

**THIRD 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 Third Amendment (the "Third Amendment") to the Amended and Restated Utility Agreement is made on July 12, 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.

Recitals

- A. WHEREAS, under the Amended and Restated Utility Agreement, as amended, water and sewer capacity has been paid for and thus reserved for 1,350 water and wastewater ERCs (950 ERCs at the current rate of \$4,123.00 per ERC and 400 ERCs at the previous rate of \$2,140.00 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 Sam Rogers Community at \$4,123) remain unconnected as of June 1, 2010; and
- B. WHEREAS, the parties wish to further amend the Amended and Restated Utility Agreement in recognition of changed economic circumstances.
- C. WHEREAS, the parties acknowledge that concurrent with this Third Amendment DiVosta Homes, L.P. 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 has requested that it be permitted to relinquish a portion of the prepaid water and wastewater ERCs it has previously reserved, and the monies for said relinquished ERCs be used to pay the balance of guaranteed revenue fees that were due from Fourth Quarter on July 1, 2009 in the amount of \$309,063.16, plus \$8,461.52 of late fees, for a total amount of \$317,524.68.

- (a) Fourth Quarter has informed CITY that by separate agreement between Fourth

Quarter and the named Village Developers, the past due guaranteed revenue fees and late fees will be allocated among Fourth Quarter and the named Village Developers as set forth in the following table. Nothing contained herein shall in any way be construed to diminish Fourth Quarter's primary liability for the guaranteed revenue payments to CITY required under the Amended and Restated Utility Agreement, as amended; provided, however, that Fourth Quarter shall be credited with amounts actually received from the herein identified Village Developers for ERCs initially reserved by Fourth Quarter under the Amended and Restated Utility Agreement, as amended.

Guaranteed Revenue Fees and Payments				
Fourth Quarter or Village Developer	Amount Due	Late Fee	Total Paid	Total Due
DiVosta	\$139,832.84	0	\$139,832.84	\$0.00
Fourth Quarter	\$77,471.25	\$3,873.56	\$0.00	\$81,344.81
Sam Rogers	\$59,684.70	\$2,984.24	\$0.00	\$62,668.94
Lee Wetherington	\$32,074.37	\$1,603.72	\$0.00	\$33,678.09
Total Due	\$309,063.16	\$8,461.52	\$139,832.84	\$177,691.84

- (b) A partial payment of \$139,832.84 has been previously paid to CITY by Fourth Quarter or the herein identified Village Developers, which leaves an outstanding balance of \$177,691.84 due to CITY from Fourth Quarter. By this Third Amendment, Fourth Quarter will pay to CITY, or cause the herein identified Village Developers to pay directly to CITY, a total of \$4,525.84 within fifteen (15) days of the effective date of this Third Amendment, and in order to reestablish reservation of the prepaid ERCs, Fourth Quarter will relinquish or will cause the herein identified Village Developers to relinquish a total of forty-two (42) previously purchased water and wastewater ERCs valued at the current CITY rate for a total of \$173,166.00, which amount will be applied by CITY to pay the balance of 2009 past due guaranteed revenues owed by Fourth Quarter. Fourth Quarter has informed CITY that by separate agreement between Fourth Quarter and the herein identified Village Developers, the 42 relinquished ERCs will be allocated among Fourth Quarter and the herein identified Village Developers as set forth in the following table. Nothing contained herein shall in any way be construed to diminish Fourth Quarter's primary liability for the payments to CITY required under the Amended and Restated Utility Agreement, as amended; provided, however, that Fourth Quarter shall be credited with amounts actually received by CITY from the herein identified Village Developers for ERCs initially reserved by Fourth Quarter under the Amended and Restated Utility Agreement, as amended, and assigned to individual Village Developers by Fourth Quarter.

ERCs Relinquished				
Fourth Quarter or Village Developer	Amount Due	Number of ERCs Relinquished	Value of ERCs Relinquished	Balance Owed
Fourth Quarter	\$81,344.81	19	\$78,337.00	\$3,007.81
Sam Rogers	\$62,668.94	15	\$61,845.00	\$823.94
Lee Wetherington	\$33,678.09	8	\$32,984.00	\$694.09
Total	\$177,691.84	42	\$173,166.00	\$4,525.84

3. Fourth Quarter and the District hereby acknowledge that DiVosta Homes, L.P. has requested to enter into a separate standard developer's utility agreement with CITY (a copy of which is attached hereto as Exhibit E) and to have the water and wastewater capacity needs for DiVosta Homes, L.P. 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.
 - (a) Fourth Quarter and the District hereby join in and consent to the request of DiVosta Homes, L.P., and agree that upon approval of such separate agreement by CITY, and the relinquishment of forty-two (42) ERCs as set forth above, Fourth Quarter and the Village Developers other than DiVosta Homes, LP will have 499 prepaid water and wastewater ERCs remaining for their developments, and DiVosta Homes, L.P. will have a balance of 412 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 DiVosta Homes, LP and CITY.
 - (b) If CITY and DiVosta Homes, LP 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 DiVosta Homes, LP beyond such capacity as has been prepaid by DiVosta Homes, LP directly to CITY.
4. The forty-two (42) ERCs relinquished pursuant to Section 2 above shall be added back to the schedule of ERCs to be reserved by Fourth Quarter under the terms of the Amended and Restated Utility Agreement and shall be paid for by Fourth Quarter, or caused by Fourth Quarter to be paid by Village Developers, with the ERC payment currently due July 1, 2014. If Village Developers fail to pay the future CITY guaranteed revenue invoices for ERCs reserved to Fourth Quarter, Fourth Quarter shall remain fully liable for such payment.
5. 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, is hereby further amended as follows:

TABLE 6.2 CAPACITY ALLOCATION SCHEDULE

Year	Water ERCs	Wastewater ERCs	Delivery Date
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	200	200	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
Total	4,481	2,481	

* 400 ERCs paid for by DiVosta

** Includes: 237 ERCs paid for by Sam Rogers
 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 this Third Amendment

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

6. Section 6.3(a) of the Agreement, as amended, is further amended by the deletion of the July 1, 2010 date for completion of construction of the WTP and substitution of the timetable set forth in Revised Exhibit D, and shall read as follows:

