

**CITY OF NORTH PORT, FLORIDA/FOURTH
QUARTER PROPERTIES XXXII, LLC
WATER AND WASTEWATER SYSTEM
INTERIM UTILITIES AGREEMENT**

THIS AGREEMENT made and entered into this 29th day of March 2005, by and between Fourth Quarter Properties XXXII, LLC, a Georgia limited liability company, its successors and/or assigns, hereinafter referred to as "Fourth Quarter", and the City of North Port, Florida, an incorporated municipality located within the State of Florida, hereinafter referred to as the "City".

RECITALS

1. Fourth Quarter owns or controls lands located in North Port, Florida, and described in Exhibit "A," attached hereto and made a part hereof as if fully set out in this paragraph and hereinafter referred to as "Property". The Property has or is about to be developed by erecting thereon, residential or commercial improvements.
2. The City has required Fourth Quarter to construct and/or maintain central water and wastewater facilities so occupants of each residence or commercial improvement constructed will receive adequate water and wastewater services.
3. 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.
4. The City is also willing to provide reclaimed water service, if applicable and economically feasible and subject to City regulation.

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, Fourth Quarter 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.

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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 at a 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 Fourth Quarter, which Fourth Quarter 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. Fourth Quarter 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. Fourth Quarter 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 Fourth Quarter in granting easement herein, or pursuant to the terms of this instrument, shall have the rights to grant exclusive or non-exclusive rights, privileges and easement to other entities to provide to 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 Fourth Quarter, the City covenants and agrees that it will allow the connection of the water distribution and wastewater collection facilities installed by Fourth Quarter to the central water and wastewater facilities of the City in accordance with the terms and intent of this Agreement. Such connections 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 Fourth Quarter, or others have connected customer installations to its system, that thereafter, the City will continuously provide in return for payment of all applicable rate, 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, Fourth Quarter 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. Fourth Quarter 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 transmission and distribution and wastewater collection and transmission systems proposed to be installed to provide service to the subject Property. The City will advise Fourth Quarter's engineer of any sizing requirements as mandated by the City's system policies and utility standards for the preparation of plans and specifications for 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 City has approved such plans and specifications in writing. After approval, Fourth Quarter shall cause to be constructed, at Fourth Quarter's expense, the water distribution and wastewater collection systems as shown on all plans and specifications.

5.3. During the construction of the water distribution and wastewater collection systems by Fourth Quarter, the City shall have the right to inspect such installation to determine compliance with the plans and specifications, adequacy of the quality of the installation, and further, shall be entitled to perform standard tests for, but not limited to, pressure, filtration, line and grade, and all other normal engineering tests required by specifications and/or good engineering practices. Complete as-built plans shall be completed in accordance with the City's requirements and shall be submitted to the City upon completion of construction.

5.4. By these presents, Fourth Quarter hereby transfers to the City, title to all water distribution and wastewater collection systems installed by Fourth Quarter'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 the 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, Fourth Quarter shall convey to the City, by bill of sale, or other appropriate documents, in form satisfactory to the City's counsel, the complete on-site and off-site water transmission and distribution and wastewater collection and transmission systems as constructed by Fourth Quarter and approved by the City. Fourth Quarter 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 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 Fourth Quarter'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 transmission and distribution and wastewater collection and transmission systems, installed by Fourth Quarter, 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 Fourth Quarter or its contractor shall be warranted for at least one year 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 transmission and distribution and wastewater collection and transmission 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 transmission and distribution and wastewater collection and transmission systems is not necessary, then, at the sole option of the City, Fourth Quarter, or its successor or assigns, shall retain ownership and the obligation for maintenance of such on-site facilities.

