

FILE 2794 — January 27, 2023

CONFLICT OF INTEREST; VOTING CONFLICT

**MEMBER OF PROPERTY OWNERS ASSOCIATION SERVING ON
THE WEST VILLAGES IMPROVEMENT DISTRICT BOARD OF SUPERVISORS**

To: Lindsey Whelan, Counsel to the District (West Villages Improvement District)

SUMMARY:

A member of the West Villages Improvement District Board of Supervisors will have a prohibited conflict of interest under the second part of Section 112.313(7)(a), Florida Statutes, where he is a member and an officer of a homeowners' association suing his agency and where he is the designated corporate representative of the homeowners' association in the lawsuit. The Board Member would not have a voting conflict if he voted on matters pertaining to the litigation, due to the size of the class of people affected by such a vote, but the Board Member is encouraged to abstain from such a vote pursuant to Section 286.012, Florida Statutes, to avoid any appearance of impropriety. CEO 77-14, CEO 77-32, CEO 82-14, CEO 84-80, CEO 86-24, CEO 86-41, CEO 90-20, CEO 08-22, CEO 10-2, CEO 14-12, CEO 17-4, CEO 19-1, CEO 21-7, and CEO 22-5 are referenced.

QUESTION 1:

Will a member of the West Villages Improvement District Board of Supervisors have a prohibited conflict of interest if he maintains a membership in the nonprofit corporation functioning as the homeowners' association for a

community within the District, serves as an officer on that nonprofit corporation, and serves as the designated corporate representative of the nonprofit corporation in a lawsuit against the District?

This question is answered as follows.

You write your inquiry on behalf of a member ("the Board Member") of the West Villages Improvement District Board of Supervisors. According to your inquiry, the Board Member was elected to a four-year term in November 2022. The Board Member was sworn in and seated on December 15, 2022, at which meeting he requested that you, as District counsel, to seek this opinion. The Board of Supervisors has five members. At present,¹ four of the seats on the Board of Supervisors are elected on a one-acre, one-vote basis, but the seat occupied by the Board Member is filled through a district-wide election by qualified electors of the West Villages Improvement District ("the District") rather than on a one-acre, one-vote basis.

The District spans nearly 12,000 acres. Within the bounds of the District lies the Gran Paradiso community, which spans approximately 1,000 acres and has approximately 1,935 residential units. The Gran Paradiso community is operated by the Gran Paradiso Property Owners Association ("the Property Owners Association"). The Board Member owns one residential property within the bounds of the Gran Paradiso community and, for that reason, is required to be a member of the Property Owners Association, which is a nonprofit corporation serving as a homeowners' association pursuant to Chapter 720, Florida Statutes.² In addition to

¹ Originally, all five of the Board seats were elected on a one-acre, one-vote basis. See Chapter 2004-456, Section 5(1), Laws of Florida. In compliance with Section 189.041(3), Florida Statutes, the composition of the Board has begun to transition such that some of the Board seats are elected by the qualified electors of the District.

² Section 720.301(9), Florida Statutes, defines a "homeowners' association" as:

being a member of the Property Owners Association, and prior to his election to the Board of Supervisors, the Board Member became a member of the Board of Directors of the Property Owners Association ("Board of Directors") in March 2022.

The District and the Property Owners Association transact business together through the District's provision of irrigation water to the Property Owners Association.³ In December 2020, the Property Owners Association began contracting with the District for the provision of irrigation water at specified rates. Recently, the Property Owners Association initiated a lawsuit against the District, disputing the service and seeking lower rates for the Property Owners Association. The Board Member has been heavily involved in the lawsuit. According to your inquiry, he has recently served as the designated corporate representative of the Property Owners Association in the lawsuit, though other corporate officers were available to do so instead, and began testifying as a witness against the District at a preliminary evidentiary hearing in December 2022 regarding a motion for preliminary injunction.⁴

With this background, you ask whether the Board Member's relationship with the Property Owners Association creates a prohibited conflict of interest for him.

a Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel. The term "homeowners' association" does not include a community development district or other similar special taxing district created pursuant to statute.

Relevant to this inquiry, a homeowners' association has the power to commence litigation. Section 720.303(1), Florida Statutes, states in part:

Before commencing litigation against any party in the name of the association involving amounts in controversy in excess of \$100,000, the association must obtain the affirmative approval of a majority of the voting interests at a meeting of the membership at which a quorum has been attained.

³ Your inquiry does not detail any other ongoing business transactions between the District and the Property Owners Association.

⁴ Apparently, direct testimony had occurred, but cross-examination and redirect had not. Further hearings are scheduled for February 2023 and it is expected the Board Member's witness testimony would conclude then.

To answer this question, analysis under Section 112.313(7)(a), Florida Statutes, is needed. Section 112.313(7)(a) states:

No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an officer or employee . . . ; nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.

There are two prohibitions in Section 112.313(7)(a). The first prohibition of this statute proscribes a public officer from having any contractual relationship with a business entity or an agency that is regulated by or is doing business with his or her agency. The second prohibition of this statute proscribes a public officer from having a contractual relationship that would create a continuing or frequently recurring conflict of interest or would create an impediment to the full and faithful discharge of his or her public duties. This requires an examination of the public officer's duties and a review of his or her private employment or contractual relationship "to determine whether the two are compatible, separate and distinct or whether they coincide to create a situation which tempts dishonor." Zerweck v. State Commission on Ethics, 409 So. 2d 57, 61 (Fla. 4th DCA 1982) (internal quotations omitted).

Regarding the first part of Section 112.313(7)(a), we have opined in the past that a public officer's rank-and-file membership in a nonprofit corporation creates a contractual relationship between the public officer and the nonprofit corporation. See CEO 19-1, CEO 14-12, and CEO 10-2. We have also opined that "a business entity is doing business with an agency where the parties have entered into a lease, contract, or other type of legal arrangement under which one party would have a cause of action against the other in the event of a default or breach." CEO 86-24. Initiating, maintaining, and settling a lawsuit between a business entity and an agency,

however, does not constitute "doing business" under the first part of Section 112.313(7)(a). See CEO 22-5, CEO 17-4, and CEO 77-14.

We now analyze the Board Member's situation under the first part of Section 112.313(7)(a). The Board Member has a contractual relationship with the Property Owners Association because he is a member of the nonprofit corporation. While the lawsuit does not constitute "doing business" under the first part of Section 112.313(7)(a), we nonetheless find that the Property Owners Association is doing business with the District because it has contracted with the District for the purchase of irrigation water. The arrangement constitutes "doing business" because the Property Owners Association could initiate, and in fact, has initiated, a cause of action against the District to resolve rights and obligations under that contract. Where the Board Member has a contractual relationship with the Property Owners Association (through his nonprofit membership) and that entity is doing business with the District (through the irrigation water contract), the elements of the first prohibition of Section 112.313(7)(a) are met. In the absence of an exception, a prohibited conflict of interest would be created.

