

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
External Revenues	<u>0</u>		<u>0</u>	<u>0</u>	<u>0</u>
Program Income (County)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
In-Kind Match County	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
NET FISCAL IMPACT	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

Budget Account No.: Fund _____ Agency _____ Org. _____ Object _____

Is Item Included in Current Budget? Yes _____ No X

Reporting Category N/A

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

This item has no fiscal impact.

C. Department Fiscal Review: Debra M. West

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:
No additional fiscal impact. All costs and fees under the original agreement are transferred to the new owner.

[Signature] 12-18-07
 OFMB
 [Stamp: WD 12/18/07] [Stamp: CW 12/17/07] [Stamp: J. J. [Signature] 12/20/07] Contract Development and Control 12/20/07

B. Legal Sufficiency:

This item complies with current County policies.

[Signature]
 Assistant County Attorney 12/26/07

C. Other Department Review:

 Department Director

**ASSIGNMENT AND ACCEPTANCE OF POTABLE WATER AND WASTEWATER
DEVELOPERS AGREEMENT**

THIS ASSIGNMENT, made and entered into this 20th day of September, 2007, by and between Devon Investment, Inc., whose address is 2328 10th Ave N #401 Lakewood, FL 33411 (hereinafter "Assignor") and Congress Pointe, Inc., whose address is 106 S. Military Trail, West Palm Beach, FL 33415 (hereinafter "Assignee.")

WHEREAS, On November 4, 2003, Assignor entered into a Potable Water and Wastewater Developers Agreement with Palm Beach County (hereinafter "Agreement", a copy of which is attached hereto and incorporated herein as Exhibit "A"); and

WHEREAS, Assignor has conveyed ownership of the real property covered by the Agreement to Assignee (hereinafter "Property"); and

WHEREAS, in accordance with the conveyance of the Property, Assignor wishes to assign the Agreement, and all terms, conditions, rights, privileges, duties and obligations of the Agreement, to Assignee; and

WHEREAS, Assignee wishes to accept the assignment of the Agreement and all terms, conditions, rights, privileges, duties and obligations of the Agreement.

NOW, THEREFORE, for and in consideration of these premises, the mutual undertakings and agreements herein contained and assumed, the parties hereto covenant and agree as follows:

1. The foregoing recitals are true and correct and are incorporated herein by specific reference.
2. Assignor hereby assigns the Agreement attached as Exhibit "A", including all terms, conditions, rights, privileges, duties and obligations of the Agreement, to Assignee.
3. Assignee accepts the assignment of the Agreement, and hereby acknowledges responsibility for all terms, conditions, rights, privileges, duties, and obligations of the Agreement, including, but not limited to, the assumption of certain deferred fees as contained in paragraphs 5 and 6 of the Agreement. Assignee further acknowledges that Palm Beach County has a lien on the Property covered under the Agreement, and that such lien shall remain attached to Property until payment of all fees set forth in the Agreement.
4. This Assignment shall be recorded in the Public Records of Palm Beach County.
5. This Assignment shall be effective upon the approval of all parties.

(THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK)

FROM SDA #: 02-01068-000
TO SDA#: 02-01068-001

IN WITNESS WHEREOF, the parties hereto have executed or have caused this Assignment, to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Agreement.

ASSIGNOR EXECUTION:

Charles Stein
ASSIGNOR (Please Print)

Corporation/Assoc. (If applicable)

Authorized Signature (Seal)

Secretary/Treasurer 561-533-0344
Title & Phone Number

WITNESSES

Denise Belzniek
[Signature]

NOTARY CERTIFICATE

STATE OF Florida
COUNTY OF Palm Beach



The foregoing Assignment was acknowledged before me this 6th day of November, 2007 by Charles Stein. He/she is personally known to me or has produced _____ as identification.

My Commission expires: 2-14-2010

Carol Ann Sardo
Signature of Notary
Carol Ann Sardo
Typed, Printed or Stamped Name of Notary

ASSIGNEE ACCEPTANCE:

Nelson Tiburco
ASSIGNEE (Please Print)

Corporation/Assoc. (If applicable)

Authorized Signature (Seal)

President (561) 436-7782
Title & Phone Number

WITNESSES

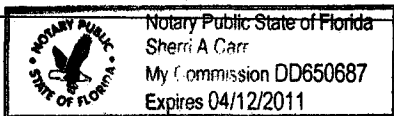
Denise Belzniek
[Signature]

NOTARY CERTIFICATE

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing Assignment was acknowledged before me this 19th day of NOVEMBER, 2007 by NELSON TIBURCO. He/she is personally known to me or has produced _____ as identification.

