

## UTILITY SERVICE AGREEMENT

**THIS AGREEMENT** made this \_\_\_\_\_ day of \_\_\_\_\_, 2006, between The City of Leesburg, hereafter referred to as "Provider" and Highland Cassidy, LLC, a Florida Limited Liability Corporation, hereafter referred to as the "Developer".

### WITNESSETH:

Provider makes potable water and wastewater disposal systems available to its customers. Developer plans to develop a residential subdivision called "Waterfront Estates" (hereafter referred to as the "Subdivision"), and has asked Provider to make those services available to the Subdivision. The parties have signed this Agreement to set forth the terms and conditions under which the services will be made available to the Subdivision.

**NOW THEREFORE**, the parties agree as follows:

#### 1. WASTEWATER DISPOSAL SERVICE

Provider will make wastewater disposal service (hereafter referred to as "Sewer service") available to the Subdivision on the following terms and conditions:

- 1.1 Developer will provide a site upon its property at least twenty-five (25) feet in size, for installation and maintenance of the master lift station and related equipment. Such site shall be chosen mutually by the parties and shall be acceptable to both. If the site does not front on a public road, then, in addition, Developer shall provide an easement for ingress and egress and provision of utilities from the nearest public road to the site, having a width of not less than 25 feet. Upon this site being chosen, Provider shall have it dedicated to Provider on the plat of subdivision, along with any access easement, and shall upon completion of the lift station have the site surveyed and legal descriptions prepared at its expense, and the site shall then be transferred by Developer to Provider at no charge by Warranty Deed in fee simple, free and clear of all liens and encumbrances other than those which Provider agrees to accept, in writing, along with whatever easements and rights-of-way may be necessary to grant vehicular and utility access to the site from the nearest public road. The Provider may, at its expense, obtain an Owner's Policy of title insurance on this master lift station site, with a commitment issued prior to transfer of title to Provider. If the commitment discloses the existence of any liens, encumbrances or other clouds on the title to the property, then upon written demand from Provider, Developer agrees at its

expense to clear the title of such liens, encumbrances and clouds before transferring the site to Provider.

- 1.2 Developer will, at its expense, construct the lift station, the wastewater collection system within the Subdivision, and such other facilities as are necessary to connect that system to Provider's sanitary force main along U.S. Highway 27. After the system has been completed, Developer will convey the system and all related lift station facilities to Provider, free and clear of liens and encumbrances, on a form of Warranty Deed and Bill of Sale furnished by Provider. All wastewater facilities constructed by Developer will be built under the supervision of Provider, and Provider must approve the plans and specifications in writing prior to commencement of construction. All facilities will conform to the standards and requirements of Provider. No FDEP construction permit application may be submitted by Developer until all plans and specifications have received written approval from Provider.
- 1.3 The following shall apply to the provision of sewer service to Developer and any customer to whom Developer sells capacity:
  - 1.3.1 Provider shall charge for wastewater service at rates established and amended from time to time by Provider. Developer will be charged impact fees and connection charges for all connections at the time of issuance of a building permit for each structure connected to the system, and once connection is made the applicable outside city rates shall be applied to the connections regardless of flow, until annexation after which the standard inside city rates will apply. Provider reserves the right to review and adjust impact fees, connection charges and monthly service rate charges to all users of Provider's sewer system as Provider deems fit.

## 2. POTABLE WATER SERVICE

Provider will make available potable water service to the Subdivision on the following terms and conditions:

- 2.1 Neither Developer nor any other person receiving potable water service from Provider under this Agreement shall install, maintain or utilize any well for providing irrigation water or other water service of any kind, nor shall any well be installed, maintained or utilized within the Subdivision for any purpose whatsoever, other than the wells installed and operated by Provider under this Agreement.
- 2.2 Developer will, at its expense, construct the water distribution system within the Subdivision, and after it has been completed, will at no charge

convey the distribution system to Provider by Warranty Deed and Bill of Sale on a form furnished by the Provider, free and clear of all liens and encumbrances of any nature whatsoever. All facilities constructed by Developer will be built under the supervision of Provider, and Provider must approve the plans and specifications in writing prior to commencement of construction. All facilities will conform to the standards and requirements of Provider, including but not limited to those pertaining to contamination and backflow protection. No FDEP construction permit application may be submitted by Developer until all plans and specifications have received written approval from Provider.