An exception, however, is applicable to negate the conflict. Section 112.313(12)(c), Florida Statutes, says that no person shall be held in violation of Section 112.313(7)(a) where "[t]he purchase or sale is . . . for any utilities service[.]" In CEO 86-41, we found that a city's sale of water to a private business entity that retained a city council member as an engineer was a purchase or sale for a utility service that qualified for this exception. Here, in the Board Member's case, where we also have the sale of water by an agency to a private entity, the exception also applies to negate the conflict.⁵

⁵ A second, though less permanent, exception is also available. We have found in the past that Section 112.316, Florida Statutes, operates to effectuate a "grandfathering" of a contractual relationship where a public officer's contractual relationship with a business entity and that business entity's "doing business" relationship with the public officer's agency both precede the public officer's assumption of office, at least until the contract terms are changed

We turn now to our analysis under the second part of Section 112.313(7)(a). We have in the past reviewed similar situations to make a determination as to whether a public officer's private contractual relationships coincide with his or her public duties to create a situation that tempts dishonor as Zerweck requires.

For example, in CEO 82-14, we determined that membership in a voluntary, unincorporated association constituted a contractual relationship with a business entity, but that mere membership in that association, without additional facts indicating the public officer could be tempted to dishonor their public responsibilities, was not enough to find a continuing and frequently recurring conflict under the second part of Section 112.313(7)(a).

In CEO 90-20, a member of an unincorporated association challenging the city's special tax assessments in court was elected to the city council. Upon his election, he resigned his post as chairman of the unincorporated association and had his name removed as one of the named plaintiffs in the class action lawsuit. Under those facts, specifically relying upon the councilmember's efforts to divorce himself in his private capacity from the ongoing lawsuit and remove himself as a representative of the group in the lawsuit, we found no prohibited conflict of interest under the second part of Section 112.313(7)(a), even though he remained a member of the association.

In CEO 08-22, we considered a city councilmember who was a member and the chairman of a registered political action committee that was suing his city. The city councilmember terminated his service as an officer or director of the political action committee, though he continued to be a dues-paying member of it. We found that where the councilmember merely

or amended. See CEO 22-5 for a lengthy discussion of grandfathering under Section 112.316 as applied to conflicts under the first part of Section 112.313(7)(a).

had membership in the organization that was suing his agency, but was not an officer or director, a prohibited conflict of interest was not created under the second part of Section 112.313(7)(a).

It is clear from these three opinions that while membership in an unincorporated association or political action committee creates a contractual relationship with that entity, that membership is not enough to create a continuing or frequently recurring conflict under the second part of Section 112.313(7)(a). However, when the membership is coupled with an additional incentive to compromise one's public duties, such as serving as an officer or director of the organization, or serving as its designated corporate representative in litigation, the prohibition in the second part of the statute will apply.

We believe the analytical framework set forth in CEO 82-14, CEO 90-20, and CEO 08-22 is applicable to members of nonprofit corporations, as well. In the Board Member's case, a conflict of interest under the second part of Section 112.313(7)(a) will be present if he continues to be a representative of the Property Owners Association (nonprofit corporation) in the lawsuit and continues to be an officer in the Property Owners Association (nonprofit corporation) while he maintains a membership in the nonprofit organization and holds office on the Board.⁶ While he serves as an officer and as a designated corporate representative of the Property Owners Association, he is in a situation where he owes obligations to those on both sides of the lawsuit and he could be tempted to compromise his public responsibilities.

To avoid a conflict of interest going forward, he should either (1) end his membership in the Property Owners Association (eliminating the contractual relationship that is a predicate to

⁶ We are not aware of any exceptions that would be applicable to the scenario presented to negate the conflict. We find that the exception in Section 112.313(7)(a)1., Florida Statutes, does not apply here given that the conflict derives from the representation of a business entity before and/or against your agency. As we opined in CEO 77-32, the exception does not apply to negate a conflict of this nature.

finding a violation),⁷ (2) resign as an officer of the Property Owners Association and remove himself in all representative capacities in the lawsuit⁸ (eliminating the facts and circumstances that might tempt him to dishonor his public responsibilities), or (3) leave his public position.

QUESTION 2:

Would the Board Member have a voting conflict if the Board were posed with a vote concerning the litigation between the District and the Property Owners Association?

This question is answered as follows.

You ask whether a voting conflict will exist if the Board Member votes on a matter pertaining to the litigation between the District and the Property Owners Association.

Section 112.3143(3)(a) provides:

No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporation parent by which he or she is retained, other than an agency as defined in s. 112.312(2); or which he or she knows would insure to the special private gain or loss of a relative or business associate of the public officer.

The statute prohibits the Board Member from voting on any measure that will inure to his special private gain or loss, or to the special private gain or loss of a principal by whom he is

⁷ We recognize the difficulties with this option given that "membership [in the homeowner's association] is a mandatory condition of parcel ownership." § 720.301(9), Fla. Stat.

⁸ Assuming the Board Member is offering uncompensated testimony (e.g., that he is not an expert witness that has been retained to testify against his agency), we believe the Board Member can continue to be a fact witness in the case. See CEO 91-66 and CEO 94-32. The Code of Ethics does not operate to prevent public officers from offering uncompensated, truthful testimony in a court of law, even if that uncompensated testimony might serve interests counter to the agency's position in the litigation.

retained, a relative, or a business associate. There is nothing in the facts presented to indicate that a principal by whom the Board Member is retained, a relative, or a business associate would be affected by a vote pertaining to the litigation. The Property Owners Association is not a principal by whom the Board Member is retained because it does not compensate him. See CEO 84-80. Therefore, we are only concerned with whether the vote would create a special private gain or loss for the Board Member himself.

We have opined before that where the size of the class of people affected by a vote is sufficiently large, and a public officer's proportional interest in the class of those affected by the vote is sufficiently small, a public officer's gain or loss from the vote cannot be said to be "special" as would be required to find a voting conflict under Section 112.3143(3).

Here, although a vote relating to the litigation could create a gain or loss for the Board Member himself, he is just one member of the Property Owners Association, which has 1,935 residential units that would be affected in substantially the same manner by the litigation. For this reason, a voting conflict would not be created if the Board Member voted on a matter pertaining to the litigation.⁹ That being said, we believe voting on such a matter would create the appearance of impropriety and raise questions about the Board Member's objectivity, given his private interests and level of involvement in the lawsuit. We do not think it would instill public confidence in government for the Board Member to participate in such a vote and we would strongly encourage him, as we suggested to a similarly-situated public officer in CEO 21-7, to invoke Section 286.012, Florida Statutes, and abstain from such a vote, instead.¹⁰

⁹ We note that the exception to the voting conflict law found in Section 112.3143(3)(b), Florida Statutes, does not apply to the Board Member because the Board Member was not elected on a one-acre, one-vote basis, even though his colleagues on the Board were.

¹⁰ Section 286.012 allows a public officer to abstain from a vote if there is or appears to be a possible conflict under Section 112.3143 or Section 112.313. If a public officer does abstain for that reason, Section 286.012 requires them to comply with the disclosure requirements of Section 112.3143.

If the Board Member does choose to vote on such a matter, he must take great care not to violate Section 112.313(6), Florida Statutes, and Article II, Section 8(h)(2), Florida Constitution, which prohibit public officers and employees from abusing or misusing their positions with a wrongful intent to achieve a benefit for themselves or certain others.

QUESTION 3:

Would the Board Member have a prohibited conflict of interest if a nonprofit corporation and political committee of which he is an officer, or the Board Member personally, litigate against the City of North Port?

This question is answered in the negative.

In your inquiry, you explain the Board Member also is the chairman of West Villagers for Responsible Government, Inc. ("WVRG"), a nonprofit corporation and a political action committee. In October 2020, WVRG began petitioning the City of North Port ("the City") to de-annex a significant portion of lands from the City's geographical boundaries. These lands, however, also fall within the District's boundaries. In October 2022, the City rejected the petition to de-annex. In December 2022, WVRG and the Board Member in his personal capacity filed a Petition for Writ of Certiorari with the Twelfth Judicial Circuit Court to quash the City's order regarding de-annexation. While the District is not a party to the litigation, you estimate it could incur substantial costs as a consequence of the proposed de-annexation, including costs to renegotiate agreements with the County, costs to obtain permits with the County, and legal and engineering costs to amend its enabling legislation and effectuate the separation from the City.

With this background, you ask whether the Board Member will have a prohibited conflict of interest as a result of the litigation with the City.

Even assuming the Board Member holds a membership in WVRG, there is no indication that WVRG is doing business with or is regulated by the District, which is the Board Member's agency. Thus, there is not a conflict under the first part of Section 112.313(7)(a). Regarding the second part of Section 112.313(7)(a), once again assuming that the Board Member holds a membership in WVRG, there is no indication that the Board Member's public responsibilities to the District bear any relation to the lawsuit against the City. The District is not a party to the case and there is no official decision-making to be taken by the Board of Supervisors that would affect the course of the litigation. Although the District could have substantial costs as a consequence of the lawsuit, those costs are not damages or fees derived from engagement in the litigation, but business expenses that will be necessary to adapt to a ruling that orders de-annexation. Because the public position of the Board Member and his private interests concerning the City lawsuit do not coincide to tempt him to dishonor his public responsibilities, there is no conflict under the second part of Section 112.313(7)(a).¹¹

You ask whether District votes regarding development matters in the proposed de-annexation areas would create a voting conflict for the Board Member. Because it does not appear that votes on development in the de-annexation areas would create a special private gain or loss for the Board Member or any relative, business associate, or principal by whom he is retained, there is no voting conflict under Section 112.3143(3).

Your questions are answered accordingly.

¹¹ If, however, the District joins the lawsuit at some point, then the facts will resemble the scenario presented in Question 1.

JG/sjz/ks

cc: Lindsay Whelan

December 16, 2022

Via USPS and Electronic Mail

Ms. Kerrie Stillman
Executive Director
The Florida Commission on Ethics
P. O. Drawer 15709
Tallahassee, FL 32317-5709
stillman.kerrie@leg.state.fl.us

Re: Advisory Opinion Request

Dear Ms. Stillman,

My firm serves as District Counsel to the West Villages Improvement District (the “District”) and has been authorized by the District’s Board of Supervisors (the “District Board”) and District Board member John Meisel individually¹ to request a formal opinion from the Florida Commission on Ethics (the “Commission”) District to determine whether Mr. Meisel’s participation in several lawsuits against and relating to the District would give rise to any prohibited conflicts of interest under the Code of Ethics for Public Officers and Employees.

The District is a special-purpose local government established pursuant to Chapter 2004-456, *Laws of Florida*, located in both the City of North Port (the “City”) and unincorporated Sarasota County. The District finances, acquires, constructs and/or maintains public infrastructure improvements and provides multiple public services to an area of over 12,000 acres, including the provision of irrigation water service to the majority of the lands within the District. Mr. Meisel was elected to the District Board in November of 2022 for a four-year term.² As a member of the District Board, Mr. Meisel is a public official and one of five members of the District Board, which constitutes the District’s collegial decision-making body that governs and sets policy for the District.

The District Board and Mr. Meisel are seeking guidance from the Commission to determine what actions should be taken to avoid any prohibited conflicts of interest or voting conflicts by Mr. Meisel under the Code of Ethics while serving on the District Board, given the active litigation Mr. Meisel is involved in concerning both the District and the City, as discussed in more detail below.

¹ This firm does not represent Mr. Meisel individually. However, Mr. Meisel individually authorized the submission of this advisory opinion request at the District’s last public meeting.

² Mr. Meisel was installed on the District Board on December 15, 2022.

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Gran Paradiso Property Owners Association v. West Villages Improvement District, et. al; Case No. 2022-CA-5368-SC

Mr. Meisel additionally serves as a Director on the Board of Directors (the “Association Board”) of the Gran Paradiso Property Owners Association, Inc. (the “Association”), a Florida not-for-profit corporation and Chapter 720, *Florida Statutes*, property owners’ association for the Gran Paradiso community, which comprises approximately 1,000 acres and is located within the boundary and jurisdiction of the District. Mr. Meisel became a member of the Association Board in March of 2022. Mr. Meisel is not compensated for his service on the Association Board. Aside from serving on the Association Board, Mr. Meisel is also a member of the Association and a property owner within the Gran Paradiso community.

The District and the Association do business with one another, namely through the District’s provision of irrigation water to the Association at rates developed and set by the District pursuant to its statutory authority and reflected in an agreement between the District and Association. The Association recently filed a lawsuit against the District and others concerning the District’s irrigation service and rates. The litigation ultimately seeks to challenge the District’s irrigation service rates and secure a lower rate for the Association and its members, including Mr. Meisel. The litigation does not currently involve any other irrigation customers within the District.

In connection with this litigation, the Association has a motion for preliminary injunction pending that requests the Court to force the District to continue providing irrigation service during the pendency of the Association’s lawsuit while allowing the Association to withhold full payment. In connection with that motion, Mr. Meisel recently served as the designated corporate representative of the Association,³ testifying as an adverse witness against the District at a preliminary evidentiary hearing held on December 9, 2022. Mr. Meisel’s testimony was not completed at that hearing (direct testimony was not completed, and neither cross examination or redirect occurred), and further preliminary evidentiary hearings have been scheduled on this matter for February 8 and 9, 2023. It is anticipated that Mr. Meisel will continue in this capacity as an Association witness adverse to the District if the litigation is not otherwise resolved prior to such evidentiary hearing.