My Commission expires:



Sherril A. Carr
Signature of Notary
Sherril A. Carr
Typed, Printed or Stamped Name of Notary

CONSENTED TO BY PALM BEACH COUNTY:

ATTEST:

**SHARON R. BOCK, CLERK &
COMPTROLLER**

**PALM BEACH COUNTY, BY ITS
BOARD OF COUNTY COMMISSIONERS**

By: _____
Deputy Clerk

By: _____
Addie L. Greene, Chairperson

(SEAL)

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS AND
CONDITIONS**

By: _____
County Attorney

By:  _____
Director of Water Utilities



POTABLE WATER AND WASTEWATER DEVELOPERS AGREEMENT (DA)

THIS AGREEMENT made and entered into this _____ day of NOV 04 2003, 200___, by and between PALM BEACH COUNTY, a subdivision of the State of Florida, hereinafter referred to as "Utility," and DEVON INVESTMENT, INC., hereinafter referred to as "Property Owner."

WITNESSETH

WHEREAS, Property Owner owns property located in Palm Beach County, Florida, and as more fully described in Exhibit "A," attached hereto and made a part hereof and hereinafter referred to as "Property," whereupon Property Owner has developed the Property by erecting thereon non-residential improvements; and

WHEREAS, on February 11, 1986, Congress Pointe Associates, Ltd. (CPA) entered into a Water and Sewer Agreement (WSA) with the City of Lake Worth (City) and Utility for the Property Owner to develop the Property with temporary service from the City of Lake Worth until such time as Utility could provide potable water and wastewater service to the Property; and

WHEREAS, the WSA is binding on Property Owner, and inures to the benefit of, the City, Utility, and CPA and their respective assigns and successors by merger, consolidation, and conveyance; and

WHEREAS, Property Owner purchased the Property on December 14, 1989, from Southeast Bank For Savings, successor in title to CPA; and

WHEREAS, in accordance with Paragraph 8 of the WSA, Property Owner must execute a Developers Agreement with Utility, with this Agreement fulfilling this requirement; and

WHEREAS, Property Owner and Utility agree that a deferred payment plan for payment of certain fees and costs is in the best interests of both parties and should be addressed herein; and

WHEREAS, Property Owner has constructed potable water and wastewater facilities hereinafter referred to as "facilities"; and

WHEREAS, upon the conditions set forth herein, Utility desires to accept ownership of the completed potable water and wastewater facilities for operation and maintenance purposes; and

WHEREAS, Property Owner understands that this contract for service in no way entitles Property Owner to densities which are greater than those allowed under the density provisions of the Comprehensive Plan of Palm Beach County, or to densities or development rights as may otherwise be limited by the Board of County Commissioners; and

WHEREAS, in the interest of public health and to encourage the use of central water and wastewater facilities, Utility desires to enter into this Agreement.

NOW, THEREFORE, for and in consideration of these premises, the mutual undertakings and agreements herein contained and assumed, Property Owner and Utility hereby covenant and agree as follows:

1. The foregoing statements are true and correct.
2. The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning:

(a) "UPAP" - the Uniform Policies and Procedures Manual of the Palm Beach County Water Utilities Department as may be amended from time to time, which is incorporated herein by reference;

DA # 02-01068-000

ATTN: MARK FALLON, PFC WATER UTILITIES DEPT
CONTRACT MGMT, 2665 PALM BEACH RD, Bldg. 3
WEST PALM BEACH, FL 33406
RETURN VIA WILL CALL
CHARGE # 1023

(b) "Service" - the readiness and ability on the part of Utility to furnish potable water to and to collect wastewater from the Property;

(c) "Point of Service" - for potable water, the point where the meters of Utility are connected with pipes of the Property Owner as further defined in Chapter 1 of the UPAP. For wastewater, the inlet side of the underground valve located at the Property line where the Property Owner's force main is connected to the Utility's force main;

(d) "Service Initiation" - the date a potable water meter or wastewater connection is requested;

(e) "Guaranteed Revenue Fee" - the fee designed to recover the carrying costs of system capacity which has been or is being constructed in anticipation of future service requests. Carrying costs include fixed operating and renewal and replacement expenses necessary to maintain excess system capacity for future use. Guaranteed Revenue does not recover variable operating expenses.

3. Property Owner hereby grants and gives to Utility the exclusive right and privilege to construct, own, maintain, operate, and expand the potable water and wastewater facilities in, under, upon, over, and across the present and future streets, roads, easements, reserved utility sites and public places as provided and dedicated to public use in the record plats, or as provided for in agreement, dedications or grants made otherwise and independent of said record plats. Utility covenants that it will use due diligence in ascertaining all easement locations; however, should Utility install any of its facilities outside a dedicated easement area, Property Owner covenants and agrees that Utility will not be required to move or relocate any facilities lying outside a dedicated easement area as long as the facilities do not interfere with the then or proposed use of the area in which the facilities have been installed. Property Owner hereby further agrees that the foregoing grants include the necessary rights of ingress and egress to any part of the Property which Utility requests for the maintenance, operation, or expansion of the potable water and wastewater facilities; that in the event Utility is required or desires to install any of its potable water and wastewater facilities in lands within the Property lying outside the streets and easement areas described above, then Property Owner shall grant to Utility, without cost or expense to Utility, the necessary easement or easements for such installation; provided, all such installations by Utility shall be made in such a manner as not to interfere with the then primary use of such Property.