- (a) As of the due date for completion and Conveyance of the Wastewater Plant as required herein, in order to obtain wastewater Capacity Allocation in addition to and exceeding the cumulative amount set forth in the Capacity Allocation Schedule (Table 6.2), the District shall have built the Wastewater Plant according to the "Capacity Allocation Infrastructure Schedule" attached as Revised Exhibit D. The District will complete construction of the Wastewater Plant according to the Capacity Allocation Infrastructure Schedule (Revised Exhibit D), and said WWTP, based on an ERC definition of 225 gallons per day ("GPD"), will provide 4,444 ERCs of wastewater capacity for each 1.0 MGD of wastewater capacity constructed. The CITY shall credit the District with that number of ERCs equal to the permitted annual average daily flow of treatment capacity in such Wastewater Plant divided by the number of gallons per day identified in the definition of a "wastewater ERC", which is currently 225 GPD as set forth in the Rate Ordinance. The wastewater ERCs in the Capacity Allocation Schedule in Section 6.2, once paid for and connected, shall be deducted from the Wastewater Plant ERCs credited to the District upon Conveyance of the Wastewater Plant and the resulting number of ERCs will be the District or Fourth Quarter's updated wastewater Capacity Allocation ("Updated Capacity Allocation"). Such wastewater Updated Capacity Allocation shall be allocated annually based on the Guaranteed Revenue Payment Schedule set forth in Table 7.1.

7. Due to delays in construction scheduling and a reduced demand for utility services, the District and Fourth Quarter have requested to delay design and construction of the water treatment plant (WTP). Since water capacity is limited by transmission capacity as well as plant treatment capacity, a two-part test based on (1) System Transmission Capacity and (2) Water Treatment Plant Supply Capacity will be used on an annual basis to determine necessary timing of design and construction of the WTP. It is the intent of the parties that design and construction of the WTP shall commence upon occurrence of the events described in either the test for Water System Transmission Capacity or the test for Water Treatment Plant Supply Capacity, whichever occurs first. Therefore, Section 6.4 (Water Capacity Allocation) of the Amended and Restated Utility Agreement dated February 27, 2007, as amended by the Second Amendment to the Amended and Restated Utility Agreement, is hereby amended as follows:

- 6.4(a) Unchanged.

- 6.4(b) Based on the commitment of the Fourth Quarter and the District to develop the Water Source and construct and Convey to the City the Water Plant, CITY commits to them capacity in accordance with the Capacity Allocation Schedule set forth in Table 6.2. In the event that, by July 1, 2012, Fourth Quarter and the District have failed to secure a water use permit for the Water Source, and therefore have no further obligation to construct the Water Plant, thereafter CITY will provide the Capacity Allocation identified in the Capacity Allocation Schedule (Table 6.2) on an "as available" basis, and will commit only that capacity to the District or Fourth Quarter corresponding to payment to CITY of the associated Capital Charges and Guaranteed Revenue required by the Rate Ordinance then in

effect. The District will complete construction of the Water Treatment Plant according to the Capacity Allocation Infrastructure Schedule (Revised Exhibit "D"), the District will complete construction of the Water Plant, and said WTP, based on an ERC definition of 250 GPD, will potentially provide an additional 8,000 ERCs of water capacity above that already paid for pursuant to the Capacity Allocation Schedule (Table 6.2). CITY shall credit District with that number of ERCs equal to the permitted annual average daily flow of treatment capacity in the Water Treatment Plant divided by the number of gallons per day identified in the definition of a "water ERC", which is currently 250 GPD as set forth in the Rate Ordinance. Such capacity credit shall be allocated annually based on the Guaranteed Revenue Payment Schedule set forth in Table 7.1, below. The District's total water Capacity Allocation at the time of Conveyance of the Water Plant ("Updated Capacity Allocation") shall be the sum of: (1) the water ERCs in the Capacity Allocation Schedule in Section 6.2 that have been paid for but not connected to CITY's water system, and (2) the lesser of the Water Treatment Plant capacity or the ERC equivalent of the raw water supply provided from the Total Property for service to the Incorporated Property on an average annual daily flow basis.

Section 6.4(c) Unchanged.

Section 6.4(d) Unchanged.

Section 6.4(e) New; as follows:

(e) Water System Transmission Capacity. The parties agree that, on February 1, 2011, and in February of each following year, CITY will review the remaining available transmission capacity in the 16" water main on US41 ("Water System Treatment Capacity").

- (i)** When 50% (2,800) of the original 5,600 ERCs are constructed and connected to the 16" water main, CITY will notify Fourth Quarter and the District in writing to commence the design of the water treatment plant and deep injection well ("DIW"), unless the DIW is required earlier as a result of the construction of the wastewater treatment plant ("WWTP"). The District shall commence design of the WTP and DIW within sixty (60) days of receipt of written notification from CITY. The District shall complete the design and permitting of the WTP and DIW within thirty (30) months of commencement of design. CITY will monitor progress submissions from the District in accordance with Revised Exhibit "D" attached hereto and incorporated herein. The schedule for the design shall be extended concurrently with the extensions in the District's design, permitting and construction of the WTP and DIW.
- (ii)** When 70% (3,920) of the original 5,600 ERCs are constructed and connected to the 16" water main, CITY will notify Fourth Quarter and the District in writing to commence construction of the WTP and DIW, unless the construction of the DIW is required earlier as a result of the WWTP. The District shall commence construction of the WTP and DIW within four (4) months of receipt of written notification from CITY. The District shall substantially complete construction of the WTP and the DIW within twenty-four (24) months of commencement of construction and within twenty-eight

(28) months following commencement will have completed certification of the WTP and DIW, and placed the WTP and DIW in operation and conveyed the WTP and DIW to CITY.

Section 6.4(f) New; as follows:

(f) Water Treatment Plant Supply Capacity. Currently the North Port WTP is not a reliable, sustainable water supply. CITY is making improvements at CITY's WTP to have a sustainable, year-round, water supply capacity. CITY relies on the Peace River WTP to meet its water demands. The Peace River Manasota Regional Water Supply Authority ("PRMRWSA") is contracted to supply 2.7 MGD to CITY. The parties agree that, on February 1, 2011, and in February of each following year, CITY will review the sustainable capacity of CITY's water treatment plant and the PRMRWSA Master Water Supply Contract to determine Supply Capacity. "Supply Capacity" means the water supply capacity available from the PRMRWSA WTP, plus any sustainable capacity from CITY's WTP.