5.7. Payment of the contributions-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 Fourth Quarter making the contribution. The City shall not be obligated for any reason whatsoever nor shall the City pay any interest or rate of interest upon the contribution. Neither Fourth Quarter nor any person or other entity holding any of the Property by, through or under Fourth Quarter, 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 of the City, and all prohibitions applicable to Fourth Quarter with respect to no refund of contributions, no interest payment on said contributions and otherwise, are applicable to all persons or entities. Any user or customer of water and wastewater services shall not be entitled to offset any bill or bills rendered by the City for such service or services against the contributions. Fourth Quarter 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 ninety (90) days after the execution of this Agreement, at the expense of Fourth Quarter, Fourth Quarter 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 opinion 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 this Section are for the exclusive rights of service contained in this 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. Fourth Quarter 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 Commission of the City of North Port, Florida. Such rules and regulations shall at all times be reasonable and subject to regulation as may be provided by law or under contract. Rates charged to Fourth Quarter or customers located upon the Property shall be identical to rates charged to other City customers 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 Fourth Quarter, upon any other entity holding by, through or under Fourth Quarter; and upon any customer of the water and wastewater services provided to the Property by the City.

SECTION 9. PERMISSION TO CONNECT REQUIRED. Fourth Quarter, 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 approval for such connection has been granted by the City.

SECTION 10. BINDING AGREEMENT; ASSIGNMENTS BY FOURTH QUARTER.

This Agreement shall be binding upon and shall inure to the benefit of Fourth Quarter, the City and their respective assigns and successors by merger, consolidation or conveyance. The rights, privileges, entitlements and/or obligations of Fourth Quarter hereunder may be assigned, in whole or in part, by Fourth Quarter to other entities, including but not limited to Gran Paradiso I and II, LLC, DiVosta Homes, Inc, and the West Villages Improvement District as the Property is developed. This Agreement shall not be sold, conveyed, assigned or otherwise disposed of by Fourth Quarter without the written consent of the City first having been obtained. The City agrees not to unreasonably withhold such consent. In the event Fourth Quarter sells all or a portion or portions of the Property, the new owner or owners shall, upon taking title to a portion or portions of the Property and accepting an assignment of this Agreement, assume the rights, benefits, obligations, and liabilities, and Fourth Quarter shall be relieved of any further obligations or liabilities, pursuant to this Agreement as they pertain to the portion of the Property that the new owners take title to.

SECTION 11. NOTICES. Until further written notice by either party to the other, all notices provided for herein shall be in writing and transmitted by messenger, or by mail to: **Fourth Quarter Properties XXXII, LLC, c/o Thomas Enterprises, Inc., 45 Ansley Drive, Newnan, Georgia 30263, Attention: Stanley E. Thomas (tel. 678-423-5445 and fax 678-423-5446)** and if the City, shall be mailed or delivered to at: **City of North Port, (mailing) Post Office Box 7228, (delivery) 6644 West Price Boulevard, North Port, Florida 34287, Attention: Cindi B. Mick, Utilities Director (tel. 941-426-9500 and fax 941-426-5409)**

SECTION 12. SURVIVAL OF COVENANTS. The rights, privileges, obligations and covenants of Fourth Quarter and the City shall survive the completion of the work of Fourth Quarter 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 Fourth Quarter and the City, made with respect to the matters herein contained, and when duly executed, constitutes the agreement between Fourth Quarter 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. The laws of the State of Florida, as well as all applicable local ordinances of the City shall govern this Agreement 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 costs incurred, including reasonable attorney's fees.

SECTION 14. DISCLAIMERS; LIMITATIONS ON LIABILITY.

14.1. STATUS. THE PARTIES DEEM EACH OTHER TO BE INDEPENDENT CONTRACTORS, AND NOT AGENTS OF THE OTHER.

14.2. INDEMNITY. Fourth QUARTER AND THE CITY, OR THEIR SUCCESSORS AND/OR ASSIGNS, AS THE CASE MAY BE, SHALL INDEMNIFY EACH OTHER, THEIR RESPECTIVE AGENTS AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITY, DEMANDS, DAMAGES, EXPENSES, FEES, FINES, PENALTIES, SUITS, PROCEEDINGS, ACTIONS AND FEES, INCLUDING ATTORNEYS' 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 THE OTHER OR THEIR SUCCESSORS AND/OR ASSIGNS, AS THE CASE MAY BE, ITS AGENTS, EMPLOYEES, SERVANTS, LICENSEES, INVITEES, OR CONTRACTORS OR BY ANY PERSON UNDER THE CONTROL OR DIRECTION OF IT OR BY FOURTH QUARTER'S, OR ITS SUCCESSORS AND/OR ASSIGNS, AS THE CASE MAY BE, USE OF THE CITY'S SYSTEM, AND EACH PARTY SHALL INDEMNIFY THE OTHER 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 IT OF ANY COVENANT, CONDITION, AGREEMENT OR PROVISION CONTAINED IN THIS AGREEMENT CONCERNING ALL OR ANY PART OF THE CITY'S SYSTEM.

14.3. FORCE MAJEURE. NEITHER PARTY SHALL BE LIABLE OR RESPONSIBLE TO THE OTHER BY REASON OF THE FAILURE OR INABILITY OF THE OTHER PARTY TO TAKE ANY ACTION IT IS REQUIRED TO TAKE OR TO COMPLY WITH THE REQUIREMENTS IMPOSED HEREBY OR (OR ANY INJURY TO THE OTHER PARTY OR BY THOSE CLAIMING BY OR THROUGH IT, WHICH FAILURE, INABILITY OR INJURY IS CAUSED DIRECTLY OR INDIRECTLY BY FORCE MAJEURE AS HEREINAFTER SET FORTH). THE TERM "FORCE MAJEURE" AS EMPLOYED HEREIN SHALL MEAN ACTS OF GOD, STRIKES, LOCK-OUTS, OR OTHER INDUSTRIAL DISTURBANCE; ACTS OF PUBLIC ENEMIES, WAR, BLOCKADES, RIOTS, ACTS OF ARMED FORCES, MILITIA, OR PUBLIC AUTHORITY, EPIDEMICS; BREAKDOWN OF OR DAMAGE TO MACHINERY, PUMPS, OR PIPE LINES; LANDSLIDES, EARTHQUAKES, FIRES, STORMS, FLOODS, OR WASHOUTS; ARRESTS, TITLE DISPUTES, OR OTHER LITIGATION; GOVERNMENTAL RESTRAINTS OF ANY NATURE WHETHER FEDERAL, STATE, COUNTY, MUNICIPAL OR OTHERWISE, CIVIL OR MILITARY; CIVIL DISTURBANCES; EXPLOSIONS, FAILURE OR INABILITY TO OBTAIN NECESSARY MATERIALS, SUPPLIES, LABOR OR PERMITS OR GOVERNMENTAL APPROVALS WHETHER RESULTING FROM OR PURSUANT TO EXISTING OR FUTURE RULES, REGULATIONS, ORDERS, LAWS OR PROCLAMATIONS WHETHER FEDERAL, STATE, COUNTY, MUNICIPAL OR OTHERWISE, CIVIL OR MILITARY; OR BY ANY OTHER CAUSES, WHETHER OR NOT OF THE SAME KIND AS ENUMERATED HEREIN, NOT WITHIN THE SOLE CONTROL OF EITHER PARTY AND WHICH BY EXERCISE OF DUE DILIGENCE NEITHER PARTY IS UNABLE TO OVERCOME.

14.4. DISCLAIMER OF THIRD PARTY BENEFICIARIES. THIS AGREEMENT IS SOLELY FOR THE BENEFIT OF AND SHALL BE BINDING UPON THE FORMAL PARTIES 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.

14.5. DISCLAIMER OF SECURITY. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE 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 REVENUES 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.

SECTION 15. COVENANT NOT TO ENGAGE IN UTILITY BUSINESS. Fourth Quarter, 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 shall have the 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 Fourth Quarter.

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/she has the

full power and authority to bind any corporation, partnership, or any other business entity for which he/she purports to act hereunder.