West Villagers for Responsible Government, Inc. and John Meisel v. the City of North Port Florida; Case No. 2022-CA-5583-SC

The West Villagers for Responsible Government, Inc. (“WVRG”), a Florida not-for-profit corporation and registered Political Action Committee, spearheaded a resident-initiated municipal

³ Note that such designation was not compulsory by virtue of his position as a director of the Association Board, as the litigation complaint and associated motion for injunction was signed by Association President, Steve Glunt, and not Mr. Meisel. Mr. Glunt was in attendance at the evidentiary hearing in question and could have served as the designated corporate representative, if desired by the Association.

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contraction petition pursuant to Section 171.052, *Florida Statutes*, that was filed with the City of North Port (the “City”) on October 28, 2020 to de-annex a significant portion of the lands within the District from the City’s geographical boundaries (hereinafter, the “Deannexation”). Mr. Meisel serves as the Chairman of the WVRG, but has not been compensated to-date for his position.

Pursuant to the statutory contraction procedures, the City held a quasi-judicial hearing in 2021 (the “Hearing”), after which it deliberated and voted unanimously to reject the petition for Deannexation. After a myriad of appellate actions involving WVRG and the City not pertinent to the immediate inquiry, the City Commission resumed deliberations on October 27, 2022, after which it voted unanimously to again reject the petition. On December 2, 2022, WVRG, and Mr. Meisel in his personal capacity, filed a petition for Writ of Certiorari with the Twelfth Judicial Circuit Court to quash the most recent quasi-judicial Order of the City Commission. Mr. Meisel has also testified at City hearings on the matter in favor of the Deannexation.

Although not a direct party to the matter, the District would be significantly and adversely affected by an approved Deannexation and in furtherance thereof previously adopted Resolution 2020-02 expressing its opposition to the removal of the lands within the District’s boundary from the municipal boundary. Namely, the City and the District have extensive development agreements in place addressing the development of the public infrastructure within the District’s boundary, which agreements would need to be terminated with the City and re-negotiated and entered into with the County. This would come at a significant cost to the District and would be detrimental to the District’s public infrastructure development activities - the purpose for which the District was established by the Florida Legislature.

Additionally, any active permits obtained from the City for the District’s planned improvements would be nullified as a result of the Deannexation and would be required to be obtained from the County further delaying the District’s provision of services to its residents and landowners. And any contractual reimbursement obligations of the City to the District (which offset the amounts that residents such as Mr. Meisel pay in assessments to fund public infrastructure serving the lands within the District) will be eliminated.

Lastly, the District will likely need to amend its enabling legislation to address the fact that its property is no longer located within the municipal boundary of the City and to remove the concept of City oversight which would come at a significant expense to the District. The District previously estimated that it would cost approximately \$650,000 in legal and engineering fees to effectuate the “divorce” from the City if the Deannexation is successful, in addition to the loss of infrastructure “cost sharing” reimbursements from the City totaling tens of millions of dollars. Any costs incurred by the District as a result of an approved Deannexation would be passed through to District residents through increased debt service operations and maintenance assessments, including residents within the Gran Paradiso community such as Mr. Meisel.

In light of the foregoing facts, the District and Mr. Meisel are hereby requesting an Advisory Opinion addressing the following questions:

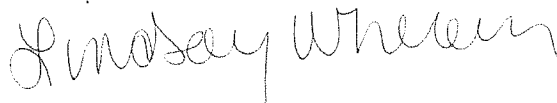
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1. **Would a prohibited conflict of interest exist if a member of the District Board also serves on the Association Board which currently does business with the District?**
2. **Given the litigation in Case No. 2022-CA-5368-SC and facts described above, does Mr. Meisel's status as i) a member of the Association Board, ii) an adverse witness testifying against the District in the above litigation, or iii) a resident of the Gran Paradiso community which would financially benefit from successful litigation efforts, create a prohibited conflict of interest?**
3. **Similarly, does Mr. Meisel's status as i) a member of the Association Board, ii) an adverse witness testifying against the District in the above litigation, or iii) a resident of the Gran Paradiso community which would financially benefit from successful litigation efforts, constitute a prohibited voting conflict of interest relative to matters taken up by the District Board regarding the litigation or otherwise directly affecting Gran Paradiso residents?**
4. **Given the litigation in Case No. 2022-CA-5583-SC and facts described above, does Mr. Meisel's status as i) a resident of the District, ii) a director of WVRG, or iii) a named party appealing the City's denial of a petition to de-annex lands within the District from the City's municipal boundary, the result of which would significantly adversely affect the District and its landowners and residents financially and otherwise, create a prohibited conflict of interest?**
5. **Similarly, does Mr. Meisel's status as i) a resident of the District, ii) a director of WVRG, or iii) a named party appealing the City's denial of the Deannexation, create a prohibited voting conflict of interest relative to matters taken up by the District Board regarding its development activities within the City (which ultimately would need to be unwound after a successful Deannexation)?**

Thank you for your time and consideration. Please do not hesitate to contact me if you require any additional information or have any questions.

Sincerely,



Lindsay Whelan
Counsel to the District

**AMENDED AND RESTATED AGREEMENT FOR THE DELIVERY
AND USE OF IRRIGATION QUALITY WATER**

GRAN PARADISO

This **Agreement** (the “Agreement”) is made and entered into this 16th day of December, 2020 (the “Effective Date”), by and between:

West Villages Improvement District, a local unit of special-purpose government established pursuant to Chapter 189, *Florida Statutes*, and whose address is 2501-A Burns Road, Palm Beach Gardens, Florida 33410 (the “DISTRICT”); and

Gran Paradiso Property Owners Association, Inc., a Florida not-for-profit corporation, whose mailing address is 20125 Galleria Boulevard, Venice, Florida 34293 (the “CUSTOMER”).

WHEREAS, the DISTRICT is a local unit of special-purpose government created and existing pursuant to Chapter 2004-456, *Laws of Florida*, as amended (the “Act”) for the purpose of planning, financing, constructing, operating and/or maintaining certain infrastructure and providing certain public services; and

WHEREAS, the DISTRICT has established its “Unit of Development No. 6” (hereinafter referred to as “Unit No. 6”) relative to its provision of irrigation services to certain of the lands within the DISTRICT; and

WHEREAS, the DISTRICT is the exclusive provider of irrigation water, consisting of treated effluent water as supplemented by ground and surface water (hereinafter, collectively the “Irrigation Quality Water”), to customers within Unit No. 6 via the DISTRICT’s central irrigation distribution system; and

WHEREAS, in accordance with the Act, the DISTRICT has approved 1) a variable operating/usage charge, 2) a fixed capital charge, and 3) a fixed well availability charge (collectively, the “Irrigation Fees”) relative to its provision of Irrigation Quality Water to customers, which rates, as of the date hereof, are more particularly identified on the attached **Exhibit A**, as may be amended and revised by the District from time to time without need for amendment to this Agreement; and