- (i)** The Supply Capacity will be calculated as the sum of the contracted capacity, measured in millions of gallons per day (MGD) of the PRMRWSA and the water produced by CITY's WTP, measured in MGD. The water supply capacity from the PRMRWSA is established in the Master Water Supply Contract. The water produced by CITY's WTP will be the annual average flow, measured in MGD, produced by CITY's as metered by the intake structure meter at CITY's WTP.
- (ii)** CITY's average daily flow for the peak consecutive thirty (30) day period during the preceding twelve (12) months shall be calculated from the daily meter readings at the PRMRWSA meter connection(s) added to the quantity of water recorded at the production meter at CITY's WTP.
- (iii)** When CITY's average daily flows for the peak consecutive thirty (30) day period during the preceding twelve (12) months reaches 70% of the Supply Capacity and 25% of the original 5,600 ERCs are constructed and connected to the 16" water main, CITY will notify Fourth Quarter and the District in writing to commence the design and permitting of the WTP and DIW, unless the DIW is required earlier as a result of the construction of the WWTP. The District shall commence design of the WTP and DIW within sixty (60) days of receipt of written notification from CITY. The District shall complete the design and permitting of the WTP and DIW within thirty (30) months of commencement of design. CITY will monitor progress submissions from the District in accordance with Revised Exhibit "D" attached hereto and incorporated herein. The schedule for the design, permitting and construction of the WTP and the DIW shall be extended concurrently, unless the DIW is required earlier as a result of the construction of the WWTP.
- (iv)** When CITY's average daily flows for the peak consecutive thirty day period during the preceding twelve (12) months reaches 80% of the Supply Capacity, and 60% of the original 5,600 ERCs are constructed and connected to the 16" water main, CITY will notify Fourth Quarter and the District in writing to commence the construction of the WTP and DIW, unless the construction of

construction of the DIW is required earlier as a result of the WWTP. The District shall commence construction of the WTP and DIW within four (4) months of receipt of such written notification from CITY. The District shall substantially complete construction of the WTP and the DIW within twenty-four (24) months of commencement of construction and within twenty-eight (28) months of commencement will have completed certification of the WTP and DIW, and placed the WTP and DIW in operation and conveyed the WTP and DIW to CITY.

Section 6.4(g) New; as follows:

- (g) It is the intent of the parties that design and construction of the WTP by the District shall commence upon occurrence of the events described in either the test for Water System Transmission Capacity or the test for Water Treatment Plant Supply Capacity, whichever occurs first.
8. If additional capacity is needed for the Incorporated Property, further amendment of the Amended and Restated Utility Agreement on terms mutually agreeable to the parties will be necessary to address those needs.
 9. On July 1 of each year, Fourth Quarter, its successors, or assignees, or Village Developers, shall continue to pay the adopted applicable Guaranteed Revenue Charge for each of the unconnected or unused potable water and sanitary sewer ERCs that have been purchased by them up to that date, less those ERCs relinquished pursuant to Section 2 above, pro-rated based upon the period of time during the year when such ERCs were unconnected or unused. This annual charge is currently \$160 for potable water and \$150 for sanitary sewer per ERC; however, CITY reserves the right to adjust the charge (up or down) in the future. Fourth Quarter or Village Developers shall pay the charge in effect at the time of invoice, if payment is timely made, or at the time of payment if payment is not timely made.
 10. Fourth Quarter agrees that the guaranteed revenues due on July 1, ²⁰¹¹2010 will be calculated after deducting the ERCs relinquished above in Section 1 on the date that this Amendment is approved by CITY Commission and by deducting the ERCs transferred to DiVosta Homes, L.P. above in Section 3 on the date that the DiVosta Developer Utility Agreement is approved by the City Commission. Fourth Quarter or Village Developers shall pay all applicable guaranteed revenues as stated in the immediately preceding paragraph.

11. 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, 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	200	200	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

This schedule is based on a WWTP size of 2.0 MGD. In the event the District elects to build a smaller WWTP, the Wastewater ERCs listed in Table 7.1 above will be reduced proportionately to correspond to the gallons per day processing ability of the smaller plant size, beginning with the Guaranteed Revenue payment due on July 1,

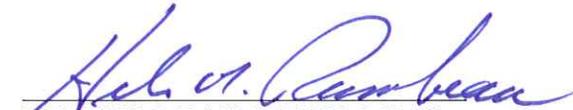
2028 and working back from there.

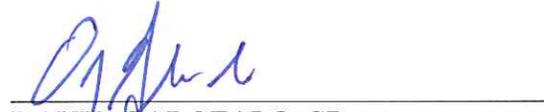
12. Fourth Quarter shall pay to CITY the One Hundred Dollar (\$100.00) fee required for amendments to agreements as set forth in the Citywide Miscellaneous Fee Schedule within fifteen (15) days of execution of this Amendment by CITY. Fourth Quarter's failure to timely make such payment shall, upon written notice from CITY to all the parties, render this Third 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 Third Amendment shall continue in full force and effect.
13. Except as specifically set forth in this Third 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, remain unchanged and in full effect.
14. The Agreement, as herein and previously amended, may be modified only by a written instrument executed by all of the parties.
15. This Third 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 Third 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 Third 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 day of July, 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

Candace Rosky
Notary Public

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

Sheryl Wilson
Witness

Kelly A. Wilson
Print Name

KD
Witness

Kevin Donegan
Print Name

By: [Signature]
As: Authorized Representative

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

ATTEST:
[Signature]
Secretary

By: [Signature]
Its: Chairman

{AFFIX DISTRICT SEAL}

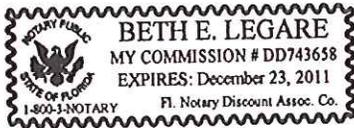
STATE OF FLORIDA
COUNTY OF SARASOTA

The foregoing instrument was acknowledged before me this 10th day of August, 2010 by the District Engineer 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

J. P. Marchand
J. P. Marchand

Beth E. Legare
Notary Public



REVISED EXHIBIT "D"

Capacity Allocation Infrastructure Schedule

On or before the following designated deadlines, Fourth Quarter or District, as applicable, or where designated herein, CITY, shall complete the following:

On or before November 15, 2006:

1. Submit FDEP permit applications and Preliminary Engineering Report for the Wastewater Treatment Plant.
2. Begin design of the Wastewater Plant.