SECTION 19. CAPACITY. The execution of this Agreement between Fourth Quarter and the City does not constitute a specific reservation of capacity by Fourth Quarter, and the City does not hereby guarantee that capacity will be available for Fourth Quarter's project at 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 Fourth Quarter to the City. Said fees and charges shall also be set forth in Exhibit "B" hereof.

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

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

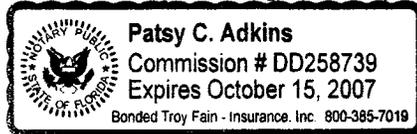
IN WITNESS WHEREOF, Fourth Quarter and the City have executed or have caused this Agreement, with the named Exhibits attached, if any, to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Agreement.

ATTEST: Helen Raimbeau
Helen Raimbeau, City Clerk

THE CITY OF NORTH PORT, FLORIDA
By: Richard A. Lockhart
Richard A. Lockhart, Commission Chair

Approved as to form and correctness:
Robert K. Robinson
Robert K. Robinson, City Attorney
STATE OF FLORIDA
COUNTY OF SARASOTA

The foregoing instrument was acknowledged before me this 29th day of March, 2005 by Richard A. Lockhart, 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 (did not) take an oath.



Patsy C. Adkins
Notary Public

FOURTH QUARTER:
X: [Signature]
By: Stanley E. Thomas, Manager

WITNESS: [Signature]
x: [Signature]
By: G. Lamar Maddox
STATE OF ~~FLORIDA~~ GEORGIA
COUNTY OF ~~SARASOTA~~ COWETA

The foregoing instrument was acknowledged before me this ___ day of ___, 200__ by _____, _____ of _____, a _____ authorized to do business in the State of Florida, on behalf of the corporation. He/She is personally known to me or has produced as identification and did (did not) take an oath.

[Signature]
Signature of Person Taking Acknowledgment

NOTARY
Title or Rank

CHERYL J EDWARDS
Name of Acknowledger Typed, Printed or Stamped

Serial Number, if any

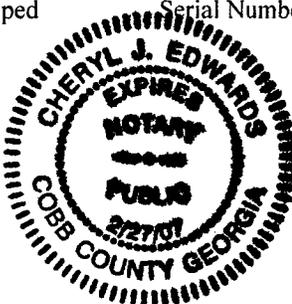


EXHIBIT "A"

DESCRIPTION:

LANDS LOCATED IN TOWNSHIP 39 SOUTH, RANGE 20 EAST, SARASOTA COUNTY, FLORIDA:

All that part of Section 21, as lies Southwesterly of County Road # 777 (West River Road).

All that part of Section 28 lying West of County Road # 777 (West River Road).

All of Section 29, less and except the following:

- Right-of-way for U. S. Highway # 41 (State Road # 45);
- Any portion of lands conveyed to Gran Paradiso I, LLC in Official Records Instrument # 2004216590, Public Records of Sarasota County, Florida;
- Any portion of lands conveyed to Gran Paradiso II, LLC in Official Records Instrument # 2004216591, Public Records of Sarasota County, Florida.

All of Section 31, less and except the following:

- Right-of-way of U. S. Highway # 41 (State Road # 45);
- Any portion of lands conveyed to DiVosta and Company, Inc. per Official Records Instrument No. 2003259292.

All of Section 32, less and except the following:

- Right-of-way of U. S. Highway # 41 (State Road # 45);
- That portion conveyed in Official Record. Book 2785, Page 634 of the Public Records of Sarasota County, Florida;
- That portion conveyed in Official Record Book 1571, Page 2172 of the Public Records of Sarasota County, Florida;
- Right-of-way for Pine Street Extension as recorded in Official Record Book 2536, pages 811-974 of The Public Records of Sarasota County, Florida;
- Any portion of lands conveyed to DiVosta and Company, Inc. per Official Records Instrument No. 2003259292.

All of Section 33 lying West of County Road # 777, less and except the following:

- Right-of-way of U. S. Highway # 41 (State Road # 45);
- That portion conveyed in Official Record Book 1571, Page 2172; of the Public Records of Sarasota County, Florida;
- That portion conveyed in Official Record Instrument No.1998166154 of the Public Records of Sarasota County, Florida;
- That portion conveyed in Official Record Book 2469, Page 451-454 of the Public Records of Sarasota County, Florida.

The South ½ of Section 34, lying West of the Myakka River, and that part of the NW 1/4 of the SW 1/4 of NW 1/4 lying West of County Road # 777, less and except the following:

That portion conveyed in Official Records Instrument # 1999057534, Public Records of Sarasota County, Florida;

The NW 1/4 of the NE 1/4 of the SW 1/4;

The maintained right-of-way of South River Road;

The right-of-way of County Road # 777 (as realigned) as per Official Record Book 2679 at Pages 2750-2754;

That portion conveyed in Official Record Instrument No. 2000002794 of the Public Records of Sarasota County, Florida;

That portion conveyed in Official Record Instrument No. 1999111833, of the Public Records of Sarasota County, Florida.

All of Section 35 lying West of the Myakka River.

IN TOWNSHIP 40 SOUTH, RANGE 20 EAST, SARASOTA COUNTY, FLORIDA:

All of Section 3, less and except the following:

That portion conveyed in Order of Taking recorded in Official Record Book 2679, Page 2750-2754, of the Public Records of Sarasota County, Florida;

That portion conveyed in Official Record Instrument No. 2000002794 of the Public Records of Sarasota County, Florida;

The maintained right-of-way of County Road #777 (South River Road);

The South 25 feet of the East Half for right-of-way of East River Road, per Deed Book 168, Page 240, Public Records of Sarasota County, Florida.

All of Section 4.

All of Section 5, less and except the following:

Right-of-way conveyed for Pine Street Extension recorded in Official Record Book 2536, Page 811-974, of the Public Records of Sarasota County, Florida;

Any portion of lands conveyed to DiVosta Homes, L.P. per Official Records Instrument No. 2004012753.

All of Section 6, less and except the following:

Right-of-way conveyed for Pine Street Extension recorded in Official Record Book 2536, Page 811-974, of the Public Records of Sarasota County, Florida;

Any portion of lands conveyed to DiVosta Homes, L.P. per Official Records Instrument No. 2004012753.

All of Section 7, less and except the following:

Right-of-way conveyed for Pine Street Extension recorded in Official Record Book 2536, Page 811-974, of the Public Records of Sarasota County, Florida.

All of Section 8.

All of Section 9.

All of Section 10, less and except the following:

The maintained right-of-way for County Road # 777 (South River Road);

The North 25 feet of the East Half for right-of-way of East River Road, per Deed Book 168, Page 240, Public Records of Sarasota County, Florida.

EXHIBIT B
THOMAS RANCH DEVELOPMENT
SPECIAL CONDITIONS TO THE INTERIM
UTILITY AGREEMENT
BETWEEN
THE CITY OF NORTH PORT
AND
FOURTH QUARTER PROPERTIES XXXII, LLC

This interim agreement is intended to provide the water and wastewater capacity needed to initiate the development of the property. It is the intent of both parties to enter into a Standard Water and Wastewater Utility agreement within ninety (90) days of the execution of this agreement to address additional water and wastewater needs and requirements. This interim agreement is to be replaced by a Standard Water and Wastewater Utility Agreement as it is merely a mechanism to reserve water and wastewater capacity. This interim agreement is not intended to include the utility requirements for which the property owner will be responsible in order to secure additional Equivalent Residential Connections for water and wastewater capacity beyond those included within this interim agreement. The subsequent Standard Water and Wastewater Utility Agreement(s) shall address future water and wastewater capacity and infrastructure needs for future phases of development and for the ultimate build-out of the Fourth Quarter property within the limits of the City of North Port.

Pursuant to Paragraph 20, the following are the Special Conditions mutually agreed upon between Fourth Quarter and the City of North Port. To the extent that these Special Conditions may conflict with the recitals or provisions contained within the Utility Agreement, these Special Conditions shall prevail.

