

UTILITY SERVICE AGREEMENT

THIS AGREEMENT made this _____ day of _____, 2008, between The City of Leesburg, hereafter referred to as “Provider” and K & M PROPERTIES OF FLORIDA, LLC, a Florida Limited Liability Company, hereafter referred to as the “Developer”.

WITNESSETH:

Provider makes potable water and wastewater disposal systems available to its customers. Developer plans to install infrastructure to be turned over to the Provider in the “Jim Rogers Industrial Park” (hereafter referred to as the “Development”), and infrastructure in the public right of way to be turned over to the Provider. The parties have signed this Agreement to set forth the terms and conditions under which the services will be made available to the Development.

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 Development on the following terms and conditions:

- 1.1 Developer will provide a site upon its property 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, or record a separate dedication if the property is not subdivided, 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 Development, and such other facilities as are necessary to connect that system to Provider's sanitary force main along Jim Rogers Industrial Way and Haywood Worm Farm Road. After the system has been completed, Developer will convey it and all related lift station facilities to the 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.

1.3 The following shall apply to the provision of sewer service to Developer :

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 rates 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 Development 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 Development for any purpose whatsoever, other than any wells installed and operated by Provider.

2.2 Developer will, at its expense, construct the water distribution system within the Development, and after it has been completed, if requested by Provider 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.

- 2.3 Developer shall also construct, at its expense, a water main extension of at least 8 inches in diameter from the system within the Development to Provider's main water lines along Haywood Worm Farm Road, and upon completion and inspection/approval by Provider will convey the extension to Provider in the manner specified above.

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 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 Development 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.
- 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: K & M Properties of Florida, LLC
 7228 C Westport Place
 West Palm Beach, Florida 33413

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.

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 Development into the Provider's municipal limits at such time as the Development may become contiguous to those limits. A copy of this 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 Development. 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.

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

THE CITY OF LEESBURG

Attest: _____
City Clerk

Mayor

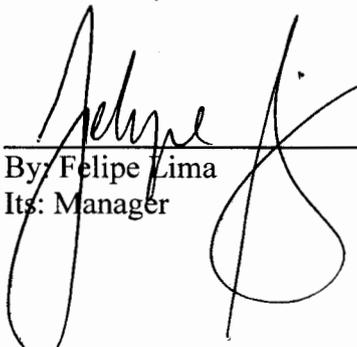
Approved as to form and content:

Fred A. Morrison, City Attorney

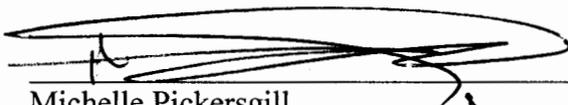
**K & M PROPERTIES OF
FLORIDA, LLC**



Lara Cole



By Felipe Lima
Its: Manager



Michelle Pickersgill

PROVINCE OF ONTARIO
CITY OF TORONTO

I, Jolanta Malicki, Notary Public in and for the Province of Ontario, at the pleasure of the Lieutenant-Governor, hereby certify that foregoing instrument was acknowledged before me by Felipe Lima, who is personally known to me.

Dated at Toronto on this the 30th day of May, 2008 and sealed with my notarial seal by my hand.

SEAL



Jolanta Malicki
Notary Public