On or before January 5, 2007:

1. Provide the water supply information required by Section 16 of the Agreement, as amended, updated annually on or before January 5th until build-out.
2. Provide a Utility Master Plan pursuant to Section 5.2 of the Agreement, as amended.
3. Provide a summary of the preliminary analyses completed to date of the potential potable and irrigation (development, yard and common areas plus agricultural) water supply sources on the Total Property available for use on the Incorporated Property, which addresses the phasing and timing of the conversion of the existing Total Property permitted agricultural quantities to potable supply and non-agricultural irrigation supply as well as alternative treatment methodologies when warranted, updated annually on or before August 1st until build out.

On or before January 15, 2007:

1. Submit to CITY 30-percent design documents for the Wastewater Plant in accordance with Section 16.5 - Design Submittals of the *West Villages WWTP Design Criteria Report*, June 2006. CITY will provide comments within two (2) weeks. A design workshop will be conducted within one (1) week of providing comments to review comments with Engineer.

On or before May 15, 2007:

1. Submit to CITY 60-percent design documents for the Wastewater Plant in accordance with Section 16.5 - Design Submittals of the *West Villages WWTP Design Criteria Report*, June 2006. CITY will provide comments within two weeks. A design workshop will be conducted within one week of providing comments to review comments with Engineer.

On or before July 1, 2007:

1. Complete a draft study of potential water supply sources on the Total Property and alternative treatment methodologies which shall demonstrate not less than 2.0 million

gallons per day (“MGD”) water supply available for use on the Incorporated Property. Said 2.0 MGD water supply shall be in addition to any agricultural and irrigation use otherwise required for the Total Property.

On or before September 1, 2007:

1. Submit to CITY 90-percent design documents for the Wastewater Treatment Plant in accordance with Section 16.5 - Design Submittals of the *West Villages WWTP Design Criteria Report*, June 2006. CITY will provide comments within two weeks. A design workshop will be conducted within one week of providing comments to review comments with Engineer.

On or before October 1, 2007:

1. CITY shall provide supporting information in the form and with the content required by SWFWMD WUP Rule (40D-2 FAC) and Basis of Review in effect as of September 1, 2007. Information to be provided by CITY would be information solely or predominantly within the control of CITY. Information from CITY is anticipated to include, but not necessarily be limited to: (a) estimated current, six, ten and twenty-year populations, per capita use rates, and water demand projections, with supporting documentation and methodologies; (b) information regarding CITY’s system-wide water supply sources and operations, including CITY’s sources, PRMRWSA sources, and any other interconnected sources of water; (c) water conservation measures; and (d) a map and description of current and proposed service area boundaries. CITY shall also provide other information as may be required by SWFWMD during the application process.

On or before January 15, 2008:

1. CITY shall supply updated demand projection and supporting information consistent with that required to be provided to the Peace River/Manasota Regional Water Supply Authority agreement with CITY dated October 5, 2005.

On or before May 18, 2008:

1. Prepare, in conjunction with CITY, a water use permit (“WUP”) application that includes a request to provide public water supply to CITY using Total Property water supply sources, and which makes practical and reasonable efforts to demonstrate reasonable assurance the application meets the requirements of the Chapter 40D-2, FAC. Said WUP application effort shall also include assistance with responses to requests for additional information from the SWFWMD, and generally assisting CITY with water use permitting of Total Property water supply sources.

On or before August 1, 2010:

1. Provide a Utility Master Plan update by technical memorandum regarding water supply to include updated population, ERC and potable water and wastewater

demand projections for all villages within the Incorporated Property, the final study of potential water sources previously submitted as a draft, and any changes to the most recently submitted Utility Master Plan. This Utility Master Plan shall be updated every two years thereafter on or before August 1 until build-out.

On or before February 1, 2011:

1. Initiate the design and permitting of a Class I deep injection well ("DIW"), with a minimum capacity as agreed upon by CITY and the District, to include associated exploratory well(s) and monitoring facilities to be located on the Incorporated Property, designed and constructed for the capacities of both the Water Treatment Plant and Wastewater Treatment Plant and future plant expansions intended to serve the Incorporated Property through build-out, and capable of disposing of both wastewater effluent and membrane reject waters by deep well injection, unless extended per the Agreement, as amended.
2. Provide CITY with a schedule for the design of the Water Treatment Plant, including review periods of two-weeks each for CITY, followed by review workshops seven (7) days thereafter unless extended per the Agreement, as amended.
3. Submit Water Source Transition Plan.

On or before March 1, 2011:

1. Initiate design of the Water Treatment Plant subject to CITY providing design review comments within two weeks of submittal of concept, 30%, 60%, and 90% plans, unless extended per the Agreement, as amended.

On or before May 1, 2011:

1. Complete 100% design of the Wastewater Treatment Plant, unless extended per the Agreement, as amended, to May 1, 2012 or later.

On or before September 1, 2011:

1. Commence construction of the approved Wastewater Treatment Plant, unless extended per the Agreement, as amended.

On or before July 1, 2012:

1. Obtain Water Use Permit sufficient to serve Water Treatment Plant.

On or before February 1, 2013

1. Complete 100% design of the Water Treatment Plant, unless extended per the Agreement, as amended, to February 1, 2014 or later

On or before July 1, 2013:

1. Complete construction of the Wastewater Treatment Plant, certify as complete to FDEP, and complete all conveyance documents to CITY, unless extended per the Agreement, as amended.
2. Commence construction of the Water Treatment Plant unless extended per the Agreement, as amended.
3. Begin construction of the Deep Injection Well, unless extended per the Agreement, as amended.

On or before February 1, 2015:

1. Complete construction of Deep Injection Well, unless extended per the Agreement, as amended.

On or before July 1, 2015:

1. Complete construction and start up of the Water Treatment Plant, certify as complete to FDEP, and complete all conveyance documents to CITY, unless extended per the Agreement, as amended.

EXHIBIT "E"

DiVosta Homes, LP Developer Utility Agreement

CITY OF NORTH PORT, FLORIDA
and
DIVOSTA HOMES, L.P.
WATER AND WASTEWATER SYSTEM
STANDARD DEVELOPER'S AGREEMENT

THIS AGREEMENT made and entered into this ____ day of _____, 2010, by and between Divosta Homes, L.P., a Delaware limited partnership, hereinafter 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:

Divosta Homes, L.P.
Attn: Richard McCormick
VP Land, South Florida Division
9240 Estero Park Commons Blvd
Estero, FL 33928
(239) 495-4821

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

DIVOSTA HOMES, L.P.