Property Owner shall obtain written approval from Utility prior to installing any structure or object, including, but not limited to, fences, gates, signs, trees, or poles within an easement area. In consideration of Utility's consent to an encroachment, Property Owner shall agree to indemnify and hold Utility harmless from and against all liabilities, damages, penalties, claims costs and expenses, including attorney's fees at all levels, which may be imposed upon or asserted against Utility as a result of or in any way connected to an encroachment approved by Utility. In the event the Utility determines that it is necessary to construct, maintain, repair, remove, or replace any of its facilities located under, over, or upon an easement, Property Owner shall immediately remove the encroachment from the easement upon the request of Utility at Property Owners' sole cost and expense. If Property Owner fails to remove the encroachment, Utility shall have the right to remove the encroachment from the easement. Property Owner shall pay all costs related to removing the encroachment from the easement incurred by the Utility.

Property Owner, as further consideration of this Agreement, and in order to effectuate the foregoing grants to Utility, hereby places the following covenant, as a covenant running with the land, upon the Property and thereby subjecting it to a reservation, condition, limitation, or restriction in favor of Utility, as follows:

Utility, or its successors, has the sole and exclusive right to provide all potable water and wastewater facilities and services to the Property described in Exhibit "A" and to any property to which potable water and wastewater service is actually rendered by Utility. All occupants of any residence or non-residential improvement erected or located on the Property, and all subsequent or future owners or purchasers of the Property, or any portion thereof, shall exclusively receive their potable water and wastewater service from the aforesaid Utility and shall pay for the same and shall abide by the terms and intent of this Agreement,

and the UPAP, for as long as the aforesaid Utility provides such services to the Property. Further, all occupants of any residence or non-residential improvement erected or located on the Property, and all subsequent or future owners or purchasers of the Property, or any portion thereof, agree, by occupying any premises on the Property or by recording any deed of conveyance with respect to the Property, that they will not construct or otherwise make available or use potable water and wastewater service from any source other than that provided by Utility.

Any water well or water source used solely for the purpose of supplying irrigation for the Property is excluded from this restriction unless the Property is required to utilize reclaimed water in accordance with the Palm Beach County Reclaimed Water Ordinance.

4. Upon the continued accomplishment of all the prerequisites contained in this Agreement to be performed by the Property Owner, Utility covenants and agrees that it will acknowledge the connection of the potable water distribution and wastewater collection facilities installed by Property Owner to the potable water and wastewater facilities of Utility in accordance with the terms and intent of this Agreement. Such connection shall be in accordance with rules, and regulations of the Health Department, the UPAP, and other governmental agencies having jurisdiction over the water supply and wastewater collection and disposal operation of the Utility.

5. Property Owner agrees to pay certain capital costs to reimburse Utility for expenditures necessary to extend potable water and wastewater lines to the Plaza in accordance with the WSA, as well as Guaranteed Revenue, Connection and Installation Fees (collectively known as Service Initiation Fees). Property Owner agrees that the costs and fees associated with the Property are as follows:

Line Extension Costs	\$76,169.63
Service Initiation Fees (SIF):	
1" Non-residential:	
Connection	\$17,400.00
Guaranteed Revenue	8,205.84
Installation	150.00
1 1/2" Non-residential:	
Connection	26,100.00
Guaranteed Revenue	12,308.76
Installation	400.00
Total SIF:	<u>64,564.60</u>
TOTAL DUE:	<u>\$140,734.23</u>

Utility and Property Owner agree that the \$140,734.23 will be amortized and billed utilizing a Deferred Payment Plan on the Property Owner's monthly billing for potable water and wastewater service for the indicated meters over a 20-year period at a 6 1/2% interest rate per annum. The monthly payments of principal and interest are \$1,049.28. Utility and Property Owner further agree that the outstanding balance of the Deferred Payment Plan is binding on Property Owner, and their respective assigns and successors by merger, consolidation, and conveyance. The outstanding balance of the Deferred Payment Plan is assumable by future owners of the Property.

6. Utility acknowledges that monthly Base Facility and Commodity Fees for the period from January 2000 through June 2002 totaling \$32,109.00 were not billed to Property Owner in a timely manner. Property Owner agrees to pay, and Utility agrees to bill, these fees over a 5-year period with interest applied at the rate of 0.00%. Both parties agree that these fees will be included with Property Owner's monthly billings and binding on Property Owner, and their respective assigns and successors by merger, consolidation, and conveyance. The outstanding balances of the Base Facility and Commodity Fees are assumable by future owners of the Property.

7. Property Owner transfers ownership and control, up to the Point of Service, of the on-site potable water distribution system to Utility through a Bill of Sale (Exhibit "B"). Property Owner also transfers ownership and control of the wastewater collection system beyond the Point of Service to Utility. Both parties agree that the Property Owner's private lift station and wastewater collection system will continue to be owned, operated, and

maintained by the Property Owner and is specifically excluded from any definition of wastewater facilities that have been transferred by Property Owner to Utility. The Property Owner shall be required to pay Guaranteed Revenue Fees, Connection Fees, Installation Fees, and other fees as set forth in the UPAP.

Utility acknowledges and Property Owner agrees that Property Owner has transferred title to all potable water distribution systems and wastewater collection systems installed by Property Owner's contractor pursuant to the provisions of this Agreement. Property Owner shall convey to Utility all easements and/or rights-of-way covering areas in which potable water and wastewater lines are installed by a recordable document in a form supplied by Utility. Said conveyance shall occur concurrent with delivery of this Agreement by Property Owner to Utility for approval and shall be included with this Agreement as an exhibit. All conveyance of easements or rights-of-way shall be accompanied by a paid title policy for the benefit of Utility in a minimum amount of:

- \$50.00 per linear foot of any granted utility easement (based on the centerline of the easement); and

Said title policy shall confirm the Grantor's rights to convey such easements or rights-of-way, and further, evidencing Utility's right to the continuous enjoyment of such easements or rights-of-way for those purposes set forth in this Agreement. The use of easement(s) granted by Property Owner may be used by other utilities as long as such is approved by the Utility.

8. The timely payment by Property Owner of all fees as set forth in Paragraph 5 of this Agreement shall be considered essential to the continued provision of existing potable water and wastewater service to the property by Utility. The transfer of ownership of the potable water distribution and wastewater collection system does not and will not result in Utility waiving or offsetting any of its fees, rules, or regulations. Property Owner shall not have any present or future rights, title, claim, or interest in and to the potable water and wastewater facilities transferred to or owned by Utility.

9. Upon submission of this Agreement, Property Owner, at his expense, agrees to furnish Utility with a copy of the recorded Warranty Deed for the purpose of establishing ownership of the Property.

10. Property Owner agrees with Utility that all potable water and wastewater facilities conveyed to Utility for use in connection with providing potable water and wastewater service to the Property, shall at all times remain in the complete and exclusive ownership of Utility, and any entity owning any part of the Property or any residence or building constructed or located thereon, shall not have the right, title, claim or interest in and to such facilities, or any part of them, for any purpose. In addition, Utility shall have the exclusive right and privilege to provide potable water and wastewater services to the Property and to the occupants of each residence or building constructed thereon.

11. Notwithstanding any provision in this Agreement, Utility may establish, revise, modify and enforce rules, regulations, and fees covering the provision of potable water and wastewater service to the Property. Such rules, regulations and fees are subject to the approval of the Palm Beach County Board of County Commissioners. Such rules, regulations, and fees shall be reasonable and subject to regulation as may be provided by law or contract. Fees charged to Property Owner or Customers located upon the Property shall be identical to fees charged for the same classification of service in the particular service area. All rules, regulations, and fees as set forth in the UPAP, shall be binding upon Property Owner, upon any other entity holding by, through, or under Property Owner, and upon any Customer of the potable water and wastewater service provided to the Property by Utility. Said rules and regulations include, but are not limited to, Service Initiation, oversizing of facilities, use of previously oversized facilities, or extension of facilities. Any fee or rate delinquent more than 120 days will automatically void this Developers Agreement.

12. The parties hereto further agree that the expense of construction, operation and maintenance of all improvements beyond the Point of Service shall be the sole cost and expense of the Property Owner or other than Utility.

13. The parties agree that the assignment of this Agreement by the Property Owner to a subsequent property owner shall occur at the time of sale, conveyance, or transfer of the Property, as evidenced by a duly executed written document. Property Owner shall supply Utility a copy of that document within thirty (30) days of said sale, conveyance, or transfer.

14. All notices provided for herein shall be in writing and transmitted by mail or by courier, and, if to Property Owner shall be mailed or delivered to Property Owner at:

2328 10TH AVE N STE 401, LAKE WORTH, FL 33461-2906;

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.

15. The rights, privileges, obligations, and covenants of Property Owner and Utility shall survive the completion of the work of Property Owner with respect to completing the potable water and wastewater facilities and services to any phased area and to the Property as a whole.

16. Unless Property Owner is requesting additional capacity for the Property described in Exhibit "A," this Agreement shall supersede, null, and void, all previous agreements or representations, either verbal or written, heretofore in effect between Property Owner and Utility, made with respect to the matter herein contained, and when duly executed, constitutes the entire agreement between the Property Owner and Utility. No additions, alterations, or variations of terms of this Agreement shall be valid, nor can provisions of this Agreement be waived by either party, unless such additions, alterations, variations, or waiver are expressed in writing and duly signed by the parties hereto. This Agreement shall be governed by the laws of the State of Florida and shall become effective upon execution by the parties hereto. The venue for actions arising out of this Agreement is in Palm Beach County, Florida.

17. Special Conditions:

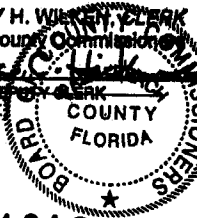
NONE

(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

POTABLE WATER AND WASTEWATER

IN WITNESS WHEREOF, Property Owner and Utility have executed or have caused this Agreement, with the named Exhibits attached, to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Agreement.

ATTEST: DOROTHY H. WILKINSON, CLERK
Board of County Commissioners
By: [Signature] PALM BEACH COUNTY, FLORIDA, BY
Clerk (or Deputy Clerk) ITS BOARD OF COUNTY
COMMISSIONERS



By: [Signature]
Karen T. Marcus, Chair NOV 04 2003

R2003 1810
APPROVED AS TO FORM AND
LEGAL SUFFICIENCY
By: [Signature]
County Attorney

APPROVED AS TO TERMS AND
CONDITIONS
By: [Signature]
Gary Desjardins,
Department Director or Designee

WITNESSES:
[Signature]
James R. Hurlburt
Typed or Printed Name
[Signature]
James R. Hurlburt Sr.
Typed or Printed Name
[Signature]
Lucia Imecillo
Typed or Printed Name

PROPERTY OWNER
By: [Signature]
Signature
Treasurer
Title
Charles Stein
Typed or Printed Name

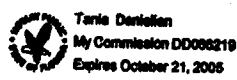
[Corporate Seal]

STATE OF FLORIDA
COUNTY PALM BEACH

NOTARY CERTIFICATE

The foregoing instrument was acknowledged before me this 05th day of November, 2003 by Charles Stein of Devon Investments Inc. of Florida corporation, on behalf of the corporation. He/she is personally known to me or has produced _____ as identification.

[Signature]
Tania Danielson
Signature of Notary
Tania Danielson
Typed, Printed, or Stamped Name
of Notary
Notary Public
Serial Number _____



POTABLE WATER AND WASTEWATER

**EXHIBIT "A"
LEGAL DESCRIPTION**

Parcel "A" of the Congress Point Plaza as platted in Plat Book 80, Page 124, Public Records
Palm Beach County, Florida.

This is not a certified copy

R2003 18

12/29/2003 14:38:12 20030794776
OR BK 16369 PG 0989
Palm Beach County, Florida

DA # 02-01068-000

ATTN: MARK FALLON, WPC WATER UTILITIES DEPT
CONTRACTS MANAGER, 100 W. W. BIRNBAUM BLVD.,
WEST PALM BEACH, FL 33411
RETURN VIA WILL CALL
CHARGE # 1023

POTABLE WATER AND WASTEWATER DEVELOPERS AGREEMENT (DA)

THIS AGREEMENT made and entered into this _____ day of NOV 04 2003, 200__, by and between PALM BEACH COUNTY, a subdivision of the State of Florida, hereinafter referred to as "Utility," and DEVON INVESTMENT, INC., hereinafter referred to as "Property Owner."

WITNESSETH

WHEREAS, Property Owner owns property located in Palm Beach County, Florida, and as more fully described in Exhibit "A," attached hereto and made a part hereof and hereinafter referred to as "Property," whereupon Property Owner has developed the Property by erecting thereon non-residential improvements; and

WHEREAS, on February 11, 1986, Congress Pointe Associates, Ltd. (CPA) entered into a Water And Sewer Agreement (WSA) with the City of Lake Worth (City) and Utility for the Property Owner to develop the Property with temporary service from the City of Lake Worth until such time as Utility could provide potable water and wastewater service to the Property; and

WHEREAS, the WSA is binding on Property Owner, and inures to the benefit of, the City, Utility, and CPA and their respective assigns and successors by merger, consolidation, and conveyance; and

WHEREAS, Property Owner purchased the Property on December 14, 1989, from Southeast Bank For Savings, successor in title to CPA; and

WHEREAS, in accordance with Paragraph 8 of the WSA, Property Owner must execute a Developers Agreement with Utility, with this Agreement fulfilling this requirement; and

WHEREAS, Property Owner and Utility agree that a deferred payment plan for payment of certain fees and costs is in the best interests of both parties and should be addressed herein; and

WHEREAS, Property Owner has constructed potable water and wastewater facilities hereinafter referred to as "facilities"; and

WHEREAS, upon the conditions set forth herein, Utility desires to accept ownership of the completed potable water and wastewater facilities for operation and maintenance purposes; and

WHEREAS, Property Owner understands that this contract for service in no way entitles Property Owner to densities which are greater than those allowed under the density provisions of the Comprehensive Plan of Palm Beach County, or to densities or development rights as may otherwise be limited by the Board of County Commissioners; and

WHEREAS, in the interest of public health and to encourage the use of central water and wastewater facilities, Utility desires to enter into this Agreement.