1. Provided Fourth Quarter shall have complied with the requirements herein, Fourth Quarter is hereby granted the right to initially acquire 2,000 ERCs (Equivalent Residential Connections) of water and domestic wastewater capacity, to be issued permits for and to receive water and wastewater service for the proposed related development within the subject property, under the following conditions:

- a. Fourth Quarter, or its individual lot transferees, shall pay the adopted Water and Wastewater Capital Charges and Guaranteed Revenue Charges as follows:

- 1) On or before July 1, 2005, Fourth Quarter shall pay the adopted Water and Wastewater Capital Charges for 400 ERCs.
- 2) On or before July 1, 2006, Fourth Quarter shall pay the adopted Water and Wastewater Capital Charges for 1,000 ERCs.
- 3) On or before July 1, 2007, Fourth Quarter shall pay the adopted Water and Wastewater Capital Charges for 600 ERCs.
- 4) On or before July 1st of each year, beginning on July 1, 2006, and on each anniversary date thereafter, Fourth Quarter shall pay the City the adopted Guaranteed Revenue Charge for each unconnected or unused potable water and domestic wastewater ERC, which Fourth Quarter has paid the adopted charges per paragraph 1.a.1) and 2) above prorated based upon the period of time during the year when such ERCs were unconnected or unused. This charge is currently \$85.00 for potable water and \$205.00 for wastewater per ERC; however, the City reserves the right to adjust the charges (higher or lower) in the future. Fourth Quarter shall pay the charge in effect at the time of said payment.
- 5) Fourth Quarter 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. Fourth Quarter 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 Fourth Quarter'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 Fourth Quarter with written notice of the City's intent to declare an event of default. Fourth Quarter shall have an additional twenty (20) days from the date Fourth Quarter receives the City's written notice within which to make the specified payment. Should Fourth Quarter fail to cure a default upon its receipt of proper notices, the City may undertake the appropriate legal actions it deems necessary to enforce its right and remedies as provided under this Agreement and Florida Law.
- 6) Fourth Quarter and City acknowledge that Fourth Quarter 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 served by the City. Fourth Quarter agrees to disclose in writing to any grantee, lessee, or assignee, Fourth Quarter's entitlement to receive for the City remittance of the Water and Wastewater Capital Charges paid hereunder by Fourth Quarter to the City. Fourth Quarter further agrees to disclose the obligation of Fourth Quarter's

grantee, lessee, or assignee to pay to the City, the then adopted Water and Wastewater Capital Charges. Fourth Quarter, 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 remittance to Fourth Quarter of the previously paid Water and Wastewater Capital Charges by Fourth Quarter and/or the City's receipt of payment from Fourth Quarter'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. In the event the City is made a party to any litigation arising as a result thereof, the City shall have the option of providing for its own defense in said litigation and billing Fourth Quarter, its successors and/or assignees for all expenses of litigation, including its direct costs, commercially recognized rate for attorney's fees, inclusive of paralegal or legal assistant services, which expenses Fourth Quarter shall pay promptly upon demand or designating Fourth Quarter, its successor and/or assigns, to defend the City at the expense of said Fourth Quarter, successor and/or assign.

- 7) If the Fourth Quarter's incremental need exceeds the yearly assigned increment for water and wastewater capacity for the Development, Fourth Quarter may request to accelerate future incremental payments of Water and Wastewater Capital Charges. The Utilities Department and the City Manager may approve an accelerated payment of future scheduled increments if water and wastewater capacity is available.
2. Fourth Quarter shall be responsible for the design, permitting, construction, and certification of all on-site and off-site infrastructures required to support the proposed development and shall comply with the City of North Port "Utilities Standards and Specifications for the Construction of Water and Wastewater Facilities", and all regulatory agencies requirements for the development of the property. Such infrastructure shall be, but not limited to, water supply, treatment, storage, booster pumping station, and transmission and distribution systems; and wastewater collection and transmission, lift stations, and wastewater treatment, effluent disposal, and reclaimed water storage and irrigation systems. In addition, Fourth Quarter agrees to install the necessary SCADA facilities that are compatible with the City's planned SCADA infrastructure on all applicable facilities. Utility systems will be designed and constructed pursuant to the review of the Development Review Committee (DRC) and Utility Department approval and shall include, but not be limited to, the following:
 - a. Potable Water Infrastructure.