By: _____

Witness

As: _____

Print Name

Witness

Print Name

STATE OF FLORIDA
COUNTY OF SARASOTA

The foregoing instrument was acknowledged before me this ____ day of _____, 2010, by _____ of Divosta Homes, L.P., a Delaware limited partnership authorized to do business in the State of Florida, on behalf of the limited partnership. He/She is personally known to me or has produced _____ as identification and did not take an oath.

AFFIX SEAL

Notary Public

EXHIBIT A-1
BOUNDARY DESCRIPTION OF PROPERTY

SKETCH OF DESCRIPTION

SHEET 1 OF 5

DESCRIPTION:

A part of Section 31 and 32, Township 39 South, Range 20 East, and Section 6, Township 40 South, Range 20 East, Sarasota County, Florida, described as follows:

BEGIN at the Southwest corner of Section 32, Township 39 South, Range 20 East, Sarasota County, Florida; thence S.89°05'35"E., along the South line of said Section 32, a distance of 1186.16 feet to a point on a curve to the right having a radius of 2999.79 feet and a central angle of 05°01'41", a chord bearing of N.15°32'37"E., and a chord length of 263.17 feet; thence northeasterly along the arc of said curve an arc length of 363.25 feet; thence N.89°05'35"W parallel with the South line of said section 32, a distance of 1251.87 feet to a point on the East line of Section 31; thence S.89°54'47"W., a distance of 259.05 feet; thence N.00°14'53"E., a distance of 4,550.46 feet; thence N.89°38'31"W., a distance of 664.69 feet; thence N.01°05'02"E., along a line lying 990 feet westerly of and parallel with said East line of Section 31, a distance of 330.03 feet to the South Right of Way line of U.S. Highway No. 41 (State Road No. 45, as shown on Florida Department of Transportation Right of Way Map Section 17010-2508); thence along said South Right of Way line the following six (6) courses: (1) N.89°38'31"W., a distance of 2,213.79 feet; (2) thence S.84°38'10"W., a distance of 100.30 feet; (3) thence N.89°38'31"W., a distance of 80.07 feet; (4) thence N.83°55'35"W., a distance of 100.41 feet; (5) thence N.89°38'31"W., a distance of 1,768.90 feet; (6) thence S.84°38'16"W., a distance of 89.26 feet to the West line of said Section 31; thence S.01°19'34"W., along said West line of Section 31, a distance of 5,169.48 feet to the Southwest corner of said Section 31; thence S.00°08'52"W., along the West line of the Northwest Quarter of Section 6, Township 40 South, Range 20 East, Sarasota County, Florida, a distance of 2,653.77 feet to the West Quarter corner of said Section 6; thence S.00°08'44"W., along the West line of the Southwest Quarter of said Section 6, a distance of 489.51 feet to a point on a non-tangent curve to the right, having a radius of 633.03 feet, a central angle of 22°39'05", a chord bearing of N.80°07'08"E., and a chord length of 248.64 feet; thence easterly along the arc of said curve, an arc length of 250.26 feet to the point of compound curvature of a curve to the right having a radius of 174.77 feet, a central angle of 35°33'31", a chord bearing of S.70°46'34"E., and a chord length of 106.73 feet; thence easterly along the arc of said curve, an arc length of 108.46 feet to the point of compound curvature of a curve to the right having a radius of 280.04 feet, a central angle of 31°09'43", a chord bearing of S.37°24'57"E., and a chord length of 150.44 feet; thence southeasterly along the arc of said curve, an arc length of 152.31 feet to a point of reverse curvature of a curve to the left having a radius of 103.32 feet and a central angle of 157°38'36", a chord bearing of N.79°20'37"E., and a chord length of 202.72 feet; thence easterly along the arc of said curve, an arc length of 284.27 feet to a point of reverse curvature of a curve to the right having a radius of 206.41 feet and a central angle of 79°37'44", a chord bearing of N.40°20'11"E., and a chord length of 264.33 feet; thence northeasterly along the arc of said curve, an arc length of 286.87 feet to the point of compound curvature of a curve to the right having a radius of 255.42 feet, a central angle of 50°26'37", a chord bearing of S.74°37'39"E., and a chord length of 217.68 feet; thence easterly along the arc of said curve, an arc length of 224.88 feet; thence S.70°48'26"E., a distance of 101.21 feet; thence N.69°47'28"E., a distance of 230.17 feet to a point on a non-tangent curve to the left, having a radius of 585.61 feet, a central angle of 33°10'24", a chord bearing of N.76°20'49"E., and a chord length of 322.92 feet; thence easterly along the arc of said curve, an arc length of 327.48 feet to a point of reverse curvature of a curve to the right having a radius of 224.35 feet and a central angle of 59°25'43", a chord bearing of N.89°28'28"E., and a chord length of 222.41 feet; thence easterly along the arc of said curve, an arc length of 232.70 feet; thence S.59°49'31"E., a distance of 155.45 feet to a point on a non-tangent curve to the left, having a radius of 238.12 feet, a central angle of 37°10'44", a chord bearing of S.79°24'02"E., and a chord length of 151.82 feet; thence easterly along the arc of said curve, an arc length of 154.51 feet to a point on a non-tangent curve to the right, having a radius of 912.50 feet, a central angle of 28°31'33", a chord bearing of S.29°07'59"E., and a chord length of 449.63 feet; thence southeasterly along the arc of said curve, an arc length of 454.31 feet; thence S.71°12'24"E., a distance of 151.95 feet to the point of curvature of a curve to the left having a radius of 407.21 feet and a central angle of 31°34'41", a chord bearing of S.86°59'44"E. and a chord length of 221.60 feet; thence along the arc of said curve, an arc length of 224.43 feet to the point of compound curvature of a curve to the left having a radius of 100.00 feet, a central angle of 59°16'15", a chord bearing of N.47°34'46"E., and a chord length of 98.90 feet; thence northeasterly along the arc of said curve, an arc length of 103.45 feet; thence N.09°11'36"E., a distance of 2454.79 feet to the point of curvature of a curve to the right having a radius of 1,200.00 feet and a central angle of 80°42'30", a chord bearing of N.49°32'50"E. and a chord length of 1,654.02 feet; thence along the arc of said curve, an arc length of 1,690.35 feet; thence N.89°54'05"E., parallel with said South line of Section 31, a distance of 959.98 feet to the POINT OF BEGINNING.

Containing 829.3177 acres, more or less.

Randall E. Britt, Professional Land Surveyor
Florida Certification Number 3979

Note: Not Valid Unless Imprinted With Etched Land Surveyor's Seal

PREPARED FOR:
DiVosta and Company, Inc.

DATE: June 14, 2004
JOB NUMBER: 04-06-15

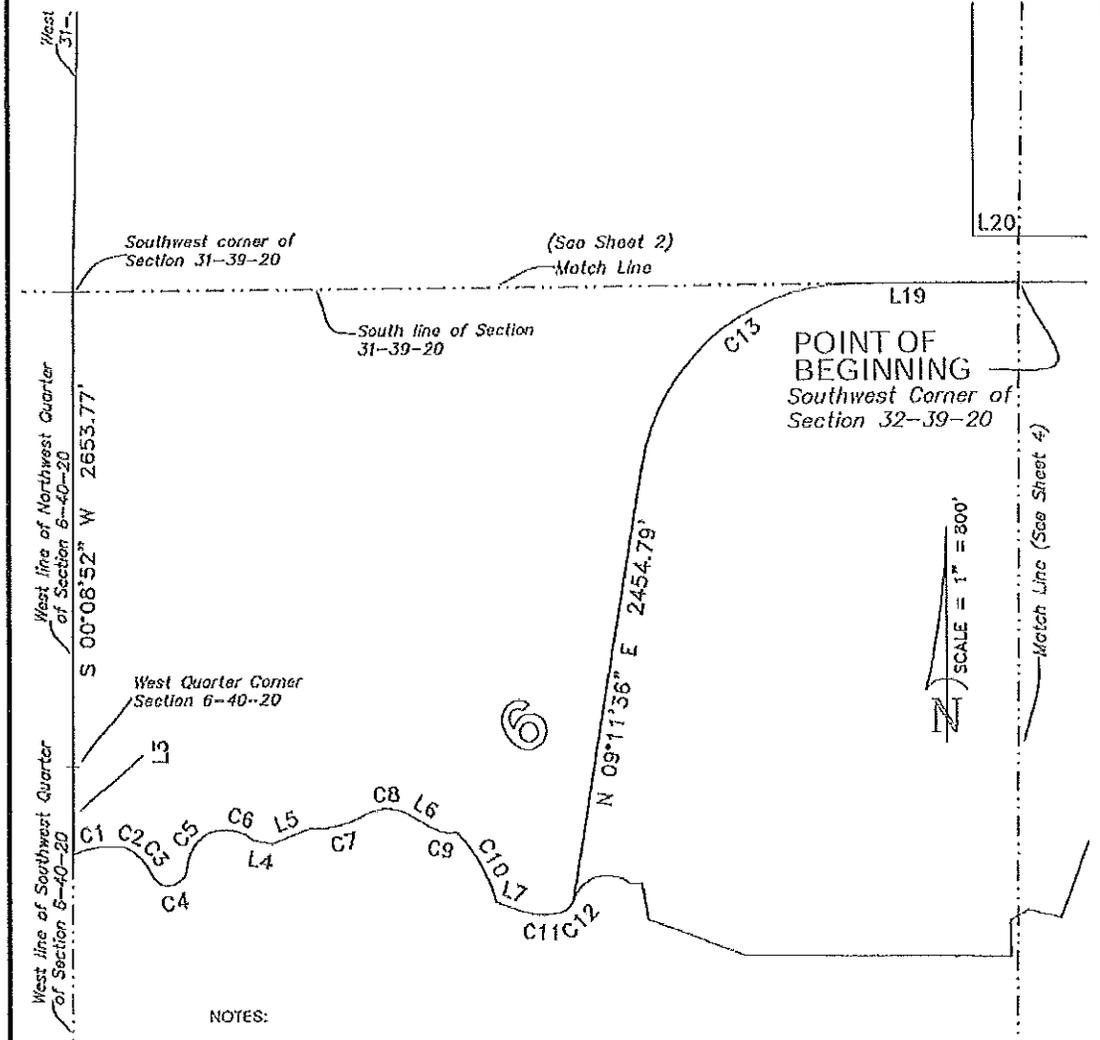


BRITT SURVEYING, INC.

LAND SURVEYORS AND MAPPERS
CERTIFICATE OF AUTHORIZATION NO. L.B. 6639
606 Cypress Avenue Venice Florida 34285
Telephone: (941) 493-1396 Fax: (941) 484-5766
Email: bsi@brittsurveying.com

SKETCH OF DESCRIPTION

SHEET 3 OF 5



NOTES:

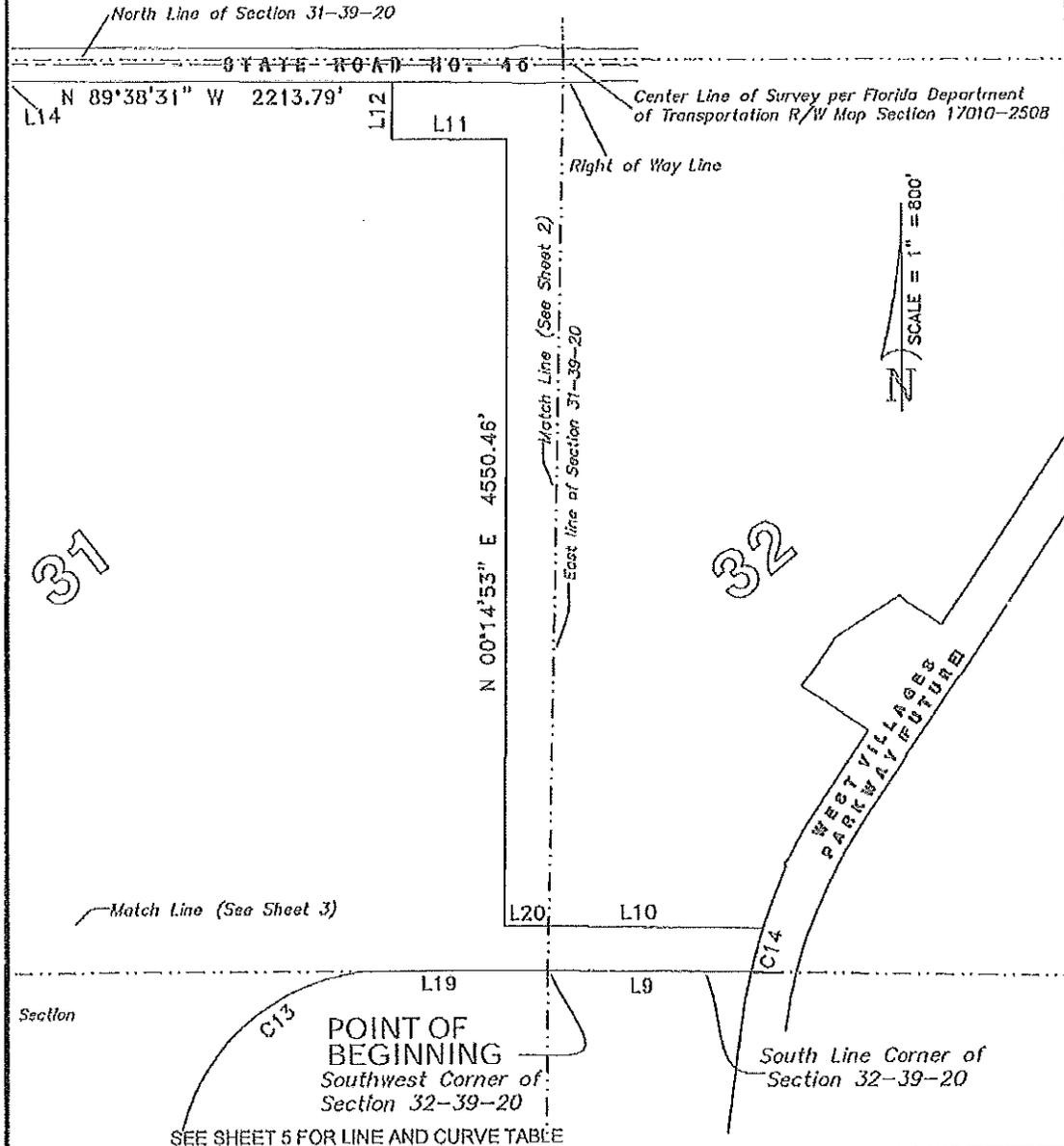
1. This sketch does not represent a boundary survey. The purpose of this sketch is to graphically depict the description shown on sheet 1.
2. The description shown on sheet 1 has been prepared for this sketch of description.
3. Subject to easements and rights of way of record, if any.

SEE SHEET 5 FOR LINE AND CURVE TABLE

PREPARED FOR: <i>DiVosta and Company, Inc.</i>		BRITT SURVEYING, INC. LAND SURVEYORS AND MAPPERS CERTIFICATE OF AUTHORIZATION NO. L.B. 6639 606 Cypress Avenue Venice Florida 34285 Telephone: (941) 493-1395 Fax: (941) 481-5768 Email: bs@brittsurveying.com
DATE: <u>June 14, 2004</u> JOB NUMBER: <u>04-06-15</u>		

SKETCH OF DESCRIPTION

SHEET 4 OF 5



SEE SHEET 5 FOR LINE AND CURVE TABLE

<p>PREPARED FOR: <i>DiVosta and Company, Inc.</i></p>	 <p>BRITT SURVEYING, INC. LAND SURVEYORS AND MAPPERS CERTIFICATE OF AUTHORIZATION NO. L.B. 6638 003 Cypress Avenue Venice Florida 34285 Telephone: (941) 493-1326 Fax: (941) 484-5768 Email: bs@brittsurveying.com</p>
<p>DATE: <u>June 14, 2004</u> JOB NUMBER: <u>04-06-15</u></p>	

SKETCH OF DESCRIPTION

SHEET 5 OF 5

CURVE TABLE

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	633.03'	250.26'	248.64'	N 80°07'08" E	22°39'05"
C2	174.77'	108.46'	106.73'	S 70°46'34" E	35°33'31"
C3	280.04'	152.31'	150.44'	S 37°24'57" E	31°09'43"
C4	103.32'	284.27'	202.71'	N 79°20'37" E	157°38'36"
C5	206.41'	286.86'	264.33'	N 40°20'11" E	79°37'44"
C6	255.42'	224.88'	217.68'	S 74°37'38" E	50°26'37"
C7	565.61'	327.48'	322.92'	N 76°20'49" E	33°10'24"
C8	224.35'	232.70'	222.41'	N 89°28'28" E	59°25'43"
C9	238.12'	154.52'	151.82'	S 79°24'02" E	37°10'44"
C10	912.50'	454.31'	449.63'	S 29°07'59" E	28°31'33"
C11	407.21'	224.43'	221.60'	S 86°59'44" E	31°34'41"
C12	100.00'	103.45'	98.90'	N 47°34'48" E	59°16'15"
C13	1200.00'	1690.35'	1554.02'	N 49°32'50" E	80°42'30"
C14	2999.79'	263.25'	263.17'	N 15°32'37" E	05°01'41"

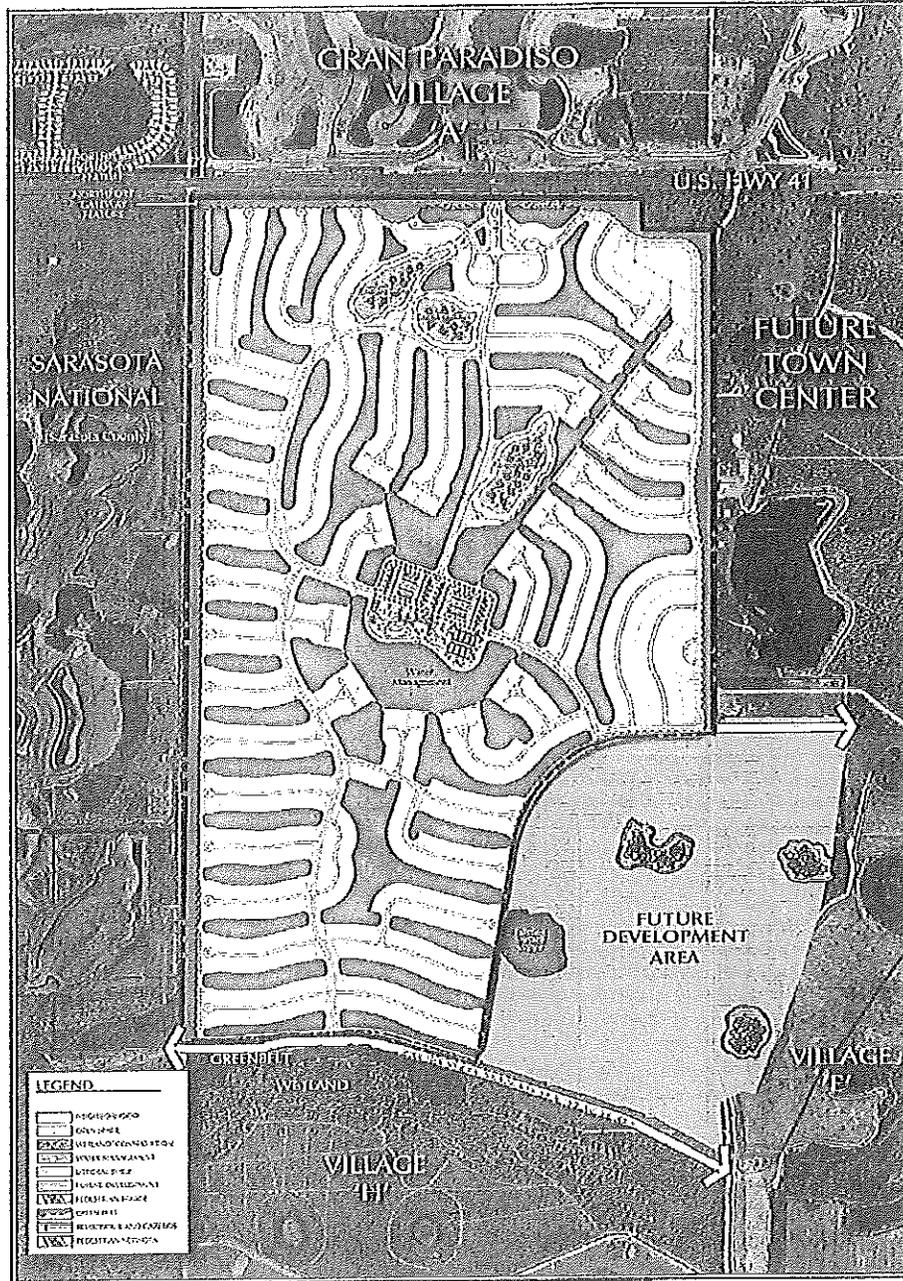
LINE TABLE

LINE	BEARING	DISTANCE
L3	S 00°08'44" W	489.51'
L4	S 79°48'26" E	101.21'
L5	N 69°47'28" E	238.17'
L6	S 59°49'31" E	155.45'
L7	S 71°12'24" E	151.95'
L9	S 89°05'35" E	1186.16'
L10	N 89°05'35" W	1251.87'
L11	N 89°38'31" W	664.68'
L12	N 01°05'02" E	330.03'
L14	S 84°38'10" W	100.30'
L15	N 89°38'31" W	80.07'
L16	N 83°55'35" W	100.41'
L17	N 89°38'31" W	1768.90'
L18	S 84°38'16" W	69.26'
L19	N 89°54'05" E	959.98'
L20	N 89°54'47" W	259.05'

PREPARED FOR: <i>DiVosta and Company, Inc.</i>		BRITT SURVEYING, INC. LAND SURVEYORS AND MAPPERS CERTIFICATE OF AUTHORIZATION NO. L.B. 6638 606 Cypress Avenue Venice Florida 34285 Telephone: (941) 493-1396 Fax: (941) 484-5766 Email: bs@brittsurveying.com
DATE: <u>June 14, 2004</u> JOB NUMBER: <u>04-06-15</u>		

EXHIBIT A-2

MAP OF PROPERTY



West Villages-Village "C"

Proposed VDPP Amendment No. 1 NORTH PORT, FLORIDA

SCALE IN FEET
 0 20 40 80
 DATE: 10/20/2010
 DRAWN BY: J. G. GILBERT
 CHECKED BY: J. G. GILBERT
 URG
 URBAN & REGIONAL GROUP

EXHIBIT B
SPECIAL CONDITIONS
DIVOSTA HOMES, L.P.

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 750 ERCs under the Fourth Quarter Properties XXXII, LLC and West Villages Improvement District's Amended and Restated Utilities Agreement dated February 27, 2007. As of June 1, 2010, 338 ERC (Equivalent Residential Connections) have been connected which leaves Developer a balance of 412 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 1,119 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 100 ERCs on or before July 01, 2014.
- (ii) Developer shall pay the adopted Water Capital Charge and Wastewater Capital Charge for a block of 100 ERCs on or before July 01, 2015.
- (iii) Developer shall pay the adopted Water Capital Charge and Wastewater Capital Charge for a block of 100 ERCs on or before July 01, 2016.
- (iv) Developer shall pay the adopted Water Capital Charge and Wastewater Capital Charge for a block of 100 ERCs on or before July 01, 2017.
- (v) Developer shall pay the adopted Water Capital Charge and Wastewater Capital Charge for a block of 100 ERCs on or before July 01, 2018.
- (vi) Developer shall pay the adopted Water Capital Charge and Wastewater Capital Charge for a block of 100 ERCs on or before July 01, 2019.

- (vii) Developer shall pay the adopted Water Capital Charge and Wastewater Capital Charge for a block of 100 ERCs on or before July 01, 2020.
 - (viii) Developer shall pay the adopted Water Capital Charge and Wastewater Capital Charge for a block of 100 ERCs on or before July 01, 2021.
 - (ix) Developer shall pay the adopted Water Capital Charge and Wastewater Capital Charge for a block of 100 ERCs on or before July 01, 2022.
 - (x) Developer shall pay the adopted Water Capital Charge and Wastewater Capital Charge for a block of 100 ERCs on or before July 01, 2023.
 - (xi) Developer shall pay the adopted Water Capital Charge and Wastewater Capital Charge for a block of 100 ERCs on or before July 01, 2024.
 - (xii) Developer shall pay the adopted Water Capital Charge and Wastewater Capital Charge for a block of 19 ERCs on or before July 01, 2025.
- 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. On or about July 01, 2010, 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.
- e. 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

	Level 1	Level 2	Level 3
	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.
WORKERS COMP 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
COMMERCIAL GENERAL LIABILITY 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
COMMERCIAL AUTO LIABILITY 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.