WHEREAS, after public hearing and in accordance with the Act, the DISTRICT has approved suspension and termination rules relative to its provision of Irrigation Quality Water to customers; and

WHEREAS, the CUSTOMER is the property owners’ association governing certain lands within Unit No. 6 within the DISTRICT developed as a residential community known as “Gran Paradiso” (the “Development”), as more particularly identified in the attached **Exhibit B**; and

WHEREAS, the CUSTOMER has a need to purchase Irrigation Quality Water from the DISTRICT for the purposes of irrigating grasses and other landscaping within the Development in the quantities set forth in the attached **Exhibit C**, and the DISTRICT is amenable to same; and

WHEREAS, the CUSTOMER and the DISTRICT have previously entered into that certain *Irrigation*

Quality Water Use Agreement, dated February 10, 2009 as amended from time to time (collectively, the "Prior Agreement"), which upon the Effective Date of this Agreement shall be rescinded and shall be of no further force and effect.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the DISTRICT and the CUSTOMER do hereby agree as follows:

1. **RECITALS.** The above recitals are true and correct to the best of the parties' knowledge and belief and are incorporated herein and made a part hereof by this reference.
2. **TERM OF THE AGREEMENT.** This Agreement shall commence as of its Effective Date and, unless otherwise terminated as otherwise authorized or provided in this Agreement, it shall run concurrently with the term of that certain *Irrigation Water Supply Agreement* recorded as Instrument No. 2018159052 in the Official Records of Sarasota County, Florida, as may be amended from time to time (the "District Water Supply Agreement").
3. **EASEMENTS.** The parties believe that the DISTRICT presently has all utility and access easements in place needed for its delivery, distribution, use, and monitoring of Irrigation Quality Water within the Development. However, if in the future, the DISTRICT determines in its sole and absolute discretion that additional utility and access easements are needed for such purpose, the parties agree to negotiate in good faith to enter into any such easements that may be necessary as determined by the DISTRICT. Any such easements shall be recorded in the Official Records of Sarasota County, Florida.
4. **RESERVATION OF IRRIGATION QUALITY WATER.** Subject to the terms and conditions as set forth in this Agreement, the DISTRICT shall deliver to the CUSTOMER at the Points of Delivery the quantities of Irrigation Quality Water in accordance with the volumes set forth in the attached **Exhibit C**, which is incorporated herein by this reference, which amounts have been calculated by utilizing AGMOD modeling software. Such volume is expressed in terms of gallons per day based on annual average daily flow ("AADF"), with the CUSTOMER's reserved Irrigation Quality Water for the Development to be hereinafter referred to as the "Reserved AADF." CUSTOMER'S Reserved AADF is exclusive to CUSTOMER and shall be used exclusively upon the property located within the Development. Reserved AADF may not be i) redirected or diverted, in whole or in part, outside of the Development, or ii) sold, assigned, or otherwise transferred in any way to third parties for use outside of the Development. The DISTRICT shall not be required to deliver more Irrigation Quality Water to the CUSTOMER than the amount for which the CUSTOMER's internal distributions system is lawfully permitted, constructed, and operationally designed to accommodate.
5. **DELIVERY OF IRRIGATION QUALITY WATER TO CUSTOMER; POINTS OF DELIVERY; METERS.**

- A. The DISTRICT has or will install appropriate meters at the Points of Delivery in order to quantify amounts utilized by the CUSTOMER for the purposes of calculating quarterly operating/usage charges allocable to the Development. The DISTRICT shall maintain complete and accurate records of its measurements and the quantity of the Irrigation Quality Water delivered to the Points of Delivery used to supply the CUSTOMER's Reserved AADF.
- B. The Point(s) of Delivery of Irrigation Quality Water from the DISTRICT to the

CUSTOMER is immediately downstream of the meter. The DISTRICT shall own, operate, and maintain the Irrigation Quality Water distribution system upstream of the Point(s) of Delivery. The CUSTOMER shall own, operate, and maintain all improvements downstream of the Point(s) of Delivery, including a pressure sustaining valve to ensure that the system pressure at the Points of Delivery is less than sixty (60) PSI, and it shall be the CUSTOMER's responsibility to construct all lines, meters, valves etc., necessary to extend water lines from existing DISTRICT facilities beyond the Points of Delivery.

- C. The DISTRICT shall be in possession and control of the CUSTOMER's Reserved AADF until it is delivered to the Points of Delivery.
- D. The DISTRICT'S obligation to make the Irrigation Quality Water available to CUSTOMER shall commence as of the Effective Date of this Agreement.

6. USE OF IRRIGATION QUALITY WATER: CUSTOMER'S IRRIGATION SYSTEM

- A. The CUSTOMER shall use Irrigation Quality Water delivered by the DISTRICT only for spray irrigation of its residential properties, common areas, amenities, and any other uses associated with the approved concept plan, provided that use of the Irrigation Quality Water shall be consistent with all local, state, and federal regulations, permits, and other applicable governmental regulations, and in such a manner as not to require a federal wastewater discharge permit.
- B. The Southwest Florida Water Management District ("SWFWMD") has issued water use permits to the District which entitle the District to coordinate the usage of a maximum permitted quantity of Irrigation Quality Water relative to Unit No. 6 (collectively, the "Permit"). In order to ensure compliance with the Permit, the CUSTOMER shall notify the DISTRICT in writing prior to, but in no event less than fourteen (14) calendar days, any anticipated irrigation needs of the CUSTOMER that are significantly in excess of normal monthly usage (i.e. landscaping grow-ins, etc.). Such notification is necessary to allow the District to notify SWFWMD of such anticipated excessive usage in order to maintain compliance with the Permit.
- C. The DISTRICT shall have the right, at any reasonable time, and without any prior notice to the CUSTOMER, to enter upon the property of the CUSTOMER to review and inspect the practices of the CUSTOMER with respect to requirements and conditions agreed to herein, including CUSTOMER's compliance with any and all local, state and federal regulatory agencies. The CUSTOMER shall have the option of having a representative accompany the DISTRICT personnel during any and all inspections. Such entry shall be permitted for any purpose, including but not limited to the purpose of meter reads, inspection of DISTRICT owned mains and appurtenances, water quality testing, or locating, operating and/or maintaining any irrigation wells located within the Development, which tasks shall be at the DISTRICT's sole cost and expense.
- D. The CUSTOMER shall comply with all Federal, State and local rules, regulations, orders, or permits of any kind relative to the use and distribution of the Irrigation

Quality Water. Among any other applicable other government regulations, the CUSTOMER shall specifically ensure and comply with the following:

- i. Appropriate warning signs shall be posted around the sites utilizing Irrigation Quality Water by the CUSTOMER to designate the nature of the water and its non-potability.
- ii. The CUSTOMER will also take all reasonable precautions, including signs and labeling, to clearly identify Irrigation Quality Water systems to prevent inadvertent human consumption.
- iii. The CUSTOMER shall ensure that no inter-connections are made between the Irrigation Quality Water system and other water systems.
- iv. The CUSTOMER shall not use the Irrigation Quality Water to fill swimming pools, hot tubs, or wading pools.
- v. The CUSTOMER shall conduct routine aquatic weed control and regular maintenance of access areas and pond embankments adjacent to retention lake(s), if such lakes are utilized for storage as permitted herein.
- vi. The CUSTOMER shall report overflows from any retention lake(s), if utilized for storage as permitted herein, to the DISTRICT within two hours of discovery.

