unreasonably withheld.
- d. Late fees that would have otherwise been due from Developer as a result of Developer's failure to make the scheduled payment of the guaranteed revenues billed on July 1, 2010 and due on August 16, 2010 shall be waived by City, provided that Developer shall pay the past due guaranteed revenue in full within four (4) days of execution of this Agreement. Developer's failure to timely make such payment shall, upon written notice from City to Developer, render this Amendment null and void ab initio.

- e. On or about July 01, 2011, and on each anniversary date thereafter, City shall provide Developer an invoice for the amount due and Developer shall pay to the City the adopted Guaranteed Revenue Charge for each unconnected or unused potable water and wastewater ERC, for which Developer has paid the adopted charges per paragraphs 1 and 3.b.(i) above, prorated based upon the period of time during the preceding year when such ERCs were unconnected or unused. The Developer will be billed for the per day charge (on a prorated basis) for the number of days each ERC remained unconnected or unused during the preceding year. This charge as of June 1, 2006 is \$160.00 per year for potable water and \$150.00 per year for wastewater per ERC; however, the City reserves the right to adjust the charge (higher or lower) in the future. Developer shall pay the charge in effect at the time of said payment. The Developer shall have forty-five (45) days from the date of the guaranteed revenue invoice to make full payment.
- f. Except for the payment of guaranteed revenues set forth in Section 3.d. above, for which there shall be no grace period and no notice of default required, the Developer shall have a five (5) day grace period before a failure to make payment as required herein shall constitute an event of default under this Agreement. The Developer shall be assessed a five percent (5%) late fee to be calculated on any delinquent payment if made after the expiration of the five (5) day grace period. In the event of the Developer's failure to make timely payment as set forth herein and upon the expiration of the five (5) day grace period, the City shall, prior to declaring an event of default, provide the

developer with written notice of the City's intent to declare an event of default. The Developer shall have an additional twenty (20) days from the date the Developer receives the City's written notice within which to make the specified payment. Should the Developer fail to cure a default within the time period specified herein, the City may enforce its right and remedies as provided under this Agreement and Florida law. In addition, should the Developer fail to cure a default of any provision of this Agreement after reasonable notice and opportunity to cure, the City has the right to deny issuance of any building permits associated with the project. The decision to deny issuance of building permits for an uncured breach of this Agreement shall be made by the Utility Director or designee, subject to appeal by Developer to the City Commission.

4. The Developer agrees to the following conditions to be complied with at the time of development:
  - a. To connect Developer's water transmission and distribution system to the City's existing water transmission system, Developer shall design to the City's specifications, apply for and be issued all required permits, and construct to the City's most current specifications all infrastructure, approved by the City's Staff Development Review (SDR). The Developer agrees to upgrade and pay for any and all supporting utility infrastructure, which is required to support the flows for the said project as identified on the plans described in Section 5.2 herein.

- b. To connect Developer's wastewater collection system to the City's existing wastewater system, Developer shall design to the City's most current specifications, apply for and be issued all required permits, and to construct to the City's specifications all infrastructure as approved by the (SDR). The Developer agrees to upgrade and pay for any and all supporting utility infrastructure, which is required to support the flows for the said project as identified on the plans described in Section 5.2 herein.
- c. The Developer shall be required to design to the City's most current specifications, apply for and be issued all required permits, and construct and install to the City's most current specifications as approved by the (SDR) a DATAFLOW SCADA system on any newly constructed on-site lift stations that will serve the project as identified on the plans described in Section 5.2 herein.
- d. The Developer agrees to permit, construct and design all irrigation systems to meet the City's reclaimed water standards, to include FDEP Rule 62-610.460. The quality of the reclaimed water shall meet the requirements of FDEP Rule 62-610.460. Developer shall hold harmless and indemnify City for the resulting water quality after mixing in the Developer's storage pond. Developer shall connect, or require its grantees, successors and assigns to connect all irrigation systems on the Property to the City of North Port reclaimed water system when it becomes available to the Property.
- e. It is understood that the Developer will pay all fees, including the Utility Inspection Fee as established by City Ordinance and which is currently

6.5% of utility construction cost up to Two Million Dollars (\$2,000,000.00) and 2.5% of utility construction cost over Two Million Dollars (\$2,000,000.00) in accordance with City Ordinance, as amended from time to time.

