

Project Name: Resort Villas at Incline Phase 1 Contract - W/O Number 42739295 water

42738695 ww

Project Manager: Susan Moynihan

Date: 1/23/08

WATER AND/OR SANITARY SEWER SERVICE AGREEMENT

THIS WATER AND/OR SANITARY SEWER SERVICE AGREEMENT ("Agreement") is made and offered as of the 7th day of January, 2008, (but shall be effective as of the acceptance date set forth on the signature page), between **Missouri-American Water Company**, a Missouri public utility corporation ("MAWC"), and MLM Properties Inc., a Corporation ("Developer"). (Expires unless accepted and returned within 30 days, Acceptance date must be entered on signature page. This expiration may be waived by written endorsement by Missouri-American Water Company.)

****AGREEMENT CONTINGENT UPON THE FOLLOWING: MISSOURI PUBLIC SERVICE COMMISSION APPROVAL OF THIS SPECIAL WATER/SANITARY SEWER AGREEMENT AND ALSO CONTINGENT UPON MISSOURI PUBLIC SERVICE COMMISSION APPROVAL OF THE INCLINE VILLAGE CERTIFICATED EXPANSION AREA SUBMITTED FOR APPROVAL ON JULY 11, 2007.**

PLEASE NOTE: THE EXISTING MISSOURI DEPARTMENT OF NATURAL RESOURCES(MDNR) PERMIT ALLOWS 78 SEWER CONNECTIONS. WHEN ADDITIONAL SEWER CONNECTIONS ARE REQUIRED AN UPDATED MDNR PERMIT WILL BE REQUIRED FOR ADDITIONAL SEWER CONNECTIONS.

Developers Name: MLM Properties Inc.

Address: #2 Willow Creek Court

St Charles, MO. 63304

Phone: 636-441-1197

E-mail: mlwm@sbcglobal.net

RECITALS:

WHEREAS, Developer has requested MAWC to furnish water and/or sanitary sewer services to a proposed development to be constructed by Developer, as more particularly described herein; and

WHEREAS, MAWC is willing to furnish water and/or sanitary sewer services subject to the terms of this Agreement and to applicable rates, rules, regulations and conditions of service in effect from time to time.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

Article 1

Construction of Water and Sewer Facilities

1.1 The Development. Developer has proposed the construction of a project known as **Resort Villas at Incline-Warren County Phase 1** (the "Main Installation") on certain lands as more specifically described below and on Exhibit A attached hereto and incorporated herein by this reference (collectively, the "Development").

- (a) Total Estimated Footage of Water Main covered by this Agreement:

1537 FT.

- (b) Total Estimated Footage of Sanitary Sewer Main covered by this Agreement: **2508 FT.**

- (c) Total number of Sanitary Sewer connections covered by this agreement:
30

1.2 Inspection and Construction of Water and/or Sanitary Sewer Facilities.

(a) Developer shall construct certain water and/or sanitary sewer facilities to provide adequate water and sewer services to all structures to be located in the Development and meet all requirements of any governing agency in accordance with a utility plan approved by MAWC and based on estimated quantities and prices as set forth on Exhibit B attached hereto and incorporated herein by this reference.

(b) Developer shall comply with the inspection and testing requirements of MAWC, which requirements shall be reasonable and shall not cause Developer any unwarranted material delays in the ordinary course of construction. MAWC will attempt to supply an inspector a minimum of three working days after notice of the planned commencement of work. AT TIMES WHEN THERE ARE MANY OTHER JOBS UNDERWAY AND NO INSPECTORS ARE IMMEDIATELY AVAILABLE, AN INSPECTOR WILL BE PROVIDED AS SOON AS IS REASONABLY POSSIBLE, AND WORK MAY NOT COMMENCE UNTIL THE INSPECTOR CAN BE PRESENT. Such notice will not be considered until this Agreement is fully executed. MAWC specifically reserves the right to withhold approval and to forbid connection of any of the facilities constructed pursuant to this Agreement to any part of MAWC's systems unless such facilities have been constructed in accordance with the plans and specifications approved by MAWC and are satisfactory to MAWC or its representatives upon inspection and testing by MAWC or its representatives.

(c) Developer understands that MAWC's inspectors will be at the job site for the sole purpose of evaluating compliance with this instrument and with MAWC's standards and specifications, and Developer shall assume all liability for the condition and safety of the job site prior to the acceptance of the Main Installation by MAWC. MAWC'S INSPECTOR WILL NOT DIRECT THE JOB. A FOREMAN OR OTHER ON-SITE MANAGER MUST BE FULLY FAMILIAR WITH PLANS AND SPECIFICATIONS BEFORE BEGINNING THE

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INSTALLATION, OR THE INSPECTOR MAY TERMINATE THE INSPECTION UNTIL COMPETENT, KNOWLEDGEABLE SUPERVISION IS PROVIDED.

(d) Developer and or Developers contractor/subcontractors shall at all times maintain good discipline and order at the site. Inappropriate behavior is forbidden.

(e) Storm water collection facilities shall not be connected to any sanitary sewer facilities which are installed pursuant to this Agreement. Furthermore, no connections shall be made to facilities to be installed pursuant to this Agreement or to any other facilities of MAWC that are deemed to be illegal connections by the Environmental Protection Agency, or any other agency having jurisdiction over such connection.