7. MONITORING OF WATER QUALITY.

- A. Irrigation Quality Water delivered under this Agreement shall be treated to levels acceptable to meet the requirements of Chapter 62-610 Florida Administrative Code and Florida Department of Environmental Protection requirements.
- B. The DISTRICT shall monitor the quality of the Irrigation Quality Water used to supply the CUSTOMER's Reserved AADF in accordance with the frequency and criteria established by Federal, State, and local regulations. In furtherance thereof, the DISTRICT shall be responsible for the installation, operation, maintenance, examination, testing, and servicing of all equipment that it deems necessary in order to monitor the quality of the Irrigation Quality Water used to supply the CUSTOMER's Reserved AADF and the cost thereof.

8. PAYMENT OF RATES, FEES, AND CHARGES AND RELATED CONSIDERATIONS.

- A. The DISTRICT will invoice the CUSTOMER for the payment of the Irrigation Fees on a quarterly basis in accordance with the rates then in effect as determined by the DISTRICT in accordance with Section 15 herein. CUSTOMER shall remit payment to the DISTRICT within thirty (30) days after receipt of such an invoice.
- B. In the event that payment of the invoice is not made to the DISTRICT within such time

period, the DISTRICT shall provide the CUSTOMER with notice of its intent to suspend the provision of Irrigation Quality Water to the CUSTOMER for nonpayment of same. The notice shall specify that the CUSTOMER shall remit payment for the outstanding invoice within ten (10) calendar days of mailing of the notice prior to the DISTRICT's suspension of the provision of Irrigation Quality Water to such CUSTOMER (hereinafter, the "Notice Period"). In the event that the payment for the outstanding invoice is not remitted to the DISTRICT during the Notice Period, the DISTRICT may suspend the provision of Irrigation Water to such non-paying CUSTOMER during the time period of such delinquency.

- C. Notwithstanding any suspension of the provision of Irrigation Quality Water by the DISTRICT pursuant to this Section 8, the CUSTOMER shall continue to incur the fixed i) capital charges and ii) well availability charges during the time period of such suspension, regardless of whether Irrigation Quality Water is being provided to the CUSTOMER during such time period.

9. CONTINGENCIES; SERVICE DISRUPTIONS; EXCUSES FROM PERFORMANCE.

- A. CUSTOMER acknowledges that the DISTRICT is a distributor, and is not the producer or supplier, of the Irrigation Quality Water. The DISTRICT is therefore entirely dependent on the supply of the Irrigation Quality Water being provided by third party suppliers pursuant to the District Water Supply Agreement, which agreement provides for the interruption of supply under certain conditions. Therefore, the DISTRICT's obligations to CUSTOMER hereunder are expressly made subject to and conditioned upon the suppliers' availability and provision of the Irrigation Quality Water in amounts sufficient to provide the Reserved AADF to the CUSTOMER.
- B. The parties agree that the DISTRICT shall not be held responsible or liable, and it shall not be a breach by the DISTRICT under this Agreement, for its failure to deliver some or all of the Reserved AADF if a service disruption prevents the delivery of such Irrigation Quality Water (hereinafter, a "Service Disruption").

i. A Service Disruption shall include, but is not limited to, the following:

1. A lack of Irrigation Quality Water due to loss or lack of flow into the DISTRICT's distribution system, regardless of cause;
2. Unacceptable quality or contamination of the Irrigation Quality Water making it unsuitable for irrigation purposes;
3. Equipment or electrical failure in the DISTRICT's Irrigation Quality Water distribution system, including its storage and pumping facilities;
4. Temporary outages for scheduled maintenance purposes; or
5. An act of God or force majeure, including but not limited to war, terrorism, or national emergency; rationing, allocation, or other

governmental restrictions upon the use or availability of labor materials; civil insurrection, riot, racial or civil rights disorder or demonstration; strike or embargo; flood, tidal wave, fire, explosion, bomb detonation, nuclear fallout, windstorm, hurricane, earthquake, or other casualty, disaster, or catastrophe; unforeseeable failure or breakdown of wells, pumps, or other central or internal distribution system facilities; theft of Irrigation Quality Water; the enactment of any rules, ordinances, resolutions, statutes, regulations, orders or restrictions, requirements, acts or action of any government, district, commission or board, agency, agent, official or officer; or any rule or ruling, order, decree or judgment, restraining order or injunction of any court.

- ii. In the event of a Service Disruption, the DISTRICT shall promptly notify CUSTOMER stating the nature of the Service Disruption and its anticipated duration. The DISTRICT shall use commercial reasonable efforts to promptly remedy such Service Disruption in order to resume the flow of Irrigation Quality Water and the provision of the Reserved AADF to the Development.
- iii. If the Service Disruption is a result of the production wells i) producing no or virtually no groundwater or ii) producing no or virtually no groundwater of a quality reasonably suitable for irrigation purposes (collectively a "Listed Event"), the obligation of the CUSTOMER to remit the well availability fees to the DISTRICT pursuant to the terms of this Agreement will be suspended for the duration of the Listed Event. However, CUSTOMER shall still remain responsible for the i) variable operating/usage charges (to the extent that Irrigation Quality Water is still able to be provided to the Development during some time) and ii) fixed capital charges incurred throughout the duration of the Listed Event.

10. ADDITIONAL IRRIGATION QUALITY WATER ALLOCATION UNDER ADVERSE CONDITIONS. The parties recognize that adverse weather conditions or unforeseen circumstances may result in a need for Irrigation Quality Water greater than the Reserved AADF quantities set forth in **Exhibit C**. Accordingly, the CUSTOMER shall have the right to request to draw additional water, subject to availability of Irrigation Quality Water supplies. During any period in which more than one customer of the DISTRICT exercises the right to draw additional Irrigation Quality Water, the DISTRICT will furnish such quantities, if available, as the District's central irrigation distribution system is capable of handling. During those periods in which multiple customers request additional Irrigation Quality Water and DISTRICT is not able to provide the total amount requested to all customers, each customer shall receive said additional water, if any, on a basis as determined by DISTRICT in its sole discretion. Notwithstanding the foregoing, nothing herein shall allow or authorize the DISTRICT to exceed the permitted quantities available to the DISTRICT pursuant to its applicable SWFWMD Permit.

11. DISCLAIMER OF WARRANTIES.

- A. The DISTRICT disclaims all express warranties. The DISTRICT does not represent or warrant the Reserved AADF, water quality, or the suitability of the Irrigation Quality

Water provided by the DISTRICT to the CUSTOMER for irrigation purposes.

B. THE DISTRICT SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS OF THE IRRIGATION QUALITY WATER FOR A PARTICULAR PURPOSE.

12. TERMINATION.

- A. In the event that CUSTOMER violates any of the terms or provisions of this Agreement, (excluding the timely payment of rates, fees, or charges which shall be addressed as set forth in Section 8 herein), and CUSTOMER fails to cure same within thirty (30) days of written notice specifying the default, the DISTRICT shall have the right to terminate this Agreement. Notwithstanding the termination of this Agreement, CUSTOMER shall remain liable for the payment of any unpaid rates, fees, or charges due to the DISTRICT hereunder and the provisions of this paragraph shall survive the termination of this Agreement.
- B. In the event the DISTRICT's supply of Irrigation Quality Water pursuant to the District Water Supply Agreement is terminated or the provision of the Irrigation Quality Water in the amounts addressed pursuant to this Agreement is otherwise prohibited by operation of any statute or law or governmental permit, rule or order, the CUSTOMER or the DISTRICT may thereafter terminate this Agreement without penalty or liability by giving written notice to CUSTOMER.

13. ASSIGNMENT.

- A. No assignment of this Agreement shall be effective unless first approved in writing by all parties.
- B. The CUSTOMER'S right to sell, transfer or encumber the land within the Development as described in **Exhibit B** shall not be restricted by this Agreement, except that CUSTOMER must provide the DISTRICT with advance written notice of any proposed sale or transfer of the lands within the Development (other than with respect to sales or transfers of lands to end-users). Prior to such sale or transfer, the buyer or transferee shall execute and deliver to the DISTRICT, an acknowledgement and acceptance of the CUSTOMER'S commitment under the same terms and conditions of this Agreement as to that portion of the property within the Development so acquired.

14. INDEMNIFICATION.

- A. CUSTOMER agrees to indemnify, defend, and hold harmless the DISTRICT from any suits, claims, damages, or liability arising out of CUSTOMER's negligence or willful misconduct in connection with its duties under this Agreement. CUSTOMER shall also indemnify, defend, and hold harmless the DISTRICT from any violation of government regulations (including but not limited to the Permits) arising out of the CUSTOMER's failure to comply with same regarding its use or distribution of the Irrigation Quality Water.

B. To the extent permitted by Florida law and other laws, the DISTRICT agrees to indemnify, defend, and hold CUSTOMER harmless from all suits, claims, damages, or liability, arising out of the DISTRICT's negligence or willful misconduct in connection with its duties under this Agreement. Notwithstanding the foregoing, nothing herein will constitute or be construed as a waiver of the District's limitations on liability set forth in Section 768.28, *Florida Statutes*, and other applicable law

15. DISTRICT'S AUTHORITY TO SET RATES, FEES AND CHARGES. Nothing in this Agreement shall be construed as affecting in any way DISTRICT'S right and authority to set or revise rates, fees, and charges relative to its provision of Irrigation Quality Water, and its right and authority to regulate the delivery, storage, or use of same including, but not limited to, through the adoption of policies and rules as it deems to be in its best interests. The DISTRICT shall set or revise such rates, fees, and charges, and shall adopt such policies and rules, in accordance with the Act and Florida law. Upon the approval of rates, fees or charges or revisions thereto by the District, such rates, fees and charges shall automatically apply to the Development pursuant to this Agreement without the need for further amendment hereto.

16. DEFAULT. A default by any party under this Agreement shall entitle the other party to all remedies available at law or in equity, which may include but not be limited to the right of actual damages, injunctive relief and/or specific performance.

17. ATTORNEYS' FEES. In the event that either party seeks to enforce this Agreement by court proceedings or otherwise, then the substantially prevailing party shall be entitled to recover all fees and costs incurred, including reasonable attorneys' fees, paralegal fees, expert witness fees and costs for trial, alternative dispute resolution or appellate proceedings.

18. DISCLAIMER OF THIRD PARTY BENEFICIARIES. This Agreement is solely for the benefit of the formal parties hereto and no right or cause of action shall accrue upon or by reason hereof, to or the benefit of any third party not a formal party hereto.

19. AMENDMENT. No modification or amendment of this Agreement may be made except by written agreement between the parties.

20. APPLICABLE LAW; VENUE. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida. Venue shall be in Sarasota County, Florida.

21. NOTICES. All notices required or authorized under this Agreement shall be given in writing and shall be served by mail on the parties at the addresses below:

DISTRICT: West Villages Improvement District
c/o Special District Services, Inc.
2501-A Burns Road
Palm Beach Gardens, Florida 33410
Attn: Todd Wodraska

With a copy to: Hopping Green & Sams, P.A.
119 South Monroe Street, Suite 300
Tallahassee, Florida 32301

Attn: District Counsel

CUSTOMER: Gran Paradiso Property Owners Association, Inc.
20125 Galleria Boulevard
Venice, Florida 34293
Attn: General Manager

22. EXHIBITS AND ADDENDUMS. This Agreement incorporates the following exhibits and addendums which are specifically made part of this Agreement:

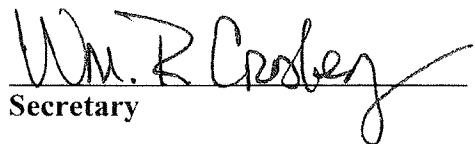
- Exhibit A:** Current Irrigation Quality Water Rate Schedule
- Exhibit B:** Map of the Development
- Exhibit C:** Customer's Reserved Average Annual Daily Flow


23. SEVERABILITY. If any part of this Agreement is found invalid or unenforceable by any court, 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 affected. To that end, this Agreement is declared to be severable.

24. COUNTERPARTS. This instrument may be executed in any number of counterparts, each of which, when executed and delivered, shall constitute an original, and such counterparts together shall constitute one and the same instrument. Signature and acknowledgment pages, if any, may be detached from the counterparts and attached to a single copy of this document to physically form one document.

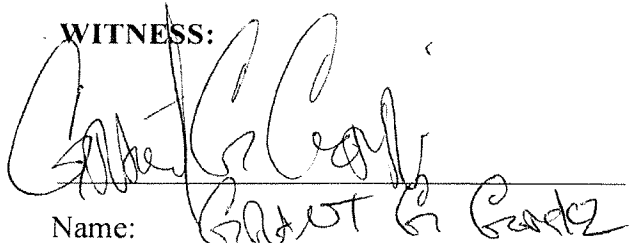
25. ENTIRE AGREEMENT; TERMINATION OF PRIOR AGREEMENT. This Agreement constitutes the entire agreement between the parties and has been entered into voluntarily and with independent advice and legal counsel, and has been executed by the authorized representative of each party on the date written herein. As of the Effective Date hereof, the Prior Agreement is hereby rescinded and shall be of no further force and effect.