- f. It is understood that the Developer will pay the developer agreement fee which is based on the number of ERCs the developer is requesting in accordance with City Ordinance and shown in the chart below:

Number of ERCs Requested	Cost
Up to 500	\$200.00
501 to 999	\$500.00 **
1,000 to 2,000	\$1,000.00 **
More than 2,000	\$2,000.00 **

\*\* plus reasonable legal fees incurred for review and approval of Developer's Agreement, and not to exceed the amount City is billed for same.

The Developer shall make this payment within (15) fifteen days of City Commission approval of this Agreement.

5. Developer shall be responsible for design, permitting and construction of all on-site and off-site utility infrastructure required to accommodate the requested flows from and to the Property to comply with the City of North Port "Utilities Manual of Standards and Specifications for the Construction of Water and Wastewater Mains" and all regulatory agencies' requirements for the development of the water and wastewater facilities. Such infrastructure shall include, but not be

limited to, water transmission and distribution systems, wastewater collection and transmission systems and lift stations, and a reclaimed water storage and irrigation system. In addition, the Developer agrees to install the necessary DATAFLOW SCADA facilities on newly constructed lift stations that are compatible with the City's SCADA infrastructure on all applicable facilities. Utility systems will be designed and constructed pursuant to the review of the City's Staff Development Review and Utility Department approval.

6. Developer shall have applied for, and have been issued; all required permits for construction of the facilities described in Section 4 of Exhibit B and shall have prepared all documents necessary to solicit bids from qualified contractors. Developer acknowledges that the City may request the facilities be oversized and Developer agrees if directed by the City to design such oversized facilities to prepare either separate bid proposals or one bid proposal for the oversizing as the base proposal and Developer required line size as an alternative proposal. Before publication of distribution by Developer, Developer agrees to submit either separate bid proposals or a singular bid proposal to the City for its review and comment which may include, but not limited to, requiring incorporating for provisions for compliance with public project bid requirements. Provided that the City does not reject the bid proposal which Developer intends to accept, City agrees to pay Developer the difference of the bid construction cost for the oversizing of the pipeline not later than thirty (30) days following approval by the City of the Developer's delivery of its contractually required incremental payment to its construction contractor if City elects to request Developer to construct any

oversized facilities. The Developer understands that the City's share of construction cost shall not include such items as design, insurance, contingency, construction management and administrative fees.

7. Developer and City acknowledge that Developer may sell or lease some or all of the Property, and may or may not be the Applicant who shall subsequently pay the Water and Wastewater Capital Charges prior to connection of the proposed units to be serviced by the City. City reserves the right to adjust the Water and Wastewater Capital Charges (higher or lower) in the future. Developer shall pay the adopted capacity charge that is in effect at the time of meter application for water and wastewater capacity, as well as the connection fee and security deposits as connections are required and approved by the North Port Utilities Department. The Developer agrees to disclose any obligation of Developer's grantee, lessee, or assignee to pay to City, the then adopted Water and Wastewater Capital Charges. Developer agrees to disclose in writing to any grantee, lessee, or assignee, the Developer's entitlement to receive a refund from the City of any Water and Wastewater Capital Charges paid hereunder by Developer to the City upon payment of those Water and Wastewater Capital Charges by any grantee, lessee or assignee of Developer. Developer, on behalf of itself and its successors and assigns, hereby further agrees to indemnify, defend, save and hold harmless the City from and against any and all suits, actions, claims, demands, liabilities, judgments and costs of any nature whatsoever arising as a result of City's refund to Developer of the Water and Wastewater Capital Charges previously paid by Developer and/or the City's receipt of payment from Developer's grantees,

lessees, or assignees, of new Water and Wastewater Capital Charges at the time of application for connection of the proposed units to be served by the City unless same was due to City's negligence by act or omission. In the event the City is made a party to any litigation arising as a result thereof, City shall have the option of providing for its own defense in said litigation and billing Developer, its successors and/or assignees for reimbursement of all reasonable expenses of litigation, including its direct costs, at the commercially recognized rate for attorney fees, inclusive of paralegal or legal assistant services, which expenses Developer shall pay promptly upon demand; or in the alternative to providing for its own defense, designating Developer, its successors and/or assigns, to defend City at the expense of Developer, its successors and assignees.