(f) Developer shall construct and install the Main Installation in accordance with the plans, specifications and drawing previously approved by MAWC. Any relocation required as a result of changes in grade, easements or other causes shall be paid for by the Developer. All phases of the construction of the Main Installation shall be open at all times to inspection by MAWC or its representatives. MAWC reserves the right, in its sole discretion, to require Developer to change contractors if the then current contractor breaches this Agreement, including without limitation, any violation of any MAWC installation specifications.

1.3 Increased Main Size. MAWC expressly reserves and shall have the right to require construction and installation of water and/or sanitary sewer main of a larger diameter than the Developer's service requirements, provided, however, that MAWC shall bear the cost difference, determined by MAWC, in accordance with its tariffs between the larger diameter main and the smaller diameter main ("Main Size Cost Differential"). The Main Size Cost Differential will be paid in accordance with Article 3. MAWC will credit to Developer, for potential refund under the provisions of Article 3, the difference between MAWC's and/or Developer's total actual costs for installing the respective sizes of pipe. Final determination for determining this credit will be at the sole discretion of MAWC. MAWC's present cost differentials and the differentials which, under this Agreement, MAWC will credit to Developer when Developer is required to and does install larger size water and/or sanitary sewer mains than those that MAWC determines are otherwise needed for this development will be the following:

THIS SECTION APPLICABLE NO (indicate "yes" or "no").

SIZE TO BE INSTALLED	SIZE OTHERWISE NECESSARY	COST PER FOOT DIFFERENTIAL	FOOTAGE ESTIMATE (SEE*)	TOTAL
12"	6"	\$ _____	_____	\$ _____
12"	8"	\$ _____	_____	\$ _____
8"	6"	\$ _____	_____	\$ _____
TOTAL				\$ _____

(*Actual footage to be used in final calculation of MAWC's credit to Developer).

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1.4 Additional Main Installation. MAWC expressly reserves and shall have the right to require construction and installation of additional pipe footage of water and/or sanitary sewer main and related facilities beyond the needs of the Development, provided, however, that MAWC shall bear the cost of the additional pipe and facilities, determined by MAWC, in accordance with its tariffs ("Additional Main Costs") The Additional Main Costs will be paid in accordance with Article 3. Final determination for determining this credit will be at the sole discretion of MAWC. In situations where MAWC requires additional pipe footage and/or related facilities beyond that which the Developer requires for the needs of its development, Developer may herewith commit to install the pipe and related facilities and MAWC will credit to Developer, for potential refund under the provisions of Article 3.

THIS SECTION APPLICABLE NO (indicate "yes" or "no").

<u>SIZE TO BE INSTALLED</u>	<u>FOOTAGE ESTIMATE*</u>	<u>COST PER FOOT</u>	<u>TOTAL</u>
6"	_____	\$ _____	\$ _____
8"	_____	\$ _____	\$ _____
12"	_____	\$ _____	\$ _____
___	_____	\$ _____	\$ _____
TOTAL			\$ _____

(*Actual footage to be used in final calculation of MAWC's Credit to Developer.)

1.5 Construction of Fire Hydrants. Developer shall install, at locations specified by appropriate fire authorities, fire hydrants in accordance with MAWC's standards and specifications. MAWC shall credit Developer the amount of \$1,800.00 per hydrant as specified on the MAWC approved Subdivision Water Main Layout which shall approximate MAWC's then cost of installing fire hydrants concurrently with new water main installations within the ST LOUIS COUNTY DISTRICT ONLY. Credits will be calculated as outlined in Article 3 (3.3) herein.

Article 2 Easements and Title

2.1 Grant of Easements. Developer hereby grants to MAWC perpetual easements within the Development and outside as may be reasonably necessary for ingress and egress and for the facilities to be constructed to provide water and/or sanitary sewer services in, to and through the Development. Developer agrees to prepare, obtain, execute and give to MAWC deeds of easement, which are acceptable to MAWC in MAWC's sole discretion for use and occupancy by MAWC before the Main Installation is accepted. All costs associated with easements for this Development shall be borne by the Developer. Easements need not be exclusive, but must be private property rights which specifically name MAWC as recipient, and

may not be conveyances that are designated "Public," "for public use forever" or that include similar wording that would result in the creation of a public right-of-way in which MAWC could only be a licensee. The Main Installation must be installed in easement(s) unless otherwise approved by MAWC. Developer must provide an instrument of conveyance to MAWC of all easements needed for the Main Installation that have not already been conveyed to MAWC by deed or recorded plat. The instrument of conveyance must be in a form and substance satisfactory to MAWC's sole discretion, free of all liens and encumbrances.

2.2 Conveyance of Title.

(a) All Developer's rights, title and interest to the water and/or sanitary sewer pipe, services, fire hydrants, valves and appurtenant facilities thereto within the Development and off-tract water facilities required to connect to MAWC's existing facilities, and (ii) all sewage lift stations, force mains, collection lines, discharge services, manholes and all appurtenant facilities thereto within the Development, and all sewage lines, lift stations, force mains and appurtenant facilities thereto constituting the off-tract sewer facilities necessary to connect the sanitary sewage system to be constructed within the Development to MAWC's or others existing facilities, in accordance with the plans and specifications approved by MAWC installed under the terms of this Agreement are herewith tendered to MAWC, its successor and assigns. MAWC will accept the Main Installation, release the mains for service connections, and so notify Developer in writing, if and when Developer demonstrates to MAWC's satisfaction, that all pipes are chemically and bacteriologically clean (WATER), and otherwise conform to all MAWC standards and specifications, and after all other preconditions herein specified have been met and all monies owed MAWC have been received

(b) All materials installed, facilities constructed and equipment provided by Developer in connection with construction of facilities under this Agreement and accepted by MAWC shall become the sole property of MAWC as installed, and full legal and equitable title thereto shall be then vested in MAWC, free and clear of any liens, without the requirement of any written document of transfer to MAWC. Developer agrees to execute and/or deliver promptly such documents as counsel for MAWC may request to evidence good and merchantable title to said facilities free and clear of all liens.

(c) Developer shall submit to MAWC (i) copies of paid invoices together with its corresponding lien waiver to MAWC for all engineering and other services, materials installed, construction performed, equipment provided and materials purchased for construction pursuant to this Agreement at the actual cost thereof, and (ii) the originals or complete and clear copies of all bills, statements, invoices, and all other evidences of expense received by Developer from subcontractors, vendors and others for all engineering and other services, materials installed, construction performed, equipment provided and materials purchased for construction pursuant to this Agreement together with corresponding lien waivers for these or other evidences of payment by Developer acceptable to MAWC and all relevant supporting data. If any lien waivers for the work described herein are not available to MAWC at the time of MAWC's acceptance of the Main Installation, an additional Letter of Credit of a form approved by MAWC,

may be issued to MAWC in an amount equal to the total dollars described on the associated invoices. (See Article 2 (2.3) herein).

(d) Upon completion of work, Developer shall remove all equipment belonging to it or used under its direction or by its contractor or its subcontractors, and shall dispose of all unused materials, rubbish, surplus excavated materials and debris in a manner reasonably acceptable to MAWC. Developer shall repair all roads, sidewalks, parkways and all else affected by its work, which repairs shall be made in accordance with the requirements of MAWC and governmental agencies having proper jurisdiction.

(e) It is specifically provided by and between the parties hereto that it is the express intention and agreement of the parties that the legal effect of this Agreement shall be that no mechanics' lien or claim may be filed or maintained by anyone including, but not limited to, any of the parties hereto, any contractor, subcontractor or materialman performing labor or furnishing materials in any way relative to any of the covenants and agreements of this Agreement. In furtherance of the foregoing provision, the parties agree that no contract or subcontract for either labor or materials performed or furnished in furtherance of this Agreement has been or shall be entered into prior to the expiration of ten (10) days from the date of the execution hereof.

2.3 Letter of Credit in Lieu of Lien Waivers.

(a) If Developer is unable to obtain lien waivers to assure MAWC that the Main Installation is free and clear of liens, but desires to provide MAWC with other assurances that such facilities will be lien free, Developer may provide to MAWC a Letter of Credit in a form satisfactory to MAWC, or a cash deposit, in the amount equal to the cost of the Main Installation to be transferred to MAWC for which lien waivers cannot be obtained.

1. Upon receipt of such Letter of Credit, MAWC will waive that portion of its contract with Developer that requires lien waivers prior to acceptance of Main Installation into its system.

2. The Letter of Credit will not expire until at least twelve months after acceptance of the Main Installation, but such Letter of Credit shall be released and returned to Developer (or the cash deposit shall be returned) upon Developer's request under either of the following conditions:

(i) As soon as the statutory time limit for the filing of liens has expired, if no liens have been filed against facilities transferred to MAWC by Developer, or

(ii) If all lien waivers have been acquired and provided to MAWC.

(b) Upon receipt of notice of a lien on facilities transferred to MAWC by Developer, MAWC shall notify Developer and provide Developer 30 days to obtain release of such lien. If such release is not obtained, MAWC will make demand against such Letter of Credit for the amount claimed in the lien. Thereupon MAWC will do the following:

1. Hold such amount until a lien release is obtained by Developer, and at that time refund the monies to Developer; or
2. Hold such amount until the statute of limitations for filing suit to enforce such lien has expired, and at that time refund the monies to Developer; or
3. Hold such amount until a suit is filed by the holder of the lien. At such time MAWC will provide Developer with notice of such suit and will either:
 - (i) If Developer decides to defend the suit and so notifies MAWC in writing, MAWC will hold the funds until a judgment is obtained and at that time provide the funds to the prevailing party; or
 - (ii) If Developer elects to not defend the suit, MAWC will permit a default judgment to be taken or will otherwise release the funds to the lien holder to free the property of the lien.

Article 3 Consideration

3.1 Developer's Consideration.

(a) In consideration of MAWC's commitment to provide water and/or sanitary sewer services to the Development, Developer agrees to pay MAWC a fee equal to: (the "Developer Fee") (1) the sum of **five percent (5%)** of the total actual cost of the construction and installation of the Main Installation to cover the cost of MAWC's internal engineering, inspection, administrative (including overhead), and legal cost and any costs MAWC incurs involved in making connections to the MAWC's existing facilities (including overhead) for the Main Installation. After the completion of the Main Installation, Developer will prepare and deliver to MAWC a final accounting of all actual costs and expenses associated with the construction and installation of the water and/or sanitary sewer facilities. Submitted actual costs will be separated into water and/or sanitary sewer facilities as set forth on Exhibit C attached hereto and incorporated herein by this reference. Costs will be shown on a per size basis. Simultaneously with the delivery of the final accounting, Developer shall calculate the Developer Fee due MAWC as a percentage of total actual costs of the Main Installation as outlined above.

(b) In addition to the Developer Fee, Developer shall grant those easements and convey the assets as set forth in Article 2.

3.2 MAWC's Consideration. In consideration of the Developer Fee and the granting of easements and conveyance of title under Article 2, MAWC shall provide necessary engineering, inspection, labor and administrative services during construction and, upon completion, shall provide water and/or sanitary sewer services to the Development.

3.3 Offsetting Credits. Upon a reasonable period of time (considering factors such as MAWC workload) after completion of the Main Installation, MAWC will prepare and deliver to Developer a final accounting of all credits associated with the Main Installation, including without limitation, MAWC's upsizing of any main and fire hydrant installation credits (ST LOUIS COUNTY DISTRICT ONLY). The calculation of the final accounting of credits shall be used in Developer's final accounting of the Developer Fee pursuant to Section 3.1. If the Developer Fee as finally determined is more than the offsetting credits calculated hereunder, Developer shall pay to MAWC the excess of the final Developer Fee over such offsetting credits. If the Developer Fee as finally determined is less than the offsetting credits, MAWC shall pay to Developer the excess of the offsetting credits over the final Developer Fee. Any amount due under this section shall be paid within thirty (30) days of MAWC's receipt of the final accounting, and shall be a condition precedent to MAWC's acceptance of the Main Installation.

3.4 Refunds. Subject to Developer's performance of all obligations hereunder, MAWC agrees to pay to Developer refunds in accordance with tariffs in effect from time to time and on file with the Missouri Public Service Commission. The maximum amount of said refunds shall be the Developer's documented actual costs of the Main Installation, excluding public fire hydrants (WATER), and the offsetting credits calculated in section 3.3 above. In no event shall the total amount of refunds to be paid by MAWC to Developer under this Agreement exceed the Developer's total actual costs. MAWC shall have the right to extend its mains and other facilities from and beyond the terminus of each extension made under this Agreement. Developer shall not be entitled to any refund on account of any such extension or the attachment of any services or hydrants to any such extension. If MAWC transfers any "existing" customer water service connections (taps) to the Main Installation described in this Agreement, such connections do not entitle the Developer to refunds or any other credits attributable to customer connections. Also, any Main Installations that are installed as "Replacements" (as determined by MAWC) do not entitle the Developer to refunds or any other credits attributable to customer connections.

3.5 Customer Fair Share/Special Customer Fair Share-*ST LOUIS COUNTY DISTRICT ONLY*. A "Customer Fair Share" or "Special Customer Fair Share" is an amount charged to new customers who connect a new-metered service line to a designated portion of the water mains installed by a Developer. The method for arriving at this charge and the limitations on customer fair share or special customer fair share are more specifically explained in MAWC's Rules and Regulations on file with the Public Service Commission. A copy of these rules is available from MAWC's New Business Department upon request. This refund is collected by MAWC and paid to the Developer or its assignee. The Developer herein must designate at the

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time of signing this Agreement, and becoming a Contract, if its Main Installation is to be subject to this charge, and if so, whether certain areas are to be excluded:

n/a If Yes, specify any areas which are to be excluded from Fair Share charges
(yes/no) (the subdivision which is to be served by this Main Extension is excluded from Fair Share Charges):

Article 4

Representations, Warranties and Covenants of Developer and MAWC

4.1 Developer hereby represents and warrants each of the following to MAWC:

(a) Developer agrees to prepare all plans for the required Main Installation, which shall be in accordance with MAWC specifications in respect to materials design, and its engineering and operating practices. To ensure conformity therewith, Developer shall employ a professional engineer registered in the State of Missouri, acceptable to MAWC, who shall make a preliminary study and drawing of the proposed Main Installation. Developer shall submit to MAWC such study, name of contractor, COMPLETED Department of Natural Resources (DNR) permit application (Sanitary Sewer installation ONLY AND for Water main installation in our Warren County and Cedar Hill districts), drawing, and its plans, together with two approved plats of the construction area which plats shall delineate the easements required for the Main Installation and show all proposed and existing utilities, sewers and easements. All plans, specifications and construction shall be in accordance with good utility practices, the utility plan for the Development as approved by MAWC, and in accordance with all rules, regulations, requirements and recommendations of regulatory agencies having or asserting proper jurisdiction over the Development. Prior to the commencement of engineering and construction by Developer, Developer shall procure the written approval of MAWC of all engineering firms, contractors and subcontractors it proposes to utilize to design and construct facilities hereunder. All of said plans and specifications shall have necessary approvals in writing of all agencies and the approval in writing of MAWC before any construction is commenced. Plans and specifications as approved by MAWC for water and/or sanitary sewer facilities to be constructed hereunder will be herein incorporated by reference and made part of this Agreement when so approved and as if set out in full herein.

(b) Developer shall obtain and furnish to MAWC all requisite permits, easements and approvals, including without limitation, a franchise agreement in a form acceptable to MAWC in its sole discretion if requested by any municipality in which the Development is within its borders, in advance of construction of Main Installation by all regulatory authority having jurisdiction over Main Installation. Developer shall provide all engineering, plans and specifications, materials, transportation, equipment, power, labor, supervision, testing, insurance, bonds, and all else required to construct and place into

satisfactory operation the following: (i) all water mains, services, valves, hydrants and all appurtenances thereto within the Development and off-tract water facilities required to connect to MAWC's existing facilities, and (ii) all sewage lift stations, force mains, collection lines, discharge services, manholes and all appurtenances thereto within the Development, and all sewage lines, lift station, force mains and appurtenances thereto constituting the off-tract sewer facilities necessary to connect the sanitary sewage system to be constructed within the Development to MAWC's or others existing facilities, in accordance with plans and specifications approved by MAWC.

(c) Developer shall permit MAWC or its representatives to inspect and approve all work during and after construction. Developer shall complete its construction of facilities for water and/or sanitary sewer service to each unit within the Development so as to enable MAWC to provide services when requested to do so. Developer or its successors in interest shall notify MAWC when water and/or sewer service or any component of the Main Installation has been completed prior to any backfilling thereof. MAWC or its representative shall inspect such service or component of the Main Installation and if satisfactory will authorize backfilling.

(d) Developer shall guarantee all construction, materials and workmanship provided under this Agreement for one year after Final Acceptance by MAWC. Final Acceptance is defined as the date when Developer has received written acceptance from MAWC, completed all construction required by this Agreement and corrected all punch list items requested by MAWC to the satisfaction of MAWC. Developer warrants that all construction, materials and workmanship provided under this Agreement will be completed substantially in accordance with the plans and specifications for said facilities as approved by MAWC. All areas affected by the Main Installation shall be restored to MAWC's reasonable satisfaction prior to the acceptance of the Main Installation. If weather conditions prohibit restoration of said affected areas, MAWC may require a cash deposit equal to MAWC's reasonable approximation of restoration costs. This cash deposit is refundable when the restoration is completed by the Developer to the reasonable satisfaction of MAWC. In the event the restoration is not performed in a timely manner as determined by MAWC, MAWC shall use the cash deposit to the extent necessary to restore the areas affected by the Main Installation construction. Any remaining deposit amounts will be refunded to Developer, but any additional amounts required will be billed to the Developer.

(e) Developer covenants and agrees any repairs to correct all defects and deficiencies in construction, materials and workmanship during the warranty period shall be performed by MAWC at Developer's expense. Developer, for a period of one (1) year after Final Acceptance by MAWC, shall (i) do what is necessary to keep all hydrants at proper elevation, relative to surrounding grade; (ii) promptly pay for the repair of, all water main and sewer line breaks, hydrant damage, or any other damages to MAWC's water and/or sanitary sewage facilities and appurtenances thereto attributed directly or indirectly to construction by or for Developer, or any of its corporate affiliates or subcontractors; and (iii) promptly remove from manholes or sewer lines of MAWC at no cost to MAWC, or pay for the removal thereof by

others, all mud, debris or material of any nature accumulated therein. Inspection and approval of facilities by MAWC shall not waive any right of MAWC under this Agreement. Repairs other than to water mains, hydrants, sanitary sewer mains or appurtenances during the warranty period or for consequential damage shall be the responsibility of Developer but if said repairs, including any site restoration costs, are not made after due notice by MAWC, MAWC or MAWC's agents shall make said repairs at Developer's expense. All costs incurred by MAWC as a result of repairs to the Main Extension and any consequential damages, including but not limited to site restoration costs, that occur during said one year warranty period will be invoiced to the Applicant by MAWC. The Applicant agrees to pay said invoice within thirty (30) days of receipt of the invoice. Modifications to the water and/or sanitary sewage systems necessitated by changes in the plan of development by Developer (grading, alignment, etc.) shall be paid for by Developer.

(f) Any amounts due MAWC from Developer under this Agreement which Developer fails to pay after due notice or which may exceed the aforescribed Letter of Credit may be deducted from refunds due Developer at MAWC's option.

4.2 MAWC hereby represents each of the following to the Developer:

(a) MAWC shall review the preliminary drawing, plans, DNR permit application and plats, and shall notify Developer in writing of its approval thereof, subject to modifications, if any, which shall be set out in said notice.

(b) Upon MAWC's final approval of the drawing, plans, and plats, MAWC shall submit (DNR) application for sanitary sewer installation to the proper authority.

(c) Construction of the Main Installation shall not begin until MAWC has notified Developer, in writing, of its approval of the contractor, DNR permit approval, and the construction costs, and then only after the site on which they are to be installed has been graded to the extent specified by MAWC.

Article 5

Indemnification by Developer

5.1 Developer shall save and hold MAWC harmless from and against all suits or claims against MAWC that may be based upon any injury or alleged injury to any person or property that may occur, or that may be alleged to have occurred, in the course of the performance of this Agreement by Developer or by any subcontractor, whether such claims shall be claimed that the alleged injury was caused through a negligent act or omission of Developer or of any subcontractor, and Developer shall, at its own cost and expense, pay all charges of attorneys and all cost and other expenses arising therefrom, or incurred in connection therewith, and if any judgment shall be rendered against MAWC in any such action or actions, Developer shall, at its own cost and expense, satisfy and discharge the same. MAWC shall give Developer prompt notice of threat or institution of any such suit or claim. MAWC retains the right to approve the attorneys hired by Developer or to select its own attorneys, the charges for which shall be paid by Developer.

Article 6
Miscellaneous

6.1 Waiver. The failure of either party hereto to enforce any of the provisions of this Agreement or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision but the same shall, nevertheless, be and remain in full force and effect.

6.2 No Liability for Non-Sanitary Sewer. MAWC has no responsibility, liability or obligation of any kind whatsoever with respect to the discharge, control, collection, detention, drainage or transmission of storm water or other non-sanitary flows with respect to the Development and the design, construction and installation of any structure or facilities thereon. Developer shall save and hold harmless MAWC from and against all suits or claims against MAWC that may be based upon, or that may be alleged to arise from or be based upon, any requirements or non-conformity with any permit, rule or regulation of any governmental body having jurisdiction over the facility with respect to the discharge, control, collection, detention, drainage or transmission of storm water or other non-sanitary flows with respect to the Development and the design, construction and installation of any structure or facilities thereon. MAWC shall notify Developer in writing of any such suit or claim (or the threat thereof) promptly upon MAWC first having knowledge thereof and shall give Developer full authority, information and cooperation in connection with the defense of such suit or claim by Developer. MAWC retains the right to approve the attorneys hired by Developer or to select its own attorneys, the charges for which shall be paid by Developer.

6.3 Cooperation. Developer and MAWC will cooperate fully with each other in all matters relating to obtaining all approvals of all regulatory agencies required in order for MAWC to provide water and/or sanitary sewer service to the Development.

6.4 Assignment. Developer agrees that if it shall enter into a contract to sell the Development or a major portion thereof, such contract shall incorporate this Agreement and the obligations imposed hereunder on a successor developer. Neither this Agreement nor any of the rights, duties or obligations of the Developer hereunder may be transferred or assigned (by operation of law or otherwise) by the Developer except with the prior written approval of MAWC. MAWC shall have the right to assign all of its rights and obligations under this Agreement to any entity which succeeds to or acquires substantially all of MAWC's operations or assets covered by this Agreement. Any such assignment by MAWC shall relieve, release, and discharge MAWC from any further duty or responsibility under this Agreement.

6.5 Recording. MAWC may record this Agreement or a memorandum thereof in accordance with the laws of the State of Missouri.

6.6 Force Majeure. Neither party to this Agreement shall be liable to the other for failure, default or delay in performing any of its obligations hereunder, other than for payment of money obligations specified herein, in case such failure, default or delay in performing any of its

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obligations specified herein is caused by strikes or other labor problems, by forces of nature, unavoidable accident, fire, acts of the public enemy, interference by civil authorities, passage of laws, orders of the court, adoption of rules, ordinances, acts, failures to act, decisions or orders or regulations of any government or military body or agency, office or commission, delays in receipt of material, or any other cause, whether of similar nature, not within the control of the party affected and which, by the exercise of due diligence, such party is unable to prevent or overcome. Should any of the foregoing occur, the parties hereto agree to proceed with diligence to do what is reasonable and necessary so that each party may perform its obligations under this Agreement. MAWC shall not in any event incur any liability to Developer for consequential or other damages which may result from delays in initiating service or interruptions or other malfunctions of service. MAWC shall have no obligation to accept the main installation if any action, law suit, proceeding or cause of action is pending or threatened with respect to installation.

6.7 Notices: All notices, consents, requests, demands and other communications hereunder are to be in writing and are deemed to have been duly given, made or delivered: (i) when delivered in person, (ii) three (3) days after deposited in the United States mail, first class postage prepaid, (iii) in the case of telegraph or overnight courier services, one (1) business day after delivery to the telegraph company or overnight courier service with payment provided, or (iv) in the case of telex or telecopy or facsimile, when sent, verification received, in each case addressed as follows:

if to MAWC:

Attn: Engineering
727 Craig Road
St. Louis, MO 63141

with a copy to:

Attn: Regional General Counsel
727 Craig Road
St. Louis, MO 63141

if to Developer:

MLM Properties Inc.
#2 Willow Creek Court
St Charles, MO. 63304

or to such other address as any party hereto may designate by notice to the other parties in accordance with the terms of this Section.

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6.8 No Agency Relationship. It is understood that in the construction and installation of the Main Installation, Developer, its contractors and agents are independent contractors and are not acting as the agents or employees of MAWC and therefore shall not incur any costs or expenses on behalf of MAWC and that MAWC is not an agent of the Developer and shall not incur any costs or expenses on behalf of the Developer.

6.9 Entire Agreement. This Agreement sets forth the complete understanding between Developer and MAWC, and any amendments hereto to be effective must be in writing. Nothing in this Agreement, express or implied, is intended, or shall be construed, to confer upon or give to any person, firm or corporation (other than the parties hereto and their permitted assigns) any rights or remedies under or by reason of this Agreement, or any term, provision, condition, undertaking, warranty, representation, indemnity, covenant or agreement contained herein.

6.10 Regulatory Approval. This Agreement is subject to such approval of the Missouri Public Service Commission as may be required by law.

6.11 Governing Law. This Agreement shall be governed by the laws of the State of Missouri, without regard to conflict of laws rules.

6.12 Operating Pressure. The normal range of operating pressures in this proposed subdivision will be from 30 pounds per square inch (psi) to 54 psi, varying with ground elevation and MAWC operating requirements. If necessary, appropriate pressure reducing valves and pressure relief valves should be installed as part of the customer's plumbing to comply with the requirements of the applicable plumbing code and water using appliances installed in the premises.

If underground lawn sprinkler systems are to be installed as part of the customer's plumbing, appropriate pressure reducing valves and backflow preventers should be installed to comply with manufacturers' requirements, applicable plumbing codes, and State regulatory requirements.

6.13 Project Reconciliation. Upon Developer's submittal of all necessary items specified in this Agreement, reconciliation of this job will be completed in a reasonable amount of time based on MAWC's current workload.

6.14 This Agreement shall become a contract and the Date of Acceptance shall be the date the Agreement is returned to MAWC fully executed.

[Remainder of page intentionally left blank; signature page follows.]

Project Name: Resort Villas at Incline Phase 1 Contract - W/O Number 42739295 water

42738695 ww

Project Manager: Susan Moynihan

Date: 1/23/08

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of
the 11 day of FEB., 2008

MAWC

Developer

MISSOURI-AMERICAN-WATER COMPANY

[MLM PROPERTIES, INC.]

By: 

By: ML Mathis

Name: DAVE PRUITT

Name: MARK MATHIS

Title: CONSTR. MGR.

Title: Owner

Federal I.D. Number: 43 1878718

This Agreement is valid only if work is begun within 60 days from this date of acceptance, unless otherwise extended by mutual agreement of Developer and MAWC.

Signature Page

Project Name: Resort Villas at Incline Phase 1
Project Manager: Susan Moynihan

Contract - W/O Number
Date: 1/23/08

EXHIBIT A

Legal Description

Exhibit A

Project Name: Resort Villas at Incline Phase 1
Project Manager: Susan Moynihan

Contract - W/O Number
Date: 1/23/08

EXHIBIT B

Water Facilities

(ESTIMATED COST BREAKDOWN BY CONTRACTOR)

ITEM	QUANTITY	MATERIAL & LABOR COST
2" PVC PIPE & DI FITTINGS		
4" DI PIPE & FITTINGS		
4" PVC PIPE & DI FITTINGS		
6" DI PIPE & FITTINGS		
6" PVC PIPE & DI FITTINGS		
8" DI PIPE & FITTINGS		
8" PVC PIPE & DI FITTINGS		
12" DI PIPE & FITTINGS		
12" PVC PIPE & DI FITTINGS		
2" BALL VALVE & VALVE BOX		
4" GATE VALVE & VALVE BOX		

Exhibit B

Project Name: Resort Villas at Incline Phase 1
Project Manager: Susan Moynihan

Contract - W/O Number
Date: 1/23/08

6" GATE VALVE & VALVE BOX		
8" GATE VALVE & VALVE BOX		
12" GATE VALVE & VALVE BOX		
16" BUTTERFLY VALVE & VALVE BOX		
20" BUTTERFLY VALVE & VALVE BOX		
24" BUTTERFLY VALVE & VALVE BOX		
30" BUTTERFLY VALVE & VALVE BOX		
FLUSH HYDRANTS (FLUSH VALVES) & VALVE BOX		
FIRE HYDRANT		
FIRE HYDRANT VALVE & VALVE BOX		
FIRE HYDRANT 6" LEAD PIPE		

TOTALS

0

The final numbers may be different from the estimates stated here.

Exhibit B

Project Name: Resort Villas at Incline Phase 1
Project Manager: Susan Moynihan

Contract - W/O Number
Date: 1/23/08

EXHIBIT B

Sanitary Sewer Facilities

(ESTIMATED COST BREAKDOWN BY CONTRACTOR)

ITEM	QUANTITY	MATERIAL & LABOR COST
(Includes Labor and Materials for Mains, fittings and all related facilities on a per size basis)		

The final numbers may be different from the estimates stated here.

Exhibit B

Project Name: Resort Villas at Incline Phase 1
Project Manager: Susan Moynihan

Contract - W/O Number
Date: 1/23/08

EXHIBIT C

Water Facilities

(ACTUAL COST BREAKDOWN BY CONTRACTOR)

ITEM	QUANTITY	MATERIAL & LABOR COST
2" PVC PIPE & DI FITTINGS		
4" DI PIPE & FITTINGS		
4" PVC PIPE & DI FITTINGS		
6" DI PIPE & FITTINGS		
6" PVC PIPE & DI FITTINGS		
8" DI PIPE & FITTINGS		
8" PVC PIPE & DI FITTINGS		
12" DI PIPE & FITTINGS		
12" PVC PIPE & DI FITTINGS		
2" BALL VALVE & VALVE BOX		
4" GATE VALVE & VALVE BOX		

Exhibit C

Project Name: Resort Villas at Incline Phase 1
Project Manager: Susan Moynihan

Contract - W/O Number
Date: 1/23/08

6" GATE VALVE & VALVE BOX		
8" GATE VALVE & VALVE BOX		
12" GATE VALVE & VALVE BOX		
16" BUTTERFLY VALVE & VALVE BOX		
20" BUTTERFLY VALVE & VALVE BOX		
24" BUTTERFLY VALVE & VALVE BOX		
30" BUTTERFLY VALVE & VALVE BOX		
FLUSH HYDRANTS (FLUSH VALVES) & VALVE BOX		
FIRE HYDRANT		
FIRE HYDRANT VALVE & VALVE BOX		
FIRE HYDRANT 6" LEAD PIPE		

TOTALS

0

Exhibit C

Project Name: Resort Villas at Incline Phase 1
Project Manager: Susan Moynihan

Contract - W/O Number
Date: 1/23/08

EXHIBIT C

Sanitary Sewer Facilities

(ACTUAL COST BREAKDOWN BY CONTRACTOR)

ITEM	QUANTITY	MATERIAL & LABOR COST
(Includes Labor and Materials for Mains, fittings and all related facilities on a per size basis)		

Exhibit C

FAXED To 11/10/08
Sean

S & S Utility Contracting Co., Inc.

Sanitary & Storm Sewers and Water Mains

P.O. Box 218

O'Fallon, MO 63366

Office and Fax (636) 463-2441

Mobile (314) 220-5611



Date-Proposal

8-Jan-08

MLM PROPERTIES, INC.

P O BOX 884

O'FALLON, MO. 63366-0884

636-379-9864 Office

636-441-1197 Fax

314-280-5846 Mark Cell

ATTN: MR. MARK MATHES

The following is our proposal for construction of Sanitary and Storm Sewers and Water mains to service "RESORT VILLAS AT INCLINE", Phase 1:

SANITARY SEWERS:

Amount	Units	Description	Price	Cost
2509	Feet	8" PSM	\$ 11.75	\$ 29,480.75
1970	Feet	6" PSM	\$ 8.00	\$ 15,760.00
58	Each	8"x 6" Tees	\$ 45.00	\$ 2,610.00
58	Each	4" PSM Markers	\$ 13.00	\$ 754.00
2	Each	8" Clean Outs (10.72')	\$ 175.00	\$ 350.00
14	Each	Std. Snt. (48") Manholes (13.36')	\$ 1,500.00	\$ 21,000.00
4479	Feet	Jetting	\$ 1.50	\$ 6,718.50
2509	Feet	Pressure Testing	\$ 1.00	\$ 2,509.00
14	Each	Vacuum Test Sanitary Manholes	\$ 200.00	\$ 2,800.00
Total Amount Sanitary Sewers-Proposal				\$ 81,982.25

STORM SEWERS:

176	Feet	12" HDPE	\$ 14.00	\$ 2,464.00
333	Feet	15" HDPE	\$ 15.75	\$ 5,244.75
1	Each	12" Flrd End Set w/Cut Off Wall	\$ 550.00	\$ 550.00
1	Each	Rip Raps (15' x 20') W/GeoClth	\$ 2,400.00	\$ 2,400.00
1	Each	Rip Raps (15' x 45') W/GeoClth	\$ 5,400.00	\$ 5,400.00
3	Each	Standard Single Catchbasins (6.55')	\$ 1,200.00	\$ 3,600.00
1	Each	Standard Double Catchbasin (4.50')	\$ 1,625.00	\$ 1,625.00
1	Each	Standard Area Inlets (4.50')	\$ 1,050.00	\$ 1,050.00
509	Feet	Jetting	\$ 1.50	\$ 763.50
Total Amount Storm Sewers-Proposal				\$ 23,097.25

Sept.
~~Aug~~ 07
B.d.

WATER MAINS

1620 Feet 8" DR-14 C900 w/Wr & Tp	\$ 15.75	\$ 25,515.00	11.75 per ft.
1 Each 8"x8"x8" Wet Tap	\$ 1,900.00	\$ 1,900.00	1600
2 Each 8"x8"x8" MJ Tees w/Megalugs & Thrust Blks	\$ 375.00	\$ 750.00	200
17 Each 8" Bends w/Megalugs & Thrust Blks	\$ 350.00	\$ 5,950.00	225
1 Each 8" Cap	\$ 200.00	\$ 200.00	100
5 Each 8" MJ RW Gate Valves & Boxes	\$ 775.00	\$ 3,875.00	750
5 Each Fire Hydrants w/6" Valves & Boxes & Tees	\$ 2,100.00	\$ 10,500.00	
150 Feet Jetting	\$ 1.50	\$ 225.00	
Total Amount WaterMains-Proposal		\$ 48,915.00	

? Bacteria Tests

GRANULAR BACKFILL & PIPE BEDDING -- ESTIMATE ONLY

1900 Tons 1" Clean	\$ 12.00	\$ 22,800.00
2900 Tons 1" Minus	\$ 7.75	\$ 22,475.00
Total Amount Granular Backfill & Pipe Bedding- Proposal		\$ 45,275.00

Total Amt Sntry & Stm Sewers & Water Mains & GB /PB-Proposal	\$ 199,269.50
Total Amt Sntry & Stm Sewers & Water Mains Less GB /PB-Proposal	\$ 153,994.50
58 Lots Cost Per Lot - Proposal w/GB/PB	\$ 3,435.68
58 Lots Cost Per Lot - Proposal less GB/PB	\$ 2,655.08

Total Cost 199,269.50
 - Storm Sewer 23,097.25
 176,172.25 Total (Water + Waste Water)
 5%
 8,808.61 - Cost to MAWC