

**SECOND 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 Second Amendment to the Amended and Restated Utility Agreement is made on June 23, 2009, 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 for the purpose of modifying the Amended and Restated Utility Agreement dated February 27, 2007 as amended by Amendment No. 1 dated May 29, 2007.

**Recitals**

1. Due to delays in construction scheduling and a reduced demand for utility services, the District and/or Fourth Quarter have requested that the annual payment for Water and Wastewater Capital Charges scheduled for 2008 be decreased, that the payment schedule be adjusted as reflected in revised Table 6.2 below, payment for Guaranteed Revenue charges shall be modified as reflected in revised Table 7.1, and that the Capital Allocation Infrastructure Schedule, "Exhibit D" be modified.
2. Late fees for capacity that would have otherwise been due from Fourth Quarter as a result of its failure to make the scheduled payment of the adopted Water Capital Charge and Wastewater Capital Charge for the block of 150 ERCs due on July 01, 2008 (revised by this Second Amendment to state that payment will be received by City by July 01, 2011) shall be waived by City, provided that the payment for guaranteed revenues is received on time as set forth in Section 7 as revised in this Second Amendment and provided that current outstanding guaranteed revenues, previously due on July 1, 2008, including the guaranteed revenue late fees, are paid by August 1, 2009. If the guaranteed revenues payments are not timely made, then all late fees, penalties and interest thereon shall become immediately due and payable upon written notice from City to Fourth Quarter, a copy of which shall be provided to the District.
3. The parties hereto agree that an executed copy of this Second Amendment shall be recorded in the Public Records of Sarasota County, Florida at the expense of Fourth Quarter.
4. Except as specifically set forth in this Second Amendment, all other provisions of the Amended and Restated Agreement dated February 27, 2007, as amended, remain unchanged and in full effect.
5. This Second Amendment to the Amended and Restated Utility Agreement and Special Conditions thereto may only be modified by mutual written consent of the parties.
6. Fourth Quarter shall pay to the City the One Hundred Dollar (\$100.00) fee required for amendments to agreements as set forth in the Citywide Miscellaneous Fee Schedule within ten (10) days of execution of this Amendment by the City. Fourth Quarter's failure to timely make such payment shall, upon written notice from City to Fourth Quarter, render this Amendment null and void ab initio.

7. The Amendments are as follows:

**A) SECTION 6. CAPACITY ALLOCATION AND CAPACITY CHARGES.** The following subsections of Section 6 are amended to be as follows:

**6.2 Capacity Allocation Schedule.**

(a). Fourth Quarter wishes to obtain, and the City agrees to provide, water and wastewater capacity by equivalent residential connection ("ERC") on the designated delivery dates ("Capacity Allocation") as follows:

**TABLE 6.2 CAPACITY ALLOCATION SCHEDULE**

<u>Year</u>	<u>Water ERC's</u>	<u>Wastewater ERC's</u>	<u>Delivery Date</u>
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	0	0	July 1, 2010
2011	550	550	July 1, 2011
2012	700	700	July 1, 2012
2013	1000	1000	July 3, 2013
2014	1,000	---	July 2, 2014
2015	1,000	---	July 1, 2015

**6.3 Wastewater Capacity Allocation**

(b) The parties agree that, on or about July 1, 2008, the City reviewed the flow records for wastewater entering its wastewater treatment plant for the preceding twelve (12) month period. As the average daily flow for the peak thirty day period during the preceding twelve months did not exceed 4.4 mgd, the parties agreed to delay the due date for commencement of construction of the Wastewater Plant to September 1, 2009. The City repeated this flow analysis on or about February 1, 2009. The average daily flow for the peak thirty day period during the preceding twelve months did not exceed 4.4 mgd, the parties agreed to delay the due date for completion of the 100% design of the Wastewater Plant to May 1, 2010 and delay the due date for commencement of construction of the Wastewater Plant to September 1, 2010. The City will repeat this flow analysis on or about February 1, 2010. If the average daily flow for any thirty day period during the preceding twelve months does not exceed 4.4 mgd, the parties agree to delay the due date for completion of 100% design of the Wastewater Plant to May 1, 2011 and commencement of construction of the Wastewater Plant to September 1, 2011. In that case, the City will repeat this flow analysis on or about February 1, 2011. If the average daily flow for any thirty day period during the preceding twelve months does not exceed 4.4 mgd, the parties agree to delay the due date for completion of 100% design of the Wastewater Plant to May 1, 2012 and commencement of construction of the Wastewater Plant to September 1, 2012. In all events, the Wastewater Plant's construction shall be completed within 24 months following the

commencement of construction. For its part, the City has re-rated the existing WWTP to 4.4 mgd and is currently constructing an expansion to the City's wastewater treatment plant that is scheduled for completion in October 2010, at which time the City's permitted capacity will be 5.32 mgd. Notwithstanding the foregoing, if at any time on or after July 1, 2008 an update of the Capacity Analysis Report on the City's wastewater plant documents that the permitted capacity will be equaled or exceeded within the next three (3) years, the due date for completion of construction of the Wastewater Plant will not be delayed or extended, and construction must commence within six (6) months of the filing with the FDEP of such update of the Report. Fourth Quarter and the District shall be entitled to review a draft of the Capacity Analysis Report, including updates, when available from the City staff, and provide comment and input which the City shall consider prior to the City's filing of the Report, or update, as the case may be, with FDEP. If the completion of the Wastewater Plant's construction extends beyond the March 13, 2013 permit expiration date, Fourth Quarter and, if it agrees to do and subject to budget, the District, will be responsible for any re-permitting costs and adjustments resulting from rule changes.

#### **6.4 Water Capacity Allocation**

(a) In order to obtain water Capacity Allocation for the year 2012 as set forth in the Capacity Allocation Schedule (Table 6.2), the District shall have constructed and the City shall have accepted Conveyance of the Wastewater Plant, or the parties shall have agreed to delay construction of the Wastewater Plant pursuant to section 6.3 (b) above.

(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, the 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 the 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 the City of the associated Capital Charges and Guaranteed Revenue required by the Rate Ordinance then in effect. According to the Capacity Allocation Infrastructure Schedule (**Exhibit "D"**), on July 1, 2015 the District will complete construction of the Water Plant which, based on an ERC definition of 250 gpd, will potentially provide an additional 8,000 ERC's of water capacity above that already paid for pursuant to the Capacity Allocation Schedule (see Table 6.2). The City shall credit District with that number of ERC's equal to the permitted annual average daily flow of treatment capacity in the Water 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 ERC's in the Capacity Allocation Schedule in Section 6.2 that have been paid for but not connected to the City water system, and (2) the lesser of the Water 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.

**B) SECTION 7. GUARANTEED REVENUE.** The following subsections of Section 7 are amended to be as follows:

7.1 Beginning on July 3, 2006, and as of each anniversary date thereafter, City shall bill Fourth Quarter, its successors or assignees or Village Developer shall pay within thirty (30) days of the invoice date, the City's Guaranteed Revenue Charge then in effect in the manner set forth in this Section according to the following schedule:

**TABLE 7.1  
GUARANTEED REVENUE PAYMENT SCHEDULE**

Capacity Reservation Date	Capacity Reserved		Guaranteed Revenue Payment Date
	Water ERC's	Wastewater ERC's	
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	0	0	July 1, 2011
July 1, 2011	550	550	July 1, 2012
July 1, 2012	700	700	July 3, 2013
July 3, 2013	1,000	1,000	July 2, 2014
July 2, 2014	1,000	1,000	July 1, 2015
July 1, 2015	1,000	1,000	July 1, 2016
July 1, 2016	1,000	1,000	July 1, 2017
July 1, 2017	1,000	1,000	July 1, 2018
July 1, 2018	1,500	1,500	July 1, 2019
July 1, 2019	1,500	---	July 3, 2020
July 1, 2020	1,500	---	July 2, 2021
July 1, 2021	1,500	---	July 1, 2022

This schedule is based on a Wastewater Plant size of 2.0 MGD. In the event the District elects to build a smaller plant, the Wastewater ERC's listed 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 the July 1, 2019 delivery date and working back from there.

**C) See attached revised Exhibit "D".**

8. To the extent that there is a conflict between the terms, understandings and provisions of the Second Amendment and the Utility Agreement, as amended, the terms, understandings and provisions of the Second Amendment shall prevail.
9. This Second Amendment shall be effective once signed by all parties hereto.

IN WITNESS WHEREOF, the CITY, the DISTRICT and FOURTH QUARTER have executed or have caused this Agreement to be duly executed in several counterparts, each of which shall be considered an original executed copy of this Agreement.

ATTEST:

CITY OF NORTH PORT, FLORIDA

  
HELEN M. RAMBEAU, MMC  
CITY CLERK

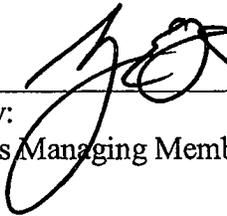
  
VANESSA CARUSONE, COMMISSIONER  
CHAIR

Approved as to form and correctness:

  
ROBERT K. ROBINSON  
CITY ATTORNEY

Executed by **FOURTH QUARTER** this 29 day of June, 2009.

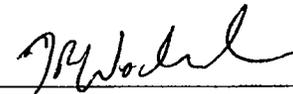
**FOURTH QUARTER PROPERTIES XXXII,  
LLC**, a Georgia Limited Liability Company

  
By: \_\_\_\_\_  
It's Managing Member

Executed by the **DISTRICT** this 23 day of June, 2009.

ATTEST:

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

By:   
Secretary

By: \_\_\_\_\_  
Its: \_\_\_\_\_

(District Seal)

## REVISED EXHIBIT "D"

### Capacity Allocation Infrastructure Schedule

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

On or before November 15, 2006:

1. Submit DEP permit applications and Preliminary Engineering Report for the Wastewater 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 this Agreement, updated annually on or before January 5<sup>th</sup> until build out.
2. Provide a Utility Master Plan pursuant to Section 5.2 of this Agreement, updated every two years on or before January 5<sup>th</sup> until build out.
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 January 5<sup>th</sup> until build out.

On or before January 15, 2007:

1. Submit to the 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 the 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 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 the City 90-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 October 1, 2007:

1. The 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 the City would be information solely or predominantly within the control of the City. Information from the City is anticipated to include, but not necessarily be limited to : A) estimated current, six, ten and 20-year populations, per-capita use rates, and water demand projections, with supporting documentation and methodologies; B) information regarding City system-wide water supply sources and operations, including City 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. The City shall also provide other information as may be required by SWFWMD during the application process.

On or before January 15, 2008:

1. The City of North Port 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 the City of North Port dated October 5, 2005.

On or before May 18, 2008:

1. Prepare, in conjunction with the City, a WUP application that includes a request to provide public water supply to the City of North Port 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 the City with water use permitting of Total Property water supply sources.

On or before February 1, 2009:

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 update shall serve as the first two year update.

On or before February 1, 2010:

1. Initiate the design and permitting of a Class I deep injection well, with a minimum capacity as agreed upon by the 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 Plant and Wastewater 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 ("Deep Well").

2. Provide the City with a schedule for the design of the Water Treatment Plant, including review periods of two-weeks each for the City, followed by review workshops 7-days thereafter.

3. Submit Water Source Transition Plan.

On or before May 1, 2010:

1. Complete 100% design of the Wastewater Plant, unless extended per Agreement to May 1, 2011 or May 1, 2012.

On or before July 1, 2010:

1. Initiate design of the Water Plant subject to the City providing design review comments within two weeks of submittal of concept, 30%, 60%, and 90% plans.

On or before September 1, 2010:

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

On or before July 1, 2011:

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

On or before July 1, 2012:

1. Complete construction of the Wastewater Plant, certify as complete to FDEP, and complete all conveyance documents to the City, unless extended per Agreement.

On or before July 1, 2013:

1. Commence construction of the Water Plant.
2. Begin construction of the Deep Well.

On or before February 1, 2015:

1. Complete construction of Deep Injection Well.

On or before July 1, 2015:

1. Complete construction and start up of the Water Plant, certify as complete to FDEP, and complete all conveyance documents to the City.