2.3 Developer shall also construct, at its expense, a water main extension of at least 12 inches in diameter from the system within the Subdivision to Provider's main water lines along U.S. Highway 27.

### 3. PROVISIONS COMMON TO ALL SERVICES

The following shall apply to all sections of this Agreement:

- 3.1 Developer will at no charge grant and dedicate to Provider all necessary easements for the construction, use, maintenance, and replacement of the systems in perpetuity, together with such easements as may be necessary to afford perpetual ingress, egress and provision of utility services to the well sites and the master meter site for the sewer system, by grant of easement with full warranties of title, free and clear of all liens and encumbrances. These easements shall be granted and dedicated at such times as may be necessary and expedient to permit Provider to comply with the terms of this Agreement. Where it is necessary to survey these easements or to have legal descriptions professionally prepared for use in granting these easements, those costs shall be borne by Developer.
- 3.2 No connections to the water or wastewater system may be made within the Subdivision until all systems have passed inspection by Provider and FDEP clearance has been received. No meter connections will be permitted until ownership of the water and wastewater systems has been transferred to Provider in accordance with the requirements of this Agreement. Inasmuch as no plans have yet been submitted, nothing in this Agreement shall be construed or implied to approve any utility designs.
- 3.3 All recording fees and transfer taxes imposed on any deed, grant of easement or other transfer required by this Agreement shall be paid by Developer.
- 3.4 Notices required or permitted hereunder shall be in writing and shall be deemed effective as follows, if sent to the address indicated below or such other address as a party may hereafter specify in writing:

- 3.4.1 If hand delivered, on the date following actual delivery thereof to the recipient.
- 3.4.2 If sent by regular or certified mail, postage prepaid, on the date which is three postal service days after postmark, whether or not received, a "Postal service day" being any day on which the U.S. Postal Service delivers mail.
- 3.4.3 If sent by Federal Express or other overnight courier service, on the day following the posting of the notice with the delivery service, whether or not received.
- 3.4.4 Notices shall be sent to the following address or such other locations as a party may hereafter specify in writing:

To Provider:           City of Leesburg  
                                Attention: City Manager  
                                Post Office Box 490630  
                                Leesburg, FL 34749-0630

To Developer:         Highland Cassidy, LLC  
                                295 First Street South  
                                Winter Haven, FL 33880

- 3.4.5 This Agreement sets forth the entire understanding of the parties with regard to its subject matter. All prior negotiations, representations and agreements are deemed to have merged into this Agreement and to have been extinguished to the extent not specifically set forth herein. This Agreement may not be amended orally, by course of conduct or in any other manner whatsoever than by a written instrument signed by all parties hereto or their successors in interest. Developer may not assign or transfer any of its rights, or delegate any of its duties hereunder, without the prior, written consent of Provider. A transfer of more than 49% of the stock in Developer, or other controlling beneficial interest in Developer, shall be considered an assignment or transfer of Developer's interests hereunder. No failure by Provider to insist on strict performance by Developer hereunder, or to enforce any of its rights in the event of a breach or default by Developer, shall constitute a waiver of any of Provider's rights in the event of a subsequent default or continuance of the initial default. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto, their successors and assigns, whether by merger, consolidation, conveyance or otherwise. The parties contemplate that this Agreement will be supplemented by a similar agreement

between Provider and the homeowner's association within the Subdivision, once such association has been formed. The parties further contemplate that the supplemental agreement between Provider and the homeowner's association will contain provisions permitting the association, at its option, to dedicate the necessary utility easements to Provider by notation on the subdivision plat, as opposed to a separate grant of easement, so long as the dedication language has been reviewed and approved by Provider prior to the recording of the plat.

