

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

=====  
Meeting Date: June 05, 2007 Consent  Regular   
Public Hearing   
Submitted By: Water Utilities Department  
Submitted For: Water Utilities Department  
=====

I. EXECUTIVE BRIEF


**Motion and Title:** Staff recommends motion to receive and file: One (1) Standard Development Renewal Agreement and one (1) Utility Concurrency Reservation Agreement complete with executed documents received during the months of April and May 2007.

Standard Development Renewal Agreement  
A) Wellington Commons, LLC 02-01053-R01

Utility Concurrency Reservation Agreement  
B) 6620 Lakeside Road, LLC 01-01191-000

**Summary:** The terms and conditions for Standard Development Agreements are outlined in the Water Utilities Department's Uniform Policies and Procedures Manual. The Board of County Commissioners delegated the authority to execute various types of Standard Development Agreements to the Department Director including potable water and wastewater agreements (R93-1619); reclaimed water agreements (R96-0228); and additional conditions for potable water, wastewater, and reclaimed water agreements (R2003-0539). After these agreements are executed by the developer and the Department, they must be recorded by the County Clerk's Office. This agenda item recommends the Board receive and file the agreements so they may be properly recorded. (Countywide) (SF) **Original documents can be viewed in Minutes.**

**Background and Justification:** N/A  
**Attachments:**  
Original documents

Recommended By:  5/11/07  
Department Director Date  
Approved By:  5/11/07  
Assistant County Administrator Date

SDRA # 02-01053-R01

**STANDARD POTABLE WATER & WASTEWATER DEVELOPMENT  
RENEWAL AGREEMENT**

**THIS AGREEMENT** is made and entered into this 18<sup>th</sup> day of APRIL, 2007 by and between Palm Beach County, a political subdivision of the State of Florida, hereinafter referred to as "Utility", and **Wellington Commons, LLC**, hereinafter referred to as "Property Owner."

**WITNESSETH:**

**WHEREAS**, the parties entered in to a Potable Water & Wastewater Development Agreement on **April 25, 2002**, hereinafter referred to as "Agreement" (R2002-1025); and

**WHEREAS**, the Agreement was recorded in the Official Records of Palm Beach County, Florida, at **Official Record Book 13688, Page 698**; and

**WHEREAS**, Utility agreed to reserve a certain number of equivalent residential connections ("ERCs") of potable water and wastewater system capacity for Property Owner for a term of five (5) years from the effective date of the Agreement; and

**WHEREAS**, the five (5) year term provided for in the Agreement has expired or will expire on **April 30, 2007** ("Capacity Expiration Date"); and

**WHEREAS**, the five (5) year term may be extended in accordance with the Uniform Policies and Procedures Manual ("UPAP"), as may be amended from time to time, which is incorporated herein by reference; and

**WHEREAS**, portions of the ERCs of potable water and portions of the ERCs of wastewater capacity provided for in the Agreement have not been used by Property Owner; and

**WHEREAS**, Property Owner wishes to extend the capacity reservation for a certain number of the unused ERCs provided in the Agreement in accordance with the terms and conditions of this Standard Potable Water and Wastewater Development Renewal Agreement ("Renewal Agreement").

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

**1. Recitals**

The recitals set forth above are true and correct and form a part of this Renewal Agreement. Terms not defined herein shall have the same meaning as ascribed to them in the UPAP as may be amended from time to time.

**2. Renewal of Capacity Reservation**

**A.** Utility agrees to extend the capacity reservation for the unused ERCs of potable water and the unused ERCs of wastewater system capacity for an additional five (5) years from the Capacity Expiration Date in accordance with the UPAP as may be amended from time to time. The number of unused ERCs being renewed and the Mandatory Agreement Payment (MAP) required upon submission of this Renewal Agreement is:

Potable Water: \$140.76 per ERC x	2.90	ERCs =	<u>\$408.20</u>
Wastewater: \$197.52 per ERC x	2.90	ERCs =	<u>\$572.81</u>
		<b>SUBTOTAL</b>	<u><b>\$981.01</b></u>
		<b>FRANCHISE FEE</b>	<u><b>\$0.00</b></u>
		<b>TOTAL MAP DUE</b>	<u><b>\$981.01</b></u>

B. Property Owner acknowledges and agrees any and all future capacity reservations for the Property shall be in accordance with the terms and conditions of the UPAP, as may be amended from time to time.

C. Property Owner acknowledges and agrees Utility shall not refund or reimburse the MAP payments made for unused ERCs upon expiration of this Renewal Agreement.

**3. Notifications**

All notices concerning this Renewal Agreement shall be in writing and transmitted by mail or courier and if to Property Owner, shall be mailed or delivered to Property Owner at:

**Attn: Joann Lawrence  
12401 Orange Dr Ste 100  
Davie, FL 33330-4340**

And if to Utility, shall be mailed to Palm Beach County Water Utilities Department, Contract Management Section, P.O. Box 16097, West Palm Beach, FL 33416-6097, or delivered to 8100 Forest Hill Blvd., West Palm Beach, FL 33413.

**4. Applicable Law**

Any litigation arising from or relating to this Renewal Agreement shall be governed by the laws of the State of Florida and venue in any such proceeding shall be exclusively in Palm Beach County, Florida.

**5. Severability**

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

**6. Enforcement Costs**

Any costs or expenses, including reasonable attorney's fees, associated with the enforcement of the terms or conditions of this Renewal Agreement shall be borne by the respective parties.

**7. Entirety of Agreement**

This Renewal Agreement represents the entire understanding between the parties, and supersedes all other negotiations, representations, or agreement, either written or oral, relating to this Renewal Agreement.

**8. Successors in Interest**

This Renewal Agreement shall be binding upon and shall inure to the benefit of Utility and Property Owner and their assigns and successors by merger, consolidation, conveyance or otherwise.

**9. Counterparts**

This Renewal Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original. All of which together shall constitute one and the same instrument.

**10. Filing**

Copy of this Renewal Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County, Florida.

**11. Modification of Agreement and Standard Renewal Agreement**

A. No additions, alterations, or variations from the terms of this Renewal Agreement shall be valid, nor can the provisions of this Renewal Agreement be waived by either party, unless such addition, alteration, variation, or waiver is expressed in writing and signed by the parties hereto.

B. Except as set forth herein, the Agreement remains unmodified and in full force and effect, and parties hereby ratify, confirm, and adopt the Agreement as amended hereby.

**12. Captions**

The captions and section designations set forth herein are for convenience only and shall have no substantive meaning.

**13. Effective Date**

The provisions of this Renewal Agreement shall become effective upon execution by the parties hereto.

**(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)**

IN WITNESS WHEREOF, the parties have caused this Renewal Agreement to be executed on the day and year first written above.

WITNESSES:

Nancy M May  
Signature  
**NANCY M. MAY**  
Print Name

Judy Provence  
Signature  
**JUDY PROVENCE**  
Print Name

PALM BEACH COUNTY

By: Lisha A. Pica  
Director, Water Utilities Department

WITNESSES:

Fred S. Metz  
Signature  
**FRED S. METZ**  
Print Name

[Signature]  
Signature  
**[Name]**  
Print Name

WELLINGTON COMMONS, LLC  
PROPERTY OWNER

By: [Signature]  
Title: HOWARD J. ZIMMERMAN  
**MANAGER**

(Seal)

NOTARY CERTIFICATE

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of MARCH, 2007, by HOWARD J. ZIMMERMAN who is personally known to me or who has produced \_\_\_\_\_ as identification.

My Commission Expires:



[Signature]  
Signature of Notary  
**JOANN LAWRENCE**  
Typed, Printed or Stamped Name of Notary

WATER UTILITIES DEPARTMENT APPROVAL:

By: [Signature]  
Director, Finance and Administration

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: [Signature]  
County Attorney

[Signature]

UCRA # 01-01191-000

UTILITY CONCURRENCY RESERVATION AGREEMENT

THIS UTILITY CONCURRENCY RESERVATION AGREEMENT is made and entered into this 1st day of MAY, 2007, by and between Palm Beach County, a political subdivision of the State of Florida, hereinafter referred to as "Utility" and 6620 LAKESIDE ROAD, LLC, a Florida limited liability company, hereinafter referred to as "Developer."

WITNESSETH:

WHEREAS, Developer plans to develop property located in Palm Beach County, Florida, as more fully described in Exhibit "A," attached hereto and made a part hereof and hereinafter referred to as "Property"; and

WHEREAS, Developer does not own all portions of Property, but must demonstrate reservation of:

Potable Water [ ] Wastewater [X] Reclaimed Water [ ]

capacity in Utility system ("Capacity") in order to obtain concurrency and proceed with the developmental approvals for the Property; and

WHEREAS, Utility warrants that Capacity, identified in terms of Equivalent Residential Connections (ERC) as defined in the Utility's Uniform Policies and Procedures Manual (UPAP), will be reserved for Developer for up to five (5) years upon execution of this Utility Concurrency Reservation Agreement ("UCRA") and payment of a Utility Concurrency Fee ("UCF"); and

WHEREAS, in the interest of public health and to encourage the use of central potable water, wastewater, and/or reclaimed water facilities, Utility desires to enter into this UCRA.

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

- 1. Developer certifies that he is currently under contract to purchase, or has an option to purchase, those portions of Property that he does not already own.
2. The Capacity reserved by this UCRA is temporary in nature and will expire in five (5) years of the date this UCRA is executed and the applicable UCF is paid.
3. This UCRA will not be recorded in the official Public Records against Property.
4. The UCF may be credited toward the Mandatory Agreement Payment (MAP) as defined in the UPAP and as required by Utility in order to obtain a Standard or Non-Standard Development Agreement (DA) on Property before the expiration of this UCRA. In the case of a rate increase after execution of this UCRA, additional MAP funds will be due at the time of entering into a DA. Once a DA has been entered into for Property, then this UCRA shall automatically expire.
5. Developer may assign his interests in and under this UCRA to a Successor Developer who meets the requirements in Section 1 above. Upon such assignment, (i) the assignee shall assume and be bound by all of the terms, conditions, duties, obligations and liabilities of and under this UCRA and become the "Successor Developer" hereunder; and (ii) Developer shall be released from all of the terms and conditions of this UCRA and have no further duty, obligation and/or liability hereunder. The assignment of this UCRA shall not extend the term of the original UCRA.

The number and type of ERCs reserved through, and the UCF due upon submission of, this UCRA are:

<b>Potable Water:</b>	<b>\$140.76 per ERC x</b>	<b>0.00 ERCs =</b>	<b>\$0.00</b>
<b>Wastewater:</b>	<b>\$197.52 per ERC x</b>	<b>16.25 ERCs =</b>	<b>\$3,209.70</b>
<b>Reclaimed Water:</b>	<b>\$0.00 per ERC x</b>	<b>0.00 ERCs =</b>	<b>\$0.00</b>
		<b>Franchise Fee</b>	<b>\$0.00</b>
		<b>UCF DUE</b>	<b><u>\$3,209.70</u></b>

6. UCF payments are not refundable, not reimbursable, and not assignable except as identified above or as allowable in UPAP.
7. This UCRA must be converted to a DA prior to final site plan approval by Palm Beach County's Development Review Committee.
8. The UCRA's Approval Date shall be used to determine the DA's five-year expiration date if the UCF payment is credited against the DA's MAP.
9. Developer agrees that Utility shall be the sole and exclusive provider of retail and/or wholesale Potable Water, Wastewater, and Reclaimed Water service to the Property and that Developer shall not seek to obtain retail and/or wholesale Potable Water, Wastewater, or Reclaimed Water service for the property from another public or private utility service provider.
10. All notices concerning this UCRA shall be in writing and transmitted by mail or courier, and if to Developer, shall be mailed or delivered to Developer at:

**2518 Aqua Vista Blvd  
Ft. Lauderdale, FL 33301-1549**

And if to Utility, shall be mailed Palm Beach County Water Utilities Department, Contract Management Section, P.O. Box 16097, West Palm Beach, FL 33416-6097, or delivered to 8100 Forest Hill Blvd., West Palm Beach, FL.

**(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)**

IN WITNESS WHEREOF, the parties, by and through their fully authorized agents, have hereunto set their hands and seals on the date first above written.

WITNESSES:

Nancy M May  
NANCY M. MAY

Type or Print Name

Anna M Daniels  
ANNA M. DANIELS

Type or Print Name

PALM BEACH COUNTY

By: Ruelle R. Pini  
County Administrator or Designee

WITNESSES:

Susan Taylor  
Susan Taylor

Type or Print Name

Lacey Ragnone  
Lacey Ragnone

Type or Print Name

DEVELOPER:

By: [Signature]  
Signature

Title

Daniel RET  
Typed or Printed Name

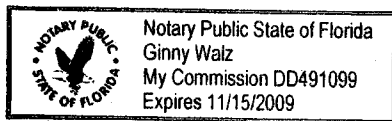
NOTARY CERTIFICATE

STATE OF FLORIDA  
COUNTY PALM BEACH

The foregoing instrument was acknowledged before me this 19TH day of APRIL, 2007 by DANIEL RET. He/she is personally known to me or has produced \_\_\_\_\_ as identification.

My Commission Expires: 11/15/2009

Signature of Notary [Signature]  
GINNY WALZ  
Typed, Printed, or Stamped Name of Notary



Notary Public  
Serial Number \_\_\_\_\_

WATER UTILITIES DEPARTMENT APPROVAL:

By: Debra M Vest  
Director, Finance and Administration  
PBC Water Utilities

(M)

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: [Signature]  
County Attorney



**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

**PARCEL 1;**

**THE EAST 274.80 FEET OF TRACT "Z" OF PLAT # 2 OF PALM BEACH COUNTY INDUSTRIAL PARK, AS RECORDED IN PLAT BOOK 28, PAGE 124, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, LESS THE NORTH 375 FEET THEREOF.**

**TOGETHER WITH AN EASEMENT FOR INGRESS AND EGRESS TO AND FROM LAKESIDE ROAD, WHICH EASEMENT WAS GRANTED IN WARRANTY DEED RECORDED IN OFFICIAL RECORDS BOOK 2839, PAGE 1694, OVER, ACROSS, AND UPON THE FOLLOWING DESCRIBED PROPERTY:**

**COMMENCING AT THE SOUTHWEST CORNER OF TRACT "Z" OF PLAT # 2 OF PALM BEACH COUNTY INDUSTRIAL PARK, AS RECORDED IN PLAT BOOK 28, PAGE 124, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, THENCE RUN EASTERLY ALONG THE SOUTH LINE OF SAID TRACT "Z", A DISTANCE OF 123.20 FEET; THENCE RUN NORTHERLY ALONG A LINE PARALLEL TO AND 274.80 FEET WESTERLY FROM THE EAST LINE OF SAID TRACT "Z", A DISTANCE OF 427.50 FEET TO THE POINT OF BEGINNING FOR THE HEREIN DESCRIBED 25 FOOT WIDE INGRESS, EGRESS EASEMENT, LYING 15 FEET NORTH AND 10.00 FEET SOUTH OF THE FOLLOWING DESCRIBED LINE; FROM THE POINT OF BEGINNING RUN WESTERLY ALONG THE CENTER LINE OF LAKESIDE ROAD, EXTENDED, A DISTANCE OF 105.74 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF SAID LAKESIDE DRIVE.**

**PARCEL 2:**

**THE NORTH 60 FEET OF LOT 14, AS MEASURED ALONG THE EASTERLY LINE THEREOF, PLAT OF FEATHER ROCK, ACCORDING TO THE PLAT THEREOF ON FILE IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT IN AND FOR PALM BEACH COUNTY, FLORIDA, RECORDED IN PLAT BOOK 44, PAGES 37 AND 38.**

OK  
04/24/07  
④