

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: February 6, 2007 ☒ Consent [] Regular
[] Workshop [] Public Hearing

Department:

Submitted By: Engineering & Public Works

Submitted For: Streetscape Section

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: An Amendment to the Financial Assistance Agreement (R2004-1409) with the Village of Royal Palm Beach (Village) for an extension of the completion date for improvements on the Florida Department of Transportation's State Road 7 from the south Village limit (approximately one mile south of Southern Boulevard) to Southern Boulevard.

Summary: The original Agreement provides for a reimbursement, in an amount not to exceed \$112,944, to the Village for the planned improvements on the Florida Department of Transportation's State Road 7 from the south Village limit (approximately one mile south of Southern Boulevard) to Southern Boulevard. This Amendment will extend the completion date from September 30, 2006 to September 30, 2007. The completion date of the improvements has been delayed due to the contractual completion date occurring after the agreement deadline.

District: 6 (ME)

Background and Justification: Funding under this Agreement, in an amount not to exceed a maximum of \$112,944, comes from funds already contributed to the County's Only Trees Irrigation and Sod (OTIS) Program by Home Depot (pursuant to County Zoning Resolution No. R2003-0098, Petition No. DOA 1977-048E). The Village has already executed this Amendment, and will be responsible for the perpetual maintenance of these improvements.

Attachments:

1. Location Sketch.
2. Amendment to Financial Assistance Agreements (2).
3. Financial Assistance Agreement of June 22, 2004 (R2004-1409).

Recommended by:


Division Director


11/29/06
Date

Approved By:


County Engineer

12/6/06
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2007	2008	2009	2010	2011
Capital Expenditures	\$ -0-	-0-	-0-	-0-	-0-
Operating Costs	-0-	-0-	-0-	-0-	-0-
External Revenues	-0-	-0-	-0-	-0-	-0-
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-
NET FISCAL IMPACT	\$ -0-	-0-	-0-	-0-	-0-

ADDITIONAL FTE

POSITIONS (Cumulative) _____

Is Item Included in Current Budget? Yes X No _____

Budget Acct No.: Fund 1200 Dept. 367 Unit G014 Object 8101
3500 367 G014 8101

B. Recommended Sources of Funds/Summary of Fiscal Impact:

Landscape Maintenance Fund
 Kimley-Horn/Western Plaza Home Depot

Transportation Improvement Fund
 Kimley-Horn/Western Plaza Home Depot

This item has no additional fiscal impact.

C. Departmental Fiscal Review: R. D. Ward 11/27/06

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

Jan Dink 12/12/06
 OFMB
 12/12/06
 12/11/06

D. S. Jacob 11/24/07
 Contract Dev. and Control

This Amendment is
 retroactive in effect.

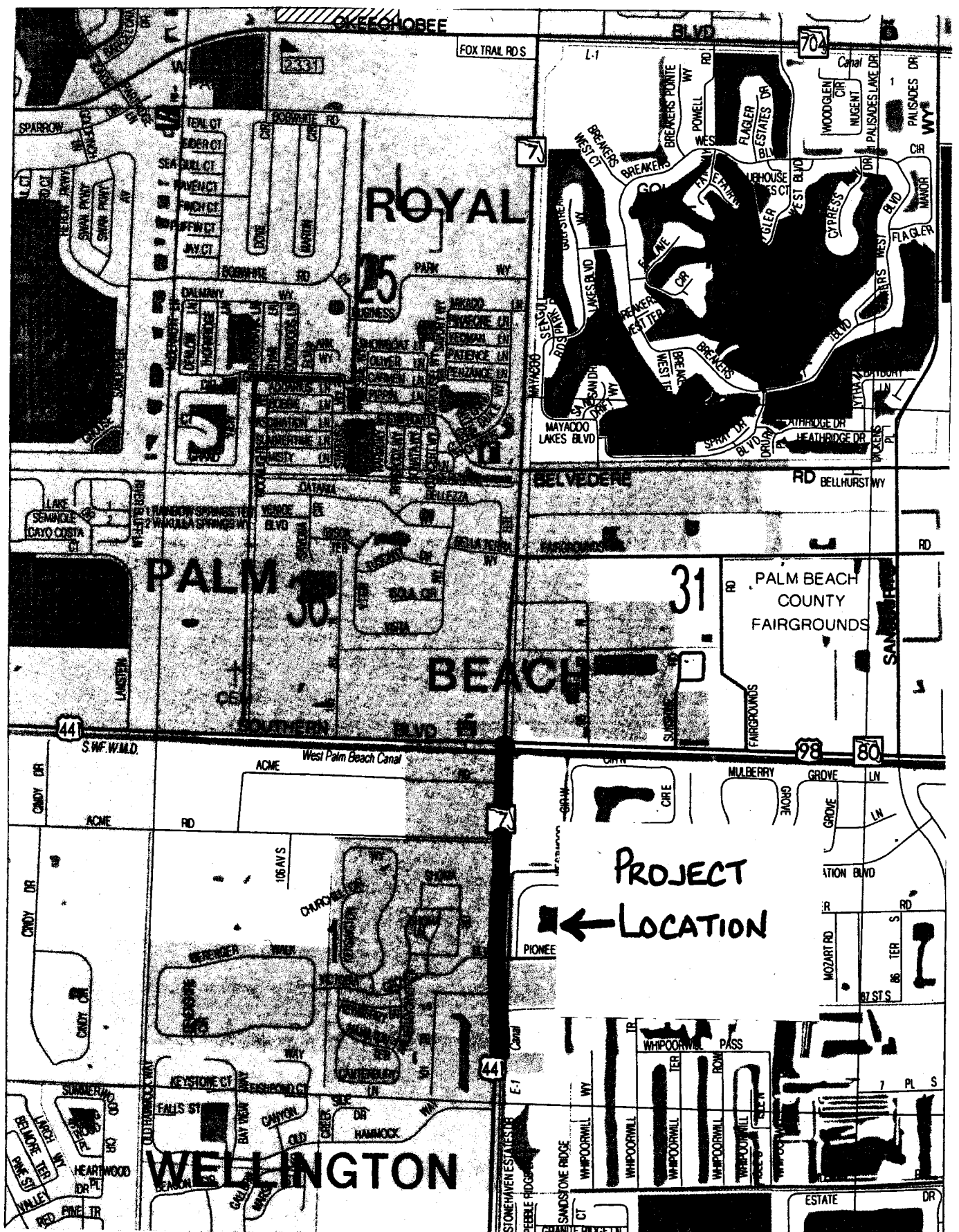
B. Approved as to Form and Legal Sufficiency:

Monica R. Pitts
 Assistant County Attorney

C. Other Department Review:

 Department Director

This summary is not to be used as a basis for payment.



LOCATION SKETCH

**AMENDMENT TO FINANCIAL ASSISTANCE AGREEMENT DATED JUNE 22, 2004
WITH THE VILLAGE OF ROYAL PALM BEACH FOR STATE ROAD 7
BEAUTIFICATION**

THIS AMENDMENT is made to the Financial Assistance Agreement (R2004-1409) dated June 22, 2004, by and between the VILLAGE OF ROYAL PALM BEACH, a municipal corporation of the State of Florida, hereinafter "VILLAGE", and BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, a political subdivision of the State of Florida, hereinafter "COUNTY".

WITNESSETH:

WHEREAS, on June 22, 2004, VILLAGE and COUNTY entered into a Financial Assistance Agreement providing for reimbursement funding of the cost of VILLAGE's planned IMPROVEMENTS on the Florida Department of Transportation's State Road 7 from the south VILLAGE limit (approximately one mile south of Southern Boulevard) to Southern Boulevard (hereinafter, "IMPROVEMENTS") in an amount not to exceed ONE-HUNDRED TWELVE THOUSAND NINE HUNDRED FORTY FOUR AND 00/100 DOLLARS (\$112,944.00); and

WHEREAS, that Agreement provided for a completion date of September 30, 2006; and

WHEREAS, the completion date for the IMPROVEMENTS will be exceeded due to the contractual completion date occurring after the agreement deadline; and

WHEREAS, COUNTY and VILLAGE desire that this amendment shall relate back to June 22, 2004, and the Contract continued without interruption nor lapse and its term extended for an additional one (1) year period until September 30, 2007; and

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements herein contained, the parties agree as follows:

- 1. The Financial Assistance Agreement dated June 22, 2004, by and between VILLAGE and COUNTY shall be continued, without interruption nor lapse in its term or effect, for an additional one (1) year period commencing on September 30, 2006, and expiring September 30, 2007. Accordingly, the Agreement is hereby amended to revise paragraph 10 as follows:**