- 3.4.6 In the event that performance of any part of this Agreement by either party is prevented or interrupted as a result of any cause beyond the control of the parties, including but not limited to fire, flood, storm or other natural disaster, strikes or other labor unrest, acts of God or public enemies, allocation of or other governmental restrictions on the use or availability of labor or materials, rationing, riot or civil insurrection, public disorder or demonstrations, or other similar causes, neither party shall be liable to the other for such non-performance.
- 3.4.7 Developer agrees to sign, contemporaneously with the execution of this Agreement, a covenant to support annexation of the subdivision into the Provider's municipal limits at such time as the Subdivision may become contiguous to those limits. A copy of the covenant shall be recorded in the public records and shall be a covenant running with the land which is binding on all subsequent purchasers of property within the Subdivision. A breach of that covenant shall also be a breach of this Agreement, which entitles Provider to invoke any remedies provided herein, as well as those which may be contained within the covenant itself.
- 3.4.8 The Guarantors signing below agree that they will unconditionally guarantee performance by Developer of all duties undertaken by it under this Agreement, and that in the event of a breach by the Developer of the terms of this Agreement, the Provider may elect at its sole option to pursue the Developer alone, the Guarantors alone, or both simultaneously, for any remedy afforded at law, in equity or under this Agreement, without thereby waiving the right to pursue, in the future, any parties not named in the prior enforcement action or actions. The guarantees provide in this Paragraph shall terminate on the earlier of the date on which Developer turns over the control of the homeowner's association in the Subdivision to the residents thereof, or seven years from the date of this Agreement.

3.4.9 The person signing on behalf of Developer certifies, by the execution of this document, that Developer is duly and properly formed, and is validly in existence, as an active and current corporation under the laws of the State of Florida, and that the person signing on behalf of Developer has full power and authority to bind Developer to all terms and conditions of this Agreement and that all conditions imposed on the execution of this Agreement by him, whether under the law or by way of the articles of incorporation and bylaws of the Developer, have been met in full.

IN WITNESS WHEREOF, the parties have set their hands and seals.

**THE CITY OF LEESBURG**

Attest: \_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

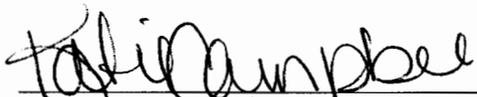
Approved as to form and content:

\_\_\_\_\_  
Fred A. Morrison, City Attorney

**HIGHLAND CASSIDY, LLC**

  
\_\_\_\_\_  
Print Name: Rennie Heath

  
\_\_\_\_\_  
By: Albert B. Cassidy  
Its: Manager

  
\_\_\_\_\_  
Print Name: Katie Campbell

STATE OF FLORIDA  
COUNTY OF LAKE POLK

The foregoing instrument was acknowledged before me this 4th day of August, 2006, by Albert B. Cassidy, who is ~~personally~~ known to me or produced \_\_\_\_\_ Drivers License # \_\_\_\_\_ as identification.



*Phyllis Gail Allen*  
Notary Public  
Printed Signature: Phyllis Gail Allen  
My Commission Expires: 7/27/07

**GUARANTORS**

\_\_\_\_\_  
**Print Name**

\_\_\_\_\_

\_\_\_\_\_  
**Print Name**

\_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF LAKE

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2006, by [FIRST GUARANTOR], who is personally known to me or produced \_\_\_\_\_ Drivers License # \_\_\_\_\_ as identification.

SEAL

\_\_\_\_\_  
Notary Public  
Printed Signature:  
My Commission Expires:

STATE OF FLORIDA  
COUNTY OF LAKE

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2006, by [SECOND GUARANTOR, if applicable], who is personally known to me or produced \_\_\_\_\_ Drivers License # \_\_\_\_\_ as identification.

SEAL

\_\_\_\_\_  
Notary Public  
Printed Signature:  
My Commission Expires: