

## **GAS SERVICE AGREEMENT**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2014 by and between the City of Leesburg, Florida, a municipal corporation organized under the laws of the State of Florida, located at 501 W. Meadow Street, Leesburg, Florida, 34748, (hereinafter referred to as "City"), and The Villages of Lake Sumter, Inc., a Florida Corporation, whose address is 1020 Lake Sumter Landing, The Villages, Florida 32162, (hereinafter jointly referred to as "Owner"), sometimes referred to herein as "Party" or "Parties".

### **WITNESSETH:**

**WHEREAS**, Owner is developing a subdivision located in Fruitland Park, Florida, known as The Villages of Fruitland Park (hereafter referred to as the "Development"), in accordance with the master plan for the Development which is on file with the City; and

**WHEREAS**, Owner has requested that the City provide natural gas service to the Development; and

**WHEREAS**, the City has agreed to provide natural gas service to the Development under the terms and conditions set forth below.

**NOW THEREFORE**, in consideration of the premises and of the mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, City and Owner do agree as follows:

1. The City shall, subject to the provisions of this Agreement, supply natural gas service to the Development. A map of the Development is attached as Exhibit "A" to this Agreement and by reference is made a part hereof. City shall provide such natural gas service from the supply line, up to and including the gas meter.

2. Owner shall ensure that all pool heaters that serve the recreation centers in the Pine Ridge, Pine Hills and Moyer Village neighborhoods utilize natural gas, purchased from the City of Leesburg, as their sole source of heating energy for a period of 10 years from the date that each service is initiated. Connection of the units specified above shall be within two (2) years from the date of this Agreement.

Owner is responsible for all appliance installations, piping and connection to outlet of city gas meters.

The Parties understand that the City relies upon these assurances from Owner as the primary consideration for the execution of this Agreement, and incurring the capital expense of installing the infrastructure required to supply natural gas to the Development.

3. If, within two (2) years from the date of this Agreement, the Developer has not equipped the three recreation center pools with natural gas pool heaters, or discontinues use of natural gas for the purpose of heating any or all of the pools as specified in Paragraph 2 above, then Owner shall reimburse the City for a pro rata share of the City's initial cost to provide natural gas service to the Development, calculated according to the following algebraic formula:

$$\text{REIMBURSEMENT} = (\text{IC}) \times \frac{(\text{PU} - \text{GU})}{(\text{PU})}$$

Where the symbols used have the following meanings:

- A. "IC" is the City's initial cost of providing natural gas service to the Development. This cost is estimated to be one hundred eighty thousand dollars (\$180,000), however, this is an estimate and the City's actual cost figures to provide the service shall be used in determining the amount of reimbursement due to the City. The Parties agree that in figuring any reimbursement owed to the City by Developer, the City's Initial Cost Figure ("IC") shall be computed with regard to the costs only and shall not include any interest thereon.
- B. "PU" is the proposed number of Recreation Centers utilizing natural gas pool heaters (3);
- C. "GU" is the number of Recreation Centers utilizing natural gas pool heaters as specified above, at the end of the two (2) year period, or when use is discontinued to any or all of the units.

If the Developer, fully complies with all requirements set forth in Paragraphs 2 of this Agreement, then Developer's contingent obligation to reimburse the City shall terminate. If the Developer becomes obligated to reimburse the City for any portion of its costs, then upon payment of the amount of reimbursement due hereunder, neither party shall have any further obligation to reimburse the other for any costs associated with the construction and maintenance of the natural gas system within the Development. Developer agrees to pay any costs that the City incurs in the collection of any unpaid reimbursement fees from Developer including reasonable attorney's fees and court costs and any attorney fees and costs for appellate proceedings, efforts to collect any judgment entered in favor of the City, and in any proceedings in receivership, bankruptcy or insolvency.

4. The City shall, within 120 days of the execution of this Agreement, take all initial steps necessary to both provide natural gas service to the Development, and to lay the natural gas pipeline within the Development. The City shall not, however, be responsible for delays caused by the Developer, weather, the availability of materials, or other things beyond the reasonable control of the City. The City shall perform all such work at its own initial expense (subject to potential reimbursement as set forth above) and in accordance with plans and specifications developed by the City.

5. The City shall both own and maintain the natural gas system to and including the natural gas meters within the Development. The natural gas system from the outlet of the gas meter to the appliance utilizing the natural gas shall be maintained by the Developer.

6. The Developer shall grant to the City all easements needed to install the natural gas pipelines within the Development, and shall dedicate those easements to the perpetual use of the City and its successors in interest for the purpose of laying, maintaining, repairing and replacing the natural gas pipelines.

7. The City shall bear responsibility for installing all gas piping and other gas infrastructure necessary to supply the natural gas service reflected in this Agreement, up to and including, but not past, the gas meter. Developer and City will share trench space, which will be dug by the Developer's contractor at no charge to the City. Each unit within the development will be individually metered.

8. The City shall provide, when requested, individual unit hookups to the natural gas system within the Development. The City shall ensure that such service is provided at the same rates and on the same terms as

those provided to other natural gas customers of the City within a comparable service area. The Parties understand that any and all hookup fees, meter charges and impact fees shall be paid by the customer at the time service is hooked up to the Recreation Center, or any other gas customer within the Development should other customers desire to utilize natural gas.

9. The Parties agree that the laws of the State of Florida shall govern the validity of this Agreement, its interpretation and performance, and any other claims related to it. The parties agree that in the event of any litigation arising under or construing this Agreement, venue shall lie only in Lake County, Florida.

10. The Parties understand and agree that this Agreement sets forth the entire understanding between the parties and supersedes and takes precedence over any and all prior negotiations, representations and agreements, oral or written, all of which are deemed to have merged into this Agreement and to have been extinguished thereby, except to the extent they are specifically set forth herein. Each party warrants, for the benefit and reliance of the other, that it has not entered into this Agreement in reliance on or on the basis of any promise, undertaking, representation or agreement of the other party, except as specifically set forth within the four corners of this instrument, and the parties mutually waive and disclaim any and all rights, remedies and causes of action which may otherwise exist, based wholly or partly on any such promise, undertaking, representation or agreement of the other party, except as specifically set forth within the four corners of this instrument.

11. The Parties understand and agree that this Agreement may not be amended orally, by implication, by course of conduct, or in any manner other than by way of a written instrument approved by the Leesburg City Commission and duly executed by both parties hereto.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed as of the date herein above written.

**CITY OF LEESBURG**

BY: \_\_\_\_\_

Mayor

Date \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

Approved as to form and content:

City Attorney

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The Villages of Lake- Sumter, Inc

By:

A handwritten signature in black ink, appearing to read "Gary Moyer", with a stylized flourish at the end.

Gary Moyer, Vice President of Development

Date 8-28-14