AMENDMENT TO FINANCIAL ASSISTANCE AGREEMENT WITH THE VILLAGE OF ROYAL PALM BEACH FOR STATE ROAD 7
BEAUTIFICATION

- 1 10. All installation of these IMPROVEMENTS shall be completed and
2 final invoices submitted to the COUNTY no later than September
3 30, 2007, and COUNTY shall have no obligation to VILLAGE or
4 any other entity or person for any cost incurred thereafter unless
5 the time for completion is extended by modification of this
6 Agreement as provided herein.
- 7 2. It is the intent of the parties hereto that this AMENDMENT shall not
8 become binding until the date executed by the Board of County
9 Commissioners of Palm Beach County.
- 10 3. All other provisions of the Financial Assistance Agreement dated June 22,
11 2004, shall remain in full force and effect.

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**FINANCIAL ASSISTANCE AGREEMENT WITH VILLAGE OF ROYAL PALM BEACH
FOR STATE ROAD 7 - BEAUTIFICATION**

THIS INTER-LOCAL AGREEMENT is made and entered into this ____ day of JUN 22 2004, 2004, by and between the **VILLAGE OF ROYAL PALM BEACH**, a municipal corporation of the State of Florida, hereinafter "**VILLAGE**", and **PALM BEACH COUNTY**, a political subdivision of the State of Florida, hereinafter "**COUNTY**".

WITNESSETH:

WHEREAS, the **VILLAGE** plans to install landscaping and irrigation in the right of way the Florida Department of Transportation's State Road 7, from the south **VILLAGE** limit (approximately one mile south of Southern Boulevard) to Southern Boulevard (hereinafter, "**IMPROVEMENTS**"); and

WHEREAS, the **COUNTY** believes that these efforts by the **VILLAGE** serve a public purpose in the enhancement of the appearance of this thoroughfare and wishes to support the **VILLAGE's** efforts to install the **IMPROVEMENTS** by providing assistance in the form of reimbursement funding for the cost of the **IMPROVEMENTS** from funds contributed to the **COUNTY's** OTIS Program by Home Depot (pursuant to County Zoning Resolution No. R2003-0098, Petition No. DOA 1977-048E), THIRTY-SEVEN THOUSAND, FOUR HUNDRED FORTY AND 00/100 DOLLARS (\$37,440.00) of which was for installation, and SEVENTY-FIVE THOUSAND, FIVE HUNDRED FOUR AND 00/100 DOLLARS (\$75,504.00) of which was for long-term maintenance, in an amount not to exceed the total amount paid, ONE HUNDRED TWELVE THOUSAND NINE HUNDRED FORTY-FOUR AND 00/100 DOLLARS (\$112, 944.00); and

WHEREAS, after installation, the **VILLAGE** will be responsible for the perpetual maintenance of the **IMPROVEMENTS**; and

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements herein contained, the parties agree as follows:

1. The above recitals are true, correct and are incorporated herein.
2. The **COUNTY** agrees to provide to the **VILLAGE** reimbursement funding for documented costs in an amount not to exceed THIRTY-SEVEN THOUSAND, FOUR HUNDRED FORTY AND 00/100 DOLLARS (\$37,440.00) for the **VILLAGE's** **IMPROVEMENTS**.
3. The **COUNTY** agrees to provide the **VILLAGE** with additional funding in the amount of SEVENTY-FIVE THOUSAND, FIVE HUNDRED FOUR AND 00/100 DOLLARS (\$75,504.00) for the **VILLAGE's** ongoing maintenance of the **IMPROVEMENTS** upon the completion of the **IMPROVEMENTS**.

- 1 4. The **COUNTY** agrees to reimburse the **VILLAGE** the amount established in
2 paragraph 2 for costs (materials and labor) associated with installation of the
3 **IMPROVEMENTS**, upon the **VILLAGE's** submission of acceptable documentation
4 needed to substantiate their costs for the **IMPROVEMENTS**. The **COUNTY** also
5 agrees to provide the **VILLAGE** with funding in the amount established in paragraph
6 3 for their ongoing maintenance of the **IMPROVEMENTS** upon the **VILLAGE's**
7 completion of the **IMPROVEMENTS**. The **COUNTY** will use its best efforts to provide
8 said funds to the **VILLAGE** on a reimbursement basis within forty-five (45) days of
9 receipt of all information required in Paragraph 7, below.
- 10 5. The **COUNTY's** obligation is limited to its payment obligation and shall have no
11 obligation to any other person or entity.
- 12 6. The **VILLAGE** agrees to assume all responsibility for design, bidding, contract
13 preparation, and contract administration for the installation of the **IMPROVEMENTS**,
14 including payment(s) to contractor(s), pursuant to all applicable governmental laws
15 and regulations and will comply with all applicable governmental landscaping codes
16 and permitting requirements in the selection and installation of the
17 **IMPROVEMENTS**. The **VILLAGE** agrees to install the **IMPROVEMENTS**
18 substantially in accordance with the plans, specifications and costs as approved by
19 the **COUNTY**. Otherwise, the **COUNTY** will have the final determination of the
20 eligibility for reimbursement of any changes. Substantial variations from the
21 submitted plans shall require prior written approval from the County Engineer's
22 Office.
- 23 7. The **VILLAGE** will obtain or provide all labor and materials necessary for the
24 installation of the **IMPROVEMENTS**. The **COUNTY** shall have the final determination
25 of eligibility for reimbursement. The **VILLAGE** shall furnish the Manager, Streetscape
26 Section, of the **COUNTY's** Department of Engineering and Public Works with a
27 request for payment supported by the following:
 - 28 a. A statement from the **VILLAGE** Manager (or his designee) that the
29 **IMPROVEMENTS** have been inspected and were installed substantially in
30 accordance with the permitted plans for the **IMPROVEMENTS**, and;
 - 31 b. A Contract Payment Request Form and a Contractual Services Purchases
32 Schedule Form, attached hereto and incorporated herein as Exhibit "A"

(pages 1 and 2) which are required for each and every reimbursement requested by the **VILLAGE**. Said information shall list each invoice payable by the **VILLAGE** and shall include the vendor invoice number, invoice date, and the amount payable by the **VILLAGE**. The **VILLAGE** shall attach a copy of each vendor invoice paid by the **VILLAGE** along with a copy of the respective check and shall make reference thereof to the applicable item listed on the Contractual Services Purchases Schedule Form. Further, the Program Administrator and the Program Financial Officer for the **VILLAGE** shall also certify that each vendor invoice listed on the Contractual Services Purchases Schedule Form was paid by the **VILLAGE** as indicated.

8. **VILLAGE** shall maintain adequate records to justify all charges, expenses, and costs incurred in performing the **IMPROVEMENTS** for at least three (3) years after the completion of such **IMPROVEMENTS**. **COUNTY** shall have access to all books, records and documents as required in this Section for the purpose of inspection or audit during normal business hours.
9. The **VILLAGE** agrees to be responsible for the perpetual maintenance of the **IMPROVEMENTS** following the installation and shall be solely responsible for obtaining and complying with all necessary permits, approvals, and authorizations from any federal, state, regional, or **COUNTY** agency which are required for the subsequent maintenance of the **IMPROVEMENTS**.
10. All installation of these **IMPROVEMENTS** shall be completed and final invoices submitted to the **COUNTY** no later than September 30, 2006, and the **COUNTY** shall have no obligation to the **VILLAGE** or any other entity or person for any cost incurred thereafter unless the time for completion is extended by modification of this Agreement as provided herein.
11. The **VILLAGE** recognizes that it is an independent contractor, and not an agent or servant of the **COUNTY** or its Board of County Commissioners. In the event a claim or lawsuit is brought against the **COUNTY**, its officers, employees, servants or agents, relating to the **IMPROVEMENTS** or any item which is the responsibility of the **VILLAGE**, the **VILLAGE** hereby agrees, to the extent permitted by law, to indemnify, save and hold harmless the **COUNTY**, its officers, employees, servants or agents, and to defend said persons from any such claims, liabilities, causes of action and

1 judgments of any type whatsoever arising out of or relating to the existence of the
2 **IMPROVEMENTS** or the performance by the **VILLAGE** as may relate to this
3 Agreement. The **VILLAGE** agrees to pay all costs, attorney's fees and expenses
4 incurred by the **COUNTY**, its officers, employees, servants or agents in connection
5 with such claims, liabilities or suits except as may be incurred due to the negligence
6 of the **COUNTY**.

7 12. The **VILLAGE** shall, at all times during the term of this Agreement (the installation
8 and existence of the **IMPROVEMENTS**), maintain in force its status as an insured
9 municipal corporation.

10 13. As provided in F.S. 287.132-133, by entering into this Agreement or performing
11 any work in furtherance hereof, the **VILLAGE** certifies that its affiliates, suppliers,
12 sub-contractors, and consultants who perform work hereunder, have not been
13 placed on the convicted vendor list maintained by the State of Florida Department of
14 Management Services within 36 months immediately preceding the date hereof.
15 This notice is required by F.S. 287.133(3)(a).

16 14. The **VILLAGE** shall require each contractor engaged by the **VILLAGE** for work
17 associated with this Agreement to maintain:

- 18 a. Workers' Compensation coverage in accordance with Florida Statutes, and;
19 b. Commercial General Liability coverage, including vehicle coverage, in
20 combined single limits of not less than ONE MILLION AND 00/100
21 DOLLARS (\$1,000,000.00). The **COUNTY** shall be included in the coverage
22 as an additional insured.
23 c. A payment and performance bond for the total amount of the improvements
24 in accordance with Florida Statute 255.05.

25 15. In the event of termination, the **VILLAGE** shall not be relieved of liability to the
26 **COUNTY** for damages sustained by the **COUNTY** by virtue of any breach of the
27 contract by the **VILLAGE**; and the **COUNTY** may withhold any payment to the
28 **VILLAGE** for the purpose of set-off until such time as the exact amount of damages
29 due the **COUNTY** is determined. In the event the **VILLAGE** elects to discontinue its
30 maintenance obligation for the **IMPROVEMENTS** under this Agreement, it shall be
31 the obligation of the **VILLAGE** to restore, if necessary, the area of the
32 **IMPROVEMENTS** to a condition acceptable to the County Engineer, which shall be

in accordance with Federal, State and **COUNTY** standards for road construction and/or maintenance. In the event the **VILLAGE** fails to restore the area of the **IMPROVEMENTS** to a condition acceptable to the County Engineer, the **COUNTY** may undertake such restoration and the **VILLAGE** shall be liable for the costs of such restoration.

16. The **VILLAGE's** termination of this **AGREEMENT** shall result in all obligations of the **COUNTY** for funding contemplated herein to be canceled.

17. The **COUNTY** and the **VILLAGE** agree that no person shall, on the grounds of race, color, national origin, sexual orientation, religion or creed, sex, age, or handicap be discriminated against in performance of the Agreement.

18. In the event that any section, paragraph, sentence, clause, or provision hereof is held invalid by a court of competent jurisdiction, such holding shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

19. All notices required to be given under this Agreement shall be in writing, and deemed sufficient to each party when sent by United States Mail, postage prepaid, to the following:

AS TO THE COUNTY

Manager, Streetscape Section
Palm Beach County Department of
Engineering and Public Works
Post Office Box 21229
West Palm Beach, Florida 33416-1229

AS TO THE VILLAGE

Village Manager
Village of Royal Palm Beach
1050 Royal Palm Beach Boulevard
Royal Palm Beach, FL 33411

20. This Agreement shall be construed and governed by the laws of the State of Florida. Any and all legal action necessary to enforce this Agreement shall be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every other remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy shall preclude any other or further exercise thereof.

21. Any costs or expenses (including reasonable attorney's fees) associated with the enforcement of the terms and conditions of this Agreement shall be borne by the respective parties; provided, however, that this clause pertains only to the parties to the Agreement.
22. Except as expressly permitted herein to the contrary, no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and equality of dignity herewith.
23. Each party agrees to abide by all laws, orders, rules and regulations and the **VILLAGE** will comply with all applicable governmental landscaping codes in the maintenance and replacement of the **IMPROVEMENTS**.
24. The parties to this Agreement shall not be deemed to assume any liability for the negligent or wrongful acts, or omissions of the other party (or parties). Nothing contained herein shall be construed as a waiver, by any of the parties, of the liability limits established in Section 768.28, Florida Statutes.
25. The **VILLAGE** shall promptly notify the **COUNTY** of any lawsuit-related complaint, or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the performance of this Agreement.
26. The parties expressly covenant and agree that in the event any of the parties is in default of its obligations under this Agreement, the parties not in default shall provide to the defaulting party thirty (30) days written notice before exercising any of their rights.
27. The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial constraint, be construed more severely against one of the parties than the other.
28. This Agreement represents the entire understanding among the parties, and supersedes all other negotiations, representations, or agreements, either written or oral, relating to this Agreement.
29. A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County, Florida.
30. This Agreement shall take affect upon execution and the effective date shall be the date of execution.

