UTILITY CONSTRUCTION REIMBURSEMENT (PIONEERING) AGREEMENT

THIS AGREEMENT made as of the _____ day of October 2006, between **THE CITY OF LEESBURG, FLORIDA,** hereafter referred to as the "City," and Highland Cassidy, LLC, a Florida Limited Liability Corporation, hereafter referred to as the "Developer,"

WITNESSETH:

THAT Developer is constructing a project on the real property described on Exhibit "A" attached (hereafter called the "Development"). The City will be providing one or more utility services to the Development as described more particularly below. Developer will be constructing certain infrastructure to support the provision of these utility services, as described on Exhibit "B" attached (hereafter called the "Infrastructure"). The parties have entered into this Agreement to set forth the terms and conditions under which Developer will be entitled to partial reimbursement for the cost of the Infrastructure.

NOW THEREFORE, for and in consideration of the construction of the Infrastructure, the provision of utility services to the Development by the City, and the mutual covenants and promises contained in this instrument, the parties do hereby agree as set forth below:

1. The following utility services will be provided to the Development by the City (check all that apply):

☒	Potable Water	☒	Wastewater
☐	Electricity	☐	Natural Gas
☐	Fiber Optic/telecommunications	☐	Reuse water

2. The portion of the Infrastructure for which Developer is entitled to reimbursement under this Agreement is described specifically on Exhibit "C" attached. During the term of this Agreement, any time a new user taps into the portion of the Infrastructure described on Exhibit "C," Developer will receive reimbursement as provided herein. However, Developer shall not under any circumstances be entitled to any reimbursement for new hookups to any portion of the Infrastructure outside the area described on Exhibit "C."

3. The term of this Agreement shall be for five (5) years from the date this Agreement is approved by the Leesburg City Commission (unless terminated earlier as provided below because total reimbursement to Developer has reached the maximum amount specified). Developer shall be entitled to reimbursement for any new taps into the portion of the Infrastructure described on Exhibit "C" which are placed into final service within the term of this Agreement, but shall not be entitled to reimbursement for any new taps not placed into final service prior to the expiration of the term of this Agreement.

4. The amount and manner of reimbursement to Developer under this Agreement is set forth on Exhibit "D" hereto. In no case shall Developer receive reimbursement which

exceeds Three Hundred Sixty Thousand Seven Hundred Ninty-Nine Dollars and Twenty-Six Cents ($360,799.26) in amount, and at such time as the total of all reimbursement to Developer hereunder equals that limit, this Agreement shall terminate and Developer shall not be entitled to any further reimbursements hereunder.

5. This Agreement sets forth the entire understanding of the parties with regard to its subject matter. It 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 except to the extent specifically set forth herein. This Agreement may not be amended orally, by implication, by course of conduct, or in any other manner whatsoever than by way of a written instrument signed by both parties hereto or their lawful successors. This Agreement shall be construed in accordance with the laws of Florida and venue for any action or proceeding arising out of this Agreement shall be in Lake County, Florida. This Agreement shall be binding on the parties hereto, as well as on their lawful successors and assigns. Each party represents for the benefit of the other that it has not entered into this Agreement in reliance on, or on the basis of, any promise, negotiation, representation, undertaking or agreement of the other party, oral or written, which is not specifically set forth within this Agreement. This Agreement shall not be binding on the City until it has received approval by a majority vote of the City Commission of the City of Leesburg at a public meeting, where a quorum was present, at which this Agreement was duly placed on the agenda for approval. In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs (at trial, on appeal, or in any proceeding involving bankruptcy or insolvency) in addition to any other relief obtained.

6. If the City sells or transfers one or more of its utility operations covered by this Agreement, it may assign its rights and delegate its duties hereunder to the person or entity to which the utility operations are assigned and upon such assignment and delegation in writing the City shall be relieved of further obligations hereunder, provided that the assignee of the City's utility operations assumes such obligations in writing. Unless it first receives written permission from the City, Developer may not assign its rights or delegate its duties hereunder, either outright or as collateral or security for any loan or other obligation, except as part of a transfer of ownership of the Development other than through the sale of individual lots or units in the ordinary course of business.

7. If Developer becomes delinquent in payment of any amount due the City for any reason, during the term of this Agreement, the City may withhold any reimbursement due Developer under this Agreement and offset it against the past due debt owed by Developer to the City, until such debt is paid in full, together with any interest or other additional charges incurred thereon. If Developer violates any provision of the City's codes and ordinances, its approved site plans or development plans, or the conditions of any permits or approvals issued to the Developer by the City, the City may withhold payment of reimbursements due Developer hereunder until all such violations have been abated fully.

8. Approval and execution of this Agreement by the City shall not be deemed to constitute approval by the City of any aspect of the Development, nor shall it be construed as permission to proceed with any portion of the Development. Developer shall still be required to obtain all necessary permits and approvals from the City and other governmental bodies before commencement or continuation of work on the Development.

9. The City's obligation to pay reimbursement to Developer under this Agreement is contingent on the completion by Developer of construction of the Infrastructure in accordance with applicable City and other standards, the plans and specifications for the Infrastructure (which must be approved in writing by the City prior to commencement of construction), and any other applicable codes and standards imposed by any level or agency of government, and upon payment in full by Developer of the costs of such construction (including but not limited to design and engineering, materials, and labor), and upon acceptance of the Infrastructure by the City into its utility system for operation and maintenance as part of the overall City system. Nothing in this Agreement shall be construed to require the City to accept or approve the Infrastructure until it is in full compliance with the plans and specifications, and all applicable codes and standards.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to set their hands and seals to this Agreement.

THE CITY OF LEESBURG, FLORIDA

BY: _____
MAYOR

Attest: _____
CITY CLERK

Approved as to form and content:

_____
CITY ATTORNEY

"DEVELOPER"
HIGHLAND CASSIDY, LLC

_____
Rennie Heath
(Type or print name of witness)

BY: _____
Its Albert B. Cassidy, Director

Kathleen Campbell

Kathy Campbell

(Type or print name of witness)

EXHIBIT "A"
LEGAL DESCRIPTION OF PROJECT

The NW 1/4 of the NE 1/4; the NE 1/4 of the NW 1/4; the North 100 feet of the SW 1/4 of the NE 1/4; and the North 100 feet of the SE 1/4 of the NW 1/4; all lying and being in Section 1, Township 21 South, Range 24 East, Lake County, Florida.
AND
That portion of the North 51 feet of the Northeast 1/4 of the Northeast 1/4 of Section 1, Township 21 South, Range 24 East, Lake County, Florida lying West of U.S. Highway No. 27.

Together with a non-exclusive easement for ingress and egress over upon and across that part of the South 20 feet of the Southeast 1/4 of the Southeast 1/4 of Section 36, Township 20 South, Range 24 East, lying West of US Highway 27; and, over upon and across the East 25 feet of the South 20 feet of the Southwest 1/4 of the Southeast 1/4 of Section 36, Township 20 South, Range 24 East, Lake County, Florida.