- 1) Fourth Quarter shall be responsible for all infrastructures necessary to supply initial water service to all potential development on Fourth Quarter's property. In order to meet these 2,000 ERC's of initial water treatment capacity requirements for the property, the City intends to provide initial water treatment capacity so that the development of the property may occur. The City intends to provide water treatment capacity from its existing water treatment facility only after the Thomas Ranch US 41 Water Main Project and the Storage and Booster Pump Station Projects are completed and accepted by the City.
- 2) Fourth Quarter further agrees to design, permit, construct and certify a 16-inch diameter water main on US 41/Tamiami Trail, which shall connect to the City's existing 12-inch diameter water main at Ortiz Boulevard and US 41, which is referred to as the Thomas Ranch US 41 Water Main Project. Furthermore, Fourth Quarter agrees to design, permit, construct, and certify all required utility infrastructure throughout the development to include a Water Booster Pump Station, which shall be designed in accordance with City requirements to supply domestic and fire flow demands. The Water Booster Pump Station shall include the necessary disinfection systems as required by the City to address potential low chlorine residuals.
- 3) The above-mentioned water main and distribution, and storage and booster pumping facilities must be constructed and accepted by the City. The City has the right to deny the issuance of any building permits associated with the development of the Fourth Quarter property prior to the City's acceptance of the above mentioned water system improvements.

b. Wastewater Infrastructure.

- 1) Fourth Quarter shall be responsible for all infrastructure necessary to supply initial wastewater service to all potential development on Fourth Quarter property. The City agrees to provide these 2,000 ERC's of initial wastewater treatment capacity so that the development of the property may occur.
- 2) Fourth Quarter shall be responsible for all infrastructures necessary to provide wastewater collection and transmission for all potential development on the Fourth Quarter property. As part of this obligation, Fourth Quarter shall construct necessary lift stations with provisions for appropriate pretreatment, SCADA systems, and 12-inch diameter force main from the development to the existing 16-inch diameter force main on Pan American Boulevard near the entrance to the City's existing wastewater treatment facility. The force main,

wastewater collection/transmission systems, and required lift stations must be constructed and accepted by the City. The City has the right to deny the issuance of any building permits associated with the development of the Fourth Quarter property prior to the City's acceptance of the above mentioned waste water system improvement.

c. Reclaimed Water and Effluent Disposal Infrastructure.

- 1) Fourth Quarter agrees to plan, permit, and construct a reclaimed water storage and distribution system within the Thomas Ranch Development in accordance with the City of North Port's Utility Standards as amended in anticipation of the West Villages WWTP to be located with the Thomas Ranch Development. The reclaimed water system shall be planned in such a manner to encompass the current and future irrigation needs of the development, including, but not limited to, golf courses, parks, recreation areas, and residential and non-residential sites. Furthermore, Fourth Quarter agrees to construct the infrastructure necessary to connect the reclaimed water infrastructure to the West Villages WWTP.

3. To the extent that Fourth Quarter may undertake any construction of utility improvements within the City right-of-way or upon City property, Fourth Quarter shall provide the following insurance coverage: a public liability insurance policy with limits no less than \$1.0 million combined single limits and \$3.0 million for aggregate coverage. The City shall be named as an additional or co-insured on all such policies. Fourth Quarter shall furnish to both the City Finance Department and Utility Department a certificate of insurance prior to the date upon which Fourth Quarter is to commence construction of the utility improvements. Said certificate shall provide that the insurance coverage shall not be canceled or reduced by the insurance carrier without the City Manager having been given at least thirty (30) days prior written notice thereof.

4. Fourth Quarter 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 and 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, Fourth Quarter 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 (2) week period.