8. In addition to, and not in substitution for, the requirements of Section 14.7 of this Agreement, to the extent that Developer may undertake any construction of utility improvements, Developer shall provide the required insurance coverage as stated in Exhibit "C". Developer shall furnish to the Utility Department the required certificate(s) of insurance prior to the date upon which the FDEP Permits are signed by the Utility Director. In the event that the insurance coverage is to expire prior to completion of the project, renewal certificates shall be issued thirty (30) days prior to the expiration date. Each insurance policy shall be endorsed by the carrier to require that the carrier provide written notice to City not less than thirty (30) days prior to cancellation or modification of the policy. Approval and acceptance of insurance by the City shall not relieve or decrease the liability of the Developer. The City reserves the right to adjust policy limit requirements.

9. The Developer agrees to the working hours as set forth in this Agreement. Normal working hours are defined as Monday through Friday, 7:00 a.m. to 3:30 p.m. Work outside of the normal working hours will constitute an "Overtime" rate, which will be reimbursed to the City. The Overtime rate will be calculated by the City on a time and a half basis plus all overhead fees. Should work be conducted on scheduled holidays, the Developer will be responsible to reimburse on a double time and a half rate plus all overhead fees. The City will invoice for such fees and payment must be made within a two-week period.
10. This Agreement may only be modified by written document signed by all parties hereto.
11. This Agreement shall be binding upon and inure to the benefit of all parties hereto and their respective successors and assigns.
12. City and Developer acknowledge that Developer is part of the West Villages Improvement District ("WVID"), Unit 2, and that Developer pays for off-site utility infrastructure through WVID assessments. Accordingly, Developer shall not be required to make any payments of any nature to City for the cost of, or reimbursement for the cost of, infrastructure improvements which are the obligation and responsibility of the WVID. Developer shall hold City harmless for, and agrees that City shall not be liable for, any inability of City to provide the utility services contemplated by this Agreement that results in whole or in part from WVID's failure to construct or cause to be constructed the utility infrastructure improvements which are the obligation and responsibility of WVID

under the terms of WVID's agreements with Developer, or under the terms of WVID's agreements with City.

**EXHIBIT C**

**City Insurance Requirements**

	<b>Level 1</b>	<b>Level 2</b>	<b>Level 3</b>
	Project will not exceed 30 calendar days. Cost will not exceed \$50,000. No unusual or high hazards present.	Project will not exceed 180 calendar days. Cost will not exceed \$500,000. No unusual or high hazards present.	Project will exceed 180 days in duration. Cost is \$1,000,000. or higher. Extremely high or unusual hazards present.
<b>WORKERS COMP</b> all state and federal statutory limits apply	\$100,000 each accident \$100,000 each employee \$500,000 policy limit for disease	\$500,000 each accident \$500,000 each employee \$500,000 policy limit for disease	\$3,000,000 each accident \$1,000,000 each employee \$1,000,000 policy limit for disease
<b>COMMERCIAL GENERAL LIABILITY</b> occurrence form; required aggregate separate to this job	\$300,000 each occurrence \$600,000 general aggregate \$100,000 fire damage	\$500,000 each occurrence \$1,000,000 general aggregate \$1,000,000 products and completed ops \$100,000 fire damage	\$3,000,000 each occurrence \$6,000,000 general aggregate \$1,000,000 products and completed ops \$100,000 fire damage
<b>COMMERCIAL AUTO LIABILITY</b> all owned, non-owned, hired vehicles	\$300,000 each accident for property damage and bodily injury with contractual liability coverage	\$1,000,000 each accident for property damage and bodily injury with contractual liability coverage	\$3,000,000 each accident for property damage and bodily injury with contractual liability coverage

**RESERVATION OF RIGHTS** - The City of North Port reserves the right to alter or amend these requirements, to decrease or increase the requirements as it sees fit, without prior notice, depending on the scope of the contract and the risk factors involved.

**ADDITIONAL REQUIREMENTS** - The (contractor / vendor) shall furnish the City with Certificates of Insurance. The City of North Port is to specifically be listed / named as an **ADDITIONAL INSURED** on both the **COMPREHENSIVE GENERAL LIABILITY** and **BUSINESS AUTO POLICIES**. All Certificates of Insurance must be on file with and approved by the City before commencement of any work activities. An **INDEMNIFICATION & HOLD HARMLESS AGREEMENT** must be signed by an authorized representative of the firm and included with the Certificate of Insurance for all contracts for service.