ALSO DESCRIBED AS:
THE NORTHWEST 1/4 OF THE NORTHEAST 1/4; THE NORTHEAST 1/4 OF THE NORTHWEST 1/4, THE NORTH 100 FEET OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4, AND THE NORTH 100 FEET OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4, AND THAT PORTION OF THE NORTH 51 FEET OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4, LYING WEST OF U.S. HIGHWAY NO. 27, ALL LYING AND BEING IN SECTION 1, TOWNSHIP 21 SOUTH, RANGE 24 EAST, LAKE COUNTY, FLORIDA, DESCRIBED AS FOLLOWS: BEGIN AT THE NORTHWEST CORNER OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 1, TOWNSHIP 21 SOUTH, RANGE 24 EAST, LAKE COUNTY, FLORIDA; RUN THENCE SOUTH 89°12'10" EAST, SAID BEARING BEING RELATED TO THE FLORIDA GRID SYSTEM EAST ZONE, ALONG THE NORTH BOUNDARY OF THE NORTHEAST 1/4 OF SAID SECTION 1, SAID BOUNDARY ALSO BEING THE SOUTH BOUNDARY OF PLANTATION AT LEESBURG RIVERSIDE VILLAGE, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 51, PAGES 56 THROUGH 58, PUBLIC RECORDS OF LAKE COUNTY, FLORIDA, AND THE SOUTH BOUNDARY OF PLANTATION AT LEESBURG BRAMPTON VILLAGE, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 52, PAGES 26 AND 27, PUBLIC RECORDS OF LAKE COUNTY, FLORIDA, A DISTANCE OF 1939.65 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 27; FROM SAID POINT, RUN THENCE SOUTH 09°40'36" EAST 51.88 FEET ALONG SAID RIGHT-OF-WAY LINE; DEPARTING SAID RIGHT-OF-WAY LINE, RUN THENCE NORTH 89°12'10" WEST PARALLEL WITH THE NORTH BOUNDARY OF THE NORTHEAST 1/4 OF SAID SECTION 1, A DISTANCE OF 624.07 FEET TO A POINT ON THE EAST BOUNDARY OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 1; FROM SAID POINT, RUN THENCE SOUTH 00°39'54" WEST 1354.36 FEET ALONG THE EAST BOUNDARY OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 1, AND THE EAST BOUNDARY OF THE NORTH 100 FEET OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 1; THENCE NORTH 89°14'01" WEST 1324.34 FEET ALONG THE SOUTH BOUNDARY OF THE NORTH 100 FEET OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 1; THENCE NORTH 89° 13'29" WEST 1322.94 FEET ALONG THE SOUTH BOUNDARY OF THE NORTH 100 FEET OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 1; THENCE NORTH 00°38'29" EAST 1406.99 FEET ALONG THE WEST BOUNDARY OF THE NORTH 100 FEET OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 1, AND THE WEST BOUNDARY OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 1; THENCE SOUTH 89°11'06" EAST 1322.98 FEET ALONG THE NORTH BOUNDARY OF THE NORTHWEST 1/4 OF SAID SECTION 1, SAID BOUNDARY ALSO BEING THE SOUTH BOUNDARY OF PLANTATION AT LEESBURG RIVERSIDE VILLAGE, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 51, PAGES 56 THROUGH 58, PUBLIC RECORDS OF LAKE COUNTY, FLORIDA; TO THE NORTHEAST CORNER OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 AND THE POINT OF BEGINNING OF THIS DESCRIPTION.

EXHIBIT "B"

DESCRIPTION OF THE INFRASTRUCTURE:

Water Distribution, Sanitary Sewer Collection, Lift Station and Force Main all in accordance with approved planes entitled Waterfront Estates, last revised 11/07/05.

EXHIBIT "C"

DESCRIPTION OF PORTION OF INFRASTRUCTURE FOR WHICH REIMBURSEMENT IS PAYABLE:

12" PVC WM & Fittings	=	6,875 LF
12" PVC WM & Fittings	=	565 LF
12" Directional Bore	=	400 LF
12" Gate Valve	=	14 Each
ARV ASSy	=	2 Each
Stuff Existing Casing	=	400 LF

EXHIBIT "D"

FORMULA FOR REIMBURSEMENT:

Based on 105 single-family lots at 350 gpd water consumption, the peak flow rate required for Waterfront Estates is calculated as follows:

105 Units X 350 gpd X 1/24 x 1/60 x 5.0 Peak Factor = 128 gpm

We then added an additional demand on the system at the entrance to the project (which would simulate other customers connecting to and utilizing water from the line). We adjusted this additional demand until the 10" water main system failed to provide the minimum fire flow rate of 1,000 gpm at our fire hydrant locations on-site. That additional demand placed on the system calculated to 315 gpm.

Therefore, the capacity of the 10" water main for potable consumption (while still providing 1,000 gpm at the proposed fire hydrant locations) is 128 gpm + 315 gpm = 443 gpm. The percentage of the pipe utilized by Highland Cassidy is therefore 128/443 = 28.9%. Based on this analysis Highland Cassidy is to be reimbursed by future connections in an amount not to exceed 71.1% of the cost of installing the pipe (less the amount covered by the City's upsizing reimbursement).