ATTEST:


Secretary

**WEST VILLAGES
IMPROVEMENT DISTRICT**

Chairman, Board of Supervisors

WITNESS:


Name: Garret G. Gardner

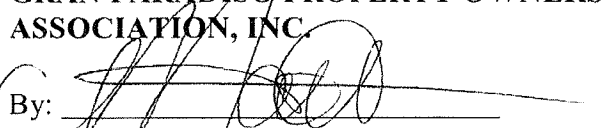
**GRAN PARADISO PROPERTY OWNERS
ASSOCIATION, INC.**
By: 
Name Printed: Matthew Koratich, President

EXHIBIT A

CURRENT IRRIGATION QUALITY WATER RATE SCHEDULE

All rates have been established in accordance with that certain *Irrigation Rate Analysis- Draft Report*, dated August 31, 2018.

Proposed Reclaimed Water Rates¹ Per 1 ERU

| <u>Rates</u> | <u>Tier 1³</u> | <u>Tier 2³</u> |
|---|----------------------------------|----------------------------------|
| <i>Variable Operating/ Usage Rate²</i> | \$0.70 | \$1.39 |
| <i>Fixed Capital Rate</i> | \$1.32 | \$1.32 |
| <i>Fixed Well Availability Rate</i> | \$3.96 | \$3.96 |

¹ Rates may be increased by the District at the beginning of each fiscal year by an amount not to exceed the greater of: i) 5.5% (i.e. the 10-year average of the United States CPI- Water and Sewerage Maintenance Series at the time of adoption of these rates), or ii) the year-over-year change in the United States CPI- Water & Sewerage Maintenance Series without the need for a further public hearing.

² Monthly operating/usage fees will ultimately be calculated per each 1,000 gallons utilized monthly.

³ Tier 2 operating rates will apply for those customers exceeding 1.5 times their monthly irrigation allocation (hereinafter the "Monthly Allocation") based on *AGMOD Demand Calculations*, as determined by the District Engineer and the Operations Manager. The Monthly Allocation shall be calculated by multiplying the *AGMOD Demand Calculations* (expressed in gallons per day) by the number of days in a given month. Monthly Allocations will fluctuate depending on peak /off peak periods, and will accommodate applicable grow-in practices for new construction, as determined to be appropriate by the District Engineer and Operations Manager. Tier 2 rates will only be applied to usage that exceeds the Monthly Allocation.

ERUs Per Customer Class

| <u>Product Type</u> | <u>Metric</u> | <u>ERU</u> |
|---|----------------------|-------------------|
| Single-Family ¹ Residential Unit | 1 unit | 1 |
| Multi-Family ² Residential Unit | 1 unit | .33 |
| Commercial Irrigable Acres ³ | .075 irrigable acres | 1 |
| Recreational Irrigable Acres ⁴ | .075 irrigable acres | 1 |

¹ A single-family unit is defined as a building containing not more than two (2) dwellings.

² A multi-family unit is defined as a building containing more than two (2) dwellings.

³ Irrigable acreage for commercial property is calculated based on 16% of the net developable area (i.e. gross land area less major roadway right-of-way and wetland areas) for each parcel.

⁴ Irrigable acreage for recreational property (i.e. golf courses, parks, athletic facilities, etc.) is calculated based on an estimate of the irrigable area for the property as conducted by a Professional Engineer.

EXHIBIT B

MAP OF THE DEVELOPMENT

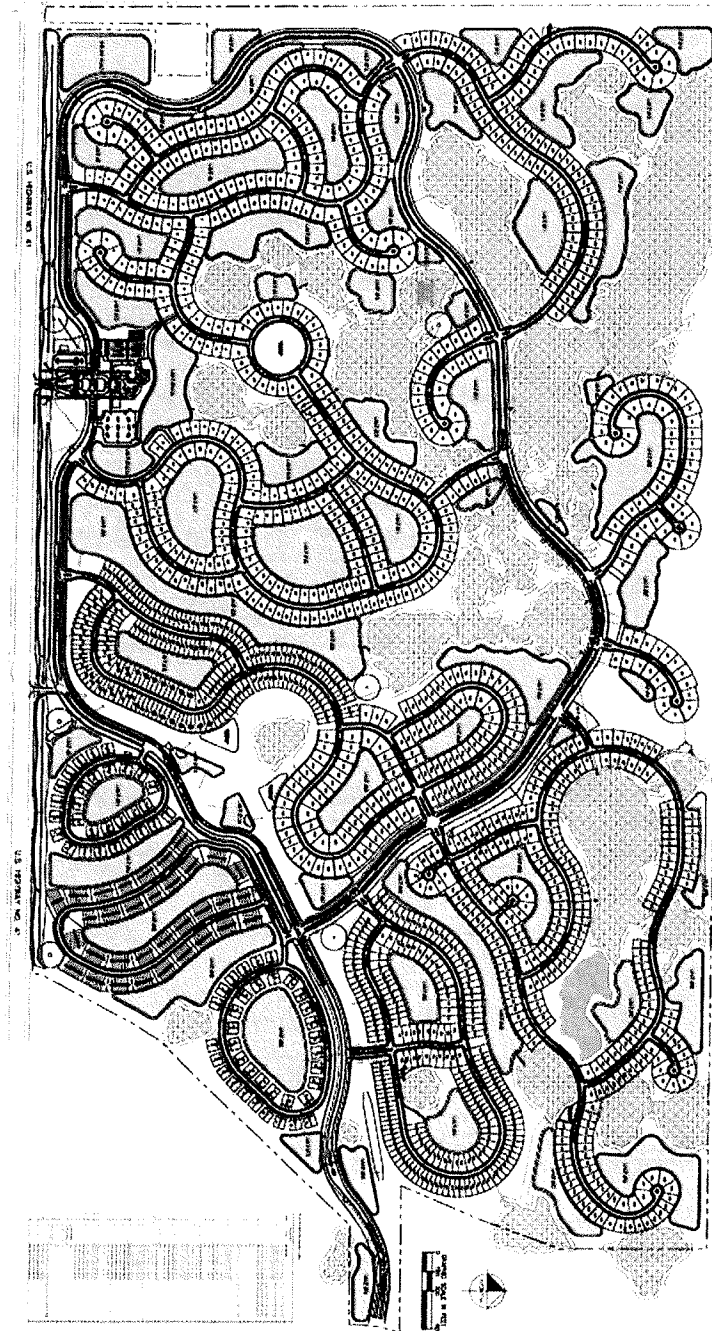


EXHIBIT C

CUSTOMER'S RESERVED AVERAGE ANNUAL DAILY FLOW¹

| Reserved Annual Average Daily Quantity for Lots, Roads and Common Areas | Reserved Peak Daily Quantity for Lots, Roads, and Common Areas |
|--|---|
| 593,200 | 1,879,900 |

¹ Expressed in terms of gallons per day.