NOW, THEREFORE, for and in consideration of these premises, the mutual undertakings and agreements herein contained and assumed, Property Owner and Utility hereby covenant and agree as follows:

1. The foregoing statements are true and correct.
2. The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning:

(a) "UPAP" - the Uniform Policies and Procedures Manual of the Palm Beach County Water Utilities Department as may be amended from time to time, which is incorporated herein by reference;

(b) "Service" - the readiness and ability on the part of Utility to furnish potable water to and to collect wastewater from the Property;

(c) "Point of Service" - for potable water, the point where the meters of Utility are connected with pipes of the Property Owner as further defined in Chapter 1 of the UPAP. For wastewater, the inlet side of the underground valve located at the Property line where the Property Owner's force main is connected to the Utility's force main;

(d) "Service Initiation" - the date a potable water meter or wastewater connection is requested;

(e) "Guaranteed Revenue Fee" - the fee designed to recover the carrying costs of system capacity which has been or is being constructed in anticipation of future service requests. Carrying costs include fixed operating and renewal and replacement expenses necessary to maintain excess system capacity for future use. Guaranteed Revenue does not recover variable operating expenses.

3. Property Owner hereby grants and gives to Utility the exclusive right and privilege to construct, own, maintain, operate, and expand the potable water and wastewater facilities in, under, upon, over, and across the present and future streets, roads, easements, reserved utility sites and public places as provided and dedicated to public use in the record plats, or as provided for in agreement, dedications or grants made otherwise and independent of said record plats. Utility covenants that it will use due diligence in ascertaining all easement locations; however, should Utility install any of its facilities outside a dedicated easement area, Property Owner covenants and agrees that Utility will not be required to move or relocate any facilities lying outside a dedicated easement area as long as the facilities do not interfere with the then or proposed use of the area in which the facilities have been installed. Property Owner hereby further agrees that the foregoing grants include the necessary rights of ingress and egress to any part of the Property which Utility requests for the maintenance, operation, or expansion of the potable water and wastewater facilities; that in the event Utility is required or desires to install any of its potable water and wastewater facilities in lands within the Property lying outside the streets and easement areas described above, then Property Owner shall grant to Utility, without cost or expense to Utility, the necessary easement or easements for such installation; provided, all such installations by Utility shall be made in such a manner as not to interfere with the then primary use of such Property.

Property Owner shall obtain written approval from Utility prior to installing any structure or object, including, but not limited to, fences, gates, signs, trees, or poles within an easement area. In consideration of Utility's consent to an encroachment, Property Owner shall agree to indemnify and hold Utility harmless from and against all liabilities, damages, penalties, claims costs and expenses, including attorney's fees at all levels, which may be imposed upon or asserted against Utility as a result of or in any way connected to an encroachment approved by Utility. In the event the Utility determines that it is necessary to construct, maintain, repair, remove, or replace any of its facilities located under, over, or upon an easement, Property Owner shall immediately remove the encroachment from the easement upon the request of Utility at Property Owners' sole cost and expense. If Property Owner fails to remove the encroachment, Utility shall have the right to remove the encroachment from the easement. Property Owner shall pay all costs related to removing the encroachment from the easement incurred by the Utility.

Property Owner, as further consideration of this Agreement, and in order to effectuate the foregoing grants to Utility, hereby places the following covenant, as a covenant running with the land, upon the Property and thereby subjecting it to a reservation, condition, limitation, or restriction in favor of Utility, as follows:

Utility, or its successors, has the sole and exclusive right to provide all potable water and wastewater facilities and services to the Property described in Exhibit "A" and to any property to which potable water and wastewater service is actually rendered by Utility. All occupants of any residence or non-residential improvement erected or located on the Property, and all subsequent or future owners or purchasers of the Property, or any portion thereof, shall exclusively receive their potable water and wastewater service from the aforesaid Utility and shall pay for the same and shall abide by the terms and intent of this Agreement,

and the UPAP, for as long as the aforesaid Utility provides such services to the Property. Further, all occupants of any residence or non-residential improvement erected or located on the Property, and all subsequent or future owners or purchasers of the Property, or any portion thereof, agree, by occupying any premises on the Property or by recording any deed of conveyance with respect to the Property, that they will not construct or otherwise make available or use potable water and wastewater service from any source other than that provided by Utility.

Any water well or water source used solely for the purpose of supplying irrigation for the Property is excluded from this restriction unless the Property is required to utilize reclaimed water in accordance with the Palm Beach County Reclaimed Water Ordinance.

4. Upon the continued accomplishment of all the prerequisites contained in this Agreement to be performed by the Property Owner, Utility covenants and agrees that it will acknowledge the connection of the potable water distribution and wastewater collection facilities installed by Property Owner to the potable water and wastewater facilities of Utility in accordance with the terms and intent of this Agreement. Such connection shall be in accordance with rules, and regulations of the Health Department, the UPAP, and other governmental agencies having jurisdiction over the water supply and wastewater collection and disposal operation of the Utility.

5. Property Owner agrees to pay certain capital costs to reimburse Utility for expenditures necessary to extend potable water and wastewater lines to the Plaza in accordance with the WSA, as well as Guaranteed Revenue, Connection and Installation Fees (collectively known as Service Initiation Fees). Property Owner agrees that the costs and fees associated with the Property are as follows:

Line Extension Costs:		\$76,169.63
Service Initiation Fees (SIF):		
1" Non-residential:		
Connection	\$17,400.00	
Guaranteed Revenue	8,205.84	
Installation	150.00	
1 1/2" Non-residential:		
Connection	26,100.00	
Guaranteed Revenue	12,308.76	
Installation	400.00	
	<u>Total SIF:</u>	<u>64,564.60</u>
	TOTAL DUE:	<u>\$140,734.23</u>

Utility and Property Owner agree that the \$140,734.23 will be amortized and billed utilizing a Deferred Payment Plan on the Property Owner's monthly billing for potable water and wastewater service for the indicated meters over a 20-year period at a 6 1/2% interest rate per annum. The monthly payments of principal and interest are \$1,049.28. Utility and Property Owner further agree that the outstanding balance of the Deferred Payment Plan is binding on Property Owner, and their respective assigns and successors by merger, consolidation, and conveyance. The outstanding balance of the Deferred Payment Plan is assumable by future owners of the Property.

6. Utility acknowledges that monthly Base Facility and Commodity Fees for the period from January 2000 through June 2002 totaling \$32,109.00 were not billed to Property Owner in a timely manner. Property Owner agrees to pay, and Utility agrees to bill, these fees over a 5-year period with interest applied at the rate of 0.00%. Both parties agree that these fees will be included with Property Owner's monthly billings and binding on Property Owner, and their respective assigns and successors by merger, consolidation, and conveyance. The outstanding balances of the Base Facility and Commodity Fees are assumable by future owners of the Property.

7. Property Owner transfers ownership and control, up to the Point of Service, of the on-site potable water distribution system to Utility through a Bill of Sale (Exhibit "B"). Property Owner also transfers ownership and control of the wastewater collection system beyond the Point of Service to Utility. Both parties agree that the Property Owner's private lift station and wastewater collection system will continue to be owned, operated, and

maintained by the Property Owner and is specifically excluded from any definition of wastewater facilities that have been transferred by Property Owner to Utility. The Property Owner shall be required to pay Guaranteed Revenue Fees, Connection Fees, Installation Fees, and other fees as set forth in the UPAP.

Utility acknowledges and Property Owner agrees that Property Owner has transferred title to all potable water distribution systems and wastewater collection systems installed by Property Owner's contractor pursuant to the provisions of this Agreement. Property Owner shall convey to Utility all easements and/or rights-of-way covering areas in which potable water and wastewater lines are installed by a recordable document in a form supplied by Utility. Said conveyance shall occur concurrent with delivery of this Agreement by Property Owner to Utility for approval and shall be included with this Agreement as an exhibit. All conveyance of easements or rights-of-way shall be accompanied by a paid title policy for the benefit of Utility in a minimum amount of:

- \$50.00 per linear foot of any granted utility easement (based on the centerline of the easement); and

Said title policy shall confirm the Grantor's rights to convey such easements or rights-of-way, and further, evidencing Utility's right to the continuous enjoyment of such easements or rights-of-way for those purposes set forth in this Agreement. The use of easement(s) granted by Property Owner may be used by other utilities as long as such is approved by the Utility.

8. The timely payment by Property Owner of all fees as set forth in Paragraph 5 of this Agreement shall be considered essential to the continued provision of existing potable water and wastewater service to the property by Utility. The transfer of ownership of the potable water distribution and wastewater collection system does not and will not result in Utility waiving or offsetting any of its fees, rules, or regulations. Property Owner shall not have any present or future rights, title, claim, or interest in and to the potable water and wastewater facilities transferred to or owned by Utility.

9. Upon submission of this Agreement, Property Owner, at his expense, agrees to furnish Utility with a copy of the recorded Warranty Deed for the purpose of establishing ownership of the Property.

10. Property Owner agrees with Utility that all potable water and wastewater facilities conveyed to Utility for use in connection with providing potable water and wastewater service to the Property, shall at all times remain in the complete and exclusive ownership of Utility, and any entity owning any part of the Property or any residence or building constructed or located thereon, shall not have the right, title, claim or interest in and to such facilities, or any part of them, for any purpose. In addition, Utility shall have the exclusive right and privilege to provide potable water and wastewater services to the Property and to the occupants of each residence or building constructed thereon.

11. Notwithstanding any provision in this Agreement, Utility may establish, revise, modify and enforce rules, regulations, and fees covering the provision of potable water and wastewater service to the Property. Such rules, regulations and fees are subject to the approval of the Palm Beach County Board of County Commissioners. Such rules, regulations, and fees shall be reasonable and subject to regulation as may be provided by law or contract. Fees charged to Property Owner or Customers located upon the Property shall be identical to fees charged for the same classification of service in the particular service area. All rules, regulations, and fees as set forth in the UPAP, shall be binding upon Property Owner, upon any other entity holding by, through, or under Property Owner, and upon any Customer of the potable water and wastewater service provided to the Property by Utility. Said rules and regulations include, but are not limited to, Service Initiation, oversizing of facilities, use of previously oversized facilities, or extension of facilities. Any fee or rate delinquent more than 120 days will automatically void this Developers Agreement.

12. The parties hereto further agree that the expense of construction, operation and maintenance of all improvements beyond the Point of Service shall be the sole cost and expense of the Property Owner or other than Utility.

13. The parties agree that the assignment of this Agreement by the Property Owner to a subsequent property owner shall occur at the time of sale, conveyance, or transfer of the Property, as evidenced by a duly executed written document. Property Owner shall supply Utility a copy of that document within thirty (30) days of said sale, conveyance, or transfer.

14. All notices provided for herein shall be in writing and transmitted by mail or by courier, and, if to Property Owner shall be mailed or delivered to Property Owner at:

2328 10TH AVE N STE 401, LAKE WORTH, FL 33461-2906;

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.

15. The rights, privileges, obligations, and covenants of Property Owner and Utility shall survive the completion of the work of Property Owner with respect to completing the potable water and wastewater facilities and services to any phased area and to the Property as a whole.

16. Unless Property Owner is requesting additional capacity for the Property described in Exhibit "A," this Agreement shall supersede, null, and void, all previous agreements or representations, either verbal or written, heretofore in effect between Property Owner and Utility, made with respect to the matter herein contained, and when duly executed, constitutes the entire agreement between the Property Owner and Utility. No additions, alterations, or variations of terms of this Agreement shall be valid, nor can provisions of this Agreement be waived by either party, unless such additions, alterations, variations, or waiver are expressed in writing and duly signed by the parties hereto. This Agreement shall be governed by the laws of the State of Florida and shall become effective upon execution by the parties hereto. The venue for actions arising out of this Agreement is in Palm Beach County, Florida.

17. Special Conditions:

NONE

(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

POTABLE WATER AND WASTEWATER

IN WITNESS WHEREOF, Property Owner and Utility have executed or have caused this Agreement, with the named Exhibits attached, to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Agreement.

DOROTHY H. WILKINSON, CLERK
Board of County Commissioners
ATTEST: [Signature] PALM BEACH COUNTY, FLORIDA, BY
Clerk (or Deputy Clerk) COUNTY BOARD OF COUNTY COMMISSIONERS
By: [Signature]
Karen T. Marcus, Chair NOV 04 2003

2003 1810
APPROVED AS TO FORM AND
LEGAL SUFFICIENCY
By: [Signature]
County Attorney

APPROVED AS TO TERMS AND
CONDITIONS
By: [Signature]
Gary Deakin,
Department Director or Designee

WITNESSES:
[Signature]
James R. Hurlock Sr.
Typed or Printed Name
[Signature]
Lucia Emerilla
Typed or Printed Name

PROPERTY OWNER
By: [Signature]
Signature
Treasurer
Title
Charles Stein
Typed or Printed Name

[Corporate Seal]

STATE OF FLORIDA
COUNTY PALM BEACH

NOTARY CERTIFICATE

The foregoing instrument was acknowledged before me this 25th day of November 2003 by Charles Stein of Florida of Devon Investments Inc. corporation, on behalf of the corporation. He/she is personally known to me or has produced as identification.

[Signature]
Signature of Notary
Tania Danielian
Typed, Printed, or Stamped Name of Notary
Notary Public
Serial Number

Tania Danielian
My Commission DD000210
Expires October 21, 2005

POTABLE WATER AND WASTEWATER

**EXHIBIT "A"
LEGAL DESCRIPTION**

Parcel "A" of the Congress Point Plaza as platted in Plat Book 80, Page 124, Public Records
Palm Beach County, Florida.

This